

# **General Terms and Conditions for the sale and supply of goods and services delivered by Opitz Packaging Systems GmbH, Kalefeld**

**last update: February 2021**

## **I. General**

1. The offer, order and contractual agreement are subject exclusively to our General Terms and Conditions. Deviating, opposing or supplementary General Terms and Conditions shall not become a contract component – even if they are known – unless their validity shall be explicitly consented to in writing.

These Terms and Conditions are applicable to all present and future contracts with persons, who act on closing the contract in the execution of their commercial or self-employed, professional activity (entrepreneur) or to a legal person governed by public law or a special fund governed by public law.

Our respective contract partner / business partner is referred to below as "entrepreneur".

2. Our offers are at all times non-binding and subject to confirmation. We reserve the right to make technical changes within a reasonable scope.

All our documents appended to our offers such as illustrations, drawings, declarations of weights and measures are only authoritative if they are expressly confirmed. Cost estimates, drawings and other documents shall remain our property and shall be subject to copyright protection. They may not be made available to third parties.

With its order the entrepreneur declares bindingly to want to purchase the ordered goods or service and to receive the offered service. We are authorized to accept the offer contained in the order within 14 days after receipt by our company. Acceptance may either be declared in writing or by the supply of the goods or delivery of the service to the entrepreneur.

3. If the goods or service are ordered electronically, the contractual text shall be stored by us and upon request sent by email to the entrepreneur next to the General Terms and Conditions.

## **II. Prices and Payment Terms**

1. Unless otherwise agreed, the prices refer to a delivery ex works including loading at the factory. The price does not include packaging and insurance, unless these are expressly stated to be included in the price. All prices are shown without the respective statutory value added tax. For export deliveries the value added tax is not applicable.

We consider ourselves bound by the prices quoted at the placement of the order for four weeks after the order has been placed. If longer dates or terms are agreed for the supply of goods or delivery of services, the applicable prices shall be subject to individual agreements.

2. Payment shall be made in cash without any deduction to our pay office:
  - in the amount of 40% of the purchase price within 10 days after receipt of the order confirmation by the entrepreneur
  - 50% of the purchase price 10 days after the acceptance of the goods in our factory or after the delivery of the goods at the entrepreneur's.

- 10% of the purchase price until at the latest six weeks after acceptance in our factory or after delivery.

If the entrepreneur defaults on any payment at the expiry of this deadline or even one deadline, an additional rate shall be charged. The defaulting entrepreneur must pay interest on the sum specified in the invoice in the amount of 8% above the currently valid base rate of the European Central Bank. We reserve the right to demonstrate higher default damages and claim these from the entrepreneur.

3. We expressly reserve the right to refuse bills and cheques. Their acceptance shall at all times be on account of performance. The entrepreneur shall always bear cashment charges, bill discount and exchange charges; these shall be due for immediate payment.
4. We shall reserve the ownership of all and any goods delivered until all existing claims maintained by us towards the entrepreneur from our business relation have been satisfied. By way of security, the entrepreneur shall in this respect already fully assign to us upon the conclusion of the purchase contract the claims, along with all subsidiary rights, against its customer that accrue to it from the sale or on any other legal basis. We hereby accept this assignment. Following assignment the entrepreneur is authorized to collect the claim. We reserve the right to collect the claim ourselves as soon as the entrepreneur does not properly fulfill its obligations of payment or is in default of payment. If the value of the delivered goods provided as security and in which we reserve title exceeds a total claim by more than 20%, upon request from the entrepreneur, we shall be obliged to release securities to this extent. Handling and processing of the goods by the entrepreneur is always executed in our name and as per our order. If processing is done with goods not belonging to us, we shall acquire, in the new object, the co-ownership at the ratio of the value of the purchased item to the other processed objects. The same applies if the purchased item is mixed with other items not belonging to us.

The entrepreneur may neither pawn nor assign the purchased goods by way of security. In the case of pledges and seizure or other orders by third parties, the entrepreneur must notify us about it without delay.

If the entrepreneur is in breach of contract, in particular default of payment, then after a reminder, we are entitled to take back the goods and the entrepreneur obliged to return the goods. The assertion of retention of title and the seizure of the purchased items are not deemed to be a withdrawal from the contract.

5. In the event of delayed acceptance by the entrepreneur, we are entitled, after failure to meet an extended time limit, to charge damage compensation for the amount of 25% of the purchase price or fees for the delivery of the service. The entrepreneur is expressly permitted to provide evidence that damages or depreciation have not occurred at all, or are much less than the flat-rate.
6. The entrepreneur undertakes to inform us immediately of any seizure of the goods by third parties, for example in the event of an attachment, as well as of any possible damage to or destruction of the goods. The entrepreneur is also obligated immediately to disclose change of ownership of the goods as well as a change of location.
7. We may in case of any act by the entrepreneur in breach of the contract, in particular in case of any delay in payment or in case of any breach of any duty under the above section of this provision, withdraw from the contract and demand that the goods be returned.

