

Standard Terms and Conditions for the Sale and Export of Goods

In the following Owen Meany Ltd. shall be referred to as "OM" and the party buying or being in pre-contractual contact to OM regarding a purchase from OM shall be referred to as "THE BUYER"

1. Preamble

These Standard Terms and Conditions for the Sale and Export of Goods shall exclusively apply, save as varied by express agreement accepted in writing by both parties.

The offer, sales confirmation, order acknowledgement, order acceptance or sale of any products covered herein is conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by THE BUYER are objected to and will not be binding upon OM unless assented in writing by OM.

These conditions shall govern any future individual contract of sale between OM and THE BUYER to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by THE BUYER. By placing an order or making an offer to OM, THE BUYER explicitly acknowledges these general terms and conditions also in case he made the order or offer subject to differing, other terms and conditions.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by OM shall be subject to correction without any liability on the part of OM. The provisions of these Terms and Conditions apply to contracts merchants in the course of business. They also apply contracts with any other private or legal person as far as legal regulations permit.

2. Offers, orders and specifications

All offers are without obligation, subject to availability of stock and material.

No order submitted by THE BUYER shall be deemed to be accepted by OM unless and until confirmed in writing by OM or OM's representative within 30 days after submittal.

The quantity, quality and description of and any specification for the goods shall be those set out in OM's quotation (if accepted by THE BUYER) or THE BUYER's order (if accepted by OM). Any such specification, sales literature, quotation etc. shall be strictly confidential for THE BUYER and must not be made available to third parties by THE BUYER.

THE BUYER shall be responsible for ensuring the accuracy of the terms of any order submitted by THE BUYER, and for giving OM any necessary information relating to the goods within a sufficient time to enable OM to perform the contract in accordance with its terms.

If the goods are to be manufactured or any process is to be applied to the goods by OM in accordance with a specification submitted by THE BUYER, THE BUYER shall indemnify OM against all loss, damages, costs and expenses awarded against or incurred by OM in connection with or paid or agreed to be paid by OM in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from OM's use of THE BUYER's specification.

OM reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory requirements and/or which do not materially affect their quality or performance.

Variations in natural materials such as leather are intended and accepted by THE BUYER and do not justify any claims or titles for THE BUYER.

3. Price of the Goods

The price of the goods shall be OM's quoted price or, where no price has been quoted, the price listed in OM's published price list current at the date of acceptance of the order. Where the goods are supplied for export, OM's published export price list shall apply.

OM reserves the right, by giving notice to THE BUYER at any time before delivery, to increase the price of the goods to reflect any increase in the cost to OM which is due to any factor beyond the control of OM (such as foreign exchange fluctuation, currency regulation, alteration of duties, increase of more than 15% in the costs of materials or other costs of manufacture) or any change in delivery dates.

Except as otherwise stated under the terms of any quotation or in any price list of OM, and unless otherwise agreed in writing between THE BUYER and OM, all prices are given by OM on an ex works basis, and where OM agrees to deliver the goods otherwise than at OM's premises, the buyer shall be liable to pay OM's charges for transport, packaging and insurance.

The price is exclusive of any applicable value added or sales tax, which THE BUYER shall be additionally liable to pay to OM, unless otherwise quoted.

Where a general handling and/or inspection charge or a general commission has been agreed between THE BUYER and OM, the prices quoted by OM shall be exclusive of any such charges and/or commissions, which THE BUYER shall be additionally liable to pay to OM, unless otherwise quoted.

4. Terms of Payment

THE BUYER shall pay the price of the goods 10 days before delivery unless otherwise agreed by both parties in writing.

Where the finished goods sold are to be transported to any other location from the place where production or processing was finished or from the place of OM's premises for and on behalf of THE BUYER or as a part of the obligations of OM according to the sales contract, delivery shall be deemed to be the time when the goods are leaving the place where production or processing was finished or the place of OM's premises.

Payment shall be effected by interbank payment transaction only, no cheque or bill of exchange will be considered as fulfillment of the payment obligation unless otherwise agreed by both parties in writing. Any payment obligation of THE BUYER shall only be considered as fulfilled, when OM has received the payment amount to its irrevocable disposal.

It may be agreed between the parties that THE BUYER has to deliver a letter of credit issued by its bank (or any bank acceptable to OM). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practise for Documentary Credits, 1993 Revision, ICC Publication No. 500.

If THE BUYER fails to make any payment on the due date then, without prejudice to any other right or remedy available to OM, OM shall at its discretion be entitled to:

- Cancel the contract or suspend any further deliveries to THE BUYER; or
- Charge THE BUYER interest on the amount unpaid, at the rate of 10 percent per annum above the interest rate for main refinancing operations of the European Central Bank then being valid, until payment in full is made. THE BUYER shall be entitled to prove that the delay of payment caused no or minor damage only.

If discounts for payment within a certain time are granted by OM to THE BUYER in the individual sales contract, these discounts are void and may not be deducted, if there are any overdue receivables of TOIKA that have not been settled by THE BUYER.

