



General Terms and Conditions of Sale and Delivery of OKE Group GmbH

1. Preamble

1.1 Deliveries and services of OKE Group GmbH or of companies affiliated with OKE Group GmbH within the meaning of §§ 15 ff AktG (German Stock Corporation Act) (hereinafter referred to as "OKE" or "Seller") shall be provided exclusively on the basis of the following terms and conditions of sale, unless the parties have agreed otherwise in individual contracts. These standard terms and conditions for the sale of goods or the provision of services by companies of the OKE Group GmbH shall apply exclusively unless they are amended by express agreement to the contrary, at least in text form, between the parties. The Seller does not recognise any terms and conditions of the Customer that conflict with or deviate from these Terms and Conditions of Sale, unless the Seller has expressly agreed to their validity in writing.

If an agreement was made verbally, it must be presented in text form within 24 hours, otherwise it shall be deemed not to have been made from the outset. These Terms and Conditions of Sale and Delivery shall also apply if the Seller carries out the delivery/service to the Buyer without reservation in the knowledge that the Buyer's terms and conditions are contrary to, deviate from or are additional to these Terms and Conditions.

1.2 Any errors in sales brochures, price lists, offer documents or other documentation of the Seller may be corrected by the Seller without the Seller being held liable for any damages resulting from such errors.

1.3 These General Terms and Conditions of Sale apply only to merchants.

2. Order and offer documents

2.1 Offers of the Seller are subject to change and represent only an invitation to submit a legally binding offer to the Buyer.

2.2 The contract is concluded only by the order of the Buyer (offer) and concordant order confirmation (acceptance) of the Seller. An order confirmation deviating from the order of the Buyer shall be deemed a new offer of the Seller.

2.3 All sales documents, specifications and price lists are to be treated as strictly confidential and may not be made accessible to third parties.

2.4 The Buyer shall be responsible for the accuracy of the order, and the Buyer shall be responsible for providing the Seller with any necessary information regarding the goods ordered within a reasonable time in order for the order to be executed in accordance with the contract.

2.5 If the goods have to be manufactured or otherwise processed by the Seller and the Buyer has submitted specifications for this purpose, the Buyer guarantees that these specifications are free from third party rights.

Any copyrights or personal rights, infringements of the right to a name as well as the infringement of other rights of third parties shall in this case be borne entirely by the Buyer. The Buyer undertakes to indemnify the Seller against all claims and demands insofar as the Buyer is responsible for the breach of duty. In this case, the Buyer shall be obliged to compensate the Seller for all defence costs and other damages incurred in this regard which are asserted against the Seller on account of the infringement of such third-party rights.

2.6 The Seller reserves the right to amend the description of the goods with regard to the specification to the extent that legal requirements are to be taken into account, provided that no deterioration of the order with regard to quality and usability occurs as a result of this amendment and the amendments are deviations customary in the trade.

3. Purchase price

3.1 Prices agreed for a specific delivery period or specific delivery day shall only apply to this delivery period or delivery day.

3.2 After timely notification of the Buyer and prior to delivery of the goods, the Seller reserves the right to increase the price of the goods as required by general price developments beyond the Seller's control (such as exchange rate fluctuations, currency regulations, changes in customs duties, significant increases in material or manufacturing costs) or due to changes in suppliers.

3.3 Unless otherwise stated in the order confirmation or unless otherwise agreed in writing between the Seller and the Buyer, all prices quoted by the Seller are on an "ex works" basis. If the parties have agreed on a different place of delivery, the Buyer shall bear the costs for transport, packaging and insurance.

3.4 Prices are exclusive of statutory Value Added Tax; this will be shown separately in the invoice at the statutory rate on the date of invoicing.

4. Terms of payment

4.1 Unless otherwise stated on the invoice, the purchase price is due within 30 days of the invoice date.

4.2 Payments should only be made by bank transfer or cheque; bills of exchange will not be accepted as fulfilment of the payment obligation.

4.3 It may be agreed between the contracting parties that the Buyer shall open a documentary letter of credit through its bank (or another bank acceptable to the Seller). In this individual case, it is specified that the letter of credit shall be opened in accordance with the Uniform Customs and Practice for Documentary Credits, 2006 Revision, ICC Publication No. 600.

