

GENERAL TERMS AND CONDITIONS OF BUSINESS OF OHARA GmbH

Section 1 Scope

Ohara GmbH does business exclusively on the basis of the following general terms and conditions of business (OHARA General Terms and Conditions of Business). These conditions of contract also apply for follow-up orders. The inclusion of deviating general terms and conditions of purchase of the party to the contract is expressly rejected. They shall also apply when we are aware of deviating or conflicting terms and conditions of the customer and execute the delivery of the goods to the customer without reservation. These OHARA General Terms and Conditions of Business shall only apply to entrepreneurs (§ 14 BGB (Bürgerliches Gesetzbuch - German Civil Code)), legal entities under public law and special funds under public law.

Section 2 Conclusion of Contract

- 1) Our offers are without obligation and non-binding. This shall apply even if we present our products on our website, provide the Buyer with catalogs, technical documentation (e.g. drawings, plans, calculations, estimates, references to standards), other product descriptions or documents - also in electronic form - to which we have reserved copyright and property rights.
- 2) The order for the goods placed by the Buyer shall be deemed a binding offer to enter into a contract. Unless stated otherwise in the order, we are entitled to accept this contractual offer within two weeks after its receipt by us.
- 3) Acceptance shall either be declared in writing, thus in written or text form (e.g. as a letter, E-mail, fax (e.g. through the order confirmation)) or through the supply of the goods to the Buyer.

Section 3 Place of performance, transport costs

- 1) All deliveries are made ex warehouse in Hofheim unless otherwise separately agreed. The transport costs, including the costs of insurance of the appropriate means of transport normally used by the supplier, are borne by the customer. The customer is entitled to choose a different means of transport than that arranged by the supplier if it assumes the additional costs.
- 2) The shipment is made in the most cost-effective packaging necessary for the delivery.

Section 4 Delivery

- 1) Delivery is subject to the prompt and correct availability of supplies and raw materials. This shall also apply if no fault can be attributed either to us or our suppliers or we do not have a procurement obligation in the individual case. The delivery obligation of Ohara ceases to apply without compensation if it is permanently hindered in the fulfilment of its obligation by government measures taken in the country of origin of the goods or international organisations, acts of war or natural disasters.
- 2) A delivery date will be extended in the event of legal strikes and lockouts if an independent supplier is affected, also in the event of unlawful industrial action of this kind, by the duration of the resulting interruption of business.

- 3) In the event of later amendments of the contract that may influence the delivery date, the delivery date is extended by a reasonable period if special agreements on this are not reached.
- 4) If the customer does not fulfil its contractual obligation to co-operate in good time, the delivery date is also extended accordingly by a reasonable period.
- 5) The supplier is entitled to perform partial deliveries. The delivery of excess quantities of up to 10% of the contractually agreed volume is permitted.

Section 5 Price, payment and delay

- 1) All prices are subject to the statutory value added tax at the rate prevailing during the period of performance.
- 2) The purchase price is due in full immediately on delivery unless otherwise agreed for the individual order.
- 3) If phased deliveries are contained in the contract, the purchase price is due with each partial delivery.
- 4) The customer undertakes to pay related interest in the amount of 9% above the base rate pursuant to section 247 of the *Bürgerliches Gesetzbuch* (BGB – German Civil Code) in the event of delayed payment. The supplier reserves the right to assert more extensive damages for delay. The supplier is entitled to exercise the right of retention to which it is entitled also in the event of delayed payment by the customer with regard to previous deliveries.
- 5) The customer is entitled to rights of set-off or retention only to the extent that its claim has become *res judicata* or is uncontested. In the event of defects in the delivery, the opposing rights of the customer, especially pursuant to section 6(3) sentence 2 of these general terms and conditions of business remain unaffected.
- 6) If it becomes apparent after the contract is concluded that the claim of the supplier for payment is put at risk by the customer's inability to pay, the supplier can generally, at its discretion and after a reasonable grace period, demand that security is furnished with payment versus delivery. After the grace period has expired without the desired result being achieved, the supplier can rescind the contract.