The set-off of any receivables, claims or titles of THE BUYER against receivables, claims or titles of OM deriving from deliveries or services to THE BUYER is excluded, unless the receivables, claims or titles of THE BUYER are undisputed or have been declared finally legally binding by a court.

OM reserves the right to assign claims and accounts receivable against THE BUYER to third parties.

If THE BUYER is in default with any payment owed to OM, all accounts receivable and claims of OM against THE BUYER become due in total automatically with immediate effect without OM serving formal notice of default on THE BUYER.

As far as not covered by German law, it is considered as explicitly agreed between THE BUYER and OM, that THE BUYER has to bear and/or reimburse OM for all cost incurred to enforce OM's claims, titles and accounts receivable against THE BUYER, equal if judicially or not.

5. Delivery

Delivery of the goods shall be made by THE BUYER collecting the goods at the place where production or processing was finished or the place of OM's premises at any time after OM has notified THE BUYER that the goods are ready for collection or, if some other place for delivery is agreed by OM, by OM delivering the goods to that place.

Where delivery of low-priced goods is to be made by OM in bulk, OM reserves the right to deliver up to 3% more or 3% less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be in the quantity ordered.

Where goods are specially produced for THE BUYER, which is deemed to be the case if the item is not in the current catalogue of OM or if alterations to such catalogue items are made on demand of THE BUYER, OM reserves the right to deliver up to 15% more or 15% less than the quantity ordered with the according adjustment in the price, and the quantity so delivered shall be deemed to be in the quantity ordered.

Any agreed delivery time or delivery time notified to THE BUYER by OM is to be considered as rough only, where aviations of 14 days may occur. Delivery times agreed or notified are not to be considered as obligation or promise to deliver.

If a fixed time for delivery is provided for in the contract, and OM fails to deliver within such time or any extension thereof granted, THE BUYER shall be entitled to, on giving notice in writing to OM within a reasonable time, to claim a reduction of 2% per week of the price payable under the contract, unless it can be reasonably concluded from the circumstances of the particular case that THE BUYER has suffered no loss. This limit shall not apply, if the business had to be settled on a fixed date or, if the delay was caused negligently or intentionally by OM, his agents or representatives or if there is any further breach of essential contractual obligations. A delivery time shall only be considered as being agreed as fixed with the consequences stipulated above, if the expression "fixed" or an equivalent has been used in the written agreement and/or sales confirmation or it can be concluded beyond doubt from other circumstances that the parties intended to agree on such fixed delivery time.

If for any reason whatever OM falls within such time to effect delivery, THE BUYER shall be entitled by notice in writing to OM to fix a deadline after the expiry of which THE BUYER shall be entitled to terminate the contract. Damages may only be claimed for by the BUYER if OM or her agents or representatives intentionally or negligently failed to fulfil the contract. OM shall nevertheless be held responsible for not fulfilling any further essential contractual obligation.

If THE BUYER fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the goods had been delivered. OM shall arrange for the storage of the goods at the risk and cost of THE BUYER. If required by THE BUYER OM shall insure the goods at the cost of THE BUYER.

Unless otherwise confirmed and accepted by OM in writing in the individual sales contract or confirmation, THE BUYER has to bear all cost for packing and delivery to any place other than the place where production or processing was finished or the place of OM's premises.

If goods are delivered by a freight forwarder in any damaged condition or if any goods are missing, THE BUYER must obtain a protocol or report on the damage or loss from the freight forwarder immediately without delay. Confirmations to freight forwarders concerning complete and orderly undamaged delivery should only be made "subject to detailed examination" by THE BUYER.

6. Transfer of Risk

Risk of damage to or loss of the goods shall pass to THE BUYER as follows:

- According to the delivery term accepted and confirmed by OM in each individual sales order (e.g. acc. INCOTERMS 2000).
- Unless otherwise agreed at the place where production or processing was finished or the place of OM's premises (ex works, Incoterms 2000) at the time when the goods are leaving this place or when OM notifies THE BUYER that the goods are available for collection, whichever is the earlier.
- In the case of goods to be delivered at OM's risk otherwise than at the place where production or processing was finished or the place of OM's premises, at the time of delivery or, if THE BUYER wrongfully fails to take delivery of the goods, the time when OM has tendered delivery of the goods;
- In the case of goods to be delivered at the place where production or processing was finished or the place of OM's premises (ex works, Incoterms 2000) at the time when OM notifies THE BUYER that the goods are available for collection.

7. Retention of title

Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to THE BUYER until OM has received payment in full of the price of the goods and all other goods agreed to be sold by OM to THE BUYER for which payment is then due.

OM shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in OM. This applies especially, but not only, if THE BUYER is in default or fails to fulfil his obligations in other ways. In this case OM also has the right to demand the transfer of all titles of THE BUYER against third parties to give back or retake the goods. The act of retaking or seizing the goods is not to be considered as cancellation of the contract.

