

# OPTIMAS OE SOLUTIONS GMBH

## General Conditions of Sale - Germany

The Purchaser's attention is in particular drawn to the provisions of Condition 11

### 1. GENERAL

1. For the entire business relationship between Optimas and the buyer, including future ones, only these General Conditions of Sale and Delivery apply. Other conditions of purchase or other terms and conditions of the buyer are hereby contradicted. They are not applied. Optimas is entitled to change its General Conditions of Sale and Delivery with effect for the future entire business relationship with the Buyer upon notification thereof.

2. If there is a framework agreement between the buyer and Optimas, these terms and conditions of sale and delivery apply to both this master agreement and the individual order.

### 2. CONCLUSION OF THE CONTRACT

1. Offers from Optimas are non-binding. The documents belonging to the offer such as illustrations, drawings, weights and measurements are only approximate values, unless they are expressly declared as binding. If Optimas provides the purchaser with drawings or technical documentation relating to the technical object of purchase to be delivered, these remain the property of Optimas.

2. Orders of the buyer are binding for him. Unless otherwise agreed in writing by Optimas, the delivery or invoice shall be deemed to be an order confirmation.

3. If the buyer is a merchant, only the written confirmation of Optimas is decisive for the content of orders and agreements, unless the buyer objects immediately in writing. This applies in particular to verbal or telephone orders and agreements. In any case, a notice to Optimas is no longer immediate if it has not been received by Optimas within seven days of receipt of the order confirmation.

This Agreement may not be modified or rescinded except by a writing signed by the Parties. If all or part of the contract is terminated by such modification or rescission, Buyer, in the absence of a contrary written agreement between Seller and Buyer, shall pay termination charges equal to Seller's costs associated with the contract, as determined by generally accepted accounting principles, plus a reasonable profit on the entire contract. Cost shall include any amount Seller must pay to its suppliers due to any termination by Seller of a purchase order or contract for Products intended for Buyer. Prices may be changed by Seller to the extent Buyer seeks earlier deliveries or excess quantity. Pricing reflects an agreement with Seller as to MOQ's. Pricing is also subject to change to the extent Buyer requests delivery over more than a six-month period.

### 3. DELIVERY DATE, SCOPE OF DELIVERY, DELIVERY DELAY

1. Delivery dates and deadlines shall only be deemed to have been approximately agreed unless Optimas has expressly made a written commitment as binding. In the case of late clarification of all details of the order by the buyer as well as the non-timely

provision of all advance payments of the buyer, the delivery dates shall be extended accordingly. Delivery dates are deemed to have been adhered to with notification of readiness for dispatch.

2. Optimas is entitled to partial deliveries, as far as these are not below the reasonable minimum.

3. In the event of delays in delivery due to breakdowns, official measures, failure to deliver to Optimas or force majeure, the delivery period shall be reasonably extended. Force majeure shall also apply to industrial actions including strikes and lawful lockouts at the premises of Optimas or the suppliers of Optimas. Claims of the buyer for damages in these cases are excluded within the limits of Section VII (General limitation of liability).

In the event Buyer orders any inventory from Optimas which Optimas produces or procures for Buyer and such inventory is not readily saleable to other customers of Optimas, Buyer agrees to be responsible and pay for all such custom or specially procured inventory, notwithstanding any defences Buyer may have as to its failure to pay for other inventory and notwithstanding Buyer's failure to use or sell such inventory.

### 4. PRICES, TERMS OF PAYMENT

1. Prices do not include VAT, freight, customs, postage, packaging, insurance and other expenses. The packaging is calculated at cost price; their withdrawal is excluded.

2. Unless otherwise agreed, invoices are due for immediate payment without deductions.

3. If the buyer is in default of payment, then Optimas is entitled to demand default interest in the amount of 8% above the base rate. We reserve the right to assert a concrete default.

4. The buyer is only entitled to offset rights if his counterclaims have been legally established, are undisputed or recognized by Optimas.

