



OPTIMESS Engineering GmbH  
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## I. General

1. These Conditions of Sale and Delivery are valid for all present and future contracts, supplies of goods and other services including consultation and providing of information and so forth. All conflicting statements on the part of the customer, drawing attention to his general trading or purchasing conditions, are herewith expressly contended.
2. The contract does not come into effect until we have given our confirmation of order in writing. Collateral agreements, reservations, alterations or supplements to the contract are not valid unless they are confirmed by us in writing. We reserve the right to modify our products in line with latest technical developments.
3. We reserve full and unrestricted title and copyright to estimates, drawings, photographs and other documents; the same shall not be disclosed to third parties without our consent and shall be returned to us without delay if we so require.
4. Drawings, photographs, indications of weights and measures and other documentation relevant to quotations are to be understood only as approximations, unless otherwise stated.
5. Safety devices will be supplied if this is legally prescribed or expressly agreed upon. Our products must be operated by qualified trained personnel and observing our description and operating instructions.
6. In case our equipment is not used any longer, the client is obliged to dispose of the delivered goods according to statutory provisions. Transfer of property to third party shall be agreed upon in a contract.
7. We store data within the framework of our mutual business relationship in compliance with the Federal German Law for the Protection of Data (BDSG).

## II. Prices

1. The prices are to be understood in EURO, excluding installation and commissioning, without packing, ex works, and without value-added tax. Costs for acceptances demanded by the customer, reports or certificates from authorities or inspection bodies will be invoiced separately.
2. All public charges (taxes, fees, customs duties, etc.) arising out of or in connection with the conclusion or execution of the contract outside the Federal Republic of Germany shall be borne by the customer.
3. Expenses for any required bank guarantees will be borne by the client. We reserve the right, instead of a bank guarantee, to transfer a collateral assignment from the shareholders for the time of the order.
4. Alterations to contracts, or cancellations of the same subsequently required by the customer will only be made against payment of the costs incurred.

## III. Conditions of Payment

1. All payments shall be settled within a fortnight of the date of invoice without any deduction.
2. For orders for deliveries of inspection systems, control technology and other products, the following terms of payment apply:
  - a. 60% are due as advance payment after receiving the order confirmation immediately.

- b. 40% are due after acceptance and after notification of readiness for delivery.

In case of an international sale, 70% are due after receipt of the order confirmation immediately and 30% are due by providing an irrevocable, confirmed letter of credit, payable against shipping documents.

We are entitled to supply goods against cash on delivery or advance payment. Bank charges, discount charges and letters of credit are at the expense of the customer. Bank and discount charges shall be borne by the customer.

3. In the case of default of payment, we shall be entitled to charge interest at an annual rate of 5 % above the discount rate of the European Central Bank (EZB). We reserve the right to lodge claims for further losses due to default of payment.
4. The customer is entitled to setoff and lodging of claims for rights of retainer only inasmuch as the counterclaims are recognised by us in writing, inasmuch as they are not contested by us, or inasmuch as they are not contested by us, or inasmuch as they have been established finally and conclusively by a Court of Law.
5. In the case of default of payment, we shall be entitled to withdraw from the contract after setting an appropriate time, or to demand compensation because of non-fulfilment. There is no need for a threat of rejection.
6. If the solvency of our customer get worse considerably all claims resulting from this business connection will become payable immediately.

## IV. Retention of Title

1. We retain title to goods supplied and/or installed by us (goods subject to retention of title) until all claims on any legal grounds whatsoever arising out of the contract or out of our business relationship with the customer, which came into existence on signing the contract, or which were already in existence at that time, have been settled in full.
2. The customer is entitled to resell, process, blend or compound the goods and to alienate the same subsequently within the framework of extended rights of retention of title, inasmuch as this is effected in the normal course of business. The customer shall not be entitled to pledge or assign goods subject to retention of title. Our customer shall not transfer title to the goods subject to retention of title to his customers until our claims have been settled in full.
3. If the customer process goods subject to retention of title with goods to which we have no title, we shall acquire co-ownership of the new product to the extent of the invoiced value of the goods subject to retention of title. The new product resulting from the said processing shall also be regarded as subject to retention of title in the sense of these Conditions of Sale and Delivery.
4. The customer shall herewith assign to us in advance, as security, all claims and subsidiary rights to which he is entitled in conjunction with the resale, and all claims he might have against his insurer. Furthermore, in the case of the goods subject to retention of title being exported, the customer shall herewith assign to us all claims which he has, or which he will have in the future, against any national or foreign banks in conjunction with the export of the said goods. If the goods subject to retention of title are sold together with goods to which we have no title, be they processed or unprocessed, the claims and rights shall be assigned to us to the extent of the invoiced value of the goods subject to retention of title.