Until such time as the property in the goods passes to THE BUYER, THE BUYER shall hold the goods as OM's fiduciary agent clearly separated from his or third parties' goods, and shall keep the goods properly stored, protected, insured and marked as OM's property.

Until that time and as long as he is not in default THE BUYER shall be entitled to resell or use the goods in the ordinary course of business. THE BUYER assigns the proceeds, titles and claims deriving from the sale or any other legal argument concerning the goods - including such from insurance and compensation for damage by third parties and balances receivable on current account - already now completely to OM for security and shall keep all such proceeds separate from any moneys or properties of THE BUYER and third parties. OM authorizes THE BUYER revocable to collect all such claims on own account and name.

THE BUYER is not entitled to pledge or assign goods in which title remains vested in OM by bill of sale as security.

If the goods are processed or reshaped by THE BUYER and if processing is done with goods that OM has no property in, OM shall become co-owner of the goods, but without any legal obligation of OM. The same shall apply, if OM's goods are completely reshaped and /or mixed with other goods.

If third parties take up steps to pledge or otherwise dispose of the goods, THE BUYER shall immediately inform this third party about OM's title concerning the goods and notify OM in order to enable OM to seek a court injunction in accordance with § 771 of the German Code of Civil procedure. If the BUYER fails to do so in due time he will be held liable for any damages caused. Moreover THE BUYER is liable for all cost and expenses incurred by OM to enforce its titles and claims towards the third party, if reimbursement cannot be obtained from the third party.

OM shall on demand of THE BUYER release any part of the collateral if the value of the collateral held in favour of OM exceeds the value of the claims being secured for more than 20%. It is to OM's decision to release those parts of the collateral suitable to it.

8. Warranties and exclusion clauses

THE BUYER shall examine the goods and in doing so check every delivery in any respect and make any according complaints to OM without delay (within two days, unless special circumstances apply).

OM warrants that all the items delivered under this agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by THE BUYER, will be free from design defects and suitable for the purposes intended by THE BUYER.

OM shall not be liable for the goods being fit for a particular purpose unless otherwise agreed upon, to which THE BUYER intends to put them.

The above warranty is given by OM subject to the following conditions:

- OM shall not be liable in respect of any defect in the goods arising from any design or specification supplied by the buyer;
- OM shall not be liable under the above warranty if the total price for the goods has not been paid by the due date for payment;
- The above warranty does not extend to parts, materials or equipment manufactured by or on behalf of THE BUYER and further damages caused by such parts, materials or equipment. OM will however transfer all titles, rights and/or claims against the manufacturer regarding such parts, materials and equipment to THE BUYER on his demand.

This warranty does not cover defects in or damage to the products, which are due to improper installation or maintenance, misuse, neglect or any use or application other than the ordinary intended one.

Any claim by THE BUYER, which is based on any defect in the quality or condition of the goods or their failure to correspond with specification and was impossible to detect by the time of the examination of the goods shall be notified to OM within six months from the date of delivery.

THE BUYER is entitled to demand the delivery of any substitute goods, or repair or a reduction of the purchase price as set forth with the terms of each individual contract of sale.

Where any valid claim in respect of any goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to OM in accordance with these conditions, OM shall be entitled at OM's sole discretion to either replace the goods free of charge or repair the goods. If OM is neither willing nor able to either repair or replace the goods THE BUYER shall be entitled at THE BUYER'S sole discretion to claim for a reduction of price or a cancellation of the contract.

9. Miscellaneous clauses

OM reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and function of the product.

This agreement supersedes and invalidates all other commitment and warranties relating to the subject matter hereof, which may have been made by the parties either orally or in writing prior to the date hereof. Such prior commitments and warranties shall become null and void from the date this agreement is signed.

Should a clause of these terms or of an individual sales contract be invalid or unlawful or should there be a blank, the rest of the agreement stays valid and effective in force. The invalid or unlawful clause is replaced or the blank is filled by a clause which is valid and lawful and comes most closely to the intended economical purpose of the invalid or unlawful clause or, in case of a blank, the intended economical purpose of the agreement. Should this not be possible due to legal reasons, the parties will cooperate in order to agree on such valid clause. Changes or completions to this agreement have to be made in writing.

This agreement shall not be assigned or transferred or made known to any third party by THE BUYER except with the written consent of OM.

Each party shall be responsible for all its legal, accountancy or other costs and expenses incurred in the performance of its obligation hereunder.

10. Choice of Law, Place of Jurisdiction

This agreement shall be governed and construed in accordance with Hong Kong law and each party agrees to submit to the jurisdiction of the courts having jurisdiction for the principal place of business of OM.

OM shall have the right to bring a claim before a court at THE BUYER's principal place of business or at his discretion before any other court being competent according to any national or international law. In case of the transfer of any title or claim to a third party, the assignee shall also have the right to chose the place of jurisdiction accordingly.