

# General Terms and Conditions of Sale

Gesellschaft für Oeltechnik mbH

Version 02/2019

## 1. Applicability

- 1.1 In the absence of other arrangements, the present General Conditions of Sale shall apply to the supply of goods and/or services by Gesellschaft für Oeltechnik mbH.
- 1.2 Other general terms and conditions shall not apply even if they have not explicitly been objected to or if Gesellschaft für Oeltechnik mbH provides deliverables to fulfill an order and has not made any reservations or raised explicit objection to such other terms and conditions. Nevertheless, Gesellschaft für Oeltechnik mbH always reserves the right to state otherwise in its quotations.

## 2. Definitions

- 2.1 Gesellschaft für Oeltechnik mbH shall be referred herein as the "Supplier".
- 2.2 The contracting partner of Gesellschaft für Oeltechnik mbH shall be referred herein as the "Customer".

## 3. Offer / Orders / Acceptance

- 3.1 Supplier quotations are non-binding unless they contain a period of validity.
- 3.2 Both order and acceptance shall be in writing; any oral side agreements in connection with any orders shall be effective only if confirmed in writing by the Supplier.

## 4. Prices

- 4.1 Deliveries shall be conducted ex works (Incoterms 2010) from the respective delivery site (Waghäusel), prices shall be plus Value Added Tax or Sales Tax – insofar as the deliverable is subject to such tax – in the statutory amount in effect from time to time on the day when the deliverable is invoiced.
- 4.2 Work and service deliverables shall be billed based on prices offered, or else on a time and materials basis.
- 4.3 The cost of any potentially required tooling, instruments, spare parts, travel and stays, leave related travel home etc. as well as any notarizations, certifications, or legalizations from Chambers of Commerce and/or Customs, and all other duties, dues, and taxes levied outside of the Federal Republic of Germany shall be borne by the Customer. For deliveries including Customs duty or other dues, the price indicated shall be based on the rates in effect at the time of the offer. Actual costs shall be billed.
- 4.4 In the event that the Customer's order is not placed in Euro (€), the Supplier may demand that the exchange rate in effect at the time of the offer shall be retained.

## 5. Payment terms

- 5.1 Invoices shall be paid within 30 days following invoicing; alternatively – upon Supplier's request – payment shall be made by means of an irrevocable letter of credit to be opened in favor of the Supplier shortly after receipt of the purchase order confirming the order and to be confirmed by Deutsche Bank AG Frankfurt (Federal Republic of Germany) or any other bank upon discretion of the Supplier. The letter of credit shall be denominated in Euro (€). The "Uniform Customs and Practice for Documentary Credits" (UCP 600, revision 2006) of the International Chamber of Commerce (Paris) shall additionally apply. All costs arising out of the opening and maintenance of the letter of credit shall be borne by the Customer.
- 5.2 The Customer shall not be entitled to any deductions (e.g. taxes, duties).
- 5.3 The determining factor to establish the timeliness of payment is that the Supplier shall, without any recovery reservations, be able to dispose of the amount credited; for checks or bills of exchange, timeliness shall take account with the possibility to cash and credit such instruments in a timely manner within the normal course of business. Expenses and costs in connection with the discounting and presentation of checks and bills of exchange shall be borne by the Customer.

5.4 In the event that money transfers from the country from which a payment is to be made should, at the time when the payment becomes due, not be possible, the Customer shall nonetheless be under the obligation, by the payment deadline, to deposit the countervalue of the amount due at a bank in that country at the Supplier's discretion and exclusive disposal. The Customer shall compensate any exchange rate deterioration in any amounts thus paid in in the non-contractual currency by means of an appropriate supplementary payment. Nevertheless, the Supplier may in such case also decide to cease the fulfillment of the contract until such transfer of payment is possible again or cancel the contract without a mutual rescission of the services.

5.5 In the event that the Customer should be wholly or partially in default of its payment obligations, the Supplier shall be entitled to increase the payment amount actually in default by late payment penalty interest from the due date until the date of actual receipt of the payment, calculated at the annual EURIBOR rate plus 8%. The option to claim higher damages and to assert all other applicable rights shall remain unaffected by the above provision.

5.6 The Customer may only conduct set off with such claims or assert a withholding right which it is contractually entitled to, which arise from final court orders or result from uncontested counterclaims.

5.7 In the event of deterioration of the Customer's financial condition after conclusion of the contract, the Supplier shall be entitled to refuse performance on the contract until its claims are settled or guarantees have been provided for claims not due yet.

