

General Terms and Conditions of Purchase of OPITEC Handel GmbH, 97232 Giebelstadt, Germany

Version 01.08.2013

Contract Language: English

1. General

- (1) These General Terms and Conditions of Purchase ("Terms and Conditions") shall apply with respect to all of our enquiries and orders (including in future) as well as to all supply agreements made with the Contractor and to other contracts concluded with the Contractor in connection with our orders. We do not recognise any terms and conditions which contradict or deviate from these Terms and Conditions, except where we have expressly consented to their application in writing. We hereby also reject any terms and conditions of the Contractor, in the event any should be communicated to us in a confirmation letter or in another manner or if we should accept goods or services of the Contractor without objecting again to the Contractor's terms and conditions, except where we have expressly consented to the application thereof in writing.
- (2) No oral agreements, ancillary agreements, deviations from these Terms and Conditions or addenda thereto or exclusion of these Terms and Conditions shall be valid unless reduced to writing. The foregoing shall also apply with respect to any waiver of this requirement of a writing.
- (3) To the extent that these Terms and Conditions, an order and/or our contract refers to Incoterms, these shall be deemed to refer to the version thereof in effect in each case at the time the contract was entered into, unless otherwise agreed.
- (4) If one or more of the provisions of these Terms and Conditions, and/or any further agreements which may be made should be or become invalid, then this shall not affect the validity of the parties' contract in other respects. In such case, the invalid provision shall be re-interpreted or supplemented such that the commercial aim intended thereby is achieved. The parties shall proceed on the same basis where, following execution of their contract, a contractual gap requiring coverage becomes apparent.

2. Orders, correspondence, call-off, changes and confirmation of orders

- (1) Our enquiries are deemed non-binding. The Contractor's submission of offers shall be deemed free of charge and non-binding on us; no compensation shall be payable for visits, the preparation of plans, drawings and the like unless expressly agreed in writing. Orders and changes and addenda to orders shall only be effective where they are made in writing.
- (2) Any correspondence which arises must be directed exclusively to the offices referenced in the order, and must quote our enquiry respectively order data.
- (3) Where the Contractor deviates from our enquiry in its offer or if its acceptance of our order deviates from the order, the Contractor must expressly advert to this.
- (4) For manufacturing reasons, and due to the specifications of our end clients, we may demand changes to orders, contracts and call-offs, to the extent reasonable to the Contractor. In this regard, any effects on the delivery schedule should be appropriately taken into account.
- (5) The Contractor must confirm our orders without delay and in writing, within 48 hours.

3. Prices

- (1) The price shown in our order is binding, and unless expressly otherwise agreed in writing, shall constitute a fixed price.
- (2) The prices stated shall be deemed to include everything the Contractor must do to satisfy its delivery respectively services obligations. Where in exceptional cases, no prices have been agreed in advance, no contract shall arise until such time as we have provided written confirmation of the prices which the Contractor must state in a binding manner in its order confirmation. The manner of setting pricing terms shall have no effect on the parties' agreement regarding the place of performance.

4. Execution of order, compliance with laws and regulations

The Contractor undertakes to comply with the relevant statutory and regulatory requirements and restrictions in performing the contract. The goods or services must comply with the relevant safety, workplace safety and accident prevention laws and regulations, as well as the relevant standards, DIN standards, German Association for Electrical, Electronic & Information (VDE) standards and other laws, regulations, norms and standards of the European Union. All agreed sales units have to be marked with the languages that we required in our orders. All documentation required for final acceptance, operation, maintenance and repair of the subject-matter of deliveries and services shall constitute an element of the Contractor's scope of goods and services. The Contractor's goods respectively services must comply with the currently recognised state of the art, unless higher standards have been agreed.

