

Terms and Conditions of Business

1. Scope of Application

These Terms and Conditions of Business apply to any and all legal relationships between us and our business partners and suppliers. These Terms and Conditions only apply, however, unless the business partners and suppliers are entrepreneurs (Section 14 BGB [German Civil Code]), legal entities under public law or public-law special funds. The following Terms and Conditions are authoritative and shall be deemed agreed with respect to transactions for goods and services with our business partners and suppliers, including any and all future transactions. General terms and conditions of contract partners are not accepted, even if no objection is raised to their application in specific cases. The invalidity of individual terms or conditions does not affect the validity of the remaining terms and conditions. The above provision applies mutatis mutandis if specific terms or conditions do not become elements of the contract.

2. Conclusion of Contract

Quotations submitted by ÖMA Beer GmbH are subject to change. The above provision also applies if we have provided catalogues, documentation (e.g. computations, calculations, references to DIN standards), other product descriptions or documents (including those in electronic form) to the Buyer; we reserve title of ownership and copyrights to any such materials. Orders become legally binding when ÖMA Beer GmbH has confirmed them in writing or when the order has been performed in timely fashion. Samples and models from ÖMA Beer GmbH serve solely as product descriptions and do not represent any warranties of characteristics. Characteristics shall be deemed warranted solely and exclusively when stipulated as such in writing.

3. Orders

Orders are always carried out on the day before the day of dispatch. ÖMA Beer GmbH can process follow-up orders to the primary order solely if they have been received at ÖMA Beer GmbH at the latest by 10.30 a.m. on the day of dispatch. If and when the follow-up order has not been received at ÖMA Beer GmbH by the above deadline, ÖMA Beer GmbH reserves the right to dispatch the primary order at a later date.

4. Campaign Orders

Sales campaigns and other special marketing agreements can be realised solely with an order lead-in time of no less than 14 days. A minimum of 85% of the ordered quantities must be accepted.

5. Shipments

ÖMA Beer GmbH ships orders twice a week. Deviating shipment times are subject to separate written agreements and may be offered by ÖMA Beer GmbH at terms and conditions differing from the following. The minimum order quantity is 50 kg. Shipping costs in the amount of the current freight rate (€/kg) of ÖMA Beer GmbH will not be charged for order quantities in excess of 300 kg and delivery will be made free of shipping expenses. Shipment is made ex warehouse, which is also place of performance for the shipment and any subsequent performance. Freight costs will be negotiated and set down in writing in each specific case for shipments outside the territory of Germany. Unless otherwise agreed in writing, shipment to ÖMA Beer GmbH shall be made "free domicile".

6. Shipment Failures

ÖMA Beer GmbH is authorised to ship partial consignments as well. If release orders have been agreed, the contract partner shall issue the release order within a reasonable period. If and when shipment becomes impossible or unreasonably difficult because of force majeure, epidemics, official actions, operational shutdown, strike, weather conditions or similar circumstances (including those affecting ÖMA Beer GmbH's suppliers), ÖMA Beer GmbH is released from the performance obligation for the duration of the hindrance and its subsequent effects. ÖMA Beer GmbH chooses the shipment method on behalf of and by order of the contract partner. The risk of accidental loss and of accidental worsening of the goods passes at the latest upon the handover to the Buyer. In the case of sale by shipment, however, the risk of accidental loss and of accidental worsening of the goods as well as the risk of delay passes upon the handover of the goods to the shipping agent, freight carrier or other person or institute designated to perform the shipment. Any risks of transport and losses of weight during transport shall be borne by the contract partner, even if we perform or order the transport. ÖMA Beer GmbH's performance shall be deemed fulfilled upon handover to the transporting agent. The transporting agent shall be deemed the contract partner's vicarious agent even if and when the goods are dispatched free of shipping costs.

7. Performance Disruptions

In the event of default of acceptance by the contract partner, ÖMA Beer GmbH may store the goods at ÖMA Beer GmbH or at a third party at the expense and risk of the contract partner or may utilise the goods appropriately for the contract partner's account; prior announcement is not required. In the case of release orders, ÖMA Beer GmbH is bound by the agreed purchase price solely for the duration of the agreed delivery period in the event of default of acceptance by the contract partner. If and when the purchase price has increased during the delay of the release order, the higher price will apply. ÖMA Beer GmbH may request the immediate payment of any and all receivables, request advance payment or provision of security before shipment or rescind the contract if and when there is a significant worsening in the contract partner's assets or a substantial risk to its assets arises.

