



## **Standard Conditions of Sale of Wire Belt Company Osterloh GmbH**

### **I. Application of the Standard Conditions of Sale**

1. These Standard Conditions of Sale shall apply to all contracts for the delivery of conveyor belts and conveyor belt systems and accessories, along with other products, by Wire Belt Company Osterloh GmbH (hereafter referred to as the "Vendor") to its contractual partners (hereafter referred to as the "Purchaser"). They shall also apply to any future dealings.

2. If the parties wish to make amendments to these Standard Conditions of Sale, an explicit agreement is necessary.

3. The Purchaser's own Conditions of Purchase or other Standard Terms and Conditions of Trade will not be accepted. Neither a failure to contest such terms and conditions nor payment nor acceptance of goods shall constitute acknowledgement of such other standard terms and conditions.

### **II. Conclusion of contract**

The Vendor does not immediately commit itself through invitations to make a quote (e.g. by statements described as "obligation-free quotes").

The Purchaser is bound by its order until acceptance by the Vendor. Acceptance must be given within a reasonable period. An order is accepted either by written confirmation of order or by executing the order.

### **III. Product descriptions**

1. Illustrations, drawings, specifications etc. in catalogues, brochures, price lists and other printed material are not binding. The Vendor reserves the right to make changes to design, production and other details given in the product descriptions according to the state of technology, providing such changes represent normal commercial practice and do not unreasonably damage the interests of the Purchaser.

2. Under no circumstances are descriptions of the products a guarantee for the existence of specific features. A guarantee is given only if there is a specific statement described as such in writing. There is no liability for any misprints in catalogues, brochures, price lists and other printed material.

### **IV. Assembly and briefing**

The Vendor is only obliged to carry out assembly and provide a briefing if this was specifically agreed. An additional payment must be made if this is the case. The details of this will be agreed separately.

Es gelten unsere allgemeinen Geschäftsbedingungen.

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Geschäftsführer: Marco Korbner  
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## V. Price, payment, counter-claims

1. The price is given exclusive of VAT (German sales tax) at the current rate at the time of invoicing.
2. The costs of customs, transport and insurance and any additional charges in respect of express delivery or express, mail order or special finishing are payable by the Purchaser.
3. The Vendor's invoices are payable on the agreed terms without any deduction.
4. In the case of exports, the Purchaser shall pay the charges associated with receiving payment to the extent that they are incurred in its country.
5. If the Vendor is contractually obliged to supply the goods before receipt of payment, it may refuse to make delivery if it becomes apparent after signing the agreement that there is a risk it may not receive payment due to the Purchaser's inability to pay. This right to refuse to supply the goods shall not apply if payment has been effected or a security provided. Further details are laid down in Sec. 321 of the German Civil Code.
6. The Purchaser shall only have a right of set-off if its counter-claims are undisputed, are accepted by the Vendor or have the authority of a final decision. This does not apply to counter-claims of the Purchaser that directly arise from costs of remedying defects or the revocation of sales contract by the Purchaser due to a already or not yet remedied defect of the goods by the means of cure and that are based on the same contractual relationship Vendor's entitlement to payment.

## VI. Delivery and passing of risk

1. The goods will be shipped from the Vendor's place of business or directly from the supply depot or place of business of the Vendor's supplier. They will be shipped at the Purchaser's own cost and risk, using the form of transport which the Vendor selects at its discretion, unless particular arrangements have been reached.
2. An agreed delivery period shall commence on receipt of the order confirmation.
3. The Vendor is only liable to comply with the agreed delivery period if the Purchaser fulfils its own contractual obligations in good time before delivery, in particular with regard to the agreed payment or where applicable the furnishing of agreed securities.
4. The Vendor is entitled to make partial deliveries if and to the extent that this is reasonable.

## VII. Warranty/Liability for defects

1. If the Purchaser is a *Kaufmann* (merchant) as defined by the *Handelsgesetzbuch* (German Commercial Code – "HGB"), there is an obligation to inspect and to give notice of defects in accordance with section 377 HGB. If the Purchaser suspects that there is a defect in delivered goods that is not merely completely immaterial,

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then it is under an obligation to notify the Vendor immediately of the reasons for its suspicions, even if further inspections will still need to be carried out to verify the defect. Any breach of this obligation will result in liability for damages on the part of the Purchaser, unless the Purchaser is not responsible for that breach.

2. If the item is defective and the notification of defects has been given in the proper form and in good time, then the Purchaser shall be entitled either to have the defect rectified or to receive a replacement for the defective item, at the Vendor's choice. If goods have been returned in connection with the complaint, and it transpires that this is not justified, then the Vendor shall be entitled to charge a reasonable amount for inspecting the goods, in addition to the costs of shipment and packaging. If the cost of shipment increases because the goods have been taken abroad by the Purchaser or by one of the Purchaser's customers, the difference shall be payable by the Purchaser. Any costs of dismantling and reassembly shall be payable by the Purchaser.

3. All claims by the in respect of defects become time-barred within twelve months as calculated from the transfer of risk. The above shortened limitation period does not apply to claims for damages that are attributable to a defect in the sold item or to a breach of a remedial performance duty. However, this exception for claims for damages applies only to claims for damages arising from injury to life, limb or health, from gross negligence or wilful misconduct on the part of the Seller, or from liability under the German Product Liability Act [Produkthaftungsgesetz]. The provisions concerning an entrepreneur's rights of recourse in respect of purchased consumer goods (Sections 478, 479 of the German Civil Code [BGB]) remain unaffected thereby.