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5. The customer is entitled and obligated to collect claims arising out of the resale of the goods subject to retention of title despite the assignment, inasmuch as we do not revoke this authorisation.
6. If the customer defaults in his obligations for payment, or if he infringes any obligation incumbent upon him derived from agreed retention of title, any balance outstanding shall become due in full immediately.
7. If the customer so requires, we shall be obliged to reassign to him our proper title to the goods subject to retention of title and the claims assigned to us in this respect, inasmuch as the value of the goods subject to retention of title exceeds the total value of our claims against the customer by more than 20 %.
8. In the event of default of payment, and upon our express demand, the customer shall grant us access to the goods subject to retention of title or to surrender the same to us. Withdrawal and pledging of the goods subject to retention of title on our part is not tantamount to cancelling the contract - except inasmuch as the Hire Purchase Act applies.

#### **V. Delivery Periods**

1. The delivery period begins on the date of confirmation of order, but not before presentation of any licenses, documents or clearances to be procured or produced, and not before the conditions of payment agreed upon and any other obligations have been complied with. If a down payment, a bank guarantee or a letter of credit have been agreed upon, the delivery period begins upon receipt of payment or the appropriate documents
2. The delivery period shall be considered to have been observed, if the customer is notified that the goods are ready for shipment within the stipulated delivery period. Any delays for which the customer is responsible, e.g. because of alterations to the order for the goods to be supplied, cause the delivery period to be interrupted and extended accordingly.
3. Partial deliveries and services are permitted within reasonable limits.
4. In the case of force majeure or other unforeseeable events, such as acts of war, measures of monetary or economic policy or other jurisdictional measures, disruptions in the power supply, internal unrest, acts of God, fire, strikes, lockouts, non-supply of materials for reasons beyond our control, disruptions to transport or shutdowns etc., the delivery period shall be extended by a reasonable period if we or our sub-suppliers are hindered from fulfilling our obligations in good time. If, due to the aforesaid circumstances, delivery or services become impossible or unreasonable, we shall be discharged from our obligation to deliver. Inasmuch as the delivery is delayed for more than 3 months, the customer shall be entitled to cancel the contract. If the delivery period is extended, or if we are discharged from our obligation to deliver, the customer shall not be entitled to derive any claim for compensation therefrom. We are only entitled to plead the aforesaid circumstances if we have notified the customer without delay.
5. If delivery is delayed for other reasons, the customer shall extend the delivery period in writing by a reasonable period.
6. If, despite a reasonable period, we are in default of delivery, the customer can claim compensation for every completed week of default of 0.3%, provided that he credibly claims that he has suffered damage, but no more than 2% of the price for to demand the part of the delivery which could not be taken to the appropriate

operation because of the delay. Further claims for damages of the customer due to delays of delivery to us do not exist.

7. If the shipment or delivery is delayed at the request of the customer, we can, starting one month after notification of readiness for shipment, charge the customer storage fee of 0.2% of the invoice amount for each started week.
8. During the delivery period, we reserve the right to change the design and shape of the delivery item, as long as the delivery item does not undergo a fundamental change and the changes are reasonable for the customer.

#### **VI. Transfer of Risk**

1. The dispatch of the goods is at the expense and risk of the customer. The risk is transferred to the customer on acceptance or acceptance, upon delivery, but at the latest upon leaving our factory, irrespective of whether the shipment is made from the place of performance or who bears the freight costs. In case of readiness for shipment of the goods and acceptance delay for reasons for which we are not responsible, the risk shall pass to the customer upon receipt of the notification of readiness for dispatch.
2. If the customer desires, we shall insure the goods to be shipped on the customer's account against transport risks of all kinds.
3. If the delivery is delayed due to circumstances for which we are not responsible, the risk shall pass to the customer from the date of notification of readiness for shipment. If the delivery is not called despite the readiness for shipment, we are entitled to store it at the expense and risk of the customer at our own discretion and to invoice it as delivered.

#### **VII. Software Licence**

1. Licensed Software, including any subsequent new releases, as well as parts thereof and related documentation, may be used only on the CPU where they were first installed. The software may only be copied for backup purposes and including the copyright of the original copy and only for use on this central unit. The customer protects the software from access by third parties. Third parties are persons who exercise their right to use them on behalf of the customer. All exploitation rights of the software remain with OPTIMESS. If the customer violates these license terms, OPTIMESS is entitled to terminate the license after unsuccessful warning and to demand the return of the software and all parts and copies thereof.
2. Upon delivery of the software, the license is deemed granted. At the same time the respectively valid license fee becomes due. With the acceptance of the delivery the software conditions are considered accepted.
3. The transfer of source code requires a special written agreement.

