

Terms and Conditions of Sale

ODU GmbH & Co. KG

Otto Dunkel GmbH

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I. General

1. All of our business offers, supplies, performances, goods, products and other legal activities are subject to these Terms and Conditions of Sale.
 2. All forms of General Terms and Conditions other than these, including but not limited to General Terms and Conditions of the customer, will not become part of any of our contracts or business orders. We reject any such General Terms and Conditions. They do not become part of the contract even if we supply goods or accept payment without further objecting to such General Terms and Conditions of the customer.
 3. The quality (materials, appearance and workmanship) of the goods to be delivered is defined only and solely by the ODU drawing and specifications given within the drawing, as set forth in the confirmation notice of the purchase order. Should the ODU-drawing in your opinion be incomplete or require any changes, your request for modification must be received by us within 3 working days after you received the confirmation notice. Otherwise any modification will not be considered. Please be advised that any change requests lead to changes in our production time and that we therefore may be unable to meet initially agreed terms of deadlines for delivery. All other requested changes regarding the quality, materials or workmanship of the goods to be delivered will only become binding if we confirm and accept in writing.
 4. Title and ownership to all copyrights, other intellectual property and ownership of all drawings, drafts, cost estimates and similar data remain with us at all times, including negotiation conclusion and execution of the contract. All of such data must not be modified or made available to any third party without our prior written consent. If the customer decides not to make a business order, all data and documents supplied by us must be returned to us immediately.
1. The terms of our offer of goods is set forth in our written offers. With its business order, the customer makes a binding commitment to purchase the ordered goods. The business order of the customer is accepted either by written confirmation or by us simply supplying the ordered goods to the customer. Written confirmations will be given after internal review and consideration of production capacities. Our employees are not authorized to give binding oral representations, covenants or pledges which vary from or are in addition to these Terms and Conditions or the written terms of any contract.
 2. Unless a particular design or specification is specifically set forth in the order confirmation from us, the sales contract, or a related drawing accepted by us, we may at any time make technical changes or change shape, color and / or weight within reasonable ranges. Furthermore, we may make changes to our goods due to technical developments in our sole discretion and the customer has no right to make any claims against us as a result of such changes.
 3. Delivery is EX WORKS (EXW Incoterms 2010). Unless otherwise agreed in writing, we arrange transport on behalf and cost of the customer. Our performances and deliveries of goods must be accepted by the customer. The risk of loss passes to the customer when the goods are made available to the carrier. This also applies in all cases in which we agreed to transportation of goods at our cost. On the request of the customer, we may arrange for delivery of the product to its final destination at the cost of the customer. The choice of the means of transportation is made by us with due care without any warranty for the lowest cost, unless the customer provides binding instructions in writing regarding a specific carrier for transportation.
 4. In case of delivery outside the EU, we are required by German tax laws to provide proof to the tax authorities, that the customer outside the EU has in fact received the goods. The customer is therefore required to provide written confirmation of the receipt of the goods shortly after arrival. This confirmation must contain the name of the customer, its place of business, the customer identification number and the identification number of the business order and our invoice. Each part delivery must be confirmed individually.

II. Offers, Supply, Passing of Risk

5. If we cancel an order at the request of the customer, the customer bears our cost that have been incurred up to the time of cancellation, with a minimum of at least 5 % of the net value of the invoice. The customer has the burden to establish that the cost in a particular case is less than the 5.0% minimum.

All business orders or contracts with us are only with the customer and must not be assigned. Should there be evidence that casts doubt about the financial condition of the customer, particularly if the customer writes bad checks or the customer stops payments, we are entitled to cancel all non-delivered business orders of the customer and demand immediate payment of all open invoices. This also applies for any order in which we have accepted checks for invoices. In such instance, we are entitled to require advance payment or due security for all open orders for such customer. We may also terminate any granted extensions or prolonged payment terms for such customer.

III. Blanket Order

If the customer requests, we provide blanket orders for goods in which the quantities of goods ordered are not delivered all at once, but rather in more than one delivery in amounts that are determined by the customer.

The total amount of goods ordered through a blanket order are binding and the customer must designate delivery of all of the goods by the date of expiration of the blanket order as shown in our order confirmation. In case the customer does not designate delivery of all of the goods by the expiration date, we will store the remaining goods for a maximum of three (3) months past the expiration. We reserve the right to charge the customer a storage fee of five percent (5%) of the net value of the stored goods. The customer has the right to prove that the actual storage costs incurred were less than the amount charged.

