

General Terms of Delivery

Industrial Lubricants

§ 1 General – Scope of Application

- (1) Oemeta's Terms of Delivery shall apply exclusively to the conclusion and performance of contracts on deliveries by Oemeta, excluding the customer's conflicting or divergent terms of sale 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 customer's terms conflict or diverge from its own terms of sale.
- (2) These Terms of Delivery also apply to all future business transactions between Oemeta and the customer.

§ 2 Quotation, Quotation Documents

- (1) Oemeta's quotations are without obligation and non-binding. Supplements, amendments or ancillary arrangements relating to such quotations have to be agreed in writing.
- (2) Oemeta reserves the rights of ownership and copyright in illustrations, drawings, calculations and other records. They may not be made accessible to third parties.
- (3) Oemeta may accept orders constituting quotations pursuant to German Civil Code [*Bürgerliches Gesetzbuch – BGB*] s. 145 within four weeks.

§ 3 Specifications of Object of Delivery

- (1) Weights and measures, illustrations and other technical specifications given in Oemeta's quotations are only binding if this has been expressly warranted, whereby a range of tolerance is possible under DIN and the agreements reached. When performing in accordance with the customer's specifications, Oemeta is under no obligation to check same.
- (2) The customer shall itself obtain all and any official permits required. The customer shall assume the cost of any approval or review procedure called for.

§ 4 Prices, Terms of Payment

- (1) Unless otherwise agreed, Oemeta's prices are "ex works" and do not include turnover tax.
- (2) Any deduction of discount must be separately agreed in writing.
- (3) Unless otherwise stated, the purchase price falls due for payment net cash (without deduction) immediately on issuance of an invoice. If the customer defaults in payment, then Oemeta shall be entitled to demand default interest at a rate of 5 percent over and above the base rate. On proving that default losses are greater, Oemeta shall be entitled to claim such greater losses. The customer is only entitled to setoff if its counterclaims have been declared *res judicata*, are undisputed, or are recognised by Oemeta. Rights of retention may only be asserted if a counterclaim is based on the same legal relationship.

§ 5 Dispatch, Passing of Risk

Unless otherwise agreed, the risk of damage to or destruction of the object of delivery – even for reasons beyond the risks typical for transport – shall pass to the customer as soon as the item(s) leave(s) Oemeta's factory or warehouse, or is/are loaded from there by a forwarding company or by Oemeta's own staff, and embark(s) on transportation.

§ 6 Delivery Dates & Periods

- (1) The commencement of the delivery period given by Oemeta shall be contingent upon all technical issues being clarified.
- (2) Oemeta shall have a reasonable period during which to effect delivery.
- (3) Delivery dates are to be regarded as merely approximate and without obligation, unless a fixed date has expressly been promised in writing.
- (4) If Oemeta defaults in delivery for reasons for which it is responsible, then liability for default damages shall be excluded in cases of simple negligence.
- (5) If the customer sets Oemeta a reasonable period of grace once the latter is already in default, then the customer shall be entitled to rescind the contract. If default is due to intent or gross negligence, the customer is only entitled to claim compensation for non-performance up to the amount of the foreseeable damage. In any such case, liability for damages shall be limited to 50% of the losses sustained. The above limitations of liability do not apply if a fixed-term business transaction has been agreed, or if the customer is able to argue that its interest in performance of the contract has lapsed.
- (6) Oemeta's compliance with its delivery obligations is contingent upon the customer duly and punctually performing its own obligations.
- (7) If the customer defaults in accepting performance, or if it breaches any other duty to co-operate, then Oemeta shall be entitled to demand the losses it sustains, including any extra expenses. In any such case, the risk of the item purchased accidentally being destroyed or accidentally deteriorating shall also pass to the customer at the moment in time when it defaults in acceptance.

§ 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 acceptance of delivery of the finished goods, or claim damages for non-performance. If damages are 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 a claim going beyond this for any losses sustained for which it has to provide evidence.