4.4 If the payment deadline is exceeded (default), the Seller shall charge interest at a rate of 9 (nine) percentage points above the respective base interest rate. Interest is calculated and debited at the end of each month.

4.5 The Buyer is only entitled to set-off rights if its counterclaims have been legally established, are undisputed or have been acknowledged by the Seller.

The Buyer is only entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

5. Delivery of goods / Force majeure

5.1 Unless otherwise stated in the order confirmation, delivery "ex works" is agreed.

5.2 The time of delivery shall be agreed in more detail between the contracting parties and shall be specified by the Seller in the order confirmation. The agreed delivery period shall commence upon receipt of the order confirmation, but not prior to the provision of the documents, approvals and releases to be procured by the Buyer. If an agreed delivery date is exceeded, the Buyer shall grant the Seller a reasonable period of grace.

5.3 Force majeure

5.3.1 In cases of force majeure, the contracting party affected thereby shall be released from the obligation to deliver or accept for the duration and to the extent of the effect. The Seller will inform the Buyer in good time in writing or in text form.

5.3.2 A case of force majeure shall be deemed to exist in the case of any unforeseeable, serious event such as, in particular, war, terrorist conflict, epidemics or pandemics (insofar as at least an increased level of risk has been determined by the Robert Koch Institute and continues at the time of performance of the contract), illnesses, quarantine measures or industrial disputes (including strikes or lawful lock-outs) which are beyond the control of a contracting party and as a result of which a contracting party is prevented in whole or in part from fulfilling its obligations, including fire damage, energy and raw material shortages, transport bottlenecks or obstacles through no fault of its own, floods, strikes as well as operational disruptions (fire, water, machinery damage) or official orders and lawful lock-outs for which it is not responsible.

5.3.3 The contracting parties undertake to adapt the contract to the changed circumstances in good faith. For the duration and to the extent of the direct and indirect effects, the contracting parties shall be released from their obligations under the contract and shall not be liable for damages in this respect. In any case, the Seller shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part due to the part not yet fulfilled, provided that the Seller has complied with its aforementioned duty to inform and it can no longer reasonably be expected to fulfil the contract and it has not assumed the procurement risk or a delivery guarantee.

5.4 As far as the delivery of bulk goods is concerned, the Seller may deliver up to 3 % more or less of the quantity of goods without having to adjust its purchase price, and it is agreed that the quantity of goods so delivered shall be deemed to be in accordance with the contract.

5.5 If the Buyer is in default of acceptance or culpably violates other obligations to cooperate, the Seller is entitled to demand compensation for the damage incurred by the Seller in this respect, including any additional expenses. In case of default of acceptance by the Buyer, the Seller shall store the goods at the risk and expense of the Buyer. At the Buyer's request, the Seller shall insure the Goods at the Buyer's expense.

6. Transfer of risk

6.1 The risk of damage to or loss of the goods, insofar as the goods are not delivered at the Seller's business premises, shall pass to the Buyer at the latest at the point in time when the Seller has delivered the goods to the forwarding agent, carrier or other person designated to carry out the shipment; if the Buyer is in default of acceptance, at the point in time when the Seller offers to hand over the goods.

6.2 If the goods are delivered to the Seller's premises ("ex works", Incoterms 2020), the risk of damage to or loss of the goods shall pass to the Buyer at the moment the Seller informs the Buyer that the goods are ready for collection.

7. Retention of title

7.1 The goods delivered by the Seller shall remain the property of the Seller until all outstanding claims arising from the joint business relationship, including interest and costs, have been settled in full ("Reserved Goods").

7.2 The Seller shall have the right to withdraw from the contract in accordance with the statutory provisions and to demand the surrender of the object of sale in the event of conduct by the Buyer that is in breach of the contract, in particular in the event of default in payment, subject to § 107 (2) InsO (German Insolvency Regulations). After reclaiming the object of sale, the Seller is entitled to sell it elsewhere or otherwise dispose of it. The proceeds of the sale shall be credited against the Buyer's liability - less reasonable costs of sale.

