

General Purchase Conditions of OMERAS GmbH

I. General

1. The following Conditions shall form part of all contracts entered into between us (omeras GmbH) and a supplier (Supplier). This shall also apply if no reference to these Conditions is expressly made by us in subsequent contracts. The Supplier's standard terms and conditions shall not apply even if they have not been expressly rejected by us. Our Purchase Conditions shall apply also in cases where we accept the Supplier's delivery without reservations, knowing that the conditions proposed by the Supplier are different or deviate from our Purchase Conditions.
2. Our Purchase Conditions shall apply exclusively in dealings with entrepreneurs according to § 310 German Civil Code.

II. Purchase orders and order confirmation

1. Only purchase orders placed in writing, including by telex, shall be binding. Ordering norms and drawings inclusive of tolerances specified by us in individual cases shall be binding. By accepting the purchase order, the Supplier acknowledges that, through viewing the available plans, it has made itself familiar with the manner of execution and scope of the delivery. We cannot be held liable if there are obvious mistakes, typing and computing errors in the purchase order itself as well as in the documents, drawings and plans submitted by us. The Supplier will be obligated to inform us about such errors so that our purchase order can be corrected and renewed. The same shall apply for the case that documents or drawings are missing.
2. Unless otherwise agreed in an individual case, purchase orders shall be binding on us only if they have been confirmed by the Supplier in writing and a binding delivery date has been indicated within 14 days of the date at which they have been received by the Supplier.
3. Deviations in the quantity and quality from the text and content of our purchase order and subsequent amendments to the contract shall be deemed as having been agreed only after they have been expressly confirmed by us in writing. The impact of such deviations shall be determined by mutual agreement, in particular in respect of additional or reduced costs.
4. We reserve proprietary rights and copyrights in drawings, tools, samples, models, brands and designs or the like as well as in finished products and semi-finished products which have been made available by, or produced by order of, omeras GmbH. They may be made available to third parties only with our express written permission. Unless otherwise agreed in an individual case, they shall be returned to us without delay of the Supplier's own accord upon completion of the purchase order. Any products produced with such means of production, with such brands and such designs may be supplied to third parties only with our express written permission.

III. Delivery and performance

1. The agreed delivery times and dates shall be binding. They begin at the date of the placement of the order. The goods must have been received at the receiving point indicated by us within the period of delivery or at the date of delivery. The Supplier shall be deemed to have defaulted if the agreed delivery date has not been kept. Unless otherwise agreed, the Supplier defaults if it fails to effect delivery within the delivery time which is reasonable and customary under the respective circumstances. The Supplier will be obligated to reimburse to us the damage caused by the delay. In addition to this, we shall be entitled, if the Supplier fails to effect delivery within the time limit set by us, to terminate the contract and/or to claim damages. In case delays are to be expected, the Supplier shall promptly inform us accordingly and ask for our decision as to whether or not the order will remain effective. An acceptance without reservations of a delayed delivery or service shall not constitute a waiver of claims to which omeras GmbH is entitled because of a delayed delivery/service.
2. As soon as the Supplier has reason to assume that it will not be able to effect delivery at the agreed date, it shall be obligated to notify omeras GmbH of the delay, giving the reasons as well as the expected duration of the delay in delivery.
3. Part shipments shall principally not be permissible unless we have expressly consented to them.
4. We will not be obligated to take delivery prior to the expiry of the date of delivery.
5. If the Supplier is not able to effect delivery, we shall have the right to claim damages and assert any other rights to which we may be entitled under the warranty.

IV. Shipment

1. Our shipping instructions shall be observed. Any costs incurred by us as a result of non-observance of our shipping instructions shall be for the Supplier's account. The same shall apply to additional costs arising from the need to accelerate a shipment for reasons attributable to the Supplier. We will accept additional transport insurances only if they have been agreed with us in advance in writing.
2. We will take delivery in our plants of shipments sent by road only from Monday till Friday from 7:00 a.m. to 04:00 p.m. Any deliveries made outside these hours shall require an express agreement. Tank trucks which are not equipped with an overflow safety device as prescribed by regulators cannot be discharged at our premises.
3. Deliveries shall be made free of charge at the Supplier's expense to the receiving point indicated by us. If we have to bear the freight charges in exceptional cases, the Supplier shall choose the mode of transport prescribed by us. If no mode has been prescribed by us, it shall choose the mode of transport and delivery which is most favourable for us.
4. Risk will pass to us only upon acceptance of the goods at our receiving point.
5. Packaging shall be included in the price. If something else has been agreed in exceptional cases, the packaging shall be charged at cost price. The Supplier shall choose the packaging specified by us and shall make sure that the packaging protects the goods from becoming damaged. If packaging is returned by us, at least two thirds of the charged price shall be placed to our credit.
6. Direct shipment to our customers shall be carried out completely neutrally and in our name. The Supplier shall request us in due time to furnish the required shipping documents. Invoices and advices may be sent solely to us.