If the goods still have not been designated for delivery after the three (3) month storage period in spite of a written notification to the customer, we reserve the right to deliver the goods to the customer unsolicited and at their expense. At the time of shipment, the goods become due for payment.

IV. Quantity delivered

All deliveries, including partial deliveries are deemed to be separate business orders. They are invoiced and due separate and apart from any other deliveries.

V. Date of Delivery - Remedy of Delay

1. The date of delivery or the week of delivery are fixed in our confirmation. In case of delay due to circumstances, that we did not know at the time of our confirmation and are beyond our reasonable control, the date of delivery is extended for a reasonable period. In no event shall customer be entitled to any damages as a result of delays in delivery due to any force majeure event or similar circumstances even if we do not comply with originally agreed dates of delivery.

This includes delay due to strike, lockout, official and governmental order or similar event, and also if such event impacts any of our external suppliers.

2. Dates of delivery are deemed to be met if the goods were in time loaded from our factory and made available to the customer or designated carrier, or the loading was prevented by delay in acceptance of the goods by the customer. In these cases the risk of loss passes to the customer upon receipt of our notice that the goods are available for transport by the carrier.

3. In cases of delay caused by the customer, customer agrees that the delivery date is extended by 4 weeks. Delay in delivery is deemed to occur only if goods are not delivered after the 4 week extension. If delay in a binding written delivery date is at our fault, the customer damages are limited to a maximum of 0.5 % for every week in delay and a total maximum of 5.0 % of the net value of goods that were delayed. Other claims of the customer than this are explicitly waived and excluded. This does not apply if the delay on our side was caused by our gross negligence or intentional misconduct.

VI. Price, Packing

Packing costs are included in the invoice cost. We do accept return of any packing materials. Prices do not include value added tax (vat). This tax is invoiced in addition to our invoice price at the rate lawfully binding for such tax on the date of invoice.

VII. Conditions of payment

1. Payment must be made to our specified bank accounts in full without any deductions or set offs. Unless otherwise designated in our order confirmation, payment is due within 30 days after receipt of the invoice.
2. If full payment of an invoice is received at our designated bank accounts within 10 days after receipt of the invoice by the customer, the customer is given a 2.0% discount. In any case of an order subject to these Terms and Conditions where we required advanced payment, there is no discount.
3. If payment is not received at the end of the payment period, customer is automatically late in making payment. At any time thereafter, we may charge interest of 8.0 % in addition to the base rate of the Europäische Zentralbank (EZB). In the event damage in excess of this amount is incurred due to the delay of payment, we reserve the right to prove and claim damages in excess of the additional interest.
4. We are not obligated to accept checks instead of bank transfer. In the case where we accept checks, payment is deemed to be made at the time the check has cleared payment with our bank.
5. The customer may set off or make deductions against amounts due for our invoices only after final legally binding determination that customer is entitled to damages payable by us.
6. We may - even at the objection of customer - apply payments first to the oldest or older amounts due from customer. In the event of delay of payment by the customer, or if costs are incurred for breach by customer of the contract, or if interest is to be paid by the customer, we may apply payment amounts first from any costs for breach, then for any interest owed and lastly to amounts owed under invoice(s).

VIII. Reservation of title

1. We retain title to and a security interest in all goods supplied until the invoice is paid in full.
2. The customer is entitled to sell, utilize or incorporate the supplied goods and collect payment for such goods sold by customer to third parties only in the ordinary course of business and customary business practices .

The customer hereby assigns to us, and we accept, the right to collect all claims or payment for invoices payable to customer resulting from the sale, utilization or incorporation of our goods or due to any loss by us of any security interest in or title to the goods sold. The assignment of the right to collect payment directly from third party customers is in the amount of the sum of all invoices payable to us by customer, including vat, due or not due. This applies not only for the sale of our goods, but for all kinds of contracts in which the customer works on or processes or manufactures our goods.

