



Oscar Goetz GmbH – Arndtstrasse 23 – D-22085 Hamburg

General Terms and Conditions

Version: August 1, 2011

I. Area of Application

As far as not explicitly specified otherwise in writing, these sales terms and delivery conditions of Oscar Goetz GmbH apply for all quotations, sales agreements, orders and deliveries which Oscar Goetz executes for purchasers. They also apply for future business relationships, even if not again explicitly agreed to. Any deviating general terms and conditions of the purchaser will not be accepted even if they were not explicitly objected against.

II. Contract conclusion

1. Quotations from Oscar Goetz are subject to change if they were not expressly specified as binding in the quotation text. The contract has only been concluded once Oscar Goetz confirms the order in writing to the purchaser.
2. Oscar Goetz will only grant warranty if this has been expressly agreed to in the order confirmation or in advertising messages.
3. Documentation which was handed over by Oscar Goetz during the contract initiation, such as images and drawings, and technical statements which were made by Oscar Goetz are decisive; any technical changes or technical improvements or construction changes are authorized if they are reasonable for the purchaser.

III. Scope of Delivery, Transportation and Passing of Risk

1. Delivery ex works is agreed to in principle. The risk passes to the purchaser at the latest with the shipment of the delivery item from the plant or shipping point. If the shipping is postponed due to the purchaser's behaviour or due to a circumstance outside of Oscar Goetz' control, the risk passes to the purchaser with the notification of readiness for despatch.
2. Unless agreed to otherwise, the purchaser must conclude a transportation insurance at its costs on the basis of the general transportation insurance conditions which covers the risk of transports of the goods which are included in the contract from the shipping point to the agreed destination point.
3. In the case of agreement of commercial terms, Incoterms apply in their respective valid version. The scope of the delivery is specified in the order confirmation.

IV. Delivery Term and Force Majeure

1. Delivery terms which are not expressly specified as binding are non-binding. Delivery terms start at the earliest once all documentation which is required for the content determination of the order has been received if the purchaser must obtain these documents according to the contract, and upon receipt of the down-payment. A delivery term is considered as being kept if the shipment has been sent or if readiness of the delivery has been notified within the term.
2. Delivery terms extend by the duration of the business disruption if circumstances occur which are not the responsibility of Oscar Goetz and which significantly influence the manufacturing or delivery of the object, especially in the case of labour disputes and other circumstances which affect Oscar Goetz or sub-suppliers (business disruption without own fault). If a required adjustment of the contract due to business disruption without own fault is not possible, Oscar Goetz shall be relieved of its performance obligation.



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3. If the delivery term is extended due to the aforementioned circumstances or if Oscar Goetz is relieved from its delivery obligation, the purchaser is not entitled to any liability claims against Oscar Goetz. Oscar Goetz is also not liable for any business disruptions without fault if they occur during the delay. Oscar Goetz is obligated to inform the purchaser of the occurrence of any of the aforementioned circumstances.

4. Oscar Goetz is entitled to issue partial deliveries and invoices prior to the end of the delivery term and to a reasonable extent.

5. If shipment or delivery of the delivery item is postponed upon the purchaser's request or due to circumstances which originated in the risk and responsibility range of the purchaser, the purchaser must compensate Oscar Goetz for costs incurred due to storage and the costs for interest for the capital which was used for the delivery item. In the case of storage by Oscar Goetz, the entitlement amounts to at least 0.5% of the still outstanding invoice amount for each outstanding month, starting with the month after notification of readiness of delivery; proof of lower damage remains possible. However, after specifying and unsuccessful expiry of a reasonable term, Oscar Goetz is entitled to dispose of the delivery item otherwise and to provide the purchaser with a replacement delivery after a reasonably extended period of time.

V. Prices

1. Delivery is carried out according to the prices which have been notified in the price list which is valid at the point in time which has been specified as the delivery date by the purchaser. All prices apply ex works / shipping point. If not specified otherwise, all prices are quoted in euro and plus transportation, insurance and installation and instruction costs if applicable and value added tax in the respectively effective amount.

