

## OSI Convenience Europe GmbH Terms and Conditions of Sale and Delivery

### § 1 General, Scope of Validity

Solely our Terms and Conditions of Sale and Delivery below (hereinafter referred to as “**Terms and Conditions of Delivery**”) apply for all offers, orders, contracts and deliveries, including those in the future, (hereinafter referred to as “**Deliveries**”) in business transactions with businesses, legal entities under public law or special assets under public law (hereinafter referred to as “**Buyer**”).

### § 2 Scope of Validity, Version, Exclusion of other Terms and Conditions

- (1) Solely the Terms and Conditions of Delivery in their respectively valid version apply for our Deliveries. On request, we will send a copy of them to the Buyer.
- (2) The Terms and Conditions of Sale also apply within the framework of ongoing business relationships between ourselves and the Buyer if they are not explicitly agreed again between the parties.
- (3) We hereby refute the validity of different general terms and conditions of business of the Buyer, or such that deviate from these General Terms and Conditions of Delivery, unless we have explicitly agreed to their validity in writing.

### § 3 Conclusion of Contract

- (1) The Buyer's order is a binding offer. We can accept the offer within two weeks after receipt. It is accepted either in writing or by delivery of the goods to the Buyer.
- (2) The scope of performance will be definitively determined by our written order confirmation and its appendices. Side agreements and changes to the content of the contract require our written confirmation.
- (3) Our offers are subject to change with regard to delivery quantity, delivery time and price. We reserve the right to prior sale. Agreed prices are in EURO and exclusive of VAT unless otherwise explicitly agreed.

### § 4 Delivery

- (1) Delivery is performed as quickly as possible unless specific delivery times are agreed. An agreed delivery period is not deemed to be a fixed date pursuant to Section 376 of the German Commercial Code (HGB - Handelsgesetzbuch). From the outset, the Buyer agrees to an appropriate subsequent delivery period of one week. We are entitled to provide the contractual performance in partial Deliveries, which are to be remunerated as independent services.
- (2) Delivery obligations are subject to the reservation of correct and timely self-delivery, unless the incorrect or delayed self-delivery is caused by us.

### § 5 Transfer of risk

- (1) Unless otherwise agreed in writing, the goods will be dispatched “*ex works*” at the cost and risk of the Buyer, even within the same place of dispatch. This applies even if the goods are transported in our vehicles.
- (2) On written request from the Buyer, we will take out insurance against theft, breakage, transport damage, fire damage, water damage or other damage for the respective delivery. The costs incurred as a result will be borne by the Buyer.
- (3) If the Buyer does not reimburse the cost of the means of transport, transport routes, packaging or insurance requested by it plus an overheads supplement of 15%, we are free to choose these performance features.

### § 6 Force Majeure

In the event of force majeure or similar events (e.g. war, strike, lock-out, sovereign regulations, general scarcity of raw materials, energy, operating materials or transport possibilities) or unforeseeable disruptions to performance for which we are not responsible and that make delivery by ourselves or our pre-suppliers fundamentally more difficult or commercially or de facto impossible, we have a right of withdrawal. Compensation claims on the part of the Buyer are excluded in this regard. If our costs for the contractual performance substantially increase as a result of events pursuant to sentence 1, we are entitled to offer to the Buyer an adjustment of the contract and, if the Buyer does not accept within an appropriate period of time, to withdraw from the contract.

### § 7 Notice of Defects, Warranty, Liability

- (1) The Buyer must examine the goods immediately after they are delivered and notify us of any obvious defects within three days of delivery and any concealed defects within three days of their discovery, by telephone, by fax or by e-mail. Otherwise, the goods are deemed to be accepted.
- (2) Information about dimensions, weights or other physical performance features, irrespective of whether they are included in prospectuses, technical drawings or other contractual documents, are merely information about approximation values and are not deemed to be an agreed property without any explicit additional assumption of guarantee by us.
- (3) Frozen goods that are the subject of a notice of defects must be stored at a temperature of at least minus 18°Celsius before they are inspected by us. In the event of return or forwarding of goods at our request, the Buyer must vouch for the observation of a seamless refrigeration chain (at least minus 18°Celsius) during proper transport.
- (4) In the event of defective goods and a timely notice of defects, we are obligated to eliminate the defect or to