8. Retention of payments because of counterclaims and/or offsetting against such claims by the entrepreneur are permissible only if these counterclaims are undisputed or have been determined with legal effect.

### **III. Delivery/Transfer of risk**

1. Delivery shall be made from our warehouse to the agreed delivery address.  
If an agreed date of performance is delayed due to circumstances for which we are not responsible because we have not been supplied, have not been supplied on time or have not been supplied properly despite proper congruent coverage, our deadlines shall be extended accordingly. If we have duly informed the customer of the impediment to performance and if it is not merely of a temporary nature, we shall be entitled to rescind the contract in whole or in part on account of the part of the contract not yet performed.  
Statutory claims of the customer shall remain unaffected in all other respects.
2. Delivery dates shall only be binding, provided this was expressly confirmed by us in writing. A delivery period begins only when all required documentation, approvals and permissions are provided by the entrepreneur as well as a payment of 40% of the purchase price in accordance with II.2. of these General Terms and Conditions was received. It is considered that the delivery deadline has been complied with, if before the expiry of the deadline, the delivery item has left our factory or if the entrepreneur has been notified the readiness for shipping. Insofar as an acceptance has to occur, the acceptance date is authoritative, or alternatively the notification of readiness to accept, unless the entrepreneur refuses acceptance for justified reasons.
3. We are not responsible for delivery and performance delays due to force majeure and due to events which significantly impede or render impossible our performance – including all kinds of natural disasters, strikes, lockouts, official directives, even if they occur at our suppliers' premises or at the premises or their subcontractors - also in the case of dates and deadlines agreed with binding force and also within a default. We shall inform the entrepreneur without delay in the event of non-availability and promptly refund any payment received. We are entitled to postpone the date of delivery or performance for the duration of the obstruction plus a start-up period of reasonable length, or to entirely or partially withdraw from the contract for such part not yet performed. If the obstruction lasts longer than three months, we shall be entitled at the end of an additional period time of reasonable length to withdraw from the contract with regard to the part not yet performed. If the delivery period is prolonged or we become free of our obligations, the entrepreneur may not derive any claims from this. Our invoking of above circumstances shall be possible only if we inform the entrepreneur immediately.
4. The risk of accidental loss or deterioration of the goods passes to the entrepreneur upon delivery or acceptance, in the event of a sale by dispatch, upon the delivery of the goods to the forwarding company, the carrier or to the person or institution engaged with performing the shipment. Such risk of loss shall also pass if partial deliveries take place or if we have taken over also other services such as for example the shipping costs or delivery and installation. If acceptance is to take place, this is the determining factor with regard to the passage of risk. It must be carried out without delay on the acceptance date or, alternatively, following our notification of readiness for acceptance. The entrepreneur may not refuse acceptance in the event of an immaterial defect.
5. If the entrepreneur delays in accepting the goods, the transfer shall still be deemed to have taken place.
6. If the dispatch of the delivery goods is delayed on the request of the entrepreneur, we shall be entitled to demand restitution for all costs incurred and still to be incurred arising from the storage of such goods, starting from one month after notification that the goods are ready to dispatch. For storage in our plant, we are entitled to at least 0.5% of the invoice amount per

month. We shall also be entitled to dispose of the object of delivery elsewhere following the setting and fruitless expiry of a suitable period of grace and to supply to the entrepreneur with a suitable extended period.

