



GENERAL TERMS AND CONDITIONS

§ 1 Scope of Application

1. All quotations and agreements are based on the conditions below and are considered to be accepted for the duration of the whole business relationship by placing the order or accepting the delivery. Deviating conditions, which have not been expressly accepted in writing, are not binding for us, even if they have not explicitly been contradicted.
2. The term „consumer“ as used in these provisions complies with the legal definition in § 13 BGB (German Civil Code).
3. The term „entrepreneur“ as used in these provisions complies with the legal definition in § 14 BGB.

§ 2 Prices – Quotation and Payment Conditions, Assignment, SEPA Prenotification

1. We shall be bound by any quotation for the delivery of goods or the production of a work for a period of 14 days after issuance, unless a different period is stipulated in writing.
2. Unless otherwise agreed on, prices apply ex works from the branch responsible for Customer, transport packing excluded. The packing will be charged separately.
3. VAT is not included in the prices. It will be separately charged at the applicable statutory rate on the day of invoicing. If there is a period of more than four months between the conclusion of the contract and the delivery of the goods/execution of the works, the applicable list price on the day of execution/delivery shall apply. If such price is higher than 5 % than the price previously agreed on, Customer may rescind the relevant contract. Customer shall rescind the contract in writing.
4. The purchase price or the invoiced amount and prices for additional services fall due for payment on the handing over of the object of purchase or the acceptance of work and service and the delivery or remittance of the invoice. All deliveries are generally made as a rule against cash or advance payment.
5. If Customer is a businessman and makes regular purchases of goods, he may, at our sole discretion get a customer number granting him a payment term of 14 days counting from the date of invoice without any further discounts. Invoices for services and repair work as well as invoices for miscellaneous services such as spare parts for machines and equipment as well as used materials are due immediately.
6. If Customer gets into substantial arrears or if an essential deterioration in his financial situation occurs, our whole credit, including all credits for any other delivery made, will become due immediately. In this case we are entitled to charge interest on all arrears according to § 288 BGB. For every reminder not establishing default, we shall charge Customer at least a lump sum to the amount of 5 Euros.
7. Customer may only offset his own claims against our claims, if his claims are acknowledged or covered by a legally binding title. In case of a contract for work, Customer may also offset any claims based on remedying any defect and/or additional cost for completion of the work, if such claims are based on the same contract of work. He may only claim a right of retention as far as it is based on claims originating from the purchase contract or the contract for work and services.
8. With the exception of claims according to Sec. 354 a HGB (German Commercial Code), Customer shall not be entitled to assign any claims against us to any third party.
9. If Customer conducts payments with us on the basis of a SEPA-Direct Debit mandate, the period of prenotification shall be 1 calendar day prior to maturity.

§ 3 Delivery

1. Dates and times of delivery, which can be stipulated bindingly or not bindingly, shall be indicated in writing. The period of the delivery time shall start upon conclusion of the contract.
2. If we are prevented from delivering the article of sale on the agreed date or within the agreed time limit or from meeting the completion deadline accepted in writing, due to circumstances we have to account for, we shall be liable according to the legal provisions. If the delay in delivery is based on a breach of a not essential contractual obligation only, Customer may claim a flat rate of maximum 5 % of the value of the delivery or service for any damage caused by delay. In case of delivery dates confirmed as non-binding, Customer shall, in the context of a reminder, set an additional period of at least 2 working days to complete delivery.
3. Force majeure and events temporarily preventing us – without any fault on our part – from supplying the delivery or service by the agreed date or within the agreed time give us the right to delay the delivery or service by the duration of the impediment plus an appropriate period of adjustment. If the delivery time is extended or if we become discharged from our obligation, Customer shall not be entitled to derive any damage claims from this. If corresponding disturbances lead to a performance delay of more than 4 months, Customer has the right to withdraw from the contract. Other rights of rescission remain unaffected.
4. Customer is obliged to accept the delivery or service. If Customer gets into default of acceptance, we are entitled to receive compensation for any damage or loss encountered.
5. We reserve the right to amend construction or shape, to deviate from the colour tone as well as to modify the supply quantity during the delivery period, as long as – with regard to our interests – the modifications or deviations are reasonable for Customer. If we or the producer use signs or numbers for the marking of the order or the ordered delivery or service, no titles may be derived from this with regard to the specification of the delivery object or of the supply quantity.
6. We are entitled to a reasonable partial delivery and partial performance at any time.