V. Quality, acceptance and notice of defect

1. The Supplier will be obligated to observe for its deliveries the technical data specified by us, the relevant health & safety and VDE regulations, the applicable legal regulations as well as current good engineering practices.
2. To assure the quality of its deliveries, the Supplier shall carry out a quality control which is appropriate in terms of the method and extent.
3. For dimensions, quantities and quality, the values determined during our receiving inspection and quality check shall be decisive.
4. The Supplier shall waive the defence of a late notice of defect and of an acceptance without reservations.

VI. Prices and payment

1. The prices agreed will be inclusive of packaging, freight and other charges.
2. In cases where it has been agreed that prices will be based on weight, the net weight determined at our premises shall apply to the calculation.
3. The price shown in the purchase order shall be binding.
4. Invoices can be processed only if, in conformity with the requirements set out in our purchase order, they show the order number indicated there. The Supplier shall be responsible for all consequences resulting from the non-observance of this obligation unless it can prove that they are not attributable to the Supplier.
5. If an advance payment has been agreed, we shall be entitled to demand that a bank guarantee or a performance guarantee be furnished.
6. Claims against us may be assigned only with our written permission. We shall be entitled to set off and to exercise rights of lien to the extent permitted under the law.

VII. Warranty and liability

1. The Supplier shall warrant that the goods including their design and labelling conform to our specifications. Our order shall be carried out in a workmanlike manner in accordance with the applicable state of the art. If samples have been agreed and have been made available, the properties of the sample shall be deemed to be warranted. The delivered goods shall conform to the sample if this has been specified in our order.

2. Where defects and non-conformities are found in a shipment, we shall be obligated to give notice of them to the Supplier as soon as they have been detected under the circumstances of an appropriate course of business. The provision set out in No. V. 4. shall apply mutatis mutandis. If defective goods have been supplied, the Supplier will be granted the opportunity to supplementary performance (repair/replacement supply). It will be up to us to decide on the form of supplementary performance. Subject to § 439 (3) German Civil Code (BGB), the Supplier will be entitled to refuse the form of supplementary performance chosen by us. We shall be entitled to reduce the price or terminate the contract if we unsuccessfully fixed in advance a reasonable period for supplementary performance. In urgent cases, we shall be entitled, after notifying the Supplier, to carry out the repair ourselves or to have it carried out by a third party. Any expenses incurred in connection therewith shall be for the Supplier's account. In addition to this, we shall be entitled to claim damages. This shall apply both to the case of violation of a primary obligation and to the case of violation of an accessory obligation. In case of a claim for damages, the Supplier will be obligated to reimburse the loss incurred by us directly or indirectly as a result of a defect. This shall also include compensation for consequential damage suffered on account of a defect. Principally, the Supplier shall be liable for damages only if it has culpably caused the damage. If the Supplier has assumed a supply risk and/or furnished a guarantee, the Supplier shall be liable irrespective of whether or not it is at fault.
3. The warranty period shall principally be two years from the date of acceptance of the delivery items. It shall be extended accordingly if we are obligated under contracts with our customer to grant longer warranty periods. If a claim is asserted against ourselves on account of a right of recourse in the sense of § 478 German Civil Code (BGB), the periods set out there shall apply.
4. In case of defects of title, the Supplier shall indemnify and hold us harmless of possibly existing claims of third parties. The statutory warranty shall apply.
5. The period of limitation for parts which have been rectified or repaired within the warranty period shall commence anew from the date of completion of supplementary performance.
6. If costs are incurred by us because of a defective delivery or other defective performance, in particular transport, material and labour costs, the Supplier shall be obligated to pay compensation for the same.
7. If a defect appears within 6 months of passing of risk, it shall be deemed to have existed already at the time passing of risk.
8. If the Supplier is responsible for a product damage, it shall be obligated to indemnify and hold us harmless from damage claims of third parties upon our first request in so far as the damage has been caused within its sphere of responsibility and organisation and Supplier is liable itself in the legal relationship with third parties.
9. As part of its liability for claims in the sense of No. VII. sub-clause 8, the Supplier will also be obligated to reimburse in accordance with §§ 683, 670 German Civil Code (BGB) or §§ 830, 840, 426 German Civil Code (BGB) any expenses incurred from or in connection with a recall action carried out by us. In respect of such claims, the Supplier shall waive the plea of the statute of limitations for as long as claims can be brought forward against us. We will inform the Supplier – to the extent possible and reasonable – about the contents and extent of the recall measures to be taken and grant it the opportunity to give its views. This shall be without prejudice to any other legal claims.