7.3 As long as the goods have not been paid for in full, the Buyer must hold the goods in trust for the Seller and keep the goods separate from its property and that of third parties and properly store, secure and insure the goods subject to retention of title and mark them as the property of the Seller.

7.4 The Buyer is revocably entitled to resell the reserved goods in the ordinary course of business. The Buyer hereby assigns to the Seller accepting the assignment, irrespective of any processing, all claims and ancillary rights to which it is entitled from the resale and the business relationship with its customers in connection with the resale. In the event that the delivery is sold by the Buyer together with other goods not belonging to the Seller, the assignment of the Buyer's purchase price claim shall only apply to the value of the delivery.

7.5 The Buyer is revocably authorised to collect the claim from the resale of the reserved goods as long as it meets its payment obligations. The authorisation to collect and the right to process shall lapse, even without express revocation, if the Buyer ceases to make payments, is in default of payment, in the event of a seizure having taken place or if an application has been made to open insolvency proceedings. Assigned accounts receivable received thereafter shall be accumulated immediately in a special account with the designation to be specified separately by the Seller. At the request of the Seller, the Buyer shall immediately inform the Seller in writing of the debtors of the assigned claim(s) and notify the debtors of the assignment to the Seller. The Seller shall also be entitled to notify the Buyer's customers of the assignment of the Buyer's claim(s) to the Seller and to collect the claim(s).

7.6 In the event of a combination or inseparable mixing of the reserved goods with other items, the reservation of title shall also extend to the resulting uniform item. If the reserved goods are combined or inseparably mixed with other materials not owned by the Seller, the Seller shall acquire co-ownership of the uniform item in the ratio of the invoice value of the reserved goods to the invoice value of the other, third-party materials. If the combination or mixing takes place in such a way that the Buyer's item is to be regarded as the main item, the Buyer hereby assigns to the Seller the co-ownership share determined in accordance with the above sentence. In addition, the provisions of this Section 7 regarding the goods subject to retention of title shall also apply to the uniform item created after combination or mixing.

7.7 Any processing or transformation of the reserved goods shall always be carried out on behalf of the Seller, with the result that the Seller shall become the owner of the newly produced item. If the reserved goods are processed or transformed into a new item together with other materials not owned by the Seller, the Seller shall always acquire co-ownership of the newly produced item in the ratio of the invoice value of the reserved goods to the invoice value of the third-party processed materials. In all other respects, the provisions of this Section 7 concerning the goods subject to retention of title shall also apply to the new item produced after processing or transforming the goods subject to retention of title.

7.8 The Buyer shall be deemed to be the Seller's custodian for the Seller's sole or joint property thus created.

7.9 In the event of seizure or other interventions by third parties - also after combining, mixing, processing or reworking - as well as any other impairment of the rights to the goods subject to retention of title owned by the Seller, the Buyer shall notify the Seller in writing without delay so that the Seller can file an action pursuant to § 771 ZPO (German Code of Civil Procedure). Insofar as the Buyer fails to comply with this obligation, it shall be liable for the damage incurred.

7.10 The Seller undertakes to release the securities to which it is entitled at the Buyer's request to the extent that the realisable value of the securities exceeds the claims to be secured by more than 10%. The choice of the securities to be released shall be made by the Seller.

8. Warranty and liability

8.1 Claims for defects on the part of the Buyer presuppose that it has duly fulfilled its obligations to examine the goods in accordance with § 377 of the German Commercial Code (HGB). If the goods are not delivered in full or as agreed, the Buyer is obliged to give written notice of this immediately after discovery of the defect and to assert its claim to subsequent performance. If the Seller does not fulfil its obligation of subsequent performance, the Buyer is entitled to set a reasonable deadline. If the Seller allows this period to elapse without success, the Buyer may, at its discretion, demand a reduction in price within the framework of the statutory provisions. The Buyer shall not be entitled to substitute performance (performance of the work by third parties at the Seller's expense).