2. Oscar Goetz reserves the right to increase prices reasonably if after contract conclusion cost increases occur, especially due to tariff agreements, market cost prices or material price increases. Evidence of those will be shown to the purchaser upon request.

3. For order values below EUR 50 Oscar Goetz will charge a surcharge of EUR 10 for small quantities. If quantities purchased are smaller than as stated on the packaging units, there will be no quantity discount and a minimum 10% additional charge will apply to the net worth of the goods.

VI. Payment and arrears

1. Payments are to be made to Oscar Goetz without any deductions, as specified in the invoice, immediately upon receipt. Oscar Goetz expressly accepts cheques under reserve. Cheques are only accepted pending full discharge of the debt and will only become effective once cashed in as payment. All payments are to be made exempt from charges. For cheques, the purchaser must bear the bank discount and collection charges and other bank charges. Payments are first settled for costs, then for interest and subsequently, for the respectively oldest main principal claim.

2. If in arrears, default interest in the legally valid amount, however, at least 9% annually, will be charged; proof of lower damage is possible until the amount of the legally valid interest rate.

3. The purchaser is only entitled to offsetting and retention rights against the claims of Oscar Goetz if the counterclaim is undisputed and has been determined as being legally binding.

4. Any assignment of claims requires Oscar Goetz' consent.



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5. If it is determined after contract conclusion or after delivery of the goods that the purchaser is not or no longer creditworthy, e.g. enforcement measures have been instituted against the purchaser or any other capital deterioration occurs, Oscar Goetz can immediately assert claims which are not yet due or such claims for which a cheque had been provided. In these cases and if due invoices have not been paid despite reminder, Oscar Goetz can demand advance payment or a collateral security for future deliveries and declare that a delivery will only be carried out based on cash on delivery. If a purchaser does not meet this demand, Oscar Goetz is entitled to withdraw from the contract or to request immediate payment of delivered goods. In the case of withdrawal, the purchaser must compensate all costs which incurred to Oscar Goetz until the withdrawal, including lost profit.

VII. Retention of title

1. Oscar Goetz keeps ownership of delivered items until all claims which have incurred from the business relationship with the purchaser at the time of contract conclusion, including all claims at this point in time which incurred from follow-on orders, repeat orders or spare parts orders have been paid. As far as the value of security rights which Oscar Goetz is entitled to exceed the amount of all secured claims by more than 20%, Oscar Goetz will release the corresponding portion of the security rights upon the purchaser's request.

2. In the case of any purchaser behaviour contrary to contract, in particular delayed payment, Oscar Goetz is entitled to take back the delivery. Taking back or garnishment of the delivery by Oscar Goetz does not constitute a withdrawal from the contract, unless Oscar Goetz confirms this expressly in writing. Oscar Goetz is entitled to liquidation and the amount realized from the sale is to be offset against the purchaser's liabilities, reasonable liquidation costs deducted. The purchaser is obligated to take good care of the delivery. In particular, the purchaser is obligated to sufficiently insure the goods against damages resulting from fire, water, storm and burglary at the replacement value. Security entitlements which incur in the case of damages are to be transferred to Oscar Goetz. As far as maintenance and inspection work becomes necessary, the purchaser must perform such work at its own costs and on time.

3. The purchaser may neither pledge nor transfer delivery items as a security. The purchaser must inform Oscar Goetz immediately in the case of garnishments or other third party interference so that Oscar Goetz can file third party interference proceedings and the purchaser must provide Oscar Goetz with any information and documentation which is required to protect the rights of Oscar Goetz. Executory officers or third parties must be informed about Oscar Goetz' ownership. If third parties are not able to reimburse Oscar Goetz with the court and out-of-court costs of third party interference proceedings, the purchaser is liable to pay Oscar Goetz the incurred loss, subject to asserting additional claims due to damage, change or destruction of the object itself.

