

General Terms and Conditions

§ 1 Scope of Application

1. The following General Terms and Conditions shall apply to any and all deliveries by ORYXRED Warenhandels & Marketing GmbH (hereinafter referred to as "ORYXRED") to its commercial Buyers (hereinafter referred to as "Buyers"), even in the event that future orders which are concluded do not expressly make reference to these General Terms and Conditions. Any terms and conditions of the Buyer are hereby expressly objected to; these shall apply only if ORYXRED has expressly consented to such terms and conditions of business in writing.
2. Agreements which derogate from these General Terms and Conditions shall require the written form. Sales agents and representatives of ORYXRED shall not be authorised to enter into oral collateral agreements. Where they nonetheless enter into oral subsidiary agreements or provide oral warranties which exceed the written contract of sale, they shall always require the written confirmation of ORYXRED in order to be valid.

§ 2 Offers and Conclusion of Contracts, Prices

1. Offers shall always be non-binding. Where a written offer has been made by ORYXRED, and unless otherwise agreed, such offer shall be binding for a period of three weeks after it has been made. The right to make deviations that are typical in the trade from information contained in documents belonging to the offer, such as illustrations, drawings, statements of weight and dimensions, shall be reserved unless otherwise expressly agreed.
2. ORYXRED's offers are directed exclusively to Buyers who are not consumers within the meaning of Sec. 13 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB). Orders placed by consumers shall not be accepted.
3. All prices shall be exclusive of the statutory value added tax. Unless otherwise specifically agreed, the prices shall be ex works including loading at the facility, but excluding packaging. The Buyer shall bear the shipping costs as well as any necessary costs of insurance, value added tax levied upon import and customs duties.

§ 3 Delivery, Force Majeure, Reservation of Self-Supply

1. ORYXRED's compliance with the delivery schedule shall be subject to the Buyer discharging its contractual obligations and – insofar as necessary – its cooperation.
2. The delivery deadlines stated by ORYXRED shall constitute only non-binding information even where notified in writing. This shall not apply where ORYXRED has expressly designated in writing a deadline or date as a so-called "binding delivery date".
3. Governmental measures, riots, strikes, lock-outs, fire, machine malfunctions, industrial disruptions, shortages of raw materials, intervention by the authorities, power shortages, disruptions to transport and other reasons which are outside ORYXRED's control which delay the normal production or dispatch shall be regarded as "force majeure" and shall entitle ORYXRED to a corresponding postponement of the delivery date. ORYXRED shall be obligated to inform the Buyer of such circumstances without undue delay if ORYXRED becomes aware of them. Where a postponement of the provision of the service due to the aforementioned events is intolerable for one of the contracting parties, such party shall be entitled to cancel the agreement.
4. ORYXRED reserves the right to withdraw from the obligation to perform the agreement if the goods are to be delivered by a subcontractor and the delivery is not rendered in whole or in part. This reservation of self-supply shall apply only if ORYXRED is not responsible for the failure to render delivery, particularly if ORYXRED has concluded in a timely manner a congruent covering transaction with the subcontractor for the purpose of discharging the contractual obligations. If the goods are not delivered and ORYXRED withdraws from the agreement on the basis of this provision, then ORYXRED shall inform the Buyer of this circumstance without undue delay. Any payment on the purchase price which has already been rendered shall be reimbursed without undue delay.
5. ORYXRED shall be entitled to make partial deliveries, provided such deliveries are reasonable. Where delivery on call has been agreed, the Buyer shall call the sold goods within a period which is to be separately agreed between the Parties in each case. Where the Buyer exceeds the pick-up time it has announced by more than two weeks, the goods shall be warehoused at the Buyer's expense and risk.

6. This shall apply mutatis mutandis if the dispatch is delayed at the Buyer's request or the Buyer is at fault for such delay. Where the Buyer exceeds the pick-up time by more than three months, ORYXRED shall be entitled to dispose otherwise over the delivery item after setting a reasonable grace period and to supply the Buyer with a suitably extended deadline. In such a case, ORYXRED shall also have the right to demand the acceptance of the goods once three months after the expiry of the agreed call period has elapsed.

