

## **General Terms of Sale and Delivery of O&O mdc.**

### **Article 1: Applicability**

1. These general terms exclusively govern all offers made by and/or to O&O mdc, all agreements concluded with O&O mdc and their execution, and all other undertaking with O&O mdc. The applicability of the general terms of customer, of any designation whatsoever, is hereby expressly rejected.
2. Deviations from these general terms may only be agreed in writing, and shall only be deemed to be valid if expressly confirmed in writing by O&O mdc.
3. In these general terms "customer" shall also mean its representative(s), authorized agent(s), and successor(s) or assign(s) under a universal or particular title.

### **Article 2: Offers**

1. All of O&O mdc's offers are made free of any obligation. If a time limit is not indicated, offers made by O&O mdc are valid for a period of 30 days.
2. O&O mdc is not liable for errors and deviations in illustrations, drawings, samples and/or other specifications occurring in offers and/or order confirmations, seeing as the aforementioned have been solely provided as indications.
3. All offers shall be submitted free of charge, unless otherwise agreed. The aforementioned remain the property of O&O mdc and may be claimed back by O&O mdc at all times. The aforementioned documents, samples etc. may not be copied or reproduced in any way whatsoever, imitated, publicized or displayed of handed over to third parties, without the prior written consent of O&O mdc.

### **Article 3: Conclusion and Amendment Agreements**

1. O&O mdc shall only be bound to an order as from the moment it has confirmed the order in writing to customer, or as from the moment it has made a start with the execution of the order.
2. In respect of proof of the contents of the order, the order confirmations and/or the administrative information of O&O mdc, including the invoice relating to the order, shall be deemed to fully and correctly convey the agreement.

### **Article 4: Prices**

1. All prices are quoted exclusive of VAT and, unless otherwise agreed or indicated by O&O mdc, exclusive of the costs of packaging and transportation.
2. In the event of demonstrable changes in the prices charged by the supplier of O&O mdc to O&O mdc, and/or demonstrable changes in other cost price determining factors, such as energy costs, environmental costs, materials, wages, taxes, duties, charges, exchange rates, cargoes and suchlike, after offer or conclusion of the agreement, O&O mdc may accordingly change the agreed prices in accordance with the applicable legal provisions, irrespective of whether the change was foreseeable or not for O&O mdc during the conclusion of the agreement. The aforementioned change does not entitle customer to terminate the agreement. Each following invoice issued by O&O mdc shall be based on the changed prices.

### **Article 5: Transport a Risk**

1. Customer shall be responsible for the transport of the goods to be delivered.
2. O&O mdc shall deliver the finished product ex works O&O mdc.
3. O&O mdc shall provide packaging and security for the goods to be delivered, which ensure that by means of normal transport the aforementioned reach their destination in good condition.
4. Contrary to the provision in the paragraphs 1 to 2 inclusive, parties may expressly agree upon or indicate another place of delivery.
5. The risk for the goods to be delivered shall be transferred to customer at the moment of delivery at the place specified in this article and/or at the moment the goods are made available as referred to in article 6 paragraph 1, no later than the moment of loading for transport, irrespective of which party shall bear the cost of this transport.

### **Article 6: Delivery**

1. Customer is obliged to accept delivery of the goods offered by O&O mdc for delivery within the time limit indicated by O&O mdc.
2. If due to a refusal to accept delivery the order after completion must be stored by O&O mdc, in part or in whole, all costs incurred shall be charged to customers.
3. A delivery time indicated by O&O mdc shall never be deemed to be a deadline, unless expressly agreed otherwise in writing.
4. A delivery time shall firstly take effect after the agreement has been concluded, all information necessary for the execution thereof and goods originating from customer are in possession of O&O mdc, any advance payments agreed have been made, and any possible test sample produced has been approved.
5. In the event of non-timely delivery due to force majeure on the part of O&O mdc, contrary to the provision laid down in paragraph 3 of this article, the provision in article 12 concerning force majeure shall apply.
6. O&O mdc reserves the right to deviate from the quantity ordered by up to 10%.