## 6. Delivery deadlines

6.1 Delivery and performance deadlines for goods and/or work and/or service require a written agreement. Partial deliveries are permissible.

6.2 The delivery deadline shall begin to run on the day of receipt of the Supplier's written order confirmation at the Customer's offices. Such deadline shall however in no event begin to run before all technical details are clarified and the Customer's duties are met, including but not limited to, the submission of documentation, permits, and approvals, and before payment of any agreed upon advance payment is received.

6.3 If non-compliance with the deadline is due to strike or labor unrest or to any other unforeseeable events not ascribable to the Supplier's responsibility, such as shortages of materials, equipment, or energy, incorrect or late deliveries from carefully selected sub-suppliers, and if such non-compliance could not be prevented even with customary care and diligence and reasonable efforts, the deadline shall be extended by the duration of such event plus an appropriate ramp-up period. The above shall also apply if the delivery deadline should be delayed as a result of *force majeure* or other events. Events of *force majeure* shall, in particular, be fire, war or warlike events, insurgency, mutiny, mobilization, requisition, flood, earthquake, other natural catastrophes, epidemics, quarantine measures, strike, lock-out, foreign currency transfer restrictions, as well as transport and export restrictions. If the Customer should prove that any such extension is unreasonable for its needs, it shall be entitled to terminate the unfulfilled portion of the contract if it cannot be fulfilled within a reasonable period of time.

6.4 Insofar as – with the exception of the cases referred to in Subclause 6.3 – the Customer proves that it has suffered damages as a result of the delay, it may claim a penalty payment at maximum 0.1% of the price of the goods, work, or service deliverables affected by the late delivery for every full week of delay, but no more than 5% of the total value of the goods, work, or service deliverables affected by the late delivery.

6.5 If the Supplier should be responsible for the failure to meet the delivery deadline, the Customer may, after

# General Terms and Conditions of Sale

Gesellschaft für Oeltechnik mbH

Version 02/2019

expiry of an appropriate period of notice set in writing, be entitled to withdraw from the unfulfilled portion of the contract. The Customer shall be entitled to damage compensation due to non-performance only for typically foreseeable damages.

## 7. Notice duty of non-conformity for material defects and transport damage

Obvious material defects, transport damage, wrong deliveries or quantity variances shall be reported to the Supplier in writing without delay, but at the latest 14 days after receipt of the goods.

## 8. Retention of title

8.1 The Supplier shall retain ownership of the goods delivered until all payment claims have been settled ("Goods Subject to Retention of Title").

8.2 The Customer shall, within the normal course of business, remain entitled to onward sale of the goods delivered even before payment, always provided that it assigns, with immediate effect, the payment claims as well as any and all ancillary rights arising out of such onward sale to the Supplier in the amount of the sum owed. The Supplier empowers the Customer revocable to collect any payment claims assigned to the Supplier in its own name and on behalf of the Supplier. The Customer shall only be entitled to transfer ownership of the Goods Subject to Retention of Title in pledge or assignment as collateral with the consent of the Supplier.

8.3 If processing the Goods Subject to Retention of Title together with other items, the Supplier shall be deemed to be a manufacturer, and shall be entitled to joint ownership of the new item in the proportion of the value of the Goods Subject to Retention of Title. In such cases, the Customer shall store the new item on behalf of the Supplier free of charge. In the event that the Customer should onward dispose of the item, Subclause 8.2. shall apply *mutatis mutandis*.

8.4 In the event of third party collection procedures against the Customer, it shall immediately so inform the Supplier and cooperate in all measures intended to protect the Goods Subject to Retention of Title. The Customer shall bear all costs arising out of any measures taken to avoid a seizure and/or to recover the Goods Subject to Retention of Title, insofar as and to the extent that such costs cannot be recovered from third parties.

8.5 The Supplier may cancel the collection proxy set forth in 8.2 if the Customer does not meet its payment obligations or its financial condition is deteriorated. In such cases, the Supplier shall, without exercising its right to terminate the contract and without setting a period of notice, demand surrender of the Goods Subject to Retention of Title at the Customer's expense. Further to the Supplier's request, the Customer shall be under the obligation to report the claim for assignment to its own customer, and to provide the Supplier with the information and the documentation necessary for the Supplier to execute its rights against the Customer's buyers.

8.6 In the event that the value of the collateral should exceed the value of the claim to be secured by 10%, the Supplier shall, upon the Customer's request, be under the obligation to release the Goods Subject to Retention of Title.