5. Provision of deliveries and services

- (1) Agreed deadlines and schedules shall be binding. Any deliveries made prior to the agreed delivery date may be refused by us. At such time as the agreed delivery respectively services deadline has been exceeded, the Contractor shall be deemed in default (even where we have provided no warning), except where the delivery respectively service does not take place for reasons for which the Contractor is not responsible. The Contractor is aware that its compliance with delivery and services deadlines is of the essence of the contract. In the event of a default, it is often the case that we will no longer have any interest in receiving the goods respectively services, such that even without setting any grace period, we may refuse to accept the goods respectively services and may rescind from the contract or demand damages instead of specific performance thereof. Our acceptance of belated goods or services without reservation does not constitute any waiver of any rights we may have due to the Contractor's having failed to meet the delivery respectively service deadlines.
- (2) Where the Contractor anticipates difficulties in production or in procuring primary materials, or where other circumstances arise which the Contractor anticipates will impede it in its timely rendering of the services or deliveries of the agreed quality, the Contractor is obliged to notify us forthwith thereof and to inform us of the reasons of its failure to meet the deadline and the anticipated length of any delay. Where the Contractor breaches this duty of information, the Contractor shall be liable to us to compensate us for all damages arising therefrom. Any claims we may have due to delay by the Contractor, which are not precluded by its having timely informed us, shall remain unaffected by the foregoing.
- (3) Unless otherwise agreed, the Contractor shall, in the event of a delay in effecting deliveries respectively rendering services, pay a penalty to us in the amount of 0.2% of the value of our order, per calendar day by which the delivery respectively service deadline is not met, but limited to no more than 5% of the value of our order. We may also demand payment of this penalty where we do not reserve the right to demand it at the time of accepting the Contractor's contractual performance; however, we must assert our right to demand a contractual penalty by no later than the time of final payment. Our right to assert statutory claims against the Contractor shall remain unaffected by the foregoing. Section 341 para. 2 of the German Civil Code, in conjunction with section 340 para. 2 of the German Civil Code shall remain unaffected by the foregoing.
- (4) Deliveries must at all times be accompanied by a delivery note, which must be provided in duplicate. The Contractor shall state in all of its delivery notes the following: General information: Order no. of Opitec Handel GmbH, Quantity of pallets in total - Information per item: Your item no., Out Item no., EAN-Code (if agreed), Item name, Dimensions and weight per sales unit, Quantity of sales units in total, Quantity of sales units in covering box, Quantity covering boxes in total. The Contractor shall be responsible both for completely and correctly stating the contents of its shipments in its bills of lading, and for professionally competent shipping and suitable packaging.
- (5) Unless otherwise agreed, the Contractor's delivery shall be made free of charge to such point of delivery as we have indicated in our order. Delivery of the goods shall be effected in packaging which is suitable for the product in question, taking account of the relevant environmental laws and regulations. All delivered goods have to be packed in a way, that fulfill the requirements of a mail order company with a few trade levels, placements and removals. All additional requirements before or in our order concerning content, kind and consistency of packing and marking have to be fulfilled. All necessary repackings because any failure will be charged to the contractor. The Contractor shall take back its packaging materials upon our demand. Any return thereof shall be effected at the Contractor's expense.
- (6) The Contractor shall comply with the relevant export laws and regulations. The Contractor must give us immediate notice of any export restrictions and directions of public authorities with export-restricting effect.
- (7) We do not redeem COD shipments; any costs and expenses arising therefrom shall be charged to the account of the Contractor.
- (8) To the extent applicable necessary documentation (such as spare parts lists, operating instructions, documentation files or other certificates) must be provided to us unbidden no later than at the time of delivery and free of charge.
- (9) The Contractor may only rely on our failure to provide documentation which we are obliged to furnish, which is necessary for the performance of the services respectively deliveries and where the Contractor has not received such documentation from us despite a written reminder setting a deadline therefor.

6. Force majeure and rescission respectively termination due to risks to the contractor's ability to perform the contract

- (1) *Force majeure*, industrial dispute, operational disruptions for which the Contractor bears no responsibility, civil unrest, actions by public authorities and other unavoidable events shall entitle us to rescind the contract respectively terminate the contract in whole or in part and without any compensation being payable by us where it is foreseeable that the delivery respectively service deadlines will not be complied with; our obligation to set any possible deadlines shall be governed by the contract. The provisions of applicable law with respect to exclusion of the obligation to perform, as well as our statutory rights to refuse to effect consideration shall remain unaffected by the foregoing.
- (2) In the event of impediments to our acceptance of goods and services for which we bear no responsibility, the delivery respectively service period and payment date shall be deemed extended by the duration of such delay.
- (3) Where the Contractor ceases to make payments, or where judicial or extra-judicial insolvency proceedings over its assets are applied for or where comparable proceedings are applied for under the law to which the Contractor is subject, we shall be entitled to rescind respectively to terminate the contract. The statutory rights to which we are entitled with respect to risks to the debtor's capacity to perform the contract shall remain unaffected by the foregoing.

7. Passage of the risk

Unless otherwise agreed, the Contractor shall bear the risk until such time as we have accepted custody of the delivery respectively where formal acceptance of a delivery of service is contemplated by statute or contract, until such time as we have effected formal acceptance thereof.