§ 4 Terms of Payment

1. After delivery and provision of the goods by ORYXRED, invoices shall become due and payable immediately unless otherwise agreed. Any and all payments shall be expedited to the greatest extent possible and shall be rendered to ORYXRED by the Buyer without deduction (discount, rebate) within 10 days after receipt of the invoice. Unless there is a right to refuse performance pursuant to Sec. 320 BGB, the Buyer shall be in default after the expiry of the 10-day period.
2. Where instalment payments have been agreed and the Buyer is in default in an amount which exceeds the amount of one instalment, and where the entire sum by which the Buyer is in default is equivalent to no less than 10% of the purchase price, the entire purchase price shall be due immediately.
3. Payment by bill of exchange shall be permitted only by way of express agreement and shall be considered even in such case only as conditional payment. Discount fees, bill of exchange taxes and collection fees shall be at the Buyer's expense; they shall be due immediately. Cheques shall be accepted by ORYXRED only as conditional payment. Where payment is made by cheque, the date on which ORYXRED received the cheque shall not be regarded as the date on which payment was rendered, but rather the date on which the amount of the cheque is credited to ORYXRED's bank account.
4. In the event that the Buyer is in default of payment of the purchase price or an instalment, it shall pay default interest on the purchase price or instalment in the statutory amount commencing on the date on which the default began. The right to assert additional damage caused by default is reserved.
5. If circumstances become known which give rise to concerns that the Buyer's economic condition has materially deteriorated after the conclusion of the agreement, any and all claims arising from the business relationship, including such claims which arose from the deposit of bills of exchange or cheques, shall be due immediately. Furthermore, the Buyer's objections or defences – with the exception of the objection that a later due date was agreed – shall remain unaffected. ORYXRED may make the rendering of outstanding services contingent on prepayment or the provision of collateral. The details shall be governed by Sec. 321 BGB.

§ 5 Passing of Risk

Risk shall pass to the Buyer at the latest when the goods are handed over to the freight forwarder or other transport person. This shall also apply in the event that ORYXRED exceptionally assumes the shipment costs pursuant to a separate agreement. In the event that there are no specific instructions from the Buyer, ORYXRED shall be responsible for selecting a suitable freight forwarder.

§ 6 Right of Retention

Set-offs shall be permitted only where the claim is uncontested or has been finally adjudicated. The same shall apply mutatis mutandis in respect of a right of retention. This shall not apply to the Buyer's counterclaims which directly arise from expenditures to remedy defects or completion costs for the delivery item and have their basis in the same legal relationship as ORYXRED's claim for payment.

§ 7 Reservation of Title

1. ORYXRED reserves the title to the products delivered until settlement in full of any and all claims arising from the business relationship with the Buyer.
2. The treatment or processing of the goods subject to reservation shall always be performed on behalf of ORYXRED, whereby ORYXRED shall not incur any obligations as a result thereof. ORYXRED shall have title to the new goods in their respective treated or processed condition. Where the goods subject to retention are treated, processed, blended, mixed or combined with other products not belonging to ORYXRED, ORYXRED shall have co-ownership of the new good, specifically in same ratio as that between the invoice price of the good subject to reservation and the invoice price of the other products.

3. The Buyer may sell the goods subject to reservation which are solely owned or co-owned by ORYXRED in the ordinary course of business; the pledge, transfer of ownership by way of security or fiduciary assignment by the Buyer shall be prohibited. The Buyer hereby and at this time assigns to ORYXRED in advance any and all claims which arise from the sale of the goods subject to reservation or the products which result from the blending, mixing or combining of such goods with other goods. This shall also apply if such products are sold at a lump-sum price together with products not belonging to ORYXRED. If a third party acquires title to or co-ownership of the products by operation of law as a result of treatment, processing, blending, mixing or combining, then the Buyer hereby and at this time assigns to ORYXRED in advance any and all claims it acquires against such third party. Assignments within the meaning of this paragraph shall at all times be made only up to the amount of the invoice amount of the goods subject to reservation. The Buyer shall be authorised to collect the assigned claims until such time as the authorisation is revoked, which may be at any time.

ORYXRED at this time hereby accepts the Buyer's assignments contemplated in this Clause.

4. Where the Buyer's cooperation is required for the retention of title to be valid, such as in the case of registrations which are required under the law of the Buyer's country, then the Buyer shall perform such acts.
5. Where the Buyer is in default of a payment, ORYXRED may prohibit it from disposing over the goods subject to reservation in whole or in part, e.g. only the sale or further treatment etc., at ORYXRED's discretion.
6. If the objective conditions for the obligation to file a petition for insolvency are satisfied for the Buyer, then the Buyer – without the need for a corresponding request – shall refrain from disposing over the goods subject to reservation in any manner whatsoever. The Buyer shall notify ORYXRED of the inventory of the goods subject to reservation without undue delay. Furthermore, ORYXRED shall be entitled in such case to rescind the agreement and demand that the goods subject to reservation be handed over. If the goods subject to reservation have been treated, processed, blended, mixed or combined with other products, ORYXRED shall be entitled to demand that the products be handed over to a fiduciary; the Buyer shall provide the company names, addresses and co-ownership share of any and all co-owners of the goods subject to reservation. The same shall apply mutatis mutandis to claims which have been assigned to ORYXRED pursuant to the foregoing paragraphs; furthermore, the Buyer shall convey on its own initiative the names and addresses of all debtors, including a copy of the documentation proving the claim against them.