Section 6 Guarantee

- 1) The quality and condition of the goods supplied is determined by the specification and description of the subject matter of the contract handed over when the tender is prepared or the order is confirmed by the supplier. The parties to the contract agree that the goods are free of defects if they fulfil the condition indicated in the specification. The delivery of short quantities up to 10% of the contractually agreed volume does not represent a defect.
- 2) In the event of defects in the goods supplied, the customer can initially demand that the defects are remedied or a replacement delivery is supplied solely as subsequent performance. The period for the subsequent performance must take into account the time that the supplier requires to procure replacement of the goods from the same country of origin from which the defective goods came.
- 3) The expenses necessary for the purpose of audit and subsequent performance, especially transport, infrastructure, labour and material costs (not: disassembly and installation costs) will be borne by us if a defect is actually present. If a claim of the purchaser for rectification of a defect proves to be unjustified, we can demand from the purchaser reimbursement of the costs incurred in this.

- 4) In urgent cases, e.g. when operating safety is put at risk or to avert disproportionate damages, the purchaser has the right to rectify the defect themselves and to demand from us reimbursement of the expenses objectively required for this. We are to be informed immediately, if possible in advance, of self-performance of this kind. The right to self-performance does not exist if we would be entitled to refuse corresponding subsequent performance in accordance with the statutory regulations.
- 5) We are entitled to make the subsequent performance undertaken to be carried out dependent on the purchaser paying the purchase price that is due. The purchaser is, however, entitled to retain a part of the purchase price that is reasonable in proportion to the defect.
- 6) In the event that the subsequent performance fails or after a reasonable grace period to be set by the purchaser for the subsequent performance has elapsed without the desired outcome being achieved or is superfluous in accordance with the statutory regulations, the customer can at its discretion rescind the contract, reduce the remuneration or demand compensation under the terms of the statutory regulations in observance of the regulations in section 7 of these general terms and conditions of business. There is no right of retention in the case of an insignificant defect, however.
- 7) The customer undertakes to examine the goods thoroughly after receipt of each individual delivery and before any possible processing and to notify the supplier of visible defects without delay within a maximum period of 7 days.
- 8) Defects in the goods that are not evident are to be notified to the supplier immediately after they are discovered.
- 9) The assignment or pledging of guarantee claims where the goods are not transferred to the third party is precluded.
- 10) The purchaser undertakes to inform the supplier in full without delay if guarantee claims are asserted against it by its customers.

Section 7 Liability

- 1) The supplier shall not be liable for ordinarily negligent actions, including ordinarily negligent actions of its executive staff and all vicarious agents, if these do not involve duties that are indispensable for the achievement of the objective of the contract or on the fulfilment of which the customer may rely.
- 2) The supplier shall not be liable in principle for damages that are not typical of this type of contract, are unforeseeable or can be controlled by the party to the contract, if the party to the contract may not in particular rely specifically on their prevention.
The supplier shall in particular not be liable for damages that arise as a result of improper operation or inadequate supervision of equipment of the purchaser with which the contract products are processed.
- 3) All limitations of liability apply also to the liability arising from culpa in contrahendo, other breaches of duty or on account of tort claims for compensation for material damage pursuant to section 823 BGB. In addition, the supplier shall not be liable for consequential damages for which liability on account of other breaches of duty come into consideration, unless the other party to the contract could rely on proper performance of a duty on the basis of a particular element of trust or material contractual obligations are affected.
- 4) Damages arising from injury to life, limb or health are excluded from the limitations of liability if the supplier is responsible for the breach of duty.

5) The limitations of liability resulting from section 7 paras. 1)-3) shall not apply if we maliciously conceal a defect or have assumed a guarantee for the quality of the goods. The same shall apply for claims of the customer pursuant to the *Produkthaftungsgesetz* (German product liability act).

Section 8 Retention of title

1) The goods supplied remain the property of the supplier until complete payment of all accounts receivable arising from the business relationship with the customer. Retention of title shall also apply in any managed current account relationship and also with regard to the claim for the balance of account.

2) The customer is entitled to sell or process the goods subject to retention of title in the normal course of business; a pledge or chattel mortgage is not permitted. This authorisation shall not apply if the resale is made to customers who have precluded the assignment of the claim for payment directed against it or have at any rate limited it with regard to the share received of the performance of the supplier.