#### **VIII. Warranty**

1. We provide warranty for our products for 12 months calculated from transfer of risks.
2. This period is a limitation period and is also valid for claims for compensation of consequential harm caused by a defect, as far as there are no claims in tort.
3. The customer shall give notice in writing of warranty claims on the grounds of incomplete or incorrect supply of goods or on the grounds of recognisable defects of the same without delay, or 7 days after receipt of the goods at the latest. In case of non-traders the same shall also apply to apparent defects.

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4. Precondition for preservation of warranty are regularly maintenance works realized by OPTIMESS or a third party authorized by OPTIMESS. In case of warranty damages, which are not repaired by OPTIMESS or authorized third party, OPTIMESS will only pay for cost which would be valid with repair at OPTIMESS premises. The same is valid for maintenance work which are not realized by OPTIMESS or an authorized third party.
5. Where we are obliged to implement repair we have the right of choice between repair or replacement of the faulted item.
6. If the customer requests that a representative of our company be sent to his premises in conjunction with the repair, although there is no objective need for this, the costs thereby incurred shall be borne by the customer. The customer shall grant us a period of time and opportunity to remedy the defects as shall be deemed reasonable. If the customer refuses to do so, we shall be discharged from the warranty obligation.
7. Our warranty does not apply in cases of natural wear and tear, damage due to improper or careless handling, overstraining, atomic radiation, the use of unsuitable materials and such environmental influences as are not foreseen in the contract. Excluded are wearing parts, e.g. cable, glass items, lamps, tyres, motor-gear combinations. Proper handling includes the observance of our installation, operating instructions, proof of which the customer shall be required to furnish.
8. Transport and travel expenses incurred for warranty repairs outside of our premises will be borne by client. Warranty claims will be recognised within our normal working hours. Second hand equipment is excluded from warranty.
9. We undertake liability for delivered equipment manufactured by other suppliers under the conditions agreed upon with these manufacturers.

#### **IX. Liability**

1. All claims not expressly covered by these "Conditions of Sale and Delivery" irrespective of any reasons whatsoever are inadmissible. We are therefore liable only for damage occurring to the delivered item. We are especially not liable for loss of profit or other forms of capital or financial damages of the customer
2. Claims from special damages prescribe with expiration of statutory limitation according to Article VIII. OPTIMESS will not be liable for damages at the goods caused by slight negligence.
3. Special damages arising from rescue work of OPTIMESS products which will be necessary due to obstacles, protruding obstacles and connection pieces, pipe displacement, cavities and restrictions will not be compensated by OPTIMESS generally.
4. The personal liability of our employees working as our agent of vicarious liability is inadmissible.
5. Our liabilities are limited, when not otherwise agreed upon, within the limits of our insurance coverage.

#### **X. Software warranty**

1. Additional to these "Conditions of Sale and Delivery" for SOFTWARE applies the following:
2. Corresponding to the state-of-the-art software is according to its structure not free of errors. In case of major flaws the instruction to avoid the effect of the flaw is regarded as sufficient repair.
3. OPTIMESS doesn't take guarantee that the functions of the program meet the requirements of the customer or work together

in his selection. Corresponding to the state-of-the-art an operation free of interruption and faults or the complete removal of all possible faults can not be guaranteed in the frame of program service.

4. Excluded are all guarantees for the replacement or the loss of data related to a software delivery. The customer is obliged to save his data appropriately.
5. For the reason of special features of particular programmes the quotation or the product description can be used to inform the customer informed legally binding about the extent of the respective warranty.

#### **XI. Compliance**

1. OPTIMESS is committed to ethical correct behaviour towards clients, contractual partners and competitors. Our compliance guidelines are valid on all target markets, on which we are acting. OPTIMESS is working according to the principle of a fair competitive conduct, i.e. we dissociate ourselves from price arrangements and corruption of every description. OPTIMESS staff and the management are not allowed to accept gifts, which hypothesize the influence to contractual decisions. Corrupting gifts are generally not permitted. In the same way all gifts for clients and contractual partners are controlled according to our compliance guidelines before handing over
2. OPTIMESS staff and contractual partners can contact our compliance officer in case of questions or indications of potential infringement. These notices can be carried out confidentially or anonymously if requested. Therefore a special hotline is provided (49 365 / 4319457).

#### **XII. Conclusive Conditions**

1. The rights of the customer resulting from these "Conditions of Sale and Delivery" are not transferable without our agreement.
2. The ineffectiveness of particular regulations don't affect the effectiveness of the other regulations. Ineffective regulations shall be replaced by effective regulations that come close to the meant purpose.

#### **XIII. Place of Fulfilment of Contract and Legal Domicile**

1. Place of fulfilment of Contract and legal domicile for all disputes between the contractual parties arising out of the said contract is Gera, inasmuch as the customer is a trader, a body corporate or a public corporation. Notwithstanding this, we shall also be entitled to take legal action at the domicile of the customer.
2. The Law of the Federal German Republic is binding for all legal relations between ourselves and the customer, as would be the case between two German contracting parties.

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