§ 4 Installation by Qualified Specialists

Customer is obliged to have the installation of the purchased goods carried out by qualified specialists.

§ 5 Estimates of Cost, Technical Documents

1. Quotations, estimates of cost, plans, drafts, drawings, pictures, measures, weights, or other performance data are generally not binding. They are only binding, if this is expressly stipulated in writing. Ownership and copyrights of estimates of cost, pictures, drawings, or other documents remain reserved. A passing on of such documents to any third party is only permitted upon prior written consent.
2. Application technology advices – spoken and written – are only considered as not binding indications and do not release Customer from his own test obligation with regard to the intended purpose of application.

§ 6 Provisions regarding Contracts for the Sale of Goods

I. Passing of Risk

1. The risk of accidental loss and accidental deterioration shall pass on to Customer upon handing over of the object.
2. In case Customer is not a consumer the risk shall pass to Customer when the object is passed on to the person executing the transport or when the goods have left our stock for the purpose of shipment.

II. Liability for Material Defects, Limitation to Liability

1. If Customer is a businessman, Customer shall inspect goods delivered within 14 days of delivery for both quantity and outer appearance and to indicate in writing a shortfall or surplus in the amount of delivered goods or recognizable outward defects. In case of failure to make such indication, the delivery is deemed to be accepted in these regards.
2. Unless agreed to otherwise, the place of performance for any claims regarding subsequent fulfilment shall be at the branch responsible for Customer.
3. The limitation period for claims because of a material defect for all newly manufactured goods is 1 year unless Customer is a consumer. Apart from that the legal limitation period of 2 years applies. For used goods the limitation period is 1 year if Customer is a consumer. Unless Customer is a consumer the sale of used goods is carried out to the exclusion of any liability for material defects, unless such defect was fraudulently concealed or a legal quality guarantee was assumed (§ 444 BGB).



4. Customer claims for defect removal are mainly limited to subsequent performance, i.e. to subsequent improvement or substitute delivery. Unless Customer is a consumer we have the option on subsequent improvement or substitute delivery. If the subsequent improvement or substitute delivery fails, Customer may demand reduction or withdrawal from the contract. A subsequent improvement may be considered failed when and to the extent to which an appropriate time limit set for the subsequent improvement has elapsed without any result. The preconditions for the exercise of the right of withdrawal are defined by § 323 BGB.
5. Customer has to assert his claims for removal of any defects against us.
6. In case of a defect based on a deficient instruction sheet, liability for material defects only comes into force if the mounting or the installation of the sold object has been carried out skilfully. Customer has to demonstrate and to prove the skilful execution.
7. Regarding limitations to liability, § 8 shall apply.

III. Recourse against the Entrepreneur when Selling to Commercial Resellers

1. If – within the scope of his commercial business – Customer has resold the purchased object to a consumer and has had to take this object back or has had to reduce the purchase price in consequence of the object's deficiency, he may assert claims for material defects against us.
2. Additionally Customer may demand refund of the expenses he has had to bear in his relationship to the consumer, if the defect claimed by the consumer already existed upon passing of the risk to Customer.
3. Within the scope of this recourse against the entrepreneur the Customer shall not have the right to claim damages against us.

IV. Chemicals Legislation, Material Safety Data Sheets

1. If Customer is a business man, Customer expressly hereby consents that, unless upon express demand by Customer, material safety data sheets for all products procured from us, may be made available online under www.optimal-germany.com for download by Customer.
2. Customer furthermore confirms being technically capable to perform the download set out under sub-section 1 above.
3. Despite the foregoing, we shall be required to give separate information to Customer in case of substantial change. Such substantial change shall mean in particular (i) granting of an authorisation or any refusal; (ii) new information on hazards becomes available (iii) new information on hazards becomes available, which affects the risk management procedures of Customer.

§ 7 Special Provisions regarding Contracts for Work

I. No obligation for personal performance

Customer hereby irrevocably consents that we may also use any third party to perform customer's orders.

II. Extended Right of Lien

1. Based on our claim arising from the order a contractual right of lien on the objects arrived in our possession by virtue of the order is due to us.
2. A contractual right of lien may also be claimed for works and other services executed earlier as far as they are associated with the ordered object. For other claims from the business connection the contractual right of lien only applies as far as these claims are unquestioned or a non-appealable title is submitted and the object of order is owned by Customer.

