

Terms and Conditions of Ordering

1. Scope of application

These terms and conditions of order apply to all – including future – orders of the customer (buyer) for deliveries and services by suppliers (seller), even if they are not expressly agreed again in subsequent orders. They do not apply to natural persons who enter into a legal transaction solely for a purpose that cannot be attributed to either their commercial or independent professional activity.

With the acceptance and execution of an order, the supplier accepts these order conditions in the version valid at the time of the order. The current version of the order conditions can be found on the www.ospelt.com website (supplier area).

Any deviating agreements and terms and conditions of business of the supplier require express written agreement in order to be effective. Any deviating terms and conditions or counter-confirmations of the supplier which have not been expressly agreed in writing are hereby expressly rejected.

1.1. Basic requirements for the supplier

All suppliers should be certified to a GFSI standard or other equivalent standard and have undergone the supplier approval process of the Ospelt Group, which also includes the buyer.

The supplier agrees to notify Herbert Ospelt Anstalt of any changes to the company structure, the production site or other significant changes without delay, but at the latest within 10 working days.

2. Orders, order confirmation, conclusion of contract

Orders must be made in writing and the supplier must confirm them in writing. Only orders placed in writing by the buyer are binding. The buyer is entitled to revoke the order if confirmation by the supplier is not received in writing within two weeks (or such other period as may be specified in the order).

Deviations of the order confirmation from the order, verbal agreements before, at or after conclusion of the contract and deviations from these terms and conditions of order require the written consent and confirmation of the buyer to become effective.

3. Templates, samples, provision of materials

Templates, samples, tools, material, etc. provided by the customer remain the property of the buyer and may not be made available to third parties or used for purposes other than those agreed without the written consent of the customer. The supplier is in particular not authorised to supply goods and services to third parties on the basis of these documents and information.

These documents and information are to be secured against unauthorised use and inspection and, as is the case with the information provided by the buyer, treated as strictly confidential.

The supplier is obliged to return all documents, samples etc. provided to it to the buyer immediately upon request, but at the latest upon termination of the contractual relationship.

Ownership of templates, samples, tools and the like produced by the supplier by agreement, including all rights of use, transfer to the buyer upon payment of the agreed remuneration.

4. Remuneration/prices

Unless otherwise agreed in writing, the agreed prices are fixed prices and are not subject to any changes resulting from possible market price increases. The cost of packaging, freight and transport to the delivery destination are included in these prices.

Any claims arising from additional deliveries and/or services can only be asserted upon prior written agreement and commissioning of the additional deliveries and/or services.

Offers, planning, drafts and the like are only remunerated by the buyer when expressly agreed in writing.

5. Time of performance, contractual penalty in the event of default

The delivery dates agreed upon are binding and to be complied with without fail. The timeliness of deliveries or services is determined by the date of receipt at the place of receipt specified in the order; in the case of contracts for work and services, deliveries with assembly and services, the date of acceptance.

Foreseeable delays to delivery, performance or supplementary performance must be reported to the buyer immediately, indicating the reasons for and duration of the delay, without prejudice to the buyer's claims.

If the delivery/performance date are exceeded for reasons for which the supplier is accountable, the buyer is entitled to demand a lump-sum contractual penalty of 0.3% for each commenced working day of exceeding the deadline, but not totalling more than 5% of the order value; further specific claims (damages and withdrawal) of the buyer remain unaffected.

If the reservation of the contractual penalty is omitted upon acceptance of deliveries, services or subsequent performance, the contractual penalty may nevertheless be asserted until the final invoice. In particular, accepting late deliveries and services shall not result in a waiver of claims for compensation.

If the delivery/service date is exceeded due to force majeure or if the acceptance of the delivery/service is prevented, the buyer may, at its discretion, withdraw from the contract in whole or in part or extend the date after having set a deadline to no avail, without the supplier having any claims for damages, etc. in these cases.

5.1. Penalties

Any complaints (deviations in a delivery) shall be submitted to the supplier in the form of a complaint. The expenses incurred for processing the complaint will be charged at an hourly rate of CHF/EUR 50.00 plus a flat-rate processing fee of CHF/EUR 100.00. Any additional expenses justified by the complaint will be charged separately.

These fees can be offset against the supplier's receivables.

6. Place of performance, dispatch, transfer of risk

In the case of contracts for work and services, deliveries with assembly and services, the risk transfers to the buyer upon acceptance, in the case of other deliveries upon receipt at the place of receipt specified in the order; unless otherwise agreed, the delivery is deemed to be delivered, duty paid place of receipt (DDP) including packaging.

If the price is agreed ex works or ex warehouse of the supplier, the supplier is obliged to dispatch the goods at the lowest possible cost and to ensure that the goods are insured unless a specific mode of dispatch has been stipulated by the buyer. The supplier bears any additional costs for express transport necessary to meet the delivery date.

Simultaneously with loading in the case of delivery DDP place of receipt or provision for collection in the case of delivery ex works or ex warehouse of the supplier, the supplier is to send the buyer for each order (or, if this is called off in several part deliveries, for each call-off) a dispatch advice (delivery advice) by e-mail (to the addressee named in the order) stating, among other information, the order number, call-off number, quantity actually delivered and time of delivery.

The delivery is to be accompanied by a delivery note which, in addition to the information defined here for the dispatch advice (delivery advice), also contains the best-before date or its remaining term at the time of delivery.

The loading aids offered for exchange upon delivery or collection are to meet the agreed, or alternatively the customary, quality requirements of average type and quality; otherwise the buyer may refuse an exchange.