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#### **Article 7: Warranty**

1. As a result of the treatment of the goods to be packaged a maximum loss of 10% must be taken into account. In respect of the contents and measurements of the packaging a tolerance of 10% shall also be reserved, unless expressly agreed otherwise in writing.
2. O&O mdc warrants that the design, the composition and the quality of the goods, which must be delivered on the basis of the order, comply in all respects with O&O mdc “Technical Product Information” and its own manufacturing specifications at the time of the conclusion of the agreement.
3. Claim to warranty shall immediately expire in the following cases:
  - a. if customer or one of its supplier uses the goods contrary to the operating instructions provided, or otherwise makes a mistake when using the goods, such as not using the goods in accordance with the purpose given thereto by O&O mdc;
  - b. if customer or one of its suppliers has made alterations or has had alterations or has had alterations made to the goods delivered.
4. The liability of O&O mdc pursuant to paragraphs 1 and 2 is limited to the repair of faults in materials or workmanship, which have arisen within a period of 6 months as from the offer of delivery as referred to in the first paragraph of article 6 – insofar as is reasonably possible – or replacement, at the option and expense of O&O mdc, all this up to a maximum of the invoice value of the goods concerned. If in respect of the execution of its obligations O&O mdc has obtained goods from third parties, it shall provide a maximum warranty for those goods equivalent to the warranty, which these third parties offer O&O mdc.

#### **Article 8: Inspection and Claims**

1. After acceptance of delivery customer is obliged to immediately inspect the goods delivered for sort, quantity, measurements, manufacturing and/or material faults.
2. Goods may only be returned to O&O mdc with the prior consent of O&O mdc, and provided the aforementioned goods are sent free of charge.
3. The consideration of claims and complaints is without prejudice to the payment obligations of customers.
4. Claims must be submitted in writing by customer within 8 days after receipt of the products and/or services delivered by O&O mdc stating the nature and scope of the complaints, failing which the right to claim shall expire.

#### **Article 9: Payment**

1. An invoice sent by O&O mdc to customer must be paid within 30 days maximum after date of invoice.
2. Customer is not entitled to any discount or set-off, of any designation whatsoever, without the written consent of O&O mdc. Payment shall always be deducted from the longest outstanding debt, unless expressly agreed otherwise in writing.
3. If the invoice amount due is not paid by the customer within the time limit stated in paragraph 1 O&O mdc is entitled to charge the customer interest per month, or a part thereof, on the total amount outstanding, without notice of default being required, which on an annual basis shall amount to the then current interest rate from the European Central Bank plus 7%. (As per guideline 2000135/EG from the European Parliament).
4. If O&O mdc is obliged to give the unpaid invoice or a part thereof for collection to a third party, O&O mdc is entitled to claim damages from customer for all judicial and extra judicial costs.
5. The extra judicial shall be fixed at a minimum of 15% of the principles sum, increased by the interest already due, with a minimum of Euro 500,-excluding VAT, without prejudice to the right of O&O mdc to charge the full costs if the aforementioned are higher.
6. In the event customer may make payment in instalments and customer fails to pay one of the instalments, it shall be deemed to be ipso jure in default without any notice of default being required, and the full remaining invoice amount shall become immediately due for payment.

#### **Article 10: Suspension and Retention**

1. If customer does not pay or does not pay on time, O&O mdc shall suspend all related payments to be made by O&O mdc to customers, for any designation and any reason whatsoever, until the payments concerned have been as yet made, and in that case O&O mdc may also demand cash payments for further deliveries, even though otherwise agreed.
2. O&O mdc shall never be obliged to give back customer moulds and/or other materials provided by customer to O&O mdc, as long as customer has not complied with all of its obligations to O&O mdc, for any reason whatsoever.