III. Liability for Material Defects

1. In case of the construction of buildings and/or planning or supervisory tasks to that end, the statutory provisions for the limitation period shall apply (§ 634 a Sec. 1 No. 2 BGB.), unless the VOB/B (German Construction Contract Procedures) apply in full to the relevant contract. Otherwise, Customer's claims for material defects shall lapse after one year from the date of acceptance of the work or service. In case of Customer's acceptance of the work in spite of his knowledge of a defect claims for material defects are only due to him if he has reserved them in the acceptance procedure.
2. Unless otherwise agreed customer's acceptance of the work or service shall be carried out on our premises.
3. If the object of order is the delivery of movables to be manufactured or produced and if Customer is a legal person under public law, a separate fund under public law, or an entrepreneur who – when concluding the contract – acts in the exercise of his commercial or self-employed professional activity, any claims of Customer for material defects will lapse after one year from the date of delivery. For other customers (consumers) the legal provisions shall apply.
4. If materials and/or indications (especially conditions of application, operating, and processing, recipes, specifications as well as other circumstances and parameters relevant for the work to be performed by us) supplied by Customer cause a defect, any liability on our part shall be excluded.
5. In all other instances our general terms and conditions in relation to sales contracts shall apply accordingly (§ 6 II.3., 4. and 6), in particular the limitation as to liability according to § 6 II. 6., 8.

§ 8 General Provisions on Liability

We shall be liable according to applicable statutory provisions to the extent that Customer

- (i) asserts a claim for damages based on a separate contractual quality guarantee or based on applicable product liability statutes;
 - (ii) asserts a claim for damages, which is based on deliberate intent, fraudulent intent, or gross negligence including deliberate intent, fraudulent intent, or gross negligence of our representatives or vicarious agents. In case of gross negligence, any damages shall be limited to the foreseeable and typically accruing amount of damages;
 - (iii) asserts a claim for damages, which is based on having incurred a loss of life, bodily harm, or an impairment to personal health; and/or
 - (iv) asserts a claim for damages or any other claim, which is based on a violation on our part of integral contractual duties, so called cardinal obligations. Cardinal obligations are those obligations, which the contract has to grant to Customer in order to enable its whole purpose or in whose compliance Customer regularly trusts and can trust.
- With exception to sections (i) to (iv) above, all liability for damages is hereby excluded.

§ 9 Intellectual property rights, Domains

1. Customer shall not be granted any license, whether express or implied, with the delivery of goods. In particular, Customer is not granted any licence to use one of our trademarks in its business papers.
2. In case of a contract for work, Customer shall concurrently (Zug um Zug) against full payment be granted a royalty free, non-transferable license, unlimited as to space and time, to use any copyrighted results emanating from a contract for work within the purpose of said contract. If third parties take over the work, we shall let us grant corresponding usage rights from the third party.
3. Customer shall also not register any domains, neither in Germany nor abroad containing expressions which are covered by our trademark rights. If customer still registers a domain in violation of this provision, customer hereby irrevocably consents to either the transfer or the deletion of such domain at our sole discretion.
4. Indications as to our intellectual property rights or such rights of third parties, which can be found on the product and/or its packing, may not be removed, disfigured or concealed in any way by customer. Customer shall also not add any such indications or stickers without prior written consent of the owner of the intellectual property rights or repack the goods.



§ 10 Taking back of Goods / Restocking Fee

1. As far as we take goods back from Customer voluntarily, the following applies: only goods, which are not custom-made products or special orders, can be returned, if they are in a proper, vendible condition. When goods are returned, Customer will receive a credit note for the amount of the value of the returned goods less a restocking-fee. Such credit will not be paid cash but can only be offset against future purchases or orders.

2. The restocking fee amounts to 20 % of the value of every returned item.

§ 11 Reservation of Title, Requirement of Insurance

1. Any delivered object remains our property until all claims based on the purchase contract or the contract for work and services are fully settled. If Customer is a businessman, we shall retain the property in all delivered objects until receipt of all payments arising from the business connection.

2. In case of breach of contract on the part of Customer, especially in case of late payment, we shall be entitled to withdraw from the contract and to claim the release of the object under retention of title. Customer shall be obliged to return the object. After withdrawal we are fully entitled to exploit the delivery object. Customer is obliged to compensate the difference between the purchase price and the proceeds of exploitation. Furthermore we reserve the right to assert further claims against Customer.