4. The purchaser may sell the item(s) of sale in the normal course of business or process them. The purchaser already assigns all demands to Oscar Goetz which the purchaser gains from the sale to its buyers or third parties, irrespective of whether the items were sold without or after processing, in the amount of the final invoice amount including VAT. Oscar Goetz accepts the assignment. In the case of a current account relationship between the purchaser and its buyers, the claim which is assigned to Oscar Goetz by the purchaser in advance also refers to the accepted account balance and in the case of the purchaser's insolvency also to the existing "causal" balance. The purchaser may collect the claims even after the assignment. The right to collect this claim directly shall not be affected. Oscar Goetz will not collect the claim itself as long as the purchaser meets its payment obligations from the received proceeds, does not delay payments and no insolvency proceedings were filed.



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5. The purchaser obligates itself to provide Oscar Goetz upon request with a detailed listing of the claims to which Oscar Goetz is entitled including name and address of the buyer, amount of the individual claims, invoice dates, etc.; to provide Oscar Goetz with all the required information to enable the assertion of the assigned claim, to allow verification of this information and to disclose the assignment to the buyers.

6. The purchaser already declares its consent that the individuals which are commissioned by Oscar Goetz to collect the conditional goods may, for this purpose, enter the building or drive onto the property where the conditional goods are located in order to pick up the conditional goods.

7. Processing or alteration of the delivery item by the purchaser is always performed for Oscar Goetz. If the item is processed with other items that are not the property of Oscar Goetz, Oscar Goetz acquires co-ownership of the new item in the ratio of the value of the delivery item to the other items that are to be processed at the time of the processing. Otherwise, the same applies for the item that is produced by the processing as for the item that was delivered under reserve. If the processing, mixing or combination is carried out in a way that the purchaser's item is to be considered as the main item, it is considered as agreed that the purchaser assigns proportional co-ownership. The purchaser stores the resulting sole ownership or co-ownership item for Oscar Goetz.

VIII. Claims of Defect – Period of Limitation

1. Claims of defect by the purchaser require that the purchaser has duly met the legal inspection and reprimand liabilities.

2. If a delivery item is deficient, the purchaser is entitled to the following rights:

a) Oscar Goetz is obligated to carry out subsequent performance and will carry this out at its own choice by correcting the deficiency during the course of subsequent improvement or by delivering an item which is free of defects.

b) The period of limitation for claims of defect is one year as of delivery. The deficiencies of the delivery are to be notified immediately to Oscar Goetz by the purchaser. Replaced parts become Oscar Goetz' property. The legal period of limitation for structures and items for structures (Section 438, para. 1 no. 2 BGB (German Civil Code) and for recourse from the supplier (Sections 478, 479 BGB (German Civil Code) shall not be affected.

c) If the improvement fails the purchaser is entitled to withdraw from the contract or to decrease the purchase price. Withdrawal is exempted if the liability breach of Oscar Goetz is only insignificant.

d) After coordination with Oscar Goetz, the purchaser must provide Oscar Goetz with the required time and opportunity to carry out any subsequent improvements and replacement deliveries which Oscar Goetz deems necessary. Otherwise, Oscar Goetz is released from the liability for resulting consequences. If the purchaser requests the rush deployment of a technician due to company reasons incurring additional costs for Oscar Goetz or if the purchaser requests the performance of work outside regular working hours, the purchaser must carry the resulting additional costs e.g. overtime premiums, longer transportation routes).

e) Warranty is provided for replacements and improvements to the same extent as for the original delivery item, however with a time limit until the end of the warranty period of the original delivery item.

3. Damages resulting from wear and tear, inappropriate or improper use, faulty installation or startup by the purchaser or third parties, faulty or negligent treatment, excessive stress, inappropriate equipment or chemical, electrochemical or electrical influences, as far as those were not Oscar Goetz' fault, are the sole responsibility of the purchaser.



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IX. Returns

Return of goods delivered by Oscar Goetz is, in principal, never accepted unless they are proven to be deficient. Should Oscar Goetz GmbH in an individual case, subsequent to prior written agreement, to accept a return as an exception, a processing fee of 25% of the net value of the returned goods plus VAT will be charged. The transportation risk and transportation costs will be borne by the ordering party.