8. Passage of title

No protracted and/or extended reservation of title by the Contractor is permitted. In addition, the Contractor is not permitted to exercise a simple reservation of title. The Contractor shall transfer title to us, without any reservation of title thereof, and free of all rights of third parties. We shall acquire an unrestricted right of ownership in the subject-matter of the Contractor's deliveries or services at such time as it transfers custody thereof to us, where we have not already acquired legal title thereto prior to this time pursuant to the provisions of applicable law. By transferring custody of the goods or services to us, the Contractor is deemed to declare that it has the full right of disposition thereof and that no third party rights thereto exist.

9. Invoice and payment

- (1) The following shall be stated on the Contractor's invoices: Order number, order date, description of the goods with material number, quantity, origin of the goods, customs tariff number and, where we have indicated, our cost centre. The Contractor shall furnish its invoices to us in duplicate and in accordance with the relevant provisions of applicable law. No original invoices may be enclosed with the shipments of goods. Duplicates shall be specially marked as such.
- (2) Unless we have given our prior express approval in writing for partial deliveries to be made respectively partial elements of services to be provided by the Contractor, the Contractor may not invoice until such time as it has fully transferred custody of the goods, including any partial deliveries thereof respectively until such time as we have effected formal acceptance of the complete services. Invoices for partial deliveries respectively services which we have expressly approved in writing must bear the notation "Invoice for partial delivery" respectively "Invoice for partial services", and final invoices must bear the notation "Final invoice for deliveries" respectively "Final invoice for services".
- (3) Payment periods and cash discount periods shall begin to run from such time as the invoice containing the details required under clause 9 (1) hereof has been received, but shall not begin to run prior to delivery of custody of the goods to us respectively in the case of services, shall not begin to run prior to our final acceptance thereof and, where the scope of services includes the provision of documentation, testing certificates or similar documents, shall not begin to run until they have been provided to us in accordance with the contract. We shall, unless otherwise agreed, effect payment within 60 days after date of invoice (for deliveries DDU or DDP) or 90 days after Bill of Lading (FOB or CIF). However, where we accept custody of goods respectively agreed services prior to their agreed deadlines, the period shall not begin to run until the agreed deadline for the goods respectively services at the earliest.
- (4) Payment reminders must be made in writing. Payment shall be deemed timely where we have substantiated that we have issued a payment order on or before the date the payment falls due.
- (5) Our payments shall be deemed subject to a reservation of audits by us.
- (6) The manner of payment shall be at our discretion; provision of a bill of exchange shall require a separate agreement.

10. No assignment, set-off or retention

- (1) No claims the Contractor may have against us may be assigned by it to third parties; section 354 lit. a) of the German Commercial Code shall remain unaffected hereby.
- (2) The Contractor shall be entitled to exercise a right of set-off only in respect of undisputed claims or claims recognized by declaratory judgment. The Contractor shall only be entitled to exercise a right of retention as regards such undisputed claims or claims recognized by declaratory judgment, where they arise from the same contractual relationship with us.
- (3) We shall be entitled to rights of set-off and retention to the extent provided by law.
- (4) Where we make advance payments with respect to our orders, we shall be entitled at any time, at our option, to demand appropriate security or transfer of title by way of security with respect to corresponding materials, in particular including items which have been ordered and which may be in the course of processing.

11. Guarantee, defects as to quality, defects of title

- (1) The Contractor hereby guarantees that the goods shall be free of defects at the time of delivery of custody thereof, and shall remain so for a period of 2 years thereafter (according date we sold goods to our customer), unless otherwise agreed.
- (2) The Contractor is liable that no patents or other rights of third parties, domestically or abroad, will be infringed by its delivery to us and our use and processing of the Contractor's goods and services, except where the Contractor bears no fault therefor.
- (3) The Contractor warrants that an outgoing goods inspection shall be performed for each product. We may demand these reports respectively material certificates at any time where needed. Our goods receiving inspection shall be limited to an examination of the identity and quantity of the goods and an inspection for any visible defects, such as shipping damage. To the extent the contract which forms the basis for the application of these Terms and Conditions is a purchase agreement or a contract for work and materials, notice of defects which are apparent following the above-referenced proper inspection of the goods following their delivery must be given within one week of physical delivery thereof; we must raise other defects within one month of our discovery thereof. Where as the result of defects in goods supplied by the Contractor, it becomes necessary to institute receiving inspections which exceed the ordinary scope of such inspections, the Contractor shall bear the costs thereof.
- (4) We shall be entitled to assert the full scope of legal claims for defects; in all cases, we shall be entitled to demand, at our option, that the Contractor remedies the defect or deliver replacement goods. Where the Contractor fails to effect remediation or to supply non-defective goods within a reasonable deadline which has been set therefor, we may remedy the defect ourselves at the Contractor's expense, or have a third party do so. We expressly reserve our right to demand damages, and in particular, our right to demand damages instead of specific performance shall remain expressly reserved. We are entitled to effect remediation of defects ourselves at the Contractor's expense in case of imminent danger or if there is another reason for particular urgency; however, in the case of particular urgency without imminent danger, the Contractor must be informed thereof in advance. The provisions of applicable law regarding other dispensability of setting deadlines shall remain unaffected by the foregoing.