#### **Article 11: Retention of Title and Transfer**

1. All goods delivered and to be delivered by O&O mdc to customer shall remain the property of O&O mdc until customer has complied with all of its obligations to O&O mdc in respect of the preceding and following similar deliveries, additional work carried out or to be carried out by O&O mdc, as well as in respect of the claims of O&O mdc against customer due to the failure of customer to comply with its undertakings to O&O mdc.
2. Customer is obliged to immediately inform O&O mdc of claims or attempts by third parties to acquire the authority over goods or to recoup damages from goods, which are the property of O&O mdc. Customer is obliged to do everything in its power to protect the property rights of O&O mdc.
3. In the event of non-compliance on the part of customer with its obligations stated in this article, O&O mdc is entitled, after notice of default however without the interference of the court being required, to take back the goods which by virtue of the retention of title or otherwise are –still- the property of O&O mdc. Customer is obliged to indicate to O&O mdc the place where the goods are to be found, to identify the goods

as the property of O&O mdc, and grants O&O mdc permission now for in the future to enter –to have entered- the ground and buildings concerned in order to take back the goods.

#### **Article 12: Force Majeure**

1. There shall be deemed to be force majeure on the part of O&O mdc in the event that compliance with the agreement cannot in all reasonableness be required due to war, danger of war, civil war, riot, war risk, fire, water damage, flood or any other Acts of God or decay, theft or embezzlement, strike, sit-in, lockout, import and export restrictions, government measures, defects in machinery, breakdowns in the electricity supply, all this both in the company of O&O mdc as in the company of third parties from which it obtains the necessary materials or raw materials, in whole or in part, as well as in the event the suppliers of O&O mdc do not deliver, do not deliver on time or make an unsatisfactory delivery of raw materials, semi-manufactured products, means of production and suchlike, as well as in the event of storage or during transport, under its own management or not, and furthermore due to all remaining causes for which O&O mdc cannot be held responsible or which are not at the risk of O&O mdc.
2. In the event of force majeure O&O mdc is entitled at its option to extend the delivery time for the duration of the hindrance, or to terminate the agreement, without being liable on that account to pay any damages to customer.
3. O&O mdc is obliged to indicate in writing its option within 8 days if summoned by customer to do so.
4. If O&O mdc has complied in part with its obligations during the occurrence of the force majeure, it is entitled in the interim period to separately invoice the goods delivered or the services carried out, and customer is obliged to pay this invoice as though it were a separate agreement.

#### **Article 13 Liability and Exoneration**

1. Save pursuant to provisions of statutory law, and save in the event of malicious intent of gross negligence on the part of O&O mdc, and save that to which O&O mdc may be obliged pursuant to warranties, the liability of O&O mdc shall be limited in all events to the maximum amount for which O&O mdc in that respect is insured. If there is no insurance cover, for any reason whatsoever, its liability is limited to the invoice amount of the goods, which have caused damage, excluding VAT.
2. As a supplement to paragraph 1 O&O mdc shall not be liable for the products and/or moulds or other materials entrusted to it for packaging. O&O mdc assumes that customer has taken out adequate insurance.
3. If one of the products for packaging constitutes a danger of any kind whatsoever, customer shall timely inform O&O mdc of these circumstances. Each damage caused by spontaneous combustion, explosion of every other circumstance caused by the product for packaging shall be fully compensated by customer to O&O mdc, whereas customer shall also indemnify O&O mdc against claims from third parties based on the aforementioned ground, irrespective of whether the product was packaged or not.
4. O&O mdc does not accept any responsibility for the possible chemical and/or natural reactions, which could occur between the product for packaging and the material, with which the aforementioned product has been brought into contact through treatment.
5. O&O mdc is not liable for damage caused to the person and/or goods of the buyer or third parties by goods originating from O&O mdc, irrespective of whether this damage is caused in whole or in part by acts or negligence on the part of the staff of O&O mdc. Customer shall indemnify and reimburse O&O mdc in the event the latter is claimed against in this respect by a third party and has to compensate the damage on this account.
6. Any further liability, in respect of direct or indirect damage, which has arisen from any cause whatsoever, is excluded.

