

General Conditions of Delivery and Payment of OMERAS GmbH

I. Scope

1. These General Conditions shall apply to all contractual relationships under which omeras GmbH (hereinafter referred to as "omerass") is obligated to make deliveries to and provide services for a third party (hereinafter also referred to as "Customer"). They shall also apply to all future transactions carried out within current business relationships with a Customer to the extent that such transactions are related in nature. Differing conditions of the Customer shall have no validity even if they had been known to us and we effect delivery without reservation. In exceptional cases a contractual relationship will not be based on these Conditions if and in so far as differing agreements (on an individual contract basis) have been entered into between the parties involved. The standard terms and conditions of the Customer are hereby expressly rejected by us. They shall apply solely if and in so far as they have been expressly accepted by us in writing.
2. These Conditions shall apply exclusively in business conducted with companies, legal entities under public law and/or special funds under public law. They shall not apply in respect of consumers in the sense of § 13 German Civil Code (BGB).

II. Offers, purchase order and prices

1. All offers shall be deemed to be without engagement and subject to confirmation unless they have been expressly designated in writing as binding offers. Any particulars contained in our catalogues and price lists shall be without engagement unless provided otherwise in the provisions set out below.
2. In case a non-binding offer has been submitted by us, a contract shall be deemed to have been entered into with the Customer only after the order has been confirmed by us in writing. For orders designated by us as binding, a contract shall be deemed to have been entered into if the Customer has accepted our offer within a period of 2 weeks from the date of the offer. Following expiry of this period, we will no longer be bound by the offer.
3. Unless prices have been expressly agreed, our list prices applying at the date of contract conclusion shall be deemed as having been agreed. Prices designated by us as binding in our offers shall be binding on us only within the time within which the offer must be accepted.
4. The prices reflect the cost situation existing at the time of confirmation of the order. In case critical cost factors such as negotiated wage rates, material and raw material prices and distribution costs have changed by the time delivery has to be effected under the contract, we shall be entitled to raise the agreed price by the additional costs which have been or will still be incurred. Except for the case of continuous obligations, such a price rise shall be excluded in cases where a period of just 3 months lies between the date of confirmation of the order and the date at which delivery must be effected.
All prices quoted shall relate to delivery ex works exclusive of packing and freight costs, plus the statutory value-added tax.
5. Unless otherwise agreed, the following terms of payment shall apply to our deliveries. Payments shall be made without deductions and shall be received in our account within 30 days of the invoice date. If a payment is received within 14 days of delivery, a 2 % discount will be granted by us. The Customer shall be deemed to have defaulted in payment if it fails to make payment within 30 days of the invoice date unless otherwise agreed on an individual contract basis. No further reminder on our part shall be required. The date at which the amount is received in one of our bank accounts shall be decisive for determining whether or not the payment has been made in due time. In case of a default in payment, the Customer shall be liable to pay interest on the defaulted payment at a rate of 8 % above the applicable base interest rate unless we are entitled to charge higher interest for another legal reason. This shall be without prejudice to our right to assert other additional damages.
6. The Customer shall be entitled to get back or set off payments on account of similar counterclaims only if Customer's claims for payment are undisputed by omeras or Customer has a final and binding legal title.
7. If we are obliged to make advance deliveries and, following conclusion of the contract, become aware of circumstances indicating that our claim for payment is endangered by an inadequate capacity of the Customer to pay, we shall be entitled, in addition to our legal claims to which we are entitled under the reservation of title agreed in No. VIII., to prohibit any resale and processing of the supplied goods, to demand their return or transfer of indirect possession of the delivered goods at the Customer's expense, as well as to annul the direct debiting authorisation. The Customer is authorising us already now to enter its premises in the aforementioned cases and to collect the delivered goods. Taking back of the goods shall be deemed to constitute a termination of the contract only if we expressly declare that this is the case. If the

Customer is affected by a change in circumstances which may have a detrimental impact on us in comparison with the circumstances leading to the conclusion of the contract, we shall be entitled to require the Customer to pay for our delivery in cash.

8. If the Customer defaults in payment, we shall be entitled after giving notice to this effect in writing, to suspend the fulfilment of our obligation until the payment is received by us. We will also be entitled to require the Customer to effect the payments in cash. After fixing a reasonable time limit, we shall also be entitled in such a case to withdraw the contract.