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- (5) We shall be entitled to assert the claims covered by clause 11 (4) hereof *mutatis mutandis* in the event of non-compliance with the Contractor's guarantee pursuant to clause 11 (1) hereof.
- (6) The prescription period for claims due to defects, including right of recourse claims, shall be 2 years, unless longer prescription periods are provided by statute. The statutory provisions regarding the commencement of the prescription period in cases of supplemental performance as well as tolling of the prescription period with respect to claims for right of recourse shall remain unaffected by the foregoing. The prescription period for a remediated defect or replacement good shall begin to run anew as at such time as we accept the remediation respectively replacement goods.
- (7) Our rights due to defects with respect to defects of which we are aware at the time of accepting goods or services shall not be deemed precluded even if we fail to make a corresponding reservation at the time of acceptance.

12. Materials supplied by customer and finished goods

- (1) Materials and/or devices we have supplied ("Materials Supplied by Customer") shall remain our property. Immediately following the Contractor's goods receiving inspection, this shall be marked as such and shall be separately stored until shipped in accordance with the contract. Processing of Materials Supplied by Customer shall be deemed to be undertaken for our benefit. Where the Contractor acquires co-ownership of Materials Supplied by Customer as a result of a merger or co-mingling of Materials Supplied by Customer, the Contractor hereby transfers, now and in advance, its co-ownership share to the finished goods ("Finished Goods") to us; we hereby accept the assignment. Transfer of custody thereto shall be deemed replaced by the Contractor's storage of the Finished Goods for us free of charge. Where the Contractor acquires sole title to Finished Goods, it hereby grants to us, now and in advance, in the manner described above co-ownership *pro rata* in accordance with the value of our Materials Supplied by Customer. The Contractor shall keep the Finished Goods separate from its other inventory and shall mark our (co-)ownership to the Finished Goods, and indicate the same in its business records. Furthermore, we shall be entitled at any time to satisfy ourselves that the Materials Supplied by Customer respectively the Finished Goods are being stored separately and properly marked, by inspecting the same at site. Materials Supplied by Customer and Finished Goods may only be used in accordance with their intended purpose.
- (2) The Contractor shall inform us without delay where third parties obtain liens or attachments on the materials or devices supplied by us and/or the goods referenced in clause 12 (1) hereof, or where any such measures are imminent.
- (3) Any Materials Supplied by Customer must be surrendered to us upon our first demand therefor. The same shall apply with respect to the Finished Goods referenced in clause 12 (1) hereof.
- (4) In the event Materials Supplied by Customer and/or the Finished Goods referenced in clause 12(1) hereof are subject to a deterioration in value or loss, the Contractor shall pay compensation therefor and must obtain insurance for this purpose at its own cost and expense.

13. Confidentiality/Barring clause

- (1) The information provided to the Contractor as well as any models, drawings, drafts, calculations and other documents and information made available to it (irrespective of whether the foregoing are originals or copies) may not be used, copied or made accessible to third parties for purposes other than the performance of the parties' contract ("Duty of Confidentiality") and shall be subject to our copyright, to the extent we have ownership thereof. Following performance of the contract, the foregoing must be returned to us unbidden. The Contractor shall have no right of retention thereto. The Contractor's Duty of Confidentiality shall also survive the complete performance of this contract; it shall expire if and as soon as the manufacturing know-how and proprietary information contained in the figures, drawings, calculations and other documents and information provided to the Contractor have entered the public domain without any breach of this Duty of Confidentiality having been committed.
- (2) This Duty of Confidentiality shall, in particular, also apply to any of the Contractor's products modified at our request (e.g. by way of a special customer label or a special formulation) as well as to any products we have developed jointly with the Contractor. The Contractor may not sell to anyone other than us, and may not sell to third parties (e.g. our customers or competitors) any and all products modified at our request and/or jointly developed by us, which have a specific characteristic either of us or of one of our customers. This barring clause shall apply for a period of 36 months following our last order of the products to which this clause pertains. In the event of a breach of this clause by the Contractor, we shall be entitled to demand damages from the Contractor. This barring clause shall not apply to the Contractor's standard products which do not manifest the specifications which we have demanded.
- (3) The Contractor shall not be relieved of its liability for the correctness and completeness of the documents it has furnished and for proper performance of the contract by our grants of approval or by our release of drawings, details, plans, drafts or other models.