3) The customer here and now assigns to the supplier its claim from the resale of the goods subject to retention of title or claims arising on another legal ground (e.g. section 950 BGB). The supplier accepts this assignment. Irrespective of the assignment and of the right of collection of the supplier, the customer is entitled to collect the claim as long as it fulfils its obligations towards the supplier and does not default on payment, is not subject to the filing an application for insolvency, does not become insolvent or it does not become apparent after the contract is entered into that the claim of the supplier for payment is put at risk by an inability of the customer to pay.

The customer has to inform the supplier on request of the information on the assigned claims necessary for their collection and to notify its customers of the assignment. The assignment of the purchase price claim of the purchaser against its clients to third parties is precluded up to the amount of the claim of the supplier. The supplier is entitled to demand immediately that the goods that have not been paid for are handed over after the default in payment has occurred.

4) The processing or transformation of the delivery item by the customer is always carried out on behalf of the supplier as manufacturer. If the delivery item is processed with other objects not belonging to the supplier, then the supplier acquires the joint ownership of the new article, which corresponds to the ratio of the value of its goods in proportion to the value of the goods of other suppliers. If the goods are combined or processed in such a way that the article of the purchaser and that of the purchaser's customers are to be regarded as the primary article, then it is deemed to have been agreed that the purchaser assigns joint ownership of the new article pro rate to the supplier. The purchaser or the customer of the purchaser preserves ownership for the supplier.

5) Clauses 1) to 3) apply accordingly for the articles that are newly created as a result of processing, combination or transformation.

6) If the supplier's liability on a bill of exchange has been created in connection with the payment of the purchase price by the purchaser, then the retention of ownership and the trade accounts receivable underlying this shall not expire before the bill is honoured by the customers as drawee.

Section 9 Statute of limitations

- 1) In deviation from section 438(1) no. 3 BGB, the general period of limitation for claims arising from material defects and defects in title amount to one year from delivery. If acceptance is agreed, the statute of limitations commences upon acceptance.
- 2) If, however, the goods involve a building or an article that is used in accordance with its usual manner of application for a building and has caused the defects in the building (building materials), the limitation period amounts to 5 years from delivery in accordance with the statutory regulation (section 438(1) no. 2 BGB), Special statutory regulations for third parties' claims in rem for restitution of property (section 438(1) no. 1 BGB), in the case of fraudulent intent of the seller (section 438(3) BGB) and for claims based on recourse against the supplier in the event of final delivery to a consumer (section 479 BGB) remain unaffected.
- 3) The above limitation periods of the Sales Convention also apply for contractual and non-contractual claims of the purchaser for damages that are based on a defect in the goods, unless the application of the regular statutory limitation period (sections 195, 199 BGB) would lead to a shorter limitation period in the individual case. The limitation periods of the Product Liability Act remain unaffected in any event. Otherwise the statutory limitation periods shall apply for claims of the purchaser for damages pursuant to section 7 paras. 4) and 5) exclusively.

Section 10 Warranty – Intellectual property rights

The customer vouches by way of its own warranty that in the event that Ohara produces articles on the basis of drafts and specification of the customer it is the full and exclusive rights owner. If patent, copyright or trademark rights are nevertheless asserted against Ohara GmbH by a third party in this respect, the customer has to indemnify Ohara GmbH against all costs and liabilities in this respect.

Section 11 Choice of law, venue

- 1) The contractual relationship is subject to the law of the Federal Republic of Germany.
- 2) The registered office of the supplier is agreed as the place of performance for all obligations arising from this contractual relationship. The court competent for the registered office of Ohara GmbH and at the discretion of the supplier also that of the purchaser are designated as the venue for all disputes arising from this contractual relationship.
- 3) All agreements of the parties on the contractual relationship, including the amendment of this clause, must be made in writing, i.e. in written or text form (e.g. as a letter, E-mail, fax). Statutory provisions on form and additional evidence, especially in case of doubt regarding the legitimation of the declarant remain unaffected.

OHARA GmbH Im
Langgewann 4 65719
Hofheim, Germany
Telefon +49 6192 9650-50
Telefax +49 6192 9650-51

Updated: 11/2017