8. Complaints of Defects

The contract partner must inspect the goods immediately upon receipt for material defects (e.g. quality, quantity, condition) and is obligated to note any and all obvious defects on the confirmation of receipt. Complaint of defects must be submitted within 72 hours for refrigerated goods and without delay for any and all other goods; complaint of visible defects must be submitted at the latest within one calendar week of the arrival of the goods and before processing or handover to third parties. We must be notified of any defects which could not be detected within the above-mentioned period despite careful inspection immediately upon their discovery. Goods that are the subject of complaint shall be stored correctly. They may be returned solely with the consent of ÖMA Beer GmbH. Sections 377 HGB [German Commercial Code] et seq. apply in all other respects. In the event of properly submitted and justified complaint of defects, ÖMA Beer GmbH is entitled to perform substitute delivery. If this delivery is not possible within a reasonable period or if ÖMA Beer GmbH waives the delivery in writing, the contract partner may request reduction of the price or rescind the contract.

9. Limitation Period for Claims due to Defects

Claims due to defects by our business partners are subject to a limitation period of one year. ÖMA Beer GmbH is entitled to the full legal period for warranty claims against suppliers; irrespective thereof, ÖMA Beer GmbH is entitled, at its option, to request remedy of defects or substitute delivery from suppliers. In this case, the supplier is obligated to bear any and all expenditures required for the remedy of defects or substitute delivery. We expressly reserve the right to claim damage compensation, in particular to damage compensation for non-performance.

10. Payment

Unless otherwise agreed, payment for deliveries and services shall be effected without any deductions immediately after receipt of the invoice. If and when deliveries or services have been provided with a credit line, the credit line is calculated from the date of the invoice. Objections to invoices issued by ÖMA Beer GmbH must be lodged without delay. ÖMA Beer GmbH will charge interest in the amount of 9% over the current basic interest rate of the ECB on deferred receivables or on overdue receivables. Cheques from contract partners shall be deemed received according to the date on which they are credited to the bank account. ÖMA Beer GmbH's contract partners may offset their counterclaims solely if and when such counterclaims have been acknowledged by ÖMA Beer GmbH or have been finally adjudicated. ÖMA Beer GmbH's contract partner may not exercise any right of retention that is not based on the same legal relationship. The date of the direct debiting will be noted on the relevant invoice for all customers who make use of the basic direct debiting procedure. If the debiting cannot take place on the indicated date because it is a public holiday, the amount will be debited either one day before or one day after the public holiday. The customer is responsible for ensuring adequate funds on the debited account on the day of the debiting. The contract partner bears any and all fees, costs and losses caused by inadequate funds on the account.

11. Retention of Title

ÖMA Beer GmbH retains title of ownership to the delivered goods until the purchase price and any and all claims of ÖMA Beer GmbH against the contract partner arising from the business relationship, now or in future, have been paid in full (reserved goods). ÖMA Beer GmbH is entitled to rescind the contract if and when the Buyer is in default of payment. If and when the reserved goods are inseparably mixed, blended or combined with other goods, ÖMA Beer GmbH acquires a share of co-ownership to the single product corresponding to the ratio of the value of our reserved goods to the value of the goods mixed with the reserved goods at the point in time of the mixing, blending and combining. ÖMA Beer GmbH acquires title of ownership to any new product created by the processing or working of the reserved goods; the contract partner safeguards the new product on behalf of ÖMA Beer GmbH. The contract partner is obligated to insure the reserved goods for loss or damage. It shall upon request present proof of the insurance. The contract partner is authorised to resell the goods as well as products created by mixing, blending, combining, processing or working of the goods solely within the scope of its orderly business operations. It is not entitled to any other disposal of the reserved goods, especially, but not limited to, pledging or assignment by way of security. The contract partner hereby assigns here and now any and all claims arising from the resale of the reserved goods or the products created from the processing or working of the goods to ÖMA Beer GmbH, who hereby accepts the assignment. The contract partner hereby assigns here and now a first-rank priority partial claim to the receivable arising from the sale of goods to which ÖMA Beer GmbH has acquired co-ownership owing to mixing, blending or combining to ÖMA Beer GmbH; said partial claim corresponds to the co-ownership share of the sold goods to which ÖMA Beer GmbH is entitled. If and when the contract partner sells goods to which ÖMA Beer GmbH holds title of ownership or co-ownership along with other goods that do not belong to ÖMA Beer GmbH at a total price, the contract partner hereby assigns here and now a first-rank priority partial claim to this total price that corresponds to the share of the reserved goods to ÖMA Beer GmbH. The contract partner is authorised to collect the assigned claims from the resale; the authorisation is subject to revocation at any time. Upon request, it shall reveal to ÖMA Beer GmbH the debtors of the assigned claims, notify the debtors of the assignment or hand over to ÖMA Beer GmbH the notice of assignment. As long as the contract partner fulfils its payment obligations, ÖMA Beer GmbH will not disclose the assignment. If and when the recoverable value of the securities provided to ÖMA Beer GmbH exceeds in total the secured receivables by more than 10%, ÖMA Beer GmbH is obligated upon the contract partner's request to release excess securities at ÖMA Beer GmbH's free option.