14. LIMITATIONS ON LIABILITY AND DISCLAIMER

- (1) We shall be liable in the event of intentional acts, in the event of gross negligence by our statutory representatives or executives, in the event of culpable injury to life, body, health, in the event of defects which we have fraudulently failed to disclose or the absence of which we have guaranteed, provided that liability is imposed under the German Products Liability Act for injuries to persons or property with respect to items of property used in a private capacity.
- (2) In the event of a culpable breach of material contract obligations, we shall also bear liability in the event of gross negligence of our employees who are not executives, as well as in the event of slight negligence, this being in the latter case limited to such damages as were reasonably foreseeable and typical for the contract.
- (3) Any and all further liability for damages beyond the foregoing is hereby disclaimed, irrespective of the legal theory thereof.

15. AGGREGATE LIABILITY

- (1) To the extent pursuant to clause 14 hereof, our liability for damages is disclaimed or limited, this shall also apply to claims for fault by conclusion of the contract, breach of other obligations or claims due to tort pursuant to section 823 of the German Civil Code.
- (2) The foregoing also applies where the Contractor claims compensation of futile expenditure in lieu of claiming compensatory damages.
- (3) To the extent our liability is disclaimed or limited, this shall also apply to any personal liability on the part of our employees, staff, statutory and contractual representatives and vicarious agents.

16. Products liability, indemnity, liability insurance coverage

- (1) The Contractor shall indemnify and hold us harmless against any and all claims which third parties may raise against us, irrespective of the legal basis thereof, in connection with an assertion that our products are defective, provided the cause of such defects is located within the contractor's sphere or organisation and control. In cases of fault-based liability, however, the foregoing shall not apply where the Contractor furnishes evidence that it bears no fault with respect to the product defect.
- (2) In this context, the Contractor shall also be obliged to reimburse us for any expenses we may incur pursuant to sections 683, 670 of the German Civil Code as well as pursuant to sections 830, 840, 426 of the German Civil Code, which arise out of or in connection with any recall actions we undertake. We shall inform the Contractor to the extent possible and reasonable with respect to the substance and the scope of any recall actions to be taken by us, and provide it with an opportunity to comment thereon.
- (3) The Contractor undertakes to maintain reasonable product liability insurance and to furnish evidence thereof to us upon our demand. Where we are entitled to assert claims for damages exceeding such coverage, they shall remain unaffected by the foregoing.
- (4) The contractor guarantees that all goods he deliver to us will not infringe any trademark or copyrights of a third party. He exempt us from any demands of a third party in case of any violation.

17. Place of performance

Unless otherwise agreed, the place of performance shall be the delivery address stated in our orders, but for all payments it is Giebelstadt. The place of performance with respect to guarantee and/or warranty works shall be the location at which the goods are located at the time the guarantee respectively warranty works are to be carried out.

18. Jurisdiction and venue, language of contract, applicable law

- (1) Where the Contractor is a merchant, legal entity under public administrative law or a special asset fund under public administrative law, jurisdiction and venue for all disputes arising directly or indirectly under this contractual relationship shall lie exclusively with the courts of Giebelstadt. However, we shall be entitled to initiate suit against the Contractor at any other court with statutory jurisdiction.
- (2) The language of the contract is English.
- (3) These Terms and Conditions as well as the contract forming the basis for the application of these Terms and Conditions shall be governed by German law, excluding the provisions of international private law which would lead to the application of law other than German law. The United Nations Convention on the International Sale of Goods (CISG) shall not be applicable.

OPITEC Handel GmbH, Giebelstadt, 01.08.2013

The logo for OPITEC, featuring the word "OPITEC" in a bold, blue, sans-serif font. The letters are slightly shadowed, giving it a three-dimensional appearance.