3. Customer shall have the right to resell the delivered objects in his ordinary course of business. However, he already now assigns to us all claims for the amount he has invoiced to his customer (including VAT), regardless of whether the delivered objects have been sold directly or after further processing. Customer remains entitled to collect the sums due also after their assignment to us. Our competence to collect the sums due ourselves remains unaffected thereof. We undertake not to collect the sums due ourselves as long as Customer fulfils his financial obligations according to the contract and as long as no application for opening of insolvency proceedings has been filed. If one of the latter circumstances has occurred, at our request Customer shall give us all particulars necessary to collect the assigned sums due and shall hand over all relevant documents as well as inform the respective debtor (third party) of the assignment.

4. Any processing or alteration of the goods by Customer will always be carried out in our favour. If the objects of delivery are processed with other objects not belonging to us, we shall acquire co-ownership of the object in the ratio of the value of the delivered objects to the other processed objects at the time of the processing.

5. If the objects of delivery are inseparably mingled or combined with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the delivered objects to the other components of the new objects. Customer shall keep the co-ownership in custody for us.

6. Customer shall neither pledge the delivered objects nor assign them by way of security. Customer shall immediately inform us if any delivered goods upon delivery become part of such a pledge or assignment (e.g. if an entire stock stored in a warehouse has been pledged as security), or of seizures, confiscations, or other decrees by a third party and provide us with all information and documents necessary to protect our rights. Executory officers or a third party have to be informed of our ownership. The conclusion of other contracts which involve both financing (e.g. sale-and-lease-back) and the transfer of property of goods for which title has been retained is subject to our prior written consent, unless such contract irrevocably requires the financing entity to transfer the share of funds to which we are entitled (i.e. the purchase price) directly to us.

7. In case the value of our securities will exceed the claims to be secured by more than 20 %, we are obliged to release the exceeding part on demand of Customer. We are free to choose which securities to release.

8. Customer shall insure any goods for which title is retained at least to the amount of the total purchase price against the usual risks of loss with a reputable insurance company based in Germany, store them separately, take good care of them and label them at our specific request. Claims against any insurer resulting from damage to such goods are hereby irrevocably assigned to us in the amount of the purchase price still being due. We hereby accept such assignment. Customer shall provide English language copies of such insurance policies to us on request.

9. If the law covering the delivered object, does not permit the retention of title but allows us to reserve other rights regarding the delivered object, we may execute all rights of this kind. Customer is obliged to assist us in the measures we take to protect our ownership or the right taking our ownership's place in the delivered object.

§ 12 Data protection

1. We store, process and use our customers' personal data for the purposes of proper contract fulfilment and internal use. We also use automatic data processing systems to do this.

2. In order to meet data protection regulations we have technical and organisational measures in place which ensure the safety of datasets and data handling processes with regard to Article 24 and Article 32 of the GDPR. The employees assigned to handle these data have an obligation and commitment to strictly adhere to all terms of the data protection regulations.

3. All handling of personal data is subject to our privacy policy. Our privacy policy is available on our website at: www.optimal-germany.com/en/privacy-statement

4. Furthermore, as data controllers, all customers are individually responsible for adherence to the applicable data protection legislation in their respective countries.

§ 13 Miscellaneous

1. For all disputes arising from the contractual relationship a suit shall be filed at our head office's local court, if Customer is a businessman entered in the commercial register as businessman, a legal person under public law, or a separate fund under public law. We shall also be entitled to file a suit at the jurisdiction of Customer's head office.

2. Only German Law is applicable. Any other regulations, including the laws regulating the international purchase of movables (especially the UN-Convention on Contracts of the International Sale of Goods) and its rules on the conflict of laws, are excluded, even if Customer has his head office abroad.

3. If individual provisions of the contract with Customer including these General Terms and Conditions are or will become invalid in whole or in part, the validity of the remaining provisions shall be unaffected. The wholly or partially invalid provision shall be replaced by a provision whose economic success corresponds to the invalid one as closely as possible.

4. In principle, we are not willing and obligated to participate in a dispute resolution before a consumer arbitration board.

5. The language governing the contractual relations between the parties shall at all times be English. In particular, both parties declare that they respectively have a sufficient command of the English language to understand an English (legal) document served upon them.

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