### 5. TRANSFER OF RISK, ACCEPTANCE

1. The risk passes to the buyer at the beginning of the loading or dispatch of the delivery item, even then, if partial deliveries are made or if Optimas provides other services, eg. B. has taken over the shipping or delivery and installation and / or commissioning.

2. If shipping or acceptance is delayed for reasons for which Optimas is not responsible, the risk shall pass to the buyer from the date of notification of readiness for shipment or acceptance.

### 6. WARRANTY, NOTICE OF DEFECTS

1. Optimas shall not be liable for any costs, losses, damages or other charges associated with the quality, reliability, warranty and supply failures for Products supplied by Optimas which are procured from a Buyer nominated supplier. Buyer's sole remedy related to the Products shall be the warranty provided by the manufacturer. Further, Buyer agrees to indemnify, defend and hold Optimas harmless from any and all claims, costs, losses or damages that

arise from Optimas' purchase and sale of such Products on behalf of Buyer

2. With the exception of Products from Buyer-nominated suppliers, for defects of delivery, Optimas is liable to the exclusion of further claims as follows:

The warranty periods for private use (purchase of consumer goods, § 474 BGB) from the passing of risk 24 months, for commercial and / or professional use 12 months.

3. If the warranty is improved or re-delivered, this does not trigger a new beginning of the warranty period.

4. Properties are only warranted if they are expressly designated as such in the contract. Verbal statements as well as information in the documents of Optimas contain no assurances, in particular samples, samples, dimensions, DIN regulations, performance descriptions and other information about the condition of the delivery item serve the specification and are not assured characteristics.

As far as the materials to be used by Optimas are contractually specified, this only ensures conformity with the specification and not the suitability of the materials for the contractual purpose. For clues, Optimas is committed only to their obvious inappropriateness.

5. Damage caused by external influence, improper installation and handling, inadequate operation or maintenance, corrosion or normal wear and tear are excluded from the warranty. No warranty is given for the occurrence of hydrogen embrittlement, especially when special product treatments or coatings are made. In these cases, according to the current state of technology and the specifications for fasteners, there is a general risk of hydrogen embrittlement at a strength class of 12.9 (= minimum tensile strength and lower yield strength to nominal tensile strength), at 10.9 in most cases and at 8.8 in extreme cases. For parts made of spring steel, no warranty is given for hydrogen embrittlement since this danger can never be ruled out.

6. The buyer is obliged to inspect the delivered goods properly after receiving them at his own expense and to notify Optimas of any defects, wrong deliveries, obviously unacceptably wrong deliveries or shortfalls in writing, in case of obvious defects within seven days from receipt of the delivery. Hidden defects must be reported in writing to Optimas immediately after discovery. In addition, § 377 HGB remains unaffected in a mutual trading business.

7. Any quality defects of a partial delivery do not entitle to the rejection of the remainder of the completed quantity, unless the buyer can prove that the acceptance of only part of the delivery is unreasonable for him considering the circumstances.

8. If the buyer detects a defect, he may not modify the product, process it or give it to third parties, but give Optimas sufficient opportunity and time to convince himself of the defect and, if necessary, to carry out the required subsequent performance (repair or replacement); otherwise, all claims for defects will be canceled. Only in urgent cases of endangerment of operational safety or to prevent disproportionately large damages, whereby Optimas must be notified immediately, the buyer has the right to have the defect rectified itself or by third parties and to demand from Optimas replacement of the necessary expenses. Irrespective of the existence of a defect, the warranty claims expire even if modification or repair work is carried out without the approval of Optimas by the buyer or a third party.

9. Transport damage must be reported to the seller immediately. The buyer has to settle the necessary formalities with the carrier, in particular to make all necessary determinations to safeguard rights of recourse against third parties. As far as commercial breakage, shrinkage or the like remain within reasonable limits, this can not

be objected to.

10. In the event of justified complaint, Optimas will remedy defective goods or replace deliveries. Multiple rework is permitted.