7. Partial deliveries are allowed, provided the changes are reasonable for the ordering party to accept.

#### IV. Guarantee

1. We provide a warranty to the entrepreneur for defects of the goods or services by remediation or replacement delivery, as we deem fit. Any parts that are replaced shall become our property.
2. In the event of subsequent performance failing, or if we have been granted a reasonable period of time for remediation or replacement delivery and this has elapsed to no avail, the entrepreneur, according to his option, may demand reduction of payment (reduction of purchase price) or rescission of the contract (withdrawal). With an only slight breach of contract, in particular, with only slight defects, the entrepreneur shall, however, not have a right of cancellation.
3. Obvious defects and those which can be identified by a proper examination - in as far as it can be carried out during normal business - have to be claimed for by the entrepreneur in writing within two weeks after the receipt of the goods; otherwise, the assertion of any warranty claims shall be ruled out. The timely dispatch shall be sufficient to observe the deadline. The entrepreneur shall bear the full burden of proof for all claim requirements, in particular for the defect itself, the date of detection of the defect, and due notification of the defect. Non-obvious defects and those which cannot be identified by a proper examination have to be claimed for by the entrepreneur in writing within two weeks after detection. Otherwise, the assertion of any warranty claims shall be ruled out.
4. If the entrepreneur chooses the withdrawal from the contract on the grounds of a defect of quality or a legal imperfection after failed subsequent completion, he shall not be entitled to additional damage claims on the grounds of the defect.
5. We shall not give any warranty for damages that occur due to the unsuitable or improper usage, faulty mounting or commissioning by the entrepreneur or a third party, natural wear, faulty or negligent handling, unsuitable maintenance, unsuitable operating materials, poor mounting, unsuitable construction base, chemical, electro-chemical or electrical influences, as long as they cannot be traced back to us.
6. If the entrepreneur or a third party improperly repairs the delivery item, we shall not be liable for the resulting consequences. The same shall apply for changes to the delivery item without our prior approval.
7. Where the use of the delivery item entails infringement of industrial property rights or national copyright we shall obtain the right for further use for the entrepreneur at our own expense or modify the delivery item in such a way acceptable for the entrepreneur that there is no longer an infringement of an industrial property right.

If this is not possible to be done under economically suitable conditions or within a suitable period of time, the entrepreneur shall be entitled to withdraw from the contract. We shall also have the right to withdraw from the contract under the specified conditions.

Furthermore, we shall release the entrepreneur from claims of the property rights which are determined to be undisputed or legally binding.

8. The obligations as defined in section 7. in the event of breach of industrial property rights or copyrights, shall only exist if
  - a) the entrepreneur immediately informs us about asserted claims for breach of property right or copyright,

- b) the entrepreneur supports us in an appropriate scale with the fending off of the asserted claims or enables us to perform modification measures,
  - c) all measures for fending off including out of court settlements remain reserved,
  - d) the defect of title is not based on an instruction made by the entrepreneur and
  - e) the infringement of rights was not caused by the fact that the entrepreneur modified or utilized the delivery item in a manner that is contrary to the accordance of contract,
9. For the entrepreneur the warranty period shall be one year from the supply of the goods or delivery of the service. The limitation period starts with the delivery of the goods or with the termination of the full performance of the service.

## **V. Liability**

1. In cases of breaches of obligations committed intentionally or through gross negligence, such as culpable damage to life and limb, we shall be unrestrictedly liable for all damage arising therefrom, unless otherwise stipulated by the law.
2. In the case of gross negligence by non-managerial staff our liability for material and financial damage is limited to the foreseeable damage in standard contractual practice.
3. In the case of slight negligence we shall be liable for material and financial damage only in the case of a breach of substantial contractual obligations. Here, our liability is also limited to foreseeable damage typical of the contract.
4. Any more wide-ranging liability for compensation than that envisaged in the prior sections is excluded, regardless of the legal nature of the claim asserted. This especially applies to tort according to Articles 823 and 831 of the German Civil Code; any unrestricted liability according to the provisions of the German Product Liability Act remains unaffected.
5. The legal terms apply to all compensation claims according to V.1. – 4. These shall also apply for defects of building works or for delivered items which due to the customary purpose of use were assembled for a building and have caused defects of such building.

## **VI. Use of Software**

1. To the extent the scope of delivery includes software, we hereby grant to the entrepreneur a non-exclusive license to use the delivered software and its accompanying documentation. It shall be transferred exclusively for use on the delivery item intended for this purpose. The use of the software on more than one system is prohibited.
2. The entrepreneur is only permitted to copy, revise, translate or change the software from the object code to the source code to the legally permitted extent (Articles 69a et seq. of the German copyright law). The ordering party may not remove manufacturer information – in particular copyright labels or notices – or make any other modifications without our prior written express consent.

All other rights to the software and the documentation including copies thereof shall remain with us or with the software supplier. Granting of sublicences is prohibited.

**VII. Place of performance and jurisdiction**

1. If the contract partner is a sales person, a legal person or a person governed by public law or a special fund governed by public law, the court of jurisdiction for the conflicts ensuing from this contract shall be exclusively our headquarters. The same applies if the contractual partner does not have a general place of jurisdiction in Germany or if neither residence nor general location of habitation are known at the time of the filing of a lawsuit.

**VIII. Applicable law**

1. The law of the Federal Republic of Germany shall apply. The provisions of the UN Sales Convention shall not apply.
2. Should individual provisions of the contract with the entrepreneur including these general conditions and terms of business be or become partly or wholly legally invalid, the validity of the remaining provisions shall not be affected by this. The entire or partially invalid provision shall then be replaced by a provision that most closely approximates the economic purpose of the deleted provision.