#### **Article 14: Intellectual and/or Industrial Property Rights**

1. In the event of the manufacture of articles according to drawings, samples, models or other instructions in the broadest sense of the word, received by O&O mdc from its customer or through them from third parties, customer shall assume the full warranty that the manufacture and/or delivery of these articles does not infringe patent, trademark or user rights, trade models or any other rights of third parties and customer indemnifies O&O mdc against all claims, which may be filed against it. If a third party, on the ground of any alleged right as aforementioned, objects to the manufacture and/or delivery. O&O mdc is entitled to immediately stop the manufacture and/or delivery and to demand compensation of the costs incurred, without prejudice to the claims of O&O mdc to further possible damages against its customer and without O&O mdc being obliged to pay it any damages. In the event the process is not compulsorily prescribed by the nature of the product or by customer, the latter shall not be liable for the results of the irregular application of patents of third parties in the process of O&O mdc. O&O mdc is obliged to immediately inform customer of objections to the manufacture and/or delivery of the article concerned submitted by third parties.
2. O&O mdc shall be deemed to be designer of all drawings or models (in the sense of the Benelux Drawings and Models Act), and all this irrespective of the question whether the drawings or models have been designed to order or not. O&O mdc is entitled to the copyrights to all objects, which it has manufactured.

#### **Article 15: Moulds**

1. Moulds and/or other aids manufactured by O&O mdc at the expense of customer are and shall remain the property of O&O mdc.
2. All maintenance and repair costs and alteration costs shall be passed on to customer.

#### **Article 16: Termination**

1. If:
  - a. customer does not comply, does not comply on time or correctly with its obligation to O&O mdc;

- b. customer is declared bankrupt of a petition for bankruptcy is filed, applies of has applied for a moratorium of payment, or if it has been granted a –temporary- moratorium of payment;
  - c. attachment has been levied on its property, in part or in whole;
  - d. the court has declared customer legally incompetent or has deprived customer of its freedom;
  
  - e. customer is dissolved or liquidated, or in the event of a natural person, is deceased;
  - f. customer begins to discontinue, has already discontinued, or transfers its business or an important part thereof, including the contribution of its business to a business to be founded or already established, and customer has not yet complied with all of its obligations to O&O mdc, O&O mdc may, solely through the occurrence of one of the aforementioned circumstances, without any warning or notice of default or interference of the court being required, consider the agreement to be terminated, or demand back the delivered goods as its property, or demand in full any amount due to be paid to it by customer. In addition to this O&O mdc may demand damages from customer.
2. In order to be able to exercise the right of O&O mdc to take back the goods, customer grants it now for in the future permission to have the grounds and/or buildings entered where the goods are to be found. Customer is obliged to indicate to O&O mdc the place where the goods are to be found, and to identify the aforementioned as property of O&O mdc.

**Article 17: Cancellations**

If customer cancels the order placed in part or in whole, it is obliged to compensate to O&O mdc all costs reasonable incurred with a view to the execution of the order (costs of preparation, storage, production of mould, purchase of raw materials and suchlike), and, insofar as O&O mdc so desires, to assume the costs of materials and semi-manufactured goods intended for the execution of this order at the prices included by O&O mdc in its calculation, all this without prejudice to the right of O&O mdc to claim damages in respect of loss of profit and the remaining damage resulting from the termination in question.

**Article 18: Applicable Law and Competent Court**

1. These general terms, and all agreements and undertakings to which the aforementioned terms apply, shall be exclusively governed by the Law of the country of invoice.
2. All disputes arising from or related to an offer, order, agreement or undertaking to which these terms apply, or in respect of the terms or their interpretation and implementation, shall, insofar as is permitted by the statutory provisions, at the option of O&O mdc either
  - a. be settled by any European Arbitration Court which shall determine the rules of procedure, as well as the bearer of the costs of the arbitration procedure including the costs of the legal advisors, or
  - b. shall be submitted to the competent court of the place of establishment of O&O mdc, or the court of the place of residence or establishment of customer.
3. O&O mdc shall indicate its option in any way to customer within a reasonable period of time.