## **VIII. Liability**

1. No compensation claims of any kind may be brought against the Vendor and its legal representatives and vicarious agents, except in cases where there is intention or gross negligence or the breach of an essential contractual obligation.

2. "Essential contractual obligation" means any obligation which must be fulfilled to allow proper performance of the contract in the first place, and which the Purchaser is able to rely on as being regularly observed.

3. However, liability is limited to the typically foreseeable loss. This limitation of liability shall not apply in case of intention.

4. The above limitations and exclusions of liability do not apply to liability under product liability law or in cases of death or injury to body or health.

5. The Purchaser's right to assert a claim for the reimbursement of expenses under section 284 of the German Civil Code (BGB) shall not apply to the extent that any claim to compensation in lieu of performance is ruled out under the above provisions.

## **IX. Retention of title**

1. The Vendor shall retain title in the goods delivered until all of its claims under its business relationship with the Purchaser have been paid in full.

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2. Processing or manufacturing by the Purchaser of the goods subject to the retention of title (“Reserved Goods”) will in all cases be on behalf of the Vendor, but this shall not give rise to any obligations on its part. The Vendor shall be entitled to ownership in the new items in their processed or manufactured state. If the Reserved Goods are processed, manufactured, blended, mixed or combined with other products which do not belong to the Vendor, then it shall have joint ownership in the new item, its share being the same proportion as the invoice price for the Reserved Goods compared to the invoice price for the other products. The Purchaser hereby assigns to the Vendor in advance any joint ownership rights which it acquires in terms of the previous sentence, up to the amount of the invoice price for the Reserved Goods.

3. The Purchaser may resell in the normal course of business the Reserved Goods in the sole or joint ownership of the Vendor. The Purchaser may not pledge the goods as collateral, transfer ownership therein by way of security or agree to an assignment by way of security. The Purchaser hereby assigns in advance to the Vendor any outstanding receivables which are owed to it from the resale of the Reserved Goods or for the product created through processing, manufacturing, blending, mixing or combining. This shall also apply if the product is resold at a lump-sum price along with other products which do not belong to the Vendor. If a third party has demanded rights of ownership or joint ownership in the product on the basis of statutory provisions following processing, manufacturing, blending, mixing or combining, then the Purchaser also hereby assigns in advance to the Vendor the claims it acquires in respect to the third party. Any assignment in terms of this paragraph shall in all cases only be up to the amount of the invoice price for the Reserved Goods. The Purchaser is entitled to collect the claims assigned until such time as this right is revoked (which may be at any time). The Purchaser undertakes to keep the Reserved Goods insured against the usual risks. It hereby assigns to the Vendor in advance its claims for compensation against its insurer for loss of or damage to the Reserved Goods.

4. The Vendor hereby accepts the assignments by the Purchaser provided for in this paragraph.

5. The Vendor undertakes to release those of the securities of its choice to which it is entitled in terms of the foregoing provisions, on request by the Purchaser, to the extent that their value exceeds the claims to be secured by more than 10%.

6. The Purchaser must carry out any such steps required if its involvement is required for the retention of title to be effective, such as making any registrations required under the law of the Purchaser’s country.

7. If the Purchaser defaults in payment, the Vendor may prohibit it from using the Reserved Goods completely or, if the Vendor chooses, in part, e.g. only the resale or reprocessing.

If the Purchaser meets the objective requirements for the duty to file for insolvency, then the Purchaser must refrain from using the Reserved Goods in any way, without a demand to this effect being necessary. The Purchaser is under an obligation to provide the Vendor immediately with an inventory of Reserved Goods. In this event, the Vendor is further entitled to cancel the contract and to demand the return of the Reserved Goods. If the Reserved Goods were processed, manufactured, blended, mixed or combined with other Products, then the Vendor is entitled to demand that they be delivered to a trustee.

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The Purchaser is under an obligation to provide details of all joint owners of the Reserved Goods with the company or other name, address and joint ownership share. The same applies *mutatis mutandis* to claims which have been assigned to the Vendor in terms of the foregoing paragraphs. The Purchaser must also provide to the Vendor, without being asked to do so, the names and addresses of all debtors and the documents proving the claims against them, in duplicate.

#### **X. Force majeure and disclaimer for goods not supplied to Vendor**

1. Measures taken by the Government, revolts, strikes, lock-outs, fire, machine disruption, shortages of materials or energy supplies, transport disruption and any other events outside the control of the Vendor that delay the normal manufacturing or delivery process are regarded as instances of force majeure and entitle the Vendor to extend the supply deadline agreed with the Purchaser. The Vendor is obliged to notify the Purchaser without delay of any such circumstances when the Vendor itself becomes aware of them. If either party cannot reasonably be expected to tolerate the resulting delay in supplying the goods, that party is entitled to withdraw from the agreement.

2. Fulfilment of the delivery terms is subject to receipt by the Vendor in good time of the correct input materials from its own suppliers.

#### **XI. General provisions**

1. The place of performance for any claims resulting from or in connection with the contract between the parties, including warranty claims, is Selmsdorf.

2. The courts of Lübeck will have exclusive jurisdiction to hear any disputes with merchants or people who do not have any general place of jurisdiction within Germany. However, the plaintiff is also entitled alternatively to bring a claim before the court of arbitration of the Chamber of Commerce (*Handelskammer*) in Hamburg ([www.hk24.de/arbitration](http://www.hk24.de/arbitration)), instead of before the usual courts. If this is done, then the Court of Arbitration before which the matter is brought shall have exclusive jurisdiction. Any legal proceedings shall be conducted in German.

3. German law shall apply. The provisions of UN sales of goods law shall not apply.

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