§ 8 Guarantee for Defects

- (1) The customer's guarantee rights are contingent upon the customer duly performing its obligations under the German Commercial Code [*Handelsgesetzbuch – HGB*] to inspect the goods and file complaints.
- (2) If the item purchased has a defect for which Oemeta is responsible, Oemeta shall be entitled to remedy the defect or make a substitute delivery, at its own option. If it remedies the defect, Oemeta shall be under obligation to pay all the expenses required for the purpose of remedying it, in particular transport, travel, labour and material costs, insofar as such costs are not
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(4) increased due to the purchased item having been taken to some place other than the place of performance.

(5) If Oemeta is not willing or able to remedy the defect or 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 customer shall be entitled – at its own option – to rescind the contract or to demand an appropriate reduction in the purchase price.

§ 9 Exclusion of Liability

- (1) Claims based on defects in Oemeta's deliveries going beyond those contained in § 8 above are excluded, for whatsoever legal cause. Oemeta is not therefore liable for damage not caused to the actual item delivered. In particular, it is not liable for lost profits or any other pecuniary losses suffered by the customer.
- (2) Insofar as Oemeta's liability is excluded or limited, this also applies to the personal liability of its employees, workers, staff, representatives, and those assisting it in performing its obligations.
- (3) The above exemption from liability does not apply if damage caused is due to intent or gross negligence, or if the customer claims damages for non-performance because a warranted characteristic is lacking.
- (4) Claims pursuant to Product Liability Law [*Produkthaftungsgesetz*] s. 1 and s. 4, and claims based on initial inability to comply or on a reasonable degree of initial impossibility are excluded from the above exemption of liability. Losses based on injury to life or limb or health hazards are likewise excluded from the exemption of liability.

§ 10 Reservation of Title, Collateralisation of Claims

- (1) Oemeta reserves title to the purchased item until such time as all the payments have been settled to which it is entitled under the delivery agreement and any other business relationship. If the customer is in breach of contract, in particular if it defaults in payment, then Oemeta shall be entitled to take back the purchased item, whereby this shall not constitute rescission of the contract unless Oemeta issues a written declaration to this effect. After taking back the purchased item, Oemeta shall be authorised to realise same, whereby the realisation proceeds – minus reasonable realisation costs – shall be counted towards the customer's liabilities.
- (2) The customer must inform Oemeta in writing without delay in the event of attachment or any other third-party interference. The customer is liable to pay Oemeta its expenses for prosecuting the third party, insofar as the latter is not able or under obligation to refund same.
- (3) In the context of proper business transactions, the customer is entitled to resell the purchased item or to allow third parties to own it after it has been installed. Customer here and now assigns to Oemeta up to the invoiced amount (including value added tax [*Mehrwertsteuer*]) all its receivables thus accruing to it from its own customer, irrespective of whether the purchased item is resold without being processed or after processing. Even after assigning them, the customer remains authorised to collect assigned receivables as long as it does not default in making payments to Oemeta, as long as no petition for the institution of bankruptcy or composition proceedings has been filed against its assets, and as long as it has not ceased making payments.
- As soon as its own authorisation to collect the payment lapses, the customer is under obligation to notify Oemeta about the assigned receivables and the parties owing same, to provide all the particulars required for collecting them, and to hand over all the relevant documents.
- (4) Any processing or conversion of purchased items by the customer shall always be done on Oemeta's behalf. If the purchased item is processed along with other items not belonging to Oemeta, then it shall acquire co-ownership in the new item to the extent of the value of the purchased item in relation to the other items processed at the time of processing. For the item created by such processing, the aforementioned reservations shall all apply as for the purchased item delivered.
- (5) At the customer's request, Oemeta undertakes to release the security to which it is entitled insofar as the value of such security exceeds the receivables being collateralised by more than 20%. Oemeta is free to choose the security to be released.

§ 11 Venue, Place of Performance

- (1) Provided the customer is a registered merchant as defined in the Commercial Code, or a legal entity or a special trust under public law, Uetersen, Germany, shall be exclusive venue for all and any disputes directly or indirectly arising from the contractual relationship. However, Oemeta is also entitled to sue the customer at its place of residence.
- (2) Unless otherwise agreed, place of performance is Uetersen, Germany.
- (3) German law applies exclusively.
- (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.

§ 12 Written Form

All and any agreements reached in connection with the discharging of orders must be done in writing.