

General delivery terms

1. Scope, general information

These general business terms shall form an integral part of all of our offers and contracts – also for all future business – and shall apply for all deliveries and services of OMT, insofar as no other terms and conditions are expressly accepted in writing. Each deviation from the contents of these general business terms must be made in writing. Our business terms shall also apply if we make a delivery or provide a service without reservation in the knowledge of opposing or deviating terms and conditions of the customer. The customer expresses his acceptance of the business terms through the acceptance of the delivery with the knowledge of the business terms.

Entrepreneur within the meaning of these business terms are natural persons or legal entities or partnerships with legal capacity, which act while performing their commercial or independent professional activity when concluding the legal transaction.

2. Offer and draft documents, conclusion of the contract

Offers, cost estimates, price lists and other documents submitted by OMT are without obligation and shall only become binding including the prices specified therein when the contractual offer issued by the customer is accepted in writing by OMT. The written form is also satisfied if the acceptance declaration is submitted by fax or eMail and without the supplier's signature. Collateral agreements, addendums and amendments to the contract must also be made in writing. Instead of a written acceptance declaration OMT may issue an invoice with the corresponding contents.

We reserve the property and the copyright to all offer, draft and other technical documents (drawings, calculations, follow-up checks of calculations, construction proposals, cost estimates). These documents may not be used otherwise, in particular not copied or made accessible to third parties without the consent of OMT. If no order is placed they are to be returned to us immediately.

All necessary permits of official or other type are to be procured by the customer and made available to OMT in time. For this purpose OMT shall make necessary documents available to the customer upon request.

3. Deadlines and dates for execution

Insofar as OMT does not expressly agree a delivery or service time or period of execution, all information shall only be deemed as approximate based on the circumstances known when the order is placed, the corresponding time information is provided to the best of knowledge of belief, however non-binding. OMT is entitled to make part deliveries to a reasonable extent after notification.

OMT shall not be responsible for delays in delivery and service owing to events which make the delivery substantially more difficult or render it impossible for OMT – these include in particular natural disasters, strike, lock-out, official orders, etc. – even if they occur at components suppliers, even in case of binding agreed deadlines and dates. They entitle OMT to postpone the delivery or service by the duration of the impediment plus a reasonable leadtime or – insofar as the delay is not due to strike or lock-out – to cancel the contract either in whole or in part owing to the not yet satisfied part. If the impediment lasts longer than one month the customer is also entitled to cancel the contract owing to the not yet satisfied part of the contract after setting a reasonable final deadline.

4. Prices and terms of payment

All prices are deemed ex works insofar as not otherwise expressly stated.

In the case that an agreement between OMT and the customer exists that the delivery of goods will be handled by a haulage firm hired by OMT, the commissioning takes place in the name of and on behalf of the customer, who is, accordingly, contractual partner and recipient of the invoice for the contracted haulage firm. OMT accepts no responsibility for receipt of the shipment. Number 10 ADSp does not apply.

Surcharges shall be charged for all overtime, night work, Sunday and bank holiday work ordered by the customer as well as for work under more difficult conditions.

If there is a period of more than four months between the conclusion of the contract and agreed delivery and service time or period of execution and if the prices of our suppliers increase in the meantime, OMT shall be entitled to adjust the agreed price with the expiry of four months after conclusion of the contract. OMT is entitled to make this adjustment towards entrepreneurs after the expiry of six weeks after conclusion of the contract. OMT shall provide proof of the price increases in all cases upon request.

The deduction of cash discount or any other change in the payment modalities requires a special written agreement.

OMT is entitled to demand advance payments to a reasonable extent (e. g. with expensive special designs, exceeding of the credit insurance limit, etc.).

The offsetting against claims of OMT and the exercising of rights of retention is only permitted in case of undisputed or final absolute counter claims.

OMT is entitled to assign claims from business relations.

The acceptance of substitute means of payment (bills of exchange, cheque), to which OMT is not obliged, does not represent any satisfaction or deferral of the claim. Credits from bills of exchange and cheques are made subject to the receipt and with valuation on the day, on which the amount has been credited to our account or we may dispose over the counter value. The costs for safekeeping and encashment, in particular discount charges as well as all other bank charges caused by the customer shall be for his account.

Independent of other provisions of the customer, payments are always offset against the oldest debt. If costs have already been incurred for the collection and interest claims, payments shall initially be offset against the costs, then the interest and finally the main claim.

If deferral, instalments or the acceptance of bills of exchange have been agreed with the customer, then our total claim shall be deemed due and payable irrespective of this agreement and the term of the bills of exchange if the customer is in default with the agreed payments or the encashment of substitute means of payment fails for reasons for which the customer is responsible, there is a substantial deterioration in the asset circumstances of the customer, he disputes or otherwise endangers the claim of OMT. In the event of the essential deterioration of the asset circumstances of the customer after conclusion of the contract OMT shall also be entitled to make services not yet provided dependent on the prior payment of the remuneration or the provision of securities. If the customer does not satisfy the duty for advance payment owing to deterioration in the assets, OMT may cancel the contract after setting a reasonable deadline or, insofar as the customer is responsible for the deterioration in assets, to demand compensation instead of performance. Payments of the customer shall also be offset according to § 366 BGB [German Civil Code]. If cost or interest claims exist besides a main debt the payment shall always initially be offset against the costs, the interest and only then against the main claim.

5. Reservation of title

OMT reserves the property to all delivered objects until full payment of all claims existing from the business relationship. The rights to reservation of title (simple, extended and prolonged reservation of title) in the comprehensive form shall apply for all current and future goods deliveries. The customer undertakes to treat the reserved goods carefully. Insofar as service and inspection work is required the customer shall carry these out regularly at own costs.