8.7 The Customer shall be under the obligation to appropriately store the Goods Subject to Retention of Title and to ensure them against the usual risks at its own costs as well as to prove such insurances to the Supplier upon the latter's request. The Customer hereby directly subrogates its insurance claims in the value of the Goods Subject to Retention of Title to the Supplier, who accepts such subrogation.

8.8 In the event that retention of title should not be valid in the present form under the laws of the country of destination, the Customer shall collaborate in creating a

right for the Supplier that meets the requirements of that country's regulations. The Customer shall immediately notify the Supplier if any third parties should assert any claims that may jeopardize the substance or existence of the Supplier's collateral.

## 9. Testing and acceptance

9.1 Testing in the Customer's presence as well as special tests require prior arrangements.

9.2 If acceptance testing of the deliverable is agreed upon, such acceptance testing shall take place at the Supplier's manufacturing facilities. Acceptance shall be deemed to have taken place if the Customer has not asserted any justified complaints or objections by the completion of testing. Acceptance may not be refused due to insignificant defects, although the Supplier shall also remain under the obligation to remedy such defects.

9.3 In the event the Customer waives the right for a joint acceptance testing, or if it is, despite timely notification, not be present during testing, testing conducted by the Supplier shall be deemed to constitute acceptance.

9.4 In the event that testing should be delayed for reasons the Supplier is not responsible for, any additional costs arising out of such delay shall be borne by the Customer and the delivery dates shall be postponed accordingly.

## 10. Warranty and material defects liability

10.1 The Supplier warrants that the goods or the services are free of material or manufacturing defects. In the event that the Customer should report any such defect(s) in writing within the warranty period, the Supplier shall be under the obligation, at its own discretion, to remedy the defect either by rectification rework or by delivery of goods that are free from defects, at no charge and within an appropriate period of time. In the event the Supplier should not be able to do so, the Customer shall, further to consultation with the Supplier, be entitled to claim an appropriate reduction in price. In the event no agreement could be reached in this matter, the Customer may also terminate the contract to the extent as it concerns the delivery of goods or services which are defective. Any costs for review and testing of goods reported to be defective shall be borne by Customer in case no such defect has in fact occurred or the Supplier is not responsible for it. The Customer shall submit a respective order to the Supplier covering the costs for such services submitted.

10.2 In the event of a defect notification in accordance with Subclause 10.1, the Supplier may, at its own discretion, request that the Customer either send the defective part or device to the Supplier at an address designated by the Supplier for rework and subsequent return to the Customer, or that the Customer keep the defective part or device in readiness for a Supplier service technician to perform the rework at the Customer's premises further to obtention of the required permits and approvals. When performing rework outside of the Federal Republic of Germany, the Supplier shall assume only those costs that would also have arisen for it if performing the work at its facilities in the Federal Republic of Germany. The Customer shall support the Supplier's service technician so as to avoid preventable delays in the work.

10.3 Legal characteristics of the goods or services shall only be warranted if confirmed to the Customer in writing. Models and descriptive information contained in catalogs, brochures, and instructions for use shall not constitute warranted characteristics. In case warranted characteristics are absent, the Customer may, within the scope of the commercial business relationship, claim damage compensation for non-performance only for the typical and foreseeable loss, unless the warranty was made with the intent to warrant the Customer also the compensation against further losses.

