

**General Delivery Conditions**  
**OCTAGON PROCESS TECHNOLOGY GmbH**  
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**1. Applicability; Quotations**

- 1.1 These General Delivery Conditions shall apply to all deliveries and services inside and outside Germany. They shall also apply to future deliveries and services, unless the Contracting Parties agree otherwise in individual cases. Any terms and conditions of the Buyer differing from those specified herein will be binding on the Seller only if he expressly confirms acceptance thereof in writing.
- 1.2 The Seller's quotations are non-binding offers. Any documents or data, such as illustrations, drawings, details of weight and dimensions, forming part of the Seller's offer, are only to be considered approximate, unless expressly designated as binding. The Seller retains ownership of, and copyright in, all cost estimates, drawings, project proposals, documentation and other data or information furnished to the Buyer; they may be neither made available to any third party nor reproduced in any form without prior written permission from the Seller.

**2. Scope of Delivery of goods/services**

- 2.1 The Seller's written order confirmation shall be conclusive in determining the scope of delivery of goods/services by the Seller, if not otherwise agreed in individual cases. If a quotation limited by the Seller with regard to its period of validity is accepted by the Buyer within the stated time limit, but no timely order confirmation has reached the latter, then the Seller's quotation shall be conclusive in determining the scope of delivery of goods/services by the Seller.
- 2.2 No collateral agreements or amendments shall be effective unless accepted by the Seller in writing.
- 2.3 Insofar as any modifications requested by the Buyer after placing the order results in increased expenditure for the Seller, the latter shall be entitled to claim an appropriate increase in price.

**3. Prices and Payment**

- 3.1 Failing specific agreement to the contrary, the Seller's prices are always for delivery ex works (EXW), which includes loading in the works, but excludes packing costs. Invoicing will be with the addition of VAT at the level chargeable under the law.
- 3.2 In the absence of any other specific agreement, payment shall be in cash and without any deductions and be made free the Seller's payment office within 5 calendar days after date of invoice.
- 3.3 The Buyer's obligations to effect payment - by whichever means - to the Seller are only considered as fulfilled if and when a given amount invoiced by the Seller to the Buyer is fully and irrevocably credited to the Seller's account. If any payment owed by the Buyer to the Seller is not made when due, the Seller shall be entitled to claim a late charge to be calculated from the due date at the rate of 8% per annum above the current Deutsche Bundesbank base interest rate.
- 3.4 The Buyer is only permitted to withhold payment or offset any payments against claims of the Buyer which are not disputed by the Seller or which are legally established.
- 3.5 If the Buyer's financial position substantially deteriorates, thereby creating a risk that any sum payable to the Seller might not be paid, then the latter shall be entitled to suspend deliveries until payment is effected or adequate security supplied.

#### **4. Time of Delivery; Delay**

- 4.1 In the case of any delay in receipt of the agreed-upon down payment and/or in the opening of the agreed-upon letter of credit, or in the case of any subsequent modification of the extent of the Buyer's order, or in the case of the Buyer's obligations under the Contract not being fulfilled in good time, in particular in the case of delayed provision by the Buyer of documents and/or permits and/or releases as specified in the Contract, the delivery period/delivery deadline will be extended accordingly.
- 4.2 All agreed upon times for delivery are subject to correct and punctual self supply. If a delay becomes apparent, Seller will inform Buyer as soon as possible.
- 4.3 The delivery period shall be deemed to have been observed if, by the time of its expiry, the Contract goods have left the works or the Buyer has been notified of their readiness for shipment.
- 4.4 The delivery period or the delivery deadline shall be reasonably extended in the case of any delay arising out of an industrial dispute, particularly a strike or a lock-out, or where any unavoidable obstacles to the Seller's performance of the Contract arise (Force Majeure). Cases of force majeure shall also include shortage of energy, of raw and auxiliary material and lack of transportation. This shall also apply where the a.m. circumstances arise on the side of any subcontractor of the Seller.
- 4.5 Should the Buyer suffer damage or loss as a result of a delay in delivery, the Buyer shall be entitled to claim a lump-sum compensation. Such compensation shall amount to 0.5% for each full week of delay, but limited to a maximum of 5% of the value of that part of the delivery which, due to the delay, cannot be used on time or in accordance with the Contract.
- 4.6 Where the Buyer, given the length of the delay in delivery by the Seller, has become entitled to the maximum lump-sum compensation as per sub-section 5 hereof and the ordered goods/services have not yet been delivered, the Buyer shall be entitled to fix a final deadline for delivery with the express statement that on expiry of that deadline he will refuse acceptance of the delivery. Should the Seller fail to meet such final deadline for a cause for which he is responsible, the Buyer shall be entitled by notice in writing to the Seller to terminate the Contract. In case of delay in a partial delivery the Buyer shall be entitled to terminate the Contract in respect of such portion of the ordered goods/services as cannot in consequence of the Seller's failure be put to the intended use.
- 4.7 Further remedies with respect to delay cases are excluded as per section 11 below.