The customer must inform us immediately in writing of seizure attempts or other intervention of third parties in the reserved goods in order for

us to take counter measures. The customer must object to seizure attempts by referring to our reserved property.

In case of conduct of the customer in breach of the contract, in particular with default of payment or breach of his obligations according to the above paragraphs OMT shall be entitled to cancel the contract and demand that the goods are handed over.

Insofar as the delivered objects have become essential parts of real estate owned by the customer, the customer undertakes to permit OMT to dismantle the goods, which may be dismantled without any essential impediment to the building shell, in case the agreed payment deadlines are not observed and to reassign him the property to these items. Dismantling and the other costs shall be borne by the customer.

If delivered objects are firmly connected with another object the customer shall assign, in case claims or co-ownership is thus incurred, his claims or his co-ownership to the new object to OMT in the amount of the claim of OMT.

The customer may resell the reserved goods, as long as he is not in default of payment, in ordinary business transactions at the general business terms. He is obliged to agree a reservation of title.

The customer hereby now already assigns OMT all claims and secondary rights in full to which he is entitled from a resale of the reserved goods or from any other legal ground against his buyer or third party independent of whether the sale is carried out to one or several buyers. If the reserved goods are sold after conversion, connection, combination or processing with other goods which do not belong to OMT, the assignment is only carried out in the amount of our co-ownership share of the sold object or the sold stocks.

Until further notice the customer is entitled to collect the claims assigned to OMT without this affecting our authorization to also personally collect the claim. OMT undertakes not to personally collect the assigned claims as long as the customer satisfies his payment obligations from the collected proceeds, is not in default of payment and no application has been filed for the opening of insolvency proceedings or payments have been suspended. If on the other hand the stated pre-requisites exist OMT shall be entitled to revoke the customer's collection mandate and demand that the customer informs OMT of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors of the assignment. If applicable, OMT may inform the debtor itself.

6. Liability for defects, statute of limitations

Delivered goods are to be inspected by the recipient immediately upon receipt and any deviations in quantity and quality as well as obvious defects reported immediately. Possible complaints are to be reported in writing within eight days after receipt of the goods. If a defect of quality or title is detected at a later date then this is to be reported by

the customer in writing within eight days after detection. If the customer fails to report the defect in time OMT shall be deemed free of all liability with regard to these defects. Goods for which a complaint has been made are to be stored properly, they may no longer be processed or installed. If this happens nevertheless we shall be released from all obligation for liability for defects, nor shall we be liable for incurred follow-up damages from defects. If it is determined when the goods are inspected that the reported defect was unjustified and / or was not a result of a deficiency in the service of OMT, the customer undertakes to bear all expenses of OMT associated with the examination of the alleged deficiency (travelling expenses/required time/technical inspection costs, etc). Insofar as characteristics or other circumstances of the goods are a result of requests or other – in particular faulty – information of the customer, OMT shall be deemed free of all liability for defects.

The condition is exclusively determined according to the agreements reached as well as according to possible product specifications of the Manufacturer. Public statements, pitching or advertising of the manufacturer do not on the other represent any decision information about the condition.

In the event of the proven existence of defects of quality and title which were reported in time OMT shall, at its choice, provide subsequent improvement (remedy of defect) or subsequent delivery of a faultless object. If subsequent delivery is granted OMT can demand that the customer returns the faulty object according to §§ 346 – 348 BGB. In the event that subsequent deliveries or improvements fail the recipient is only entitled to rescission of the contract (cancellation) or reduction of the price. In the event that a guarantee is assumed and in case of the existence of wilful intent or gross negligence of OMT or its vicarious agents OMT shall also be liable for compensation within the framework of the statutory provisions. A reference to norms or regulations does not represent the assumption of a guarantee to comply with these. Only the customer shall be entitled to all claims for liability of defects against OMT. These may not be assigned.

In case of purchase contracts they shall become statute-barred within one year after delivery, in case of contracts, of which the decisive contents are the production of a work, within one year after acceptance. This deadline shall not apply in case of malicious conduct of OMT.

The customer is not entitled to refuse acceptance owing to insignificant defects. If the customer unjustifiably refuses acceptance, acceptance shall be deemed as declared after expiry of two weeks after delivery.

7. General liability limit

Besides the liability for faulty deliveries and services OMT shall only be liable for all other legal grounds with the existence of wilful intent, gross negligence or serious organisational faults. In case of a breach of essential contractual duties or a guarantee was assumed, OMT shall be liable for all faults. However, in these cases liability is limited to the indemnification of our liability insurance. We shall permit the customer to view the policy upon request. If requested we shall ensure increased coverage of the liability insurance at the customer's costs.

In case of damages from the injury to life, the body or health OMT shall be liable for each negligent breach of duty to an unlimited extent. Neither do the above liability restrictions relate to claims which are due to the regulations of the Product Liability Act.

8. Other agreements

Information about possibilities for processing, use and application of our deliveries and services, technical advice and other information is provided to the best of our knowledge and belief, however with no obligation whatsoever and without any liability unless OMT undertakes as per contract to provide consultancy or assumes an express guarantee for the existence of certain properties of products.

The tolerances which are customary for the trade apply for dimensions.

Should individual of these business terms be or become invalid this shall have no effect on the validity of the other provisions.

9. Place of performance

Place of performance for all rights and duties is Hoya.

10. Place of jurisdiction

Place of jurisdiction for all disputes, insofar as the customer is a merchant, legal entity under public law or special assets under public law, is Hoya. At his choice OMT may take legal action against the customer at his registered seat.

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