3. The reservation of right to title to and a security interest in the goods extends to all finished goods made through incorporation or processing the goods into a final product in the amount equal to the full value of the final product used by the end user customer. Any form of further processing or incorporation of our goods by the customer is done on our behalf and to our benefit, so that we are deemed to be producer of the final product. In the event goods of other suppliers are also used in the final product, we rightfully reserve title to and a security interest in any goods of other suppliers which are incorporated into the final product and we acquire joint title to the final product together with the co-suppliers in the proportion of the value of our own goods to the value of the goods of our co-suppliers in the final product.

In case we lose title to or a security interest in the goods through incorporation or utilization of our goods into a final product, the customer immediately assigns and transfers to us customer's own title to the finished product in an amount equal to the invoice(s) for the goods supplied by us for the production of the final product. We accept this assignment. The customer stores the finished product(s) on our behalf without cost to us.

4. The customer is authorized to collect the money from the sale of any final product or our non-processed goods despite the assignment, as long as we do not revoke this authorization. We will not directly collect money from a third party as long as the customer timely pays our invoice(s). On the first written notice from us, customer must immediately send us a complete list of all purchasers of any of our processed or unprocessed goods for which customer has assigned

to us payment rights and claims, and give written notice of the assignment of such claims and rights to payment to such third party customers/debtors. If customer is late in payment, we are entitled to demand from the third party customers/debtors direct payment to us concerning all assigned claims and invoices. The customer is required to turn over to us all invoices, reminders, delivery slips etc. that we need to collect the money due for all assigned claims. In addition, customer must give to the third party customer/debtor all necessary notices and declarations required or useful for us to collect the money due for any of the assigned claims or invoices.

5. If customer is late in payment, or there are reasonable doubts about the customer's financial standing, or the customer breaches any of its contractual obligations, we may revoke the authorization of the customer to resell the goods according to Section 2 above and to directly collect the claims assigned to us on our own behalf.

Should customer be subject to bankruptcy or similar insolvency proceeding, or the customer should stop making payments, or should the customer have provided notice of its intent to seek bankruptcy or insolvency proceedings, or should there be a change in the financial standing of the customer such that the customer is unlikely to meet its payment obligations, the authorization to resell the supplied goods and to collect the assigned claims on its own behalf, is waved automatically.

6. The customer will store the goods for which we have retained title or a security interest on our behalf using commercially reasonable standards of care to protect the goods and will insure the goods against the risks of fire, theft and other common risks. The customer shall store the goods separate from its own property and will mark them clearly as property of ODU.
7. The customer will not grant a security interest or any other lien on the goods and we reserve title and a security interest in the property. The customer will give us immediate notice of all security interests, liens or encumbrances or any other claims to the goods, and shall provide declaration in writing to us and all third parties that we are the owner of the goods and have a security interest in such goods. The customer will bear

all costs arising out of a legal dispute concerning the ownership of the goods. Should the defendant of a law suit according to § 771 BGB (Germany) not be able to refund the cost of the procedure, the customer is liable for that cost.

8. Should the customer breach the contract, including any delay of payment, we are entitled to repossess all goods supplied. In that case, the customer declares its consent to the shipment of the goods to our factory immediately. The customer waives and disclaims all claims, that could arise for him out of certain legal privileges and allows us free access to all areas and warehouses in which the goods for which we have reserved title are stored. Repossession and collection of the goods is only deemed a termination of the contract or applicable order, if specifically declared a termination in writing by us. Costs arising out of the repossession and collection, including but not limited to transportation and shipping costs, will be paid by the customer. Customer may request shipment of the goods repossessed and collected only if this agreement or the applicable order has not been terminated and after full payment of the corresponding invoice(s) and all costs incurred. Without waiving the obligation of the customer to pay the invoice(s), we are authorized to resell or otherwise utilize the repossessed and collected goods. This can be either by resale on the market or by credit to the account of the customer in the amount of the market price (price the goods can actually be sold on the free market) or by credit to the account of the customer in the amount of the contract price, minus all discounts, time-discounts and other allowances and minus a decrease in value of 30%.
9. Should the value of all property for which we have a security interest be more than 120 % of the sum of our claims against the customer, we may, on customer's demand, release a portion of the property (to be determined by us) for which we have a security interest, which shall be at our sole discretion.

IX. Tools

Tools which were developed, manufactured, or furnished by us to produce the goods for the customer remain the sole and exclusive property of ODU, unless otherwise agreed upon in writing.