III. Delivery and performance

1. The seat of our company, i.e., Lauter/Saxony, shall in all cases be the place of performance. The Customer shall be obligated to collect the contracted delivery at the place of performance. This shall apply also in cases where we have undertaken to bear the transport costs.
2. Terms for delivery will begin upon confirmation of the order by us, not earlier, however, than at the date where all details of the execution of the order have been clarified and all other prior duties to be fulfilled by the Customer have been fulfilled. The same shall apply to delivery dates. Shipments prior to the expiry of the delivery term and part shipments shall be permitted unless such shipments are unreasonable for the Customer. The date at which the Customer is notified of readiness for shipment shall be deemed to be the delivery date; otherwise, the date at which the goods are dispatched shall be deemed to be the delivery date. Unless expressly agreed otherwise, delivery times shall be without engagement, and possibly occurring delays will not entitle the Customer to claim damages for any losses resulting thereof. Our deliveries shall be subject to timely and appropriate deliveries from our sub-suppliers.
3. Without prejudice to the rights to which we are entitled if the Customer is in default, any agreed delivery terms and dates shall be extended or deferred by the period of time by which the Customer has defaulted in performing its obligations. If the Customer defaults in taking delivery or culpably breaches its obligations to cooperate, we shall be entitled to claim compensation including any additional expenses incurred by us. In such a case the risk of accidental loss or accidental deterioration of the purchased goods will pass to the Customer at the point of time at which it defaults in taking delivery.
4. If the goods to be supplied by us are to be sent by us to the Customer's seat or to another place designated by the Customer, this will be done exclusively at the Customer's request. The mode of shipment and the route on which the goods will be shipped will be determined by us at our discretion unless omeras has been instructed otherwise by the Customer at the time of contract conclusion. If such an instruction is given only after the time of contract conclusion, the Customer shall, in addition, bear any additional expenses arising as a result. As for the rest, the Customer shall bear the shipping costs. A transport insurance will be taken out exclusively at the Customer's express request and expense.
5. If the Customer defaults in taking delivery of the goods to be supplied by us, we shall be entitled, if the Customer has failed to remedy this failure within the reasonable time limit set by us, to terminate the contract and/or to claim damages in so far as the default is attributable to the Customer. We shall, in particular, be entitled in such a case to claim liquidated damages amounting to 0.5 % of the total order value for each commenced week up to a maximum amount of 5 % of the total order value. If only a part shipment agreed under the contract is affected by the default, the liquidated damages to be paid by the Customer shall be determined based on the amount payable for the part shipment. This shall be without prejudice to our right to claim damages actually exceeding the amount of such liquidated damages.
6. In addition to this, if the Customer defaults and fails to remedy the default within the time limit set by us, we shall be entitled at our sole discretion to bail the goods or to sell them on a self-help sale basis provided that we have advised the Customer in advance that such measures may be taken.
7. If the Customer terminates the contract for any reason whatsoever and the reason for the termination is not attributable to us, we shall be entitled to lump-sum compensation or liquidated damages in an amount of 10 % of the total payment agreed under the contract unless the Customer or omeras furnish other supporting evidence in an individual case.

IV. Long-term and call-off contracts

1. Indefinite contracts may be terminated with a notice period of 30 days to be effective at the end of the following month.
2. If, for taking delivery, no binding quantity has been agreed, a target quantity on which the calculation is based will be fixed. If the quantity accepted by the Customer is less than the target quantity, the unit price can be reasonably raised. If the quantity accepted by the Customer is greater than the target quantity, the price can be reasonably lowered provided that the Customer has notified omeras of the increased quantity at least 3 months prior to the delivery.

3. For call-off contracts, omeras shall be advised of the binding ordered quantities at least 2 months prior to the call-off of the delivery. Any additional costs caused by a delayed call-off or subsequent changes in respect of the time and/or quantity shall be for the Customer's account, if the delays or changes are attributable to the Customer.

V. Packing

1. Packing materials or pallets may be returned to us only after such a return has been agreed with us in advance. In such a case they shall be delivered to our premises in accordance with our instructions. The transport costs will be for the Customer's account.
2. We will be obligated to take back packaging (transport, transit packaging and packing materials) only if and in so far as this is a mandatory requirement under the statutory provisions of the packaging ordinance.
3. If we agree to take back packing materials and pallets, they can be entered to the Customer's credit to the extent that they belong to a delivery that had been previously made by us to the Customer.
4. All packing materials or pallets returned to us must be clean and free of foreign matter. If this is not the case, we will be entitled to refuse to take delivery or to place any additional costs thereby incurred to the Customer's account.

VI. Warranties and guarantees

1. No warranties are given by us. Neither are our employees and agents authorised to give warranties vis-à-vis our Customers. Our employees are also not authorised to give guarantees except for guarantees given in writing to our Customers by omeras personnel who are authorised to give such guarantees.
2. We will only be responsible for making sure that the delivery item is suited and fit for the purposes which are envisaged under the contract and of which we have been advised in writing prior to the conclusion of the contract. As for the rest, a delivery shall be deemed to comply with the contract if the delivery item is fit for the purpose for which it is usually intended.