11. In the event of removal of the defect, Optimas shall be obliged to bear all expenses incurred for the purpose of correcting the defect, in particular transport, travel, labor and material costs, insofar as these are not increased by the goods being brought to a place other than the place of performance has been.

12. Regarding the delivery item, the buyer who is not a consumer has only the right to repair or replacement at the option of Optimas. Further rights are excluded. However, the buyer may reduce the purchase price or withdraw from the contract if the repair or replacement fails.

## 7. GENERAL LIMITATION OF LIABILITY

1. If the object of delivery can not be used by the buyer due to fault of Optimas as a result of failure or incorrect advice before or after the conclusion of the contract or due to the breach of other ancillary contractual obligations (eg operating or maintenance instructions), the provisions of sections VI and VII.2 apply, further claims of the buyer are excluded.

2. For damages that are not the result of the delivery itself, Optimas is liable - for whatever legal reason - only

- if caused at will,

- in case of gross negligence of the owner (s) or executive officer,

- in case of culpable injury to life, body, health,

- in the case of defects which he has fraudulently concealed or whose absence he has guaranteed,

- in case of defects of the delivery item, as far as according to the Product Liability Act for personal injury or material damage to privately used objects is liable.

In the event of culpable breach of material contractual obligations, Optimas is also liable for gross negligence of non-executive employees and for slight negligence, in the latter case limited to contractually typical, reasonably foreseeable damage; further claims are excluded.

## 8. RETENTION OF TITLE, INSURANCE

1. Optimas reserves ownership of the delivery item until receipt of all payments under the delivery contract. In case of breach of contract by the Buyer, in particular default of payment, as well as in the application for opening insolvency proceedings, Optimas is entitled to take back the delivery item after reminder and the buyer is obliged to surrender. In the case of seizure or other interference by third parties, the buyer must notify Optimas immediately in writing.

2. The buyer must sufficiently insure the reserved goods against theft, breakage, fire, water and other damages. If the buyer has not completed the insurance or does not provide such proof despite being requested by Optimas, then Optimas is entitled to insure the delivery item itself at the expense of the buyer.

3. The buyer is entitled to resell the delivery item in the ordinary course of business. However, he already assigns to Optimas all claims that accrue to him from the resale against the customer or against third parties, regardless of whether the reserved goods are resold without or after processing. To collect these claims, the buyer is authorized even after the assignment. The power of Optimas to collect the claims itself remains unaffected; however, Optimas agrees not to collect the claims as long as the buyer duly meets its payment obligations. Optimas may require the buyer to disclose the assigned claims and their debtors, provide all information

necessary for collection, provide the related documents and notify the debtors of the assignment. If the delivery item is resold together with other goods that do not belong to Optimas, the buyer's claim against the buyer in the amount of the delivery price agreed between Optimas and the buyer shall be considered as assigned.

4. The processing or transformation of reserved property is always done by the buyer for Optimas. If the Reserved Property is processed or inseparably mixed with other non-Optimas items, Optimas acquires co-ownership of the new item in proportion of the value of the Reserved Property to the other processed or mixed items at the time of processing or mixing. If goods are combined by Optimas with other movable items into a unitary item or are inseparably mixed and the other item is to be regarded as the main item, it shall be deemed agreed that the buyer assigns to Optimas pro rata co-ownership insofar as the main item belongs to him. The buyer holds ownership or co-ownership for Optimas. The same applies to the thing resulting from the processing, transformation or connection as well as mixing as for the reserved goods.

5. For the proper fulfillment of Buyer's liabilities, Optimas is entitled to demand reasonable security. Optimas undertakes to release the securities to which it is entitled insofar as their value exceeds the claims to be secured by more than 20% insofar as they have not yet been settled.

## **9. PERFORMANCE OBLIGATION, IMPOSSIBILITY AND NON-PERFORMANCE**

1. The delivery obligation and the delivery period of Optimas are subject to the reservation of the proper, complete and timely self-delivery. Optimas will inform the buyer immediately about the unavailability of the delivery item and its expected duration. If the delivery item is permanently unavailable, Optimas may withdraw from the contract. In this case, Optimas will reimburse the purchaser immediately for any services already rendered.

