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General terms and conditions – OPTIMAL AG & Co. KG

1. General information

1.1 Offers, deliveries and other services from OPTIMAL AG & Co. KG shall be provided exclusively on the basis of these sales, delivery and payment conditions. They form the basis of all offers and agreements and are considered accepted for the duration of the entire business relationship either via order placement or acceptance of the delivery. Any deviating conditions that are not expressly acknowledged in writing shall not be considered binding for the Vendor, even if these conditions are not expressly contradicted.

1.2 If OPTIMAL changes these conditions, they shall become valid contract content in the newly issued version unless the Orderer submits an objection within one month.

2. Offers and contract conclusion

2.1 Offers from OPTIMAL are subject to change. Unless a different period of commitment is agreed or considered usual, the Orderer is bound to his order for at least 3 weeks.

2.2 Oral, telephone and representative-led agreements require written confirmation from OPTIMAL in order to be legally valid.

3. Prices

3.1 Our definitive prices are those valid on the day the contract is concluded or, in the case of goods or services to be provided more than 4 months after contract conclusion, those valid on the day of delivery, plus statutory VAT. Ancillary services shall be invoiced separately, particularly freight, postage, insurance and payment fees, assembly etc.

3.2 Price details on the order form may also be based on references to OPTIMAL prices for the items in question or the continuously updated prices sent to the Orderer via EDP.

4. Payment conditions

4.1 The purchase price and prices for ancillary services shall fall due for payment upon handover of the purchase object and delivery or dispatch of the invoice.

4.2 If we become aware of circumstances after contract conclusion that throw the creditworthiness of the Orderer into doubt, we may at our discretion request payment in advance or a security deposit. The same applies if the Orderer defaults on the fulfilment of any obligation he has to us.

5. Default

5.1 If the Orderer defaults, OPTIMAL is entitled to charge interest at 8% above the relevant interest rate of the European Central Bank for the marginal lending facility;



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EUR 5.00 will be charged for each reminder. Irrespective of this regulation, OPTIMAL or the Orderer is entitled to provide proof of higher or lower damages.

5.2 If the Orderer defaults on the fulfilment of a payment obligation, all payment terms in all transactions concluded between us and the Orderer shall be inapplicable.

6. Delivery and performance times

6.1 OPTIMAL shall do its best to ensure rapid delivery and adherence to agreed delivery periods and deadlines. If our delivery is delayed or becomes impossible, regardless of the reasons for this, the Orderer is not entitled to claim compensation of any sort, unless we have caused the delay or impossibility through gross culpability (i.e. gross negligence at the very least).

6.2 Compensation claims brought to the attention of our customers in printed or written form on specific forms are only valid if they are confirmed by specific correspondence.

6.3 Force majeure and events beyond our control that temporarily prevent us from supplying the purchase objects by the agreed date or within the agreed period shall entitle us to delay the delivery or performance by the duration of the obstruction plus a suitable lead time. If such disruptions lead to a performance delay of more than four months, the Purchaser may withdraw from the contract. Other withdrawal rights remain unaffected.

6.4 The Purchaser is obliged to accept the purchase object. If the Purchaser defaults on acceptance, the Vendor is entitled to request compensation for any damages arising for him as a result.

6.5 Construction or form alterations, deviations in colour tone and alterations of the scope of delivery on the part of the manufacturer are permitted throughout the delivery period, as long as these alterations and deviations are reasonable for the Purchaser with all due consideration of the interests of the Vendor. Insofar as the Vendor or manufacturer uses symbols or numbers to identify the order or the ordered purchase objects, no rights regarding the ascertainment of the purchase objects or scope of delivery may be derived from this alone.

6.6 In the case of recall orders, we are entitled to manufacture the material for the entire order. Any requests for alteration by the Purchaser can thus no longer be taken into account after the order is issued, unless otherwise expressly agreed.

7. Dispatch, risk assumption

7.1 Dispatch shall be executed in accordance with the wishes of the Orderer, or otherwise to the best of OPTIMAL's knowledge, excluding liability for the selection of the cheapest and quickest method of dispatch.

7.2 Containers, cages, caskets and pallets do not pass into the ownership of the Orderer. They are to be sent back free of costs. Wooden boxes, cardboard boxes and non-returnable packaging are invoiced at cost price and only taken back at the express wish of the Orderer.

7.3 Upon dispatch, risk is transferred to the Orderer as soon as OPTIMAL passes the delivery goods to a carrier or transport company.

7.4 If dispatch is delayed by circumstances beyond the control of OPTIMAL, risk is transferred to the Orderer on the day products are ready for dispatch and the Orderer is notified of this.