12. Liability, Infringement on Third-party Rights

ÖMA Beer GmbH is liable for damages — irrespective of the legal grounds — within the scope of fault-based liability for wilful intent and gross negligence. ÖMA Beer GmbH is liable for slight negligence, subject to the reservation of a lesser liability criterion, in accordance with legal provisions (e.g. for care in own matters) solely

- for damage or loss caused by harm to life, body or health;
- for damage or loss resulting from the not insubstantial breach of an essential contractual obligation (an obligation that must be fulfilled if the execution of the contract is to be at all possible, that the contract partner generally expects to be fulfilled and can justifiably expect to be fulfilled); in such cases, however, our liability is limited to compensation for the damage or loss that is foreseeable and typical.

The compensation obligation pursuant to the Product Liability Act is neither excluded nor limited. The aforementioned limitations of liability apply as well to breaches of obligation by and/or to the benefit of persons for whose fault ÖMA Beer GmbH is accountable in accordance with legal provisions. They do not apply to the extent that ÖMA Beer GmbH has fraudulently concealed a defect or has assumed a warranty for the characteristics of the goods. If and when claims are asserted against ÖMA Beer GmbH because of violation of official safety regulations or on the basis of domestic or foreign product liability regulations resulting from the delivery of goods/services by the contract partner, ÖMA Beer GmbH is entitled to request compensation for the resulting damage or loss from the contract partner to the extent that the damage or loss was caused by the products/services delivered by the contract partner. The damage or loss includes as well the costs of any precautionary recall action. The contract partner will therefore obtain an insurance policy covering any and all risks of product liability, including the risk of a recall, with a reasonable sum insured and, upon request, will present proof of the policy to ÖMA Beer GmbH. The contract partner warrants to ÖMA Beer GmbH that no third-party rights within Germany are infringed upon in relation to its delivery. If and when a third party asserts claims based on such infringements against ÖMA Beer GmbH, the contract partner is obligated, upon first written request, to indemnify and hold harmless ÖMA Beer GmbH from and against any such claims; ÖMA Beer GmbH is not authorised to conclude any agreements — in particular, but not limited to, the conclusion of a settlement — with the third party without the consent of the contract partner. The contract partner's indemnification obligation extends to any and all expenditures that ÖMA Beer GmbH necessarily incurs as a consequence of or in relation to the assertion of the claims by the third party.

13. Place of Performance/Venue

Place of performance is the registered office of ÖMA Beer GmbH or the place expressly designated for the performance by ÖMA Beer GmbH. Venue for merchants is Kempen in Allgäu, Germany. The contractual relationship is governed solely and exclusively by the laws of Germany, excluding the application of international uniform law, in particular, but not limited to, the UN sales laws. The application of the United Nations Convention on the International Sale of Goods of 11 April 1980 (CISG) is excluded.

14. General Provisions

If a provision of these Terms and Conditions of Business is, or becomes, invalid, the effectiveness of the remaining provisions shall not be affected. The parties covenant to replace any invalid provisions with provisions that come closest to the intent of the invalid regulations in view of the provisions of the specific contract. Amendments to the contract shall not be effective unless in writing.