8.2 The Seller accepts no responsibility for the goods being fit for a particular purpose.

8.3 The Seller accepts no responsibility for defects in the goods which are due to a description of the goods or specification by the Buyer.

8.4 The Seller's responsibility does not extend to parts, materials or other equipment manufactured by or on behalf of the Buyer, unless the manufacturer of such parts accepts responsibility vis-à-vis the Seller. The Seller shall not be liable for any defects resulting from incorrect installation or use by the Buyer or other misuse by the Buyer which is contrary to the Seller's instructions.

8.5 For damages due to injury to life, body or health, in the case of intent or gross negligence on the part of the Seller or its vicarious agents, as well as for damages covered by a guarantee granted by the Seller, the Seller shall be liable in accordance with the statutory provisions.

The liability of the Seller - irrespective of the legal grounds - shall be limited to damages caused by the Seller or its vicarious agents intentionally, by gross negligence or by breach of duties essential for the fulfilment of the purpose of the contract and on the observance of which the Buyer may regularly rely, due to slight negligence. Claims for damages according to the German Product Liability Act, due to the absence of a quality guarantee and due to injury to life, body or health or due to other mandatory legal provisions remain unaffected. The same applies to breaches of duty by vicarious agents of the Seller.

In cases of grossly negligent breach of duty or slightly negligent breach of duties essential for the fulfilment of the purpose of the contract, the Seller's liability shall be limited to the amount of the foreseeable, typically occurring damage. Liability for consequential and pecuniary damages as well as for loss of profit is not covered by the foreseeable, typically occurring damage.

8.6 The limitation of liability under this Section 8 shall also apply to the extent that the Buyer demands reimbursement of expenses instead of damages.

8.7 All claims of the Buyer based on defects shall become statute-barred after one year. The statutory provisions shall apply to the commencement and expiry of the limitation period. The reduction shall not apply if the Seller is guilty of intentional or grossly negligent breach of duty.

The reduction of the limitation period to one year shall not apply to claims against the Seller based on mandatory statutory provisions on the recourse of intermediaries in the supply chain against the Seller (§§ 478 BGB).

The Seller's liability for damages resulting from injury to life, body or health caused by a defect for which the Seller is responsible shall also not be affected by this clause.

8.8 Insofar as the delivered goods are defective, the Seller shall, at its discretion, remedy the defect or deliver new goods free of defects (subsequent performance). The Seller shall always be given the opportunity to remedy the defect within a reasonable period of time. The expenses necessary for the purpose of subsequent performance, in particular transport, material and labour costs, shall be borne by the Seller, insofar as the expenses are not increased by the fact that the delivered goods have been taken to a place other than the place of performance.

8.9 If the replacement delivery is unsuccessful or if the rectification of defects fails after two attempts at subsequent performance, the Buyer shall be entitled to withdraw from the contract or to reduce the remuneration.

9. Other provisions

9.1 The Seller shall be entitled to modify and improve the goods without having to inform the Buyer thereof in advance, provided that the modification or improvement constitutes deviations customary in the trade.

9.2 These Terms and Conditions of Sale shall not be made available to any third party without the written consent of the Seller.

9.3 Each Party shall bear its own costs in implementing this Agreement.

10. Choice of law, place of jurisdiction, Incoterms, final provisions, Severability clause

10.1 The law of the Federal Republic of Germany shall apply. The provisions of the UN Convention on Contracts for the International Sale of Goods and legal norms that refer to another legal system shall not apply.

10.2 The place of jurisdiction for disputes arising from or in connection with the contractual relationship existing between the Seller and the Buyer shall be the Seller's place of business.

10.3 The Seller shall also have the right to bring an action in the court having jurisdiction over the Buyer or in any other court which may have jurisdiction under national or international law.

10.4 Insofar as trade terms in accordance with the International Commercial Terms (INCOTERMS) have been agreed, INCOTERMS 2020 shall apply.

10.5 If copies of these Terms and Conditions of Sale have been made in other languages, only the German version shall be binding on the Seller and the Buyer.

10.6 Should any provision of these Terms and Conditions of Sale be or become invalid, the remaining provisions shall remain in effect.

As at: May 2021