The customer does not gain any right or title to the tools even if customer partly or in full paid for the cost of development, production or purchase of such tools.

X. Warranty

1. The period of warranty starts on the day on which the risk of loss passes to the customer and ends 12 months later, irrespective of when customer had possession of or began to use the goods, unless there is explicit written warranty provided by us for a longer period.
2. The customer must inspect and examine all goods immediately after receipt. All damages, missing numbers, defects in the goods, etc. must be disclosed in writing immediately (§ 377 HGB - Germany). All visible damages and defects must be disclosed immediately after receipt, hidden damages or defects immediately after their detection, otherwise the customer loses all rights with respect to any damages, or defects, missing numbers, or wrongful delivery in general.

In case of transport by truck or vehicle, visible damage to the goods must be declared in writing on the delivery sheet and the bill of lading. This has to be confirmed and signed by the driver. The customer must give us the chance to examine and inspect goods claimed to be damaged or defective.

3. In case of fault, we will, in our sole discretion, repair or replace any defective product. If we fail to remedy the defect, the customer may, in his own discretion, demand a price reduction or cancellation of the purchase order. The customer may not cancel an order for insignificant defects. If the customer chooses to cancel the order, it may not also demand damages as compensation for the same defective order. If the customer chooses to seek damage compensation for our failure to adequately address any defective product, the goods remain in the possession of the customer if just and reasonable. The amount of damage compensation is limited to the difference between the contract-price of the goods and the actual value of the defective goods. This restriction on damages does not apply if the defect was due to the intentional misconduct of ODU.

4. Defective goods must be returned to us without cost. If the goods are determined to be defective after inspection, we will bear all costs necessary to repair or replace the product and all shipping costs to the place of fulfillment. We will not pay additional costs for any goods that were transported to a place other than the place of fulfillment of the contract. If the goods do not prove to be defective, the customer must pay all costs of inspection, including statements of an expert and including all related costs such as travel expenses, accommodation, etc.

XI. Damage Compensation

1. Except as provided in Section 2 below, we are only liable for damage compensation for wrongful negotiation (culpa in contrahendo), breach of contract, and tortious act (§§ 823 ff. BGB Germany), and only if those damages were caused by gross negligence or intentional misconduct of us or our employees.
2. We are liable for all forms of negligence for mental distress, bodily injury or death, or breach of written material representations or failure to perform material terms or material duties of the contract. In the case of breach or failure to perform material duties, terms or representations, our liability is limited to compensation of foreseeable, average damage that is typical for this kind of contract. This limitation also applies to our employees and agents. We are not liable for failure to perform or breach of non-essential or non-material contract duties, terms or representations.
3. We are liable for infringement of intellectual property rights of a third party only if our goods infringe such intellectual property right valid in the Federal Republic of Germany (BRD) and publicly known at the time of delivery. We are not liable if we have produced our goods according to drawings, models or other description or specification given by the customer and we did not know and, in connection with the goods developed by us, could not have known, that the goods thus produced would infringe intellectual property rights of a third party. In these cases the customer is solely liable for existing and future infringements. The customer is obligated to give us written notice of possible or demanded infringements of intellectual property, immediately after becoming aware of any such alleged infringements. The customer will defend,

indemnify us and hold us harmless of all claims of third persons and all liabilities, costs and expenses arising out of such infringement.

4. The foregoing does not wave our liability according to the provisions of the German Produkthaftungsgesetz and §§ 478, 479 BGB Germany [Letztverkäuferregress].
5. All other claims of damage compensation are specifically excluded. In all cases, all claims for damage compensation are limited to a total maximum of 2.000.000 €

XII. Place of Jurisdiction, Applicable Law

Place of fulfillment of our contractual duties, the address for payment by the customer and place of Jurisdiction is D - 84453 Mühldorf am Inn, Germany. Notwithstanding the preceding sentence, we may file a law suit against the customer at his place of business. The law of the Federal Republic of Germany, excluding the UN Convention Sales, applies to all disputes arising out of or in connection with these terms and the business relationship with the customer.

XIII. Saving of Data

According to § 33 Abs. 1 of the German Bundesdatenschutzgesetz (BDSG) we hereby disclose, that we electronically save data and information regarding the customer and the business relationship in order to implement the business relationship.