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7.5 Insofar as persons named in § 24 of the General Terms and Conditions Act [AGBG] are not involved, OPTIMAL is entitled to insure the delivery goods against transport risks at the cost of the Orderer. An obligation to take out such insurance shall only exist if commissioned specifically in writing by the Orderer.

7.6 If no dispatch is required, risk shall pass to the Orderer 3 days after notification that products are ready for collection.

7.7 If dispatch is delayed at the request of the Orderer, OPTIMAL is entitled to invoice the Orderer for the resultant storage costs, which shall amount to at least 0.5% of the invoice sum for each started storage month. If a period of grace of at least 2 weeks expires without result, OPTIMAL is entitled to make other use of the delivery object, to make delivery to the Orderer with an appropriate extended deadline, to withdraw from the contract or to request compensation on the grounds of non-fulfilment. The same applies if the Orderer defaults on acceptance.

8. Retention of title

8.1 All deliveries shall be carried out subject to retention of title. The goods remain the property of OPTIMAL until full payment of all claims from the business relationship with the Orderer, including balance payment requests for a current account and any cheque or note receivable claims, and until release from contingent liabilities entered into by OPTIMAL in the interests of the Orderer.

8.2 The Orderer is only entitled to process, alter, connect and mix the delivered goods with other objects within the framework of standard transactions.

8.3 Processing or alteration can be undertaken here on behalf of OPTIMAL, without any obligation on the part of the latter. If goods supplied by OPTIMAL are processed with other objects subject to extended retention of title, OPTIMAL shall acquire co-ownership of the new objects in the same ratio as that of the correlation between the invoice sums for the goods subject to retention of title; if invoice sums cannot be calculated, the goods value applicable at the time of processing is authoritative.

8.4 If OPTIMAL's retention of title lapses as the result of processing, alteration, connection or mixing, it is agreed that the Orderer shall transfer co-ownership of the new objects to OPTIMAL at the time the right is lost in accordance with § 930 of the German Civil Code. The ratio of the correlation between the OPTIMAL invoice sum and the value of the new objects is authoritative for the value of the co-ownership share. The Orderer shall be the custodian for OPTIMAL.

8.5 The Orderer is obliged to provide suitable external identification to indicate the goods remaining in the (co-) possession of OPTIMAL or any applicable substitute goods (goods subject to retention of title) as described in the previous sections. These shall be kept separate from other goods. The Orderer must insure the goods appropriately, particularly against fire, water and theft. Insurance claims for damages relating to goods subject to retention of title are ceded to OPTIMAL in the amount of the value of said goods. The Orderer must inform the insurance company of the claim assignment.

8.6 If the retention of title lapses or is violated, regardless of the legal or material reason, the Orderer shall cede any resultant claims against third parties to OPTIMAL. Upon request, the Orderer must provide the third party with proof of the transfer and provide OPTIMAL's name and address.

8.7 The Orderer is entitled to sell the goods subject to retention of title in the normal course of business, as long as he has not agreed any ban on assignment with third



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parties in relation to the purchase price claims resulting from the sale of said goods. Purchase price claims against third parties arising from the sale of goods subject to retention of title shall be ceded by the Orderer to OPTIMAL until full redemption of all liabilities. However, the Orderer remains entitled to collect the claim from the resale, unless it is recalled on the grounds of contract violation. He must then pass on the collected sums immediately to OPTIMAL. If the third-party purchaser does not pay immediately, the Orderer shall sell on the goods as subject to retention of title. The right to sell on goods subject to retention of title lapses if the Orderer ceases his payments, defaults on payments to OPTIMAL or otherwise infringes his obligations resulting from the present conditions. The Orderer is not entitled to use the goods subject to retention of title as pledges or transfer of security. Upon request, he must provide OPTIMAL with the necessary details for collection, hand over documentation, inform borrowers of the transfer and produce notarised documents on the assignment of the claim at his own cost. OPTIMAL is entitled to inform the third-party debtors of the claim assignment in the name of the Orderer.

8.8 If the Orderer sells on the goods subject to retention of title along with other goods not belonging to OPTIMAL, the purchase price claim (amounting to the invoice value of the goods subject to retention of title that were the object of the purchase agreement along with the other goods) shall be considered ceded.

8.9 Use of the goods subject to retention of title for the fulfilment of contracts for work and services or materials shall also be considered sales in the aforementioned sense.