- make a substitute delivery at our discretion (subsequent performance). (1)
- (5) If the subsequent performance fails, if it is impossible, if it is refused by us or if it cannot be reasonably expected of the Buyer, the Buyer can withdraw from the contract or reduce the purchase price. In the case of minor defects, the Buyer's right to withdraw is excluded.
- (6) As a fundamental rule, we do not give any guarantees in the legal sense. This does not affect manufacturer's guarantees explicitly assumed as such. (2)
- (7) No legal obligation can be derived from the partial or complete return of sold Goods and the acceptance of the return consignment by us. Goods are fundamentally accepted for reasons of goodwill.
- (8) Claims due to a defect in the object of purchase or due to a delay in performance become time-barred one year after delivery of the Goods, except in the event of fraud. Other claims (i.e. damage claims) become time-barred six month after the time Buyer took notice of the claim, but latest one year after occurrence of damage if the claim was not asserted in court before.
- (9) Unless otherwise determined below, further claims of the Buyer irrespective of the legal grounds are excluded. We are therefore not liable for damage that has not occurred on the subject of delivery itself. In particular, we are not liable for loss of earnings and damage to other assets of the Buyer. The above disclaimer of liability does not apply in the case of damage from injury to life, body or health or if the cause of the damage is due to wilful intent or gross negligence or breaches a fundamental obligation of the contract, i.e. an obligation whose fulfilment makes the proper fulfilment of the contract possible in the first place and in whose fulfilment the Buyer regularly trusts and may trust (cardinal obligation). It also does not apply if the Buyer is entitled to file for compensation due to non-performance, based on a guarantee. However, liability is restricted in this regard to the foreseeable damage typical of such contracts, with the exception of the cases in **para. 9, sentences 3 and 4**.
- (10) The provisions of **para. 9** above do not entail a change in the burden of proof to the Buyer's detriment.

## § 8 Further Liability

- (1) Liability on our part for compensation that goes beyond that in **Section 7** is excluded, without consideration of the legal nature of the claim filed.
- (2) Liability pursuant to the German Product Liability Act (Produkthaftungsgesetz) is not affected by the terms and conditions of sale. This provision also applies for other mandatory statutory regulations.
- (3) If the liability on our part is excluded or restricted, this also applies for the personal liability of our staff, employees, colleagues, representatives and vicarious agents.

## § 9 Retention of title

- (1) We reserve retention of title to the goods sold until the complete final payment of all receivables arising from the business relationship. The crediting of checks is not deemed to be a final payment until the right of reclaim customary in banking has expired. In the case of cheque and bill transactions, ownership is not transferred to the Buyer until the latter has fulfilled all liabilities arising from the cheques and/or bills. In the case of a running account, the retention of title applies until the first repayment of the receivables balance.
- (2) The Buyer is entitled to resell the goods under retention of title in ordinary business. If the goods under retention of title are sold by the Buyer on their own or together with other goods, the Buyer already assigns to us now the receivables resulting from the resale to the value of the goods under retention of title (end invoice amount, including VAT) with all ancillary rights and rankings. We hereby accept this assignment. The right to resell the goods under retention of title expires in the event of arrears in payment or insolvency on the part of the Buyer. In this case, the Buyer has to surrender the goods under retention of title to us on our first written request.
- (3) In the event of the goods under retention of title being processed or refined, we are entitled to ownership of the resulting new item in the ratio of the value of the goods under retention of title (end invoice amount including VAT) to the value of the other processed goods. **Paragraphs 2, 4 and 6** apply accordingly for the fractional right to the new item created by processing to which we are entitled.
- (4) We are entitled to notify the retention of title and the assignment of receivables agreed with the Buyer to the third-party debtor/creditor of the Buyer. The Buyer must immediately notify its creditors of the right of retention if the latter view the goods under retention of title as a security/usable pledge and it must notify us about impending utilisation measures by its creditors.
- (5) We will waive the collateralisation rights if their value exceeds our receivables by more than 10% and the Buyer demands the release.
- (6) In the event of pledges or other intervention by third parties, the Buyer must notify us of this immediately in writing so that we can file third-party proceedings. If the third party is unable to reimburse us for the judicial and extra-judicial costs of third-party proceedings, the Buyer is liable for the loss incurred by us. The Buyer is not entitled to encumber the goods under retention of title with the rights of third parties.