2. If Optimas becomes unable to provide all performance prior to the transfer of risk due to a circumstance for which Optimas is responsible, Buyer may rescind the contract.

In the case of partial impossibility or partial inability, the above provision applies only to the relevant part.

In this case, the buyer can only withdraw from the overall contract if he can prove a legitimate interest in the rejection of the partial delivery. Further claims of the purchaser, in particular claims for damages, are excluded in accordance with the provisions of sections VI and VII.

3. If the impossibility occurs during the delay in acceptance or through the fault of the buyer, he remains obliged to fulfill.

4. After the resignation of Optimas from the contract or after setting a deadline with a threat of refusal, Optimas is entitled to freely use the goods taken back.

## **10. TERMINATION**

This Agreement may not be modified or rescinded except by a writing signed by the Parties. If all or part of the contract is terminated by such modification or rescission, Buyer, in the absence of a contrary written agreement between Optimas and Buyer, shall pay termination charges equal to the Optimas's costs associated with the contract, as determined by generally accepted accounting principles, plus a reasonable profit on the entire contract. Cost shall include any amount Optimas must pay to its suppliers due to any termination by the Optimas of a purchase order or contract for Products intended for Buyer.

If the Buyer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a Optimas) it passes a resolution or the Court makes an order that the Buyer be wound up (otherwise than for the purpose of amalgamation or reconstruction) or if a receiver, administrator or administrative receiver is appointed of any of the assets or undertaking of the Buyer or if circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court to make a winding-up order or if the Buyer takes or suffers any similar action in consequence of debt or commits any breach of any part of this or any other contract between the Optimas and the Buyer the Optimas may stop any Goods in transit and suspend further deliveries and by notice in writing to the Buyer may immediately terminate the Contract without prejudice to the provisions of Condition 5.3 and to existing claim.

Notwithstanding anything specified to the contrary, in all events upon termination for whatever reason, the Buyer will purchase from the Optimas any product specially stocked or procured by the Optimas for the Buyer ("Special Stock Product") and in the possession of the Optimas or in transit to the Optimas, plus any finished goods in the possession of the Optimas or its suppliers, and reimburse the Optimas for any manufacturer cancellation charges for unshipped items.

## **11. PLACE OF PERFORMANCE, JURISDICTION, APPLICABLE LAW**

1. Unless otherwise agreed in the contract, the place of performance for the payment and the delivery of goods is the registered office of Optimas.

2. If the buyer, businessman, a legal entity under public law or a special fund under public law, is the place of business of Optimas jurisdiction for all disputes, including in the context of a bill of exchange or check process; Complaints against Optimas can only be made there.

3. It is exclusively the law of the Federal Republic of Germany to apply to the exclusion of international private law, the unified international law and to the exclusion of UN sales law.

## **12. LEGAL EFFECTIVENESS, DATA PROTECTION**

1. Should one of the provisions of these General Conditions of Sale and Delivery be or become ineffective, this shall not affect the validity of the remainder of the contract. The legal regulation applies in its place. If such does not exist, what the parties would have wanted would have been known if they had filled the gap when concluding the contract. In no event will the provision in these General Terms and Conditions of Sale and Delivery be replaced by terms and conditions of the Buyer.

2 Any changes or additions to the contract must be confirmed in writing by Optimas in order to be effective. this also applies to a deviation from the contractual written form requirement itself.

3 Legally significant declarations of intent such as terminations, cancellations, requests for reduction of purchase price or damages are only valid if they are made in writing.

4. Optimas shall be entitled to process and store the data relating to the Buyer received in connection with the business relationship - even if these come from third parties - in the meaning of the Federal Data Protection Act and have it processed and stored by third parties commissioned by Optimas.

5. In case of discrepancy with the German version of the General Conditions of Sale, the German version shall prevail.