VII. Transfer of risk

1. Goods for which readiness for shipment has been notified shall be taken over without delay. If the Customer fails to do so, we shall be entitled at our own discretion to ship them or to store them at the costs usually charged by forwarding agencies and at the Customer's risk. We shall be entitled to store them as described above also in cases where we are not able to carry out the shipment taken over by us for reasons which are not attributable to us. The goods shall be deemed to have been delivered one week after commencement of storing of the same.
2. If no specific instruction has been received in this regard, we will choose the means of transport and the transport route at our own discretion.
3. Risk will pass to the Customer as soon as the goods have been handed over by us to a forwarding agency, freight carrier or railway operator. If we have agreed in writing to deliver the goods, risk will pass to the Customer as soon as the goods have left our works or our warehouse. If we have stored the goods at our premises for the Customer, risk will pass to the Customer 1 week after commencement of the storage at the latest.

VIII. Reservation of title

1. All goods delivered by us remain our property up to the time of complete payment of the amount due, including all accessory debts receivable under the contract in question as well as all amounts, including future ones, payable in connection with the entire current business relationship.
2. Up to the time of final transfer of title to the Customer, the Customer will be obligated to handle the delivered goods with care. If the goods in question are high-value goods, the Customer will be obligated to take out a sufficient replacement value insurance providing cover for the case of fire, damage caused by water, storm and tempest as well as theft. Upon placing an order with us, the Customer will assign to us by way of security any claims for insurance benefits and shall inform his insurer accordingly when requested by us to do so. Upon occurrence of the events mentioned under sub-clause 1, the reassignment of these claims shall be deemed to have taken place.
3. The Customer shall not be entitled to pledge the reserved goods or to furnish them as security. In case the reserved goods are seized or affected by interventions of third parties, the Customer will be obligated to

promptly inform us about this and to submit the relevant documents. The Customer shall support us in such cases in every suitable way in the enforcement of the claims to which we are entitled. Before a collateral assignment of a complete inventory takes place, our reserved goods shall be exempted from the assignment by expressly designating them as reserved goods vis-à-vis the recipient of the security and clearly marking them accordingly.

4. The Customer will be permitted only in our name and on our behalf to further process or transform the reserved goods in the ordinary course of business. In such a case, we will become co-owners of the newly created items in proportion to the value the reserved goods had at the beginning of processing, combining or blending relative to the value of the new items.
5. The purchase price claims arising from a resale of the reserved goods taking place in the ordinary course of business shall be assigned by the Customer to us in advance. This shall apply irrespective of whether the resale has taken place prior to or after further processing. Our Customer shall remain entitled to collect the amount relating to the assigned claim. When requested by us, the Customer shall furnish all necessary information about the third-party debtor.
6. Following a prior warning, we shall have the right to realise the securities to which we are entitled as soon as the Customer defaults. Instead of making use of the realisation, we will be entitled to disclose the collateral assignment also vis-à-vis the third-party debtor. We will also be entitled to realise the securities if the Customer has breached other contractual obligations in a way endangering the securities and has also failed to remedy the breach within a reasonable time limit set by us and after having been warned that securities will be realised. Realisation of securities can be carried out by sale in the open market. The proceeds remaining after deduction of the costs incurred will be set off against our Customer's debts, and any credit balance left will be disbursed to it.
7. If we are entitled to terminate the contract and declare termination because the Customer has breached an obligation, in particular because the Customer has defaulted, the costs incurred as a result of the taking back of the reserved goods shall be for the Customer's account. This shall be without prejudice to any other claims for damages or claims for compensation of expenses to which we may be entitled.
8. As soon as the securities exceed the value of the claim to be secured by more than 10 %, we will release at the Customer's request securities of the Customer in an amount corresponding to the value by which the securities exceed the value of the claim. We will decide at our own sole discretion which security items will be released by us.

IX. Force Majeure

1. If events of Force Majeure occur, we shall be entitled to postpone delivery by the time for which we are hindered in effecting delivery plus a reasonable start-up time, or to terminate in whole or in part the part of the contract which has not yet been fulfilled.
2. Events of Force Majeure in the sense of this contract shall mean all unforeseeable events or events which – even if they could be foreseen – are outside our control so that our reasonable efforts are not able to prevent their impact on the fulfilment of the contract. They include without limitation war (whether declared or not), a war-like situation, terror, unrest, revolution, rebellion, military or civilian coup, uprising, commotion, riots, blockade, embargo, governmental orders, sabotage, strikes, slow-down strikes, lock-out, epidemics, fire, floods, storm tides, hurricane, snow, storm, ice or other thunderstorms, earthquake, landslide, lightning, general shortage of materials, shipwreck, insufficient port or unloading capacities, severe transport accidents, manufacture of rejects or manufacture of new product lines, important plant components for reasons outside our control to the extent that the latter causes an extension of delivery times.
3. In so far we shall not be liable for delays or disturbances in contract performance resulting wholly or in part from the events listed above.