8.10 The Orderer is obliged to inform OPTIMAL of any other impairments of the retention of title and any third-party claims. Furthermore, the Orderer shall inform third parties in advance of OPTIMAL's existing rights to the goods or those resulting from claims ceded to OPTIMAL. The Orderer shall bear the costs for any intervention by OPTIMAL.

8.11 OPTIMAL pledges, at its discretion, to release the securities it has been given in accordance with the present conditions, once the value of the security exceeds the claims accrued by OPTIMAL for the Orderer by more than 20%.

9. Guarantee and liability

9.1 For newly manufactured goods, the period of limitation for material defects is two years. For used goods, the period of limitation for those persons listed in § 24 of the General Terms and Conditions Act is one year; for everyone else, the sale of used goods excludes any possible liability for material defects. Liability is also excluded for the impairment or lapse of merchantability, as well as for damages resulting from non-observance of operating, maintenance and installation instructions, improper use, incorrect assembly or start-up by the Orderer or a third party, natural wear, incorrect handling, excessive load (i.e. beyond that specified in the product specification), irrelevant, incorrect or insufficient details on the intended operating conditions and any other incorrect details from the Orderer, and any improper interference with the delivery objects by the Orderer or a third party. When the order is issued, the Orderer is obliged to provide precise details of the intended purpose of use and the usage conditions for objects to be supplied or manufactured by OPTIMAL and to provide comprehensive support during manufacturing upon request by OPTIMAL. The Orderer is further obliged to check the merchantability of the delivered object after delivery and before installation, further processing or other usage. If the Orderer does not carry out this



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examination, any claims against OPTIMAL on his part for non-existent or reduced possibility of usage shall be excluded.

9.2 The Orderer is obliged to examine the delivery immediately. Complaints about obvious defects are to be sent in writing within eight days of delivery at the latest, giving precise details of the defect. If the Orderer violates his examination and complaint duty, his guarantee claims shall lapse. The statutory conditions apply to this extent to the persons listed in § 24 of the General Terms and Conditions Act.

9.3 Otherwise, OPTIMAL shall eliminate defects either by subsequent improvement or replacement delivery, at its discretion. For persons listed in § 24 of the General Terms and Conditions Act, OPTIMAL shall bear no transport or transit costs resulting from subsequent improvement or replacement delivery if the goods are to be sent after delivery to somewhere other than the commercial office of the Orderer.

9.4 Moreover, for external products that OPTIMAL has purchased from third parties and passed on to the Orderer, OPTIMAL is entitled to cede claims against the suppliers to the Orderer and to refer the Orderer to the assertion of these ceded claims after informing him of the claim content and opposing party. If subsequent improvement or replacement delivery is not carried out or if the period of grace set for OPTIMAL by the Orderer expires, the Orderer is entitled to request the cancellation of the contract or reduction of the invoice sum. This right applies if guarantee claims against the suppliers are ceded, if they have waived the guarantee with the Orderer in writing. The persons listed in § 24 of the General Terms and Conditions Act must previously have sought and failed to gain the legal involvement of the suppliers.

9.5 An agreed retention of title also covers replacement delivery and subsequent improvement, with these being subject to guarantee according to the aforementioned conditions.

9.6 Otherwise, OPTIMAL may basically only be held liable on any legal grounds, e.g. fault resulting from contract violation, positive contract violation and unauthorised handling, in the case of deliberate intent or gross negligence. The following remain unaffected: liability for guaranteed characteristics, the right to withdraw from the contract and request compensation due to non-fulfilment in cases of non-feasibility and default, liability for ordinary negligence if fundamental contractual obligations are violated and liability in accordance with the Product Liability Act. If the Vendor is not accused of deliberate contract violation, liability is limited to foreseeable, typical damages. If the compensation claim is based on culpable failure to eliminate defects, the amount payable is limited to the corresponding rates of the DAT/Schwacke list in terms of installation and removal costs. Otherwise, liability for compensation is excluded; in particular, the Vendor shall not be held liable for damages that have not occurred on the delivery object itself, unless it is a question of endangerment of life, body and/or health. In the case of ordinary negligence, OPTIMAL shall not be liable for indirect, unforeseeable and atypical damages, or for damages for which comprehensive insurance on the part of the Orderer is normal. Otherwise, OPTIMAL liability in cases of ordinary negligence is limited to EUR 0.25 million for material damages and EUR 1.5 million for personal injury.

9.7 Installation in air and water vehicles is only allowed upon prior written agreement from OPTIMAL. In the case of damages caused by the installation of hose lines in air and water vehicles, the Orderer shall release OPTIMAL from any third-party claims, particularly those based on the Product Liability Act, and is not entitled to proceed against OPTIMAL for legally transferred claims.



