

# General terms of delivery (As of: July 2015)

## § 1 General – Scope

(1) These terms of delivery apply solely for companies, legal entities under public law or special funds under public law in the sense of § 310 section 1 BGB (German Civil Code).

(2) For the conclusion of contracts for deliveries of Oemeta and their execution, solely the terms of delivery of Oemeta apply, under exclusion of opposing terms and conditions of sale of the purchaser or such ones that are deviating from Oemeta's ones, unless Oemeta expressly agrees to their application in writing. Oemeta's terms of delivery also apply if it carries out deliveries without reservation, despite being aware that the purchaser's terms conflict or diverge from its own terms of sale.

(3) These terms of delivery also apply for all future business transactions of Oemeta with the purchaser, provided that they are legal transactions of similar nature.

## § 2 Offer and offer documents

(1) The offers of Oemeta are subject to change and non-binding. They represent merely an invitation to the purchaser to submit an offer. Additions, amendments and side agreements relating to such invitations require the written form for evidential purposes.

(2) Oemeta reserves ownership and copyright to images, drawings and calculations and other documents. They must not be made accessible to third parties.

(3) Orders to be regarded as tenders in the sense of § 145 BGB, can be accepted by Oemeta within two weeks.

## § 3 Description of the object of delivery

(1) For the illustrations, dimensions, weight and any other technical specifications given in the offers of Oemeta, customary and material-related deviations shall be permissible; tolerances according to DIN shall also be allowed. If Oemeta executes the order on the basis of purchaser's specifications, the purchaser shall be responsible for the correctness of the specifications.

(2) The purchaser itself obtains all official permits required for the use of the purchase item. The purchaser shall assume the cost of corresponding approval or review procedures.

## § 4 Prices – Terms of payment

(1) Unless otherwise agreed, Oemeta's prices are "ex works" and excluding value added tax.

(2) Any deduction of discount must be separately agreed in writing.

(3) Unless otherwise stated, the purchase price is due for payment without deduction immediately on issuance of an invoice. If the purchaser defaults in payment, Oemeta is entitled to demand default interest at a rate of 9 percent above the base rate. On proving that default losses are greater, Oemeta is entitled to claim such greater losses.

(4) Moreover, in case of default of the purchaser, Oemeta is entitled to payment of a lump sum of Euro 40.00. This also applies, if the claim for payment is about a payment on account or any other payment by instalments. The lump sum must be counted against an owed compensation for damages, insofar as the damage is due to costs of prosecution.

(5) The purchaser shall only be entitled to set-off payment, if the purchaser's counterclaims are recognized by declaratory judgement, undisputed or recognized by Oemeta. Rights of retention may only be enforced if a counterclaim is based on the same legal relationship.

## § 4 a Additional fees in case of short-term order changes and cancellations

If the purchaser changes the order at short notice (less than five work days before the date of delivery) or cancels it, then Oemeta is entitled to charges additional fees.

## § 5 Shipment / Transfer of risk

(1) Unless otherwise agreed, the delivery is agreed "ex works" (ICC2010).

(2) The risk of accidental loss and deterioration of the delivery item shall be transferred to the purchaser, regardless of who pays the freight costs.

(3) The risk is transferred upon the notification of the readiness for pick-up and/or readiness for shipment, if the pick-up/delivery remains undone due to reasons which are caused by the customer.

## § 6 Delivery dates and periods

(1) The commencement of the delivery period given by Oemeta requires the timely and all proper information about all technical issues by the purchaser.

(2) Oemeta shall have a reasonable period for the realisation of its delivery.

Delivery date for evidential purposes must be agreed in writing.

(3) In the event of delays in delivery for reasons for which Oemeta is responsible for, Oemeta is liable for compensation for damages according to the stipulations in § 9 of the present general terms of delivery. In accordance with the legal provisions, the purchaser is entitled to withdraw from the contract.

(4) If Oemeta cannot fulfil its obligation to deliver in time due to circumstances that have become recognizable only after the conclusion of the contract – which are in particular events of force majeure, natural disasters, industrial actions, interventions by authorities, supply difficulties, transport disruptions, unusual traffic conditions, unforeseeable industrial disruptions, unforeseeable failure to deliver in due time on the part of the pre-supplier or other similar reasons – the obligation to deliver shall be suspended for the duration of the hindrance and to the extent of its effect, but no longer than 4 weeks. Oemeta shall give immediate notice to the purchaser that and for which reasons the delivery cannot be carried out or is temporarily hindered. If the suspension of the obligation to deliver is not reasonable for the purchaser, the purchaser is entitled to withdraw from the contract after a reasonable deadline set by the purchaser has expired. Setting a deadline is not required in the cases mentioned in the relevant legal regulations (particularly §§ 323 clauses 2 and 4, 324, 326 clause 5 BGB (German Civil Code), § 376 HGB (German Commercial Code)). If a partial delivery has been effected, the purchaser is only entitled to withdraw from the whole contract, if he is not interested in the partial performance.

(5) Oemeta's compliance with its delivery obligations requires the timely and proper fulfilment of the obligations of the purchaser.

(6) In case of default of acceptance or of culpable violation of any other obligation to co-operate on the part of the purchaser, Oemeta shall be entitled to demand compensation for the damage incurred by it including possible additional expenses. The right to assert further claims shall be expressly reserved. Provided that the aforementioned conditions are met, the risk of accidental loss or of accidental deterioration of the purchased item shall be transferred to the purchaser at the moment in which default of acceptance and/or debtor's delay on the part of the purchaser occurs.