X. Compensation Liability

1. In cases of injuries to life, body or health which are based on a neglect of duty by Oscar Goetz or a willful neglect of duty by one of its legal representatives or auxiliary persons, Oscar Goetz is liable according to the legal provisions.
2. For other damages, the following applies:
 - a) For damages which are based on a gross neglect of duty by Oscar Goetz or a willful gross neglect of duty by one of its legal representatives or auxiliary persons, Oscar Goetz is liable according to the legal provisions.
 - b) For damages which are based on a violation of essential contractual obligations due to simple negligence by Oscar Goetz, its legal representatives or auxiliary persons, Oscar Goetz' liability is limited to the foreseeable loss typical for contracts in the maximum amount up to the value of the delivery item.
 - c) Indemnity claims for other damages due to breaching secondary obligations or insignificant obligations are exempted in cases of simple negligence.
 - d) Indemnity claims from delay which are based on simple negligence are exempted; the legal rights of the purchaser subsequent to expiry of a reasonable extension of time shall remain unaffected.
3. Liability disclaimers or restrictions do not apply if Oscar Goetz fraudulently concealed a deficiency or provided a guarantee for the condition of the item.
4. The purchaser's entitlement for replacement of unsuccessful expenses for the indemnity claim instead of the performance shall remain unaffected.

XI. Liability for Indirect Damages

Oscar Goetz is not liable for indirect damages resulting from a deficient delivery, e.g. loss of production, lost profit and additional consumption, except in cases of intent or gross negligence.

XII. Cancellation of the Sales Agreement

1. If the sales agreement is cancelled (e.g. due to the withdrawal of one of the contracting parties), the purchaser is obligated to return the delivery item to Oscar Goetz as advance performance, irrespective of the other processing according to the following paragraphs. Oscar Goetz is entitled to have the delivery item picked up from the purchaser's premises.
2. Furthermore, Oscar Goetz is entitled to request reasonable compensation from the purchaser for the deterioration, ruin or impossibility to hand over the delivery item due to a different reason within the area of risk and responsibility borne by the purchaser.
3. In addition, Oscar Goetz can request compensation for the utilization or the use of the delivery item if the value of the delivery item has decreased between the end of its setup and the complete direct repossession by Oscar Goetz. This decrease in value is calculated from the difference of the total price according to the order and the current market value as determined by sales proceeds or if sale is not possible, by an estimate from an independent sworn expert.



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XIII. Assignment

The assignment of purchaser's rights and / or transfer of purchaser's liabilities under the contract is not allowed without the written consent by Oscar Goetz.

XIV. Export Control Provisions

The delivery items may be subject to the export control provisions of the Federal Republic of Germany, the European Union, the United States of America or other countries. In the case of a later export of the item of delivery abroad the purchaser is responsible for compliance with applicable legal provisions.

XV. Place of Performance, Place of Jurisdiction and Applicable Law

1. For deliveries and performances, the location at which the delivery is carried out or where the performance is to be carried out is the place of performance. For all other liabilities resulting from the contract the shipping point is the place of performance.

2. As far as the above conditions do not include a concluding regulation, German law, excluding the UN Sales Convention, applies.

3. For contracts with purchasers based in a member state of the European Union, Hamburg (Germany) is agreed to as the exclusive place of jurisdiction.

For contracts with purchasers based outside the European Union, all disputes which cannot be settled amicably will be decided conclusively according to the arbitrary court regulation of the German Institution for Arbitration (DIS), Bonn, Germany, excluding the regular legal process. The court of arbitration can also reach a decision about the validity of this arbitrary agreement.

XVI. Collateral Verbal Agreements, Partial Invalidity

1. Any agreements that have been reached between Oscar Goetz and the purchaser concerning the performance of this contract are specified in writing in this contract. Verbal collateral agreements do not exist.

2. Should any provision be or become invalid in whole or in part, the validity of the remaining contract shall not be affected.

Oscar Goetz GmbH, as at 1 August 2011