10.4 The warranty period is 12 months from the date of delivery.

# General Terms and Conditions of Sale

Gesellschaft für Oeltechnik mbH

Version 02/2019

- 10.5 The Customer shall immediately report any defects to the Supplier in writing and do everything reasonably possible to minimize the damage.
- 10.6 The Supplier shall only be obligated to remedy the defect if the Customer has met its contractual obligations.
- 10.7 The Supplier's warranty does not apply to defects resulting from natural wear and tear (in particular in wear parts) or from improper use or handling. The Supplier's warranty does not cover defects due to improper modifications or repairs performed by the Customer or third parties.
- 10.8 The following additionally applies to software:  
The Supplier shall ensure the conformity of the software provided to the Customer with the program specifications if the software is operated on the Supplier's systems pertaining thereto and in accordance with the Supplier's guidelines. Software defects shall only be those that can be reproduced at any time. The Supplier undertakes to correct software defects that impair its contractually specified use to more than an insignificant degree, at the Supplier's discretion and depending on the significance of the defect, by means of either installation of an improved version of the software or of instructions for the removal or circumvention of the effects of the defect.
- 11. Return of goods for repair or maintenance**  
The compliance with statutory provisions on occupational health and safety, e.g. the Ordinance on Workplaces (*ArbStättV*), the Hazardous Substances Ordinance (*GefStoffV*), the accident prevention regulations as well as the regulations on environmental protection, e.g. the Waste Management Act (*AbfG*) and the Federal Water Act (*WHG*) requires all companies to protect their employees, man and the environment from harm when dealing with hazardous substances. Please make sure that all items that have come into contact with toxic, explosive, microbiological, radioactive or other harmful substances are correctly decontaminated before they are sent back to our premises for repair, corrective maintenance or other use.
- 12. Liability and damage compensation claims**
- 12.1 If the Customer is unable to use the delivered goods or services as contractually agreed for reasons ascribable to the Supplier and due to the omission or defective implementation of pre- or post-contract execution suggestions or recommendations, or due to the violation of other ancillary contractual obligations (e.g. instructions for the operation and maintenance of the deliverables), the provisions of Subclauses 12.2, 12.3, 12.4, and 12.5 shall apply *mutatis mutandis*.
- 12.2 The Supplier shall, regardless of the applicable legal claim, be liable for damages only
- in cases of willful intent or gross negligence,
  - in the event of culpable personal injury to life, limb or health,
  - in the event of defects maliciously concealed by the Supplier or whose absence had been guaranteed, as well as
  - in the event of slight negligence, in an amount limited to the typically foreseeable loss.
- 12.3 The Supplier's liability in accordance with the Product Liability Act or mandatory laws of other countries remain unaffected.
- 12.4 As concerns the installation of software, the Supplier – including its employees, servants, or agents – shall be liable for the loss or alteration of data caused by program errors only within the scope that would also have been unavoidable if the Customer had met its data backup and protection duty at intervals consistent with use, but at least once a day.
- 12.5 Further contractual or statutory claims, including claims for compensation in respect to consequential damages due to defects, are excluded. The above shall not apply if liability is mandatory by law.
- 13. Copyrights and industrial intellectual property rights**
- 13.1 It is not permitted to remove merchandise and product trade marks from the goods, to affix the Customer's trademark logos to the goods, or to modify the external aspect of the goods in such manner that the Customer or a third party appears to be the manufacturer.
- 13.2 The Supplier retains unrestricted copyright, ownership and usage rights to any quotes or estimates, drawings, and other documents; such records may be made available to third parties only upon Supplier's prior written consent. Drawings and other documents pertaining to an offer shall, if the Supplier is not awarded the contract, be returned immediately upon request.
- 13.3 For software programs and respective documentation as well as subsequent supplements, the Customer shall be granted a non-exclusive and non-transferable license for use for the Supplier's intended operation of the goods for which the programs were supplied. Third party access requires the prior written consent of the Supplier. Making copies other than a safety backup copy is not permitted. The Supplier shall only make source programs available based on a separate written agreement.
- 14. Data storage**  
The Supplier may only store personal data to the extent that such data are related to the business relationship and as far as permitted by the EU-GDPR (General Data Protection Regulation).
- 15. Export licenses**  
In the event that exports of the Supplier's deliverables require officially prescribed licenses, and if an approval applied for such license should be withdrawn or be finally not granted, the Supplier's offer, or, alternatively, the contract, shall terminate without any claims for the Customer, and the Customer agrees to the withdrawal of the offer and/or the termination of the contract. The same shall apply in events of *force majeure*. The delivery deadline(s) for goods and/or work or service shall be postponed until an export license is obtained. If the Customer should wish to export the goods, it shall bear the costs and responsibility for obtaining the required export and/or re-export licenses.
- 16. Severability Clause - Entire Agreement**  
The ineffectiveness of any individual clause(s) of the present General Conditions of Sale shall not affect the effectiveness of the remainder of the Supply Agreement.
- 17. Place of performance, applicable law and jurisdiction**
- 17.1 The place of performance shall be the Supplier's delivery site (Waghäusel).
- 17.2 German law shall apply to all contractual obligations, with the exception of International Private Law under exclusion of the United Nations Convention of April 11, 1980 on Contracts for the International Sale of Goods.
- 17.3 The place of jurisdiction shall, at the Supplier's discretion, be the competent court having jurisdiction over the Supplier in the Federal Republic of Germany, or else the competent court having jurisdiction over the Customer's registered head office.