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### § 7 Orders for goods to be delivered on request

Orders for goods to be delivered on request must be called up within 6 months; otherwise Oemeta may either demand the acceptance of the delivery of the finished goods, or claim compensation for damages for non-performance. If compensation for damages is claimed, then Oemeta shall be entitled to claim 20% of the value of the order without furnishing any specific proof of losses, whereby it reserves the right to assert any claim going beyond this for any incurred losses for which it has to provide evidence.

### § 8 Warranty for defects and limitation period

(1) The purchaser's warranty rights require that the purchaser has duly performed its obligations under the German Commercial Code (Handelsgesetzbuch – HGB) to inspect the goods and file complaints.

(2) If the purchased item is defective, Oemeta shall be entitled, at its own option, to remedy the defect or to make a substitute delivery.

(3) Unless otherwise agreed, the place of performance for subsequent performance shall be Uetersen.

(4) If Oemeta is not willing or able to remedy the defect or to make a substitute delivery, or if it is responsible for any delay beyond the reasonable deadlines it has been set, or if the remedying of the defect or the substitute delivery fails for any other reason, then the purchaser shall be entitled – at its own option – to withdraw from the contract or to demand an appropriate reduction in the purchase price. The liability for compensation for damages and expenses is limited according to the stipulations in point 9.

(5) Any claims resulting from the defectiveness of the purchased item – including any possible claims for compensation for damages as well as any possible competing identical claims for damages arising from extra-contractual liability – become time-barred after one year. The start of the limitation period shall be subject to legal regulations.

(6) The reduced limitation period under section 5 does not apply for the liability for

- a) damages caused by a culpable injury to life, body or health,
- b) other damages that are based on a deliberate or grossly negligent breach of duty.

### § 9 Exclusion of liability

(1) Oemeta shall be liable for compensation for damages, irrespective of legal basis, only in case of intention and gross negligence on the part of its corporate bodies or vicarious agents. The aforementioned exclusion of liability for simple negligence does not apply to the breach of substantial contractual obligations. Every contractual obligation is to be considered as substantial, by which the proper fulfilment of the contract is made possible at all and in case of whose breach the aim of the contract cannot be reached.

(2) Provided that we are liable according to the abovementioned provisions, the liability is limited to typical foreseeable damage.

(3) The aforementioned exclusions and limitations of liability apply to the same extent to the benefit of our corporate bodies, legal representatives, employees and other vicarious agents.

(4) In so far as we provide technical information or are active in an advisory role, and this information or advice does not belong to the contractually agreed scope of services owed

by us, this is done free of charge and under exclusion of all liability.

(5) The aforementioned restrictions and limitations of liability also apply for the reimbursement of futile expenses of the purchaser.

(6) Liability for damages due to a guarantee assumed by Oemeta and liability according to the Product Liability Act remains unaffected by the aforementioned provisions. The same applies to damages caused by injury to life, body or health.

### § 10 Reservation of title and entitlement protection

(1) Oemeta reserves the title at the purchase item until all payments have been settled to which it is entitled against the purchaser under the delivery contract and from any other business relationship.

If the purchaser is in breach of contract, particularly in case of default in payment, Oemeta is entitled to take back the purchase item. After taking back the purchase item, Oemeta is authorised to realise its sale, whereby the realisation proceeds – minus reasonable realisation costs – shall be counted towards the purchaser's liabilities.

(2) In the event of attachment or any other third-party interference, the purchaser must inform Oemeta in writing without delay.

(3) In the context of proper business transactions, the purchaser is entitled, to resell the purchase item or allow third parties to own it after it has been installed. The purchaser assigns to Oemeta already now all receivables up to the invoiced amount, including the value-added tax, accruing to him from his buyer, irrespective of whether the purchase item is resold without being processed or after processing.

(4) Oemeta accepts the assignment.

The authorisation of the purchaser to dispose of the reserved goods and/or the transferred items and rights shall cease if financial collapse of the purchaser occurs or threatens to occur, or if Oemeta revokes its consent to disposal and/or seizure due to breach of contract (particularly default in payment) of the purchaser, which jeopardises

the security interest of Oemeta. The purchaser is obligated to notify to Oemeta the assigned claims and their debtors.

(5) Upon request of the purchaser, Oemeta shall be obliged to waive the reservation of title if the purchaser has settled all claims relating to the object of delivery and if an adequate security has been provided for the remaining claims arising from the current business relationship. Furthermore, Oemeta is obligated, in the occurrence of the overcollateralisation, on demand of the purchaser, to release securities to an extent that the overcollateralisation is removed.

### § 11 Place of jurisdiction and place of performance

(1) Provided that the purchaser is a merchant in the sense of the German Commercial Code, a legal entity or special fund under public law, Uetersen shall be the exclusive place of jurisdiction for all and any disputes directly or indirectly arising from the contractual relationship.

(2) Unless otherwise agreed, Uetersen is the place of performance.

(3) German law applies exclusively. The application of the UN Convention on the International Sale of Goods is excluded. This also applies in case of cross-border legal relations.

(4) If any provision in these terms of delivery or any provision under other agreements is or becomes ineffective, this shall not affect the validity of all the remaining provisions or agreements.



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### § 12 Written form

The contract is concluded in written form. Upon conclusion of the contract, there are no known verbal side agreements. If, however, there are any verbal side agreements, then they must be immediately captured in written form for evidential purposes.

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