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10. Entrepreneur's recourse upon sale to commercial resellers

10.1 If the Purchaser sells on the purchased goods as part of his commercial operation to a consumer and these goods then have to be recalled or the purchase price has to be reduced as the result of defects, the Purchaser may assert its material defect liability claims against the Vendor without setting a fixed date.

10.2 Furthermore, the Purchaser may request payment of the expenses he has had to bear in the relationship with the consumer if the defect reported by the consumer had already existed when risk was transferred to the Purchaser. In this sense, expenses are considered in particular to be transport, transit, work and material costs.

10.3 The Purchaser has no right to compensation for damages within the framework of this entrepreneur's recourse.

11. Manufacturing by OPTIMAL, service and maintenance activities

11.1 If delivery objects are manufactured by OPTIMAL in accordance with customer wishes, the guarantee and liability regulation of Section 9 applies, with the proviso that the Orderer checks the products manufactured by OPTIMAL for defects as part of the acceptance process. OPTIMAL may require the Orderer to carry out a trial run and confirm acceptance in an acceptance report. If the Orderer does not comply with this request by OPTIMAL, acceptance is considered to be granted if two weeks have passed since delivery.

11.2 The Orderer is considered to have defaulted on acceptance if he culpably neglects to collect the order object within a week of notification of readiness or invoice dispatch and OPTIMAL has sent an official reminder.

11.3 In cases of acceptance default, OPTIMAL may charge the standard storage fee for the location. OPTIMAL may also make other use of the order object. Storage costs and risks shall be borne by the Orderer.

11.4 If OPTIMAL also produces sketches, drafts or drawings, in addition to the objects manufactured for delivery, these shall only represent guaranteed characteristics of the delivery object if this has been expressly agreed.

11.5 OPTIMAL retains all titles and copyrights for cost proposals, drawings, project proposals and other documentation submitted to the Orderer. They may not be used for any purposes other than those specified by OPTIMAL, nor may they be made available to third parties.

11.6 If OPTIMAL carries out service or maintenance activities, the guarantee and liability regulations in Sections 9.3 and 9.5 shall apply accordingly.

11.7 OPTIMAL must be notified in writing of any defects immediately after they are discovered with precise descriptions of the defect. In the case of personal notification, OPTIMAL shall give the Orderer written confirmation of notification receipt.

11.8 If OPTIMAL manufactures delivery objects in accordance with customer wishes as in Section 10, the conditions of Sections 4 and 5 shall apply, with the proviso that payments are to be made after acceptance of the delivery object and invoice receipt.

11.9 Based on its claim from the order, OPTIMAL is entitled to contractual lien on the Orderer's objects that come into OPTIMAL's possession as part of the order. This contractual lien may also be asserted due to claims from work carried out earlier, replacement part deliveries and other services, insofar as they relate to the order object. For all other claims from the business relationship, the contractual lien only



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applies if it is uncontested, or if a legal title exists and the order object belong to the Orderer.

11.10 In the case of recall orders, we are entitled to manufacture the material for the entire order. Any requests for alteration by the Purchaser can thus no longer be taken into account after the order is issued, unless otherwise expressly agreed.

12. Returns

12.1 In exceptional cases, OPTIMAL is prepared to take back delivered goods. However, this requires express agreement for each individual case. The Orderer is therefore not entitled to send back delivered goods without agreement.

12.2 When setting the buyback price, a deduction is to be made for processing and re-storage, amounting to at least 20% of the delivered goods value.

12.3 However, returns are not allowed if the goods are in an unsaleable state or if they have been manufactured or purchased according to the Orderer's own specifications.

13. Trademark right warnings

13.1 If third parties assert claims for the violation of industrial property rights against the Orderer for the delivery objects, the latter is obliged to inform OPTIMAL of this.

14. Place of fulfilment and jurisdiction

14.1 The place of fulfilment is the relevant branch of OPTIMAL, insofar as this concerns persons listed in § 24 of the General Terms and Conditions Act.

14.2 Where legally permissible, the place of jurisdiction for all disputes arising from the contractual relationship is Munich.

15. Final conditions

15.1 Relations between us and the Purchaser are subject exclusively to Federal German law. The uniform laws on the international sales of moveable goods and on the conclusion of international sales contracts for moveable goods of 17.7.1973 do not apply.

15.2 If individual conditions of these sales, delivery and payment conditions be or become invalid, this shall not affect the validity of the remaining conditions. The invalid conditions shall be replaced by legally effective regulations that reflect the purpose of the invalid conditions as closely as possible.

15.3 We store data in accordance with the Data Protection Act.



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