VIII. Proprietary rights

The Supplier warrants that neither patents nor any other proprietary rights of third parties will be infringed by us as a result of the supplies made by it and as a result of their utilisation by us. It shall indemnify and hold us and our customers harmless from any claims arising from the use of such proprietary rights. This shall not apply if the Supplier has produced the delivered goods in accordance with drawings, models or other similar descriptions or instructions furnished or given by us and has not been aware, or could not have known in connection with the products manufactured by it, that proprietary rights of a third party are infringed by the manufacture.

IX. Force Majeure

1. Events of Force Majeure which make it impossible or unreasonable for us to perform the contract, will release us from the obligation of taking timely delivery for as long as these events persist. The contracting parties will be obligated to notify each other about the occurrence of such events and to adapt the fulfilment of their obligations in good faith to the changed circumstances.
2. Events of Force Majeure in the sense of this contract shall mean all unforeseeable events or events which – even if they could be foreseen – are outside our control so that our reasonable efforts are not able to prevent their impact on the fulfilment of the contract. They include without limitation war

(whether declared or not), a war-like situation, terror, unrest, revolution, rebellion, military or civilian coup, uprising, commotion, riots, blockade, embargo, governmental orders, sabotage, strikes, slow-down strikes, lock-out, epidemics, fire, floods, storm tides, hurricane, snow, storm, ice or other thunderstorms, earthquake, landslide, lightning, general shortage of materials, shipwreck, insufficient port or unloading capacities or severe transport accidents.

X.

Supplier's declarations

1. The obligation to issue supplier's declarations in accordance with the EC regulation 1207/01 will form an essential part of the contracts formed in accordance with these Purchase Conditions. In case long-term supplier's declarations will be used, the Supplier shall notify us of its own accord in the respective order confirmation of any changes in the originating status.
2. If the supplier's declarations do not furnish sufficient details or turn out to be erroneous so that we are required for this or for any other reasons by the customs authorities to submit the information certificate INF4, the Supplier will be obligated upon our request to furnish us without delay with information certificates INF4 for the origin of the goods, which certificates must be free from errors, complete and certified by the customs authorities.
3. If we or our customers are charged an additional amount by a customs authority on account of erroneous own declarations of origin, or if we or our customers thereby suffer a pecuniary loss and the error has resulted from the fact that the origin indicated by the Supplier was incorrect, the Supplier will be held liable.

XI.

Custody / property

If we order parts from the Supplier, we reserve title to them. Processing or transforming of the same by the Supplier will be carried out on our behalf. They shall be stored separately and may be used exclusively for our orders. The Supplier shall be liable for any deterioration or loss even if such deterioration or loss has not been attributable to the Supplier. We reserve title on a pro-rata basis to the objects in their respective manufacturing state, which are produced with the material furnished by us. The Supplier shall keep these objects in safe custody for us. The purchase price shall be deemed to include the costs for keeping in safe custody the objects and materials stored for us.

XII.

Business secrets

The Supplier will be obligated to treat our purchase orders and all commercial and technical details associated therewith as business secrets.

XII.

Final provisions

1. Oral ancillary agreements shall require the written form to be effective.
2. The assignment of rights and obligations the Supplier has under the contract entered into with us shall require our written permission to be effective.
3. If any provision is or becomes invalid, this shall not affect the remaining provisions.
4. The place of delivery or execution shall be the place of performance, and Lauter/Saxony shall be the place of performance for payments.
5. In all disputes arising from the contractual relationship, the matter shall be brought before the Aue Local Court or Chemnitz District Court if the Supplier is a full merchant, a legal entity under public law or a special fund under public law. We shall also be entitled to bring the matter before a court at the Supplier's principal place of business.
6. Only German law shall apply to the exclusion of the laws on the international sale of movable goods.
7. The German version of this General Purchase Conditions should be deciding in case of interpretation unclarity of the English version.