X. Dimensions, weights, quantities

1. Dimensional, weight and quantity deviations shall be permissible if they are within the tolerances usual in the trade and comply with the relevant DIN regulations. Dimensions and weights given in our offers and order confirmations do not constitute warranted qualities.
2. The delivery weights and quantities determined by us shall be decisive for the calculation.

XI. Warranty

1. For warranty claims of the Customer to be effective, the Customer must have duly fulfilled the obligations it has under § 377 German Commercial Code (HGB). The Customer shall no longer be entitled to claim that a delivery is in breach of the contract if the Customer fails to immediately inspect the delivery and if he has failed to notify omeras in writing – precisely detailing the breach of contract – of a breach of the contract within 5 days of the time at which the Customer could have detected the breach if it had performed an appropriate inspection.
2. Warranty claims principally shall expire by limitation 12 months after collection of the delivery item or after handing over of the delivery item in cases where we have also carried out the shipment.
3. The warranty periods indicated above shall not apply in cases where longer periods are mandatory under the relevant legal regulations.
4. Any damage resulting from natural wear and tear, overloading or improper use shall not be covered by the warranty.
5. Warranty claims shall be excluded in all cases where delivery items deviate only insignificantly from the agreed quality and usefulness, in case of wear, improper treatment etc.
6. If delivery items are recognised by us as being defective, we shall only be obligated at our sole discretion to replace this item or refund the money paid for it or, if the Customer has not yet paid, to reduce the price or to terminate this contract.

XII. Liability

1. We shall be liable to the extent that we have acted with intent or with gross negligence. The same shall apply to cases of personal injury, damage to health and life. The burden of proof in such cases shall be on the Customer.
2. If the Customer is in breach of major contractual obligations, in particular primary obligations, the liability to pay damages shall be limited to the damage foreseeable according to the nature of the contract concerned, except for the cases listed in sub-clause 1. The Customer shall be obligated in each case to minimise the damage and will not be entitled to suspend his payments for outstanding invoices. We will not accept liability for processing costs, loss of production, loss of income and/or any other direct or indirect loss or damage suffered by the Customer or third parties. In so far as we are liable for a proven damage, our liability shall in all cases be limited to the maximum amount of our compulsory product liability insurance.
3. As for the rest, any liability for minor negligence shall be excluded.
4. All of this shall be without prejudice to the validity of mandatory legal regulations.

XIII. Drawings, samples, confidentiality

1. If drawings or other technical documents are made available by us or our Customers for the goods to be delivered or production equipment, they shall remain the property of the contracting party which has furnished them.
2. Production costs incurred for samples and production equipment / tools will be charged to the Customer's account separately from the goods to be delivered.
3. No documents (including samples, models, production data, calculations) and any other information of which a contracting party obtains knowledge in connection with this business relationship may be disclosed to third parties. This duty of confidentiality shall commence to apply upon the first handing over of the aforesaid documents and end 36 months after the date of termination of the business relationship.

XIV. Contract production

The above Conditions shall analogously apply also to contract production. Our liability for defects shall not apply to any damage caused by undetected defects in the materials supplied to us by the Customer or by a third party on the Customer's orders.

**XV.
Jurisdiction**

Chemnitz shall be the place of jurisdiction if the Customer is a businessperson. We shall be entitled, however, to bring the matter against the Customer also before the competent court at the Customer's seat.

**XVI.
Governing law**

The legal relationship between the parties shall be exclusively governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).

**XVII.
Severability**

If individual provisions of these Conditions or of the individual contract entered into between the parties are ineffective or invalid in whole or in part, the contracting parties undertake to agree on provisions which come as close as possible to the sense and purpose of the respective ineffective or invalid provisions.

**XVIII.
Partnership clause**

In all compensational payments, in particular as regards the amount of damages, the parties should in good faith also take into account in a reasonable manner the economic situation of the contracting parties, the nature, extent and duration of the business relationship as well as the value of the goods.

XIX.

The German version of this General Conditions of Delivery and Payment should be deciding in case of interpretation unclarity of the English version.

omeras GmbH, 17.10.2009