## § 10 Payment

- (1) Payments must be made without any deduction within 7 calendar days of invoice date. Payment is to be made in Euro. If the country, in which we have our registered office and/or the supplier has its registered office at the time when the contract is concluded, should leave the European Monetary Union then in cases of doubt the price is to be paid in the currency that applies for the country in which we have our registered office when the contract is concluded.

- (2) Payments will be used to pay the oldest due liability. Payment with bills is only permitted on explicit agreement and even then it only applies for reasons of performance. Expenses incurred will be charged to the Buyer and are due immediately. In the event of payment by cheque, the cashing of the cheque and not its receipt at the company is deemed to be payment.
- (3) In the event of arrears in payment, substantial deterioration in the asset or income circumstances of the Buyer or a substantial risk to assets, we may demand either securities on the part of the Buyer, performance step by step or make all receivables against the Buyer due through unilateral written notice, after issuing written notification and setting an appropriate payment deadline. Pursuant to the respective statutory provisions, after the expiry of the deadline to no avail, we are entitled to withdraw from the contract and demand compensation instead of performance.
- (4) The Buyer falls into arrears without requiring a reminder if the payment deadlines are not complied with. In this case, we are entitled to demand arrears interest of 9 percentage points above the respective base interest rate of the European Central Bank p.a. We reserve the right to file further claims.
- (5) Payments to our representatives or staff are only valid if the latter submit a power of attorney for collection on receipt.
- (6) Unless otherwise agreed, the Buyer also has to pay the statutory VAT incurred on the remuneration, in addition to the remuneration itself.
- (7) If customs, freight charges, insurance premiums or other ancillary costs to be indicated separately are included in our remuneration, the Buyer will bear each increase in such expenses and costs that occurs after the contract has been concluded.
- (8) Retention rights of the Buyer and the offsetting with counterclaims are waived unless the counterclaims of the Buyer are undisputed or established in a court of law.
- (9) We can offset with our own receivables or with receivables of our own subsidiaries or shareholdings against receivables of the Buyer to one of these companies.
- (3) The Buyer must ensure that he holds the necessary transferable rights of use.
- (4) The Buyer shall hold us harmless and shall indemnify us from any third party claims (including legal prosecution and defense costs at the statutory rate), which third parties may enforce against us with regard to layout specifications from the Buyer.

## § 12 Inspections

Officially sealed counter samples left behind during food inspections are to be provided to us.

## § 13 Language Version

These Terms and Conditions of Delivery are available in German and English language. In case of deviations between the different language versions, the German version shall prevail if the Buyer has its registered office in Germany, otherwise the English version shall prevail.

## § 14 Choice of Law, Performance, Place of Jurisdiction

- (1) The Customer's business relationship with us is governed by the law of the Federal Republic of Germany valid for domestic parties. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded. The Incoterms 2010 also apply. The place of payment and sole place of jurisdiction, including legal actions regarding cheques and bills ) is Günzburg. We reserve the right to also file legal action at the Buyer's domicile.
- (2) The invalidity of individual terms and conditions does not affect the validity of the remaining terms and conditions. The same applies if individual terms and conditions do not become part of the contract. The invalidity or incompleteness of single, individually negotiated agreements does not affect the validity of the rest of the contract.

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## § 11 Product Packaging

- (1) In the event that the Buyer makes specifications regarding design and layout of product packaging, the Buyer shall ensure that specifications comply with applicable law and rights of third parties are not violated. We are not obliged to audit separately.
- (2) The Buyer shall herewith assign to us the simple exclusive right of use for all layout specifications (designs, pictures, brands, texts, etc.) prescribed by him which are subject of product packaging, if necessary for the production, labeling, packing and contractual distribution.