In the case of delivery of goods in silo vehicles, the buyer reserves the right to draw up a weighing report from a calibrated, or alternatively public, weighbridge and to provide evidence that the silo vehicle has been properly cleaned. Damage to the original packaging of delivered goods or to the seal of silo vehicles which gives rise to doubts as to the integrity or genuineness of the goods entitles the buyer to reject such goods.

7. Invoices, payments

Invoices (including the duplicate to be marked as a duplicate) are sent quoting the order code of the buyer, the order number and numbers of the individual items and are only due for payment when this information is complete.

Unless otherwise agreed, invoices are to be paid net cash within 30 days of receipt of the invoice and goods/services. The payment period begins as soon as the delivery or service has been provided in full and a correct invoice is available. The buyer is deemed to be in default if no payment is made in response to a reminder (including a grace period of at least 10 days) sent by the supplier after the due date and no defences exist.

Payments are not deemed to be an acknowledgement of the delivery or service as being in accordance with the contract and are made subject to invoice verification.

The supplier is only entitled to offset against an undisputed or legally established claim or to exercise a right of retention in this respect.

8. Warranty, receiving inspection, liability for defects, guarantees

Warranty claims of the buyer against the supplier in the event of material defects and defects of title are determined in accordance with the statutory provisions.

Art. 347 of the German Commercial Code (HGB) applies in such a way that the customer is required to give notice of externally visible defects or transport damage within 10 working days of delivery, and of hidden defects within 10 working days of discovery, provided a shorter period is not required due to the perishable nature of the goods. In the event of onward shipment or rerouting of the goods, the start of the inspection is deemed to be postponed until arrival at the new destination.

The limitation period for claims for defects of the buyer according to Art. 932 of the German Civil Code (BGB) is three years, in deviation from Art. 933 of the BGB and Art. 349 of the German Commercial Code (HGB); otherwise the statutory limitation periods and regulations apply.

The type of warranty (cancellation, reduction, subsequent delivery) is selected by the buyer; the supplier's right according to Art. 932 Para. 2 of the BGB remains unaffected.

If the item or service is defective in breach of a warranty assumed by the supplier, the supplier is always liable for damages regardless of fault. If the item is defective without any guarantee having been given in this respect, the supplier is only exonerated from the claim of the customer for damages or reimbursement of futile expenses if it is proven that the non-fulfilment of obligations is due to an impediment beyond the supplier's control and that the supplier could not reasonably have been expected to have considered the impediment at the time of the conclusion of the contract or to have avoided or overcome the impediment or its consequences; if the contractor has availed of a third party, the contractor is only exonerated when the contractor is exonerated under these conditions and the third party would also be exonerated under these conditions if these conditions apply to the contractor.

If the delivery or service is defective, the exercise of the buyer's rights on account of the defects is in particular not subject to the setting of a deadline where the contractor delivered after the occurrence of the delay or where the buyer has a special interest in the immediate exercise of their rights in order to avoid their own delay vis-à-vis their customers or other urgency. If the contractor, within the scope of supplementary performance, delivers a new product in whole or in part or rectify the defect, the periods for the limitation of claims for defects begin to apply again.

The supplier guarantees that the goods to be delivered comply with the German Food and Commodities Act as well as with all legal provisions applicable at the place of delivery for the protection of life, health and safety, as far as applicable.

The supplier warrants that the delivery or service is free of industrial property rights of third parties, in particular that these do not prevent the contractually intended use at the place of performance or a contractually agreed destination. The limitation period for claims arising from liability for defects of title is 10 years from handover.

The supplier undertakes to use only such persons in the execution of the buyer's orders who have the necessary official permits and undertakes to indemnify the buyer against all claims in the event of a breach.

Upon first request, the supplier shall indemnify the buyer against all third-party claims arising from the violation of safety regulations or applicable laws or due to domestic or foreign product liability provisions in connection with its performance. This also applies if a claim is made against the buyer due to a defect in its product that can be attributed to the supplier's delivery or service. The supplier further undertakes to reimburse any court and procedural costs incurred by the buyer in connection therewith as well as external lawyers' fees. Any claims for damages remain unaffected by this.

Within the scope of its obligation to indemnify, the supplier is also obliged to reimburse any costs and expenses incurred in connection with a recall campaign.

9. Non-disclosure

The supplier is to treat the order and the related work and deliveries, including the documents and samples provided, as confidential. The fact of the business relationship itself may also only be disclosed with the prior written consent of the customer. The obligation of confidentiality shall continue to apply after conclusion or cancellation of the contract. It only expires when and insofar as the information has become public knowledge.

10. Special right of termination

In the event of suspension of payments by the supplier, appointment of a provisional insolvency administrator or opening of insolvency proceedings against the assets of the supplier, the buyer is entitled to withdraw from the contract in whole or in part. In the event of withdrawal, the buyer is entitled to make use of the supplier's existing facilities and deliveries and services provided to date for the continuation of the work in return for reasonable remuneration.

11. Choice of law, place of jurisdiction, language, form

Liechtenstein law applies. The place of jurisdiction for all disputes is the registered office of the buyer.

Order confirmation, dispatch advice (delivery advice), delivery note, invoices and other documents to be provided by the supplier are to be sent in German, unless otherwise agreed.

To the extent that written form is provided for in these order conditions, these can also be sent by e-mail (to the addressee named in the order).

12. Partial ineffectiveness

If one or more provisions of these terms and conditions of order is or becomes invalid in whole or in part, this is without effect on the legal validity of the remaining terms and conditions of order. The contracting parties undertake in good faith to replace the invalid provision with a provision that comes as close as possible to the economic purpose of the invalid provision.

13. Entry into force

These order conditions come into force on 01.12.2023.