§ 8 Documents and Tools for Promotional Labelling

Printing plates, final drawings, stamps, photographs, etc. provided to ORYXRED shall be carefully handled and kept safe by ORYXRED. They shall be returned only upon the Buyer's express request and at its cost and risk. The obligation to retain these items shall be extinguished if no further order for this is placed within 12 months. Screens for screen printing shall be kept at the Buyer's express request. The retention period shall not exceed 12 months. Where screens are retained at the Buyer's request, ORYXRED may also invoice the Buyer for the costs of materials for the screen.

§ 9 Warranty

1. ORYXRED warrants that the delivered goods shall be free from factory defects and defects in materials.
2. Variations in processing, execution and materials – and, in respect of print, variations in colour, position and outcome – may occur as a result of the type of product and/or production. Variations in the dimensions of up to 10% may occur for technical reasons; such variations shall be accepted by the Buyer and shall not constitute a warranty claim or grounds for a complaint for the total order. Variations in colouration which are standard in the trade and which occur within a consignment are a result of the production and shall be accepted by the Buyer. Where identical repeat orders are placed, variations in dimensions and/or colour in comparison to previous series cannot be ruled out due to printing and production reasons and shall likewise not constitute a warranty claim. Deliveries of quantities of up to 10% more or less than the ordered quantity shall be deemed to be accepted and shall not constitute a ground for a complaint.
3. The Buyer should independently examine the suitability for use of the respective product itself. Sec. 377 of the German Commercial Code (*Handelsgesetzbuch*, HGB) shall apply in the case of a mutual commercial transaction. The Buyer shall notify ORYXRED of any obvious defects immediately in writing, but no later than one week after receipt of the consignment. Other defects which cannot be discovered within this period even after a thorough examination shall be notified to ORYXRED in writing immediately after discovery. Where the Buyer fails to give the notification within the applicable period, the goods shall be deemed to have been accepted.

4. Any and all warranty claims of the Buyer shall become time-barred after 12 months, beginning at the time that the risk passes. The foregoing shortened limitation period shall not apply to claims for damages which are attributable to defects in the goods sold. However, this exception for claims for damages shall apply only to claims for damages which are based on loss of life, physical injury, injury to limb or health, or grossly negligent or wilful conduct by ORYXRED or liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*, ProdHaftG). The provisions relating to the entrepreneur's recourse in the case of a sale of goods to a consumer (Sec. 478, 479 BGB) shall remain unaffected.

§ 10 Limitation of Liability (Exclusion and Limitation of Liability)

1. ORYXRED shall be liable only in the case of intent or gross negligence. In the case of a breach of cardinal contractual obligations, ORYXRED shall also be liable for simple negligence. Cardinal obligations are those obligations, the performance of which enables the contract to be properly performed at all and compliance with which the Buyer can generally rely on and is entitled to rely on.
2. Barring intent, ORYXRED's liability shall be limited to the reasonably foreseeable damage that is typical of the contract.
3. The foregoing limitations of liability shall not apply in the case of loss of life, physical injury, injury to health and to cases of liability pursuant to ProdHaftG.
4. Claims for reimbursement of expenses pursuant to Sec. 284 BGB shall be waived to the extent that a claim for damages in lieu of performance is excluded pursuant to the foregoing provisions.
5. The foregoing limitations of liability shall also apply for the benefit of ORYXRED's employees, organs and other vicarious agents.

§ 11 Indemnification

1. ORYXRED is not able to comprehensively examine and guarantee that the individualisation and processing of the goods carried out in accordance with the Buyer's order do not infringe the trademark rights, industrial property rights or copyrights of third parties. The examination of rights of third parties in connection with the logo, signature or another individualisation of the purchase object by the Buyer shall be the Buyer's obligation alone. The Buyer shall expressly indemnify ORYXRED against any and all liability upon placing an order. ORYXRED's liability for the goods themselves, i.e. the purchase objects which are to be individualised for the Buyer, being free from rights of third parties shall remain unaffected by this limitation of liability.
2. Where an infringement of trademark rights, industrial property rights or copyrights of third parties is obvious to ORYXRED prior to the execution of the order, ORYXRED shall notify the Buyer thereof.

§ 12 Miscellaneous

1. The place of fulfilment shall be Hamburg.
2. ORYXRED's registered office shall be the exclusive venue for all disputes arising directly or indirectly from the contractual relationship and bills of exchange and cheques. ORYXRED reserves the right to bring legal action at the place of the Buyer's general jurisdiction.
3. Agreements between ORYXRED and the Buyer shall be governed by German law exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

As at 1 July 2014

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