#### **5. Delivery; Passing of Risk**

- 5.1 The sales terms agreed between the Contracting Parties shall be construed in accordance with the current version of the INCOTERMS, as applicable at the time of Contract formation. Failing specific Contractual arrangements, the Contract goods shall be deemed delivered "ex works" (EXW). Seller does not have to take back packing material.
- 5.2 The risk of loss shall pass to the Buyer, when the Contract goods leave the plant. If the shipment delays by reasons not attributable to the Seller and in case of delivery EXW, the risk of loss shall pass to the Buyer with the notification of readiness for dispatch.
- 5.3 Partial deliveries and invoicing shall be admissible.
- 5.4 The Buyer shall accept items delivered to him under the Contract, even if they show minor defects, his rights as per section 8 below notwithstanding.

#### **6. Reservation of title**

- 6.1 The Seller retains title to the goods/services delivered under the Contract until all claims of the Seller from the business between the Seller and the Buyer are collected in full. To the extent that the validity of the reservation of title is subject to specific preconditions or specific regulations in the country of destination, the Buyer shall have an obligation to ensure that they are complied with.
- 6.2 The Buyer may neither pledge nor transfer title to the delivered goods/services as security. He shall inform the Seller at once if any rights of attachment or confiscation or any other rights of disposal by third parties are exercised.

- 6.3 The delivered goods/services may be resold by the Buyer only with reservation of title until payment of the purchase price. With a view to this eventuality, the Buyer hereby assigns to the Seller any and all accounts and rights which the Buyer may have by reason of the resale of the goods/services as aforesaid.
- 6.4 In the case of any act or omission by the Buyer in contravention of the Contract, particularly delay in payment, the Seller shall, after notice to the Buyer, be entitled to recover the delivered goods/services and the Buyer shall surrender them.
- 6.5 An application to commence insolvency proceedings shall entitle the Seller to withdraw from the contract and to claim the immediate return of the goods.

## **7. Acceptance**

The Buyer may not refuse acceptance in the case of minor defects or deficiencies which do not materially diminish the functioning, safety or serviceability of the delivered goods/services. This notwithstanding, the Seller shall as soon as possible make good any such defects or deficiencies.

## **8. Liability for Defects**

With respect to defects or deficiencies of the delivered goods/services, the Seller hereby warrants to the exclusion of any other remedies – except as otherwise provided in section 11 - as follows:

- 8.1 The Seller undertakes to remedy any defect. The Seller shall, at his option, either replace or repair all those parts which, within 12 months from the date of delivery respectively commissioning, turn out to be defective, if it can be proved that this is the result of a circumstance which existed before the passing of risk of loss. If any such defect is discovered, the Buyer shall report it to the Seller in writing without delay with a description of the defect; should he fail to do so, he loses his right to remedial action by the Seller in respect of the defect concerned. Replaced parts become the Seller's property. Should shipment, installation or commissioning be delayed for reasons beyond the Seller's control, his warranty obligations hereunder shall cease not later than 12 months from the passing of risk of loss.
- 8.2 The Seller accepts no liability for loss or damage arising from any of the following causes: Unsuitable or improper use, faulty installation or commissioning by the Buyer or any third party, natural wear and tear, faulty or negligent treatment, Buyer-specified product design, harmful environmental conditions, or chemical, electrochemical or electrical effects, insofar as the Seller is not at fault.
- 8.3 The Buyer, after notification of, and agreement with, the Seller, shall allow the latter the necessary time and opportunity as well as provide him with the necessary tools and auxiliary staff to carry out repairs and replacements which appear to the Seller to be necessary and reasonable; otherwise the Seller shall be released from liability for the defects involved. The Buyer shall be entitled to rectify a defect himself or have it rectified by others and claim reimbursement of the necessary costs from the Seller only where operational safety is endangered and disproportionately extensive damage is to be avoided - in which cases the Seller is to be notified immediately - or where rectification of the defect involved has been delayed by the Seller.
- 8.4 If an alleged defect is proved to be a defect in accordance with the intent of the warranty hereunder, then, of the direct costs resulting from the repair/replacement part(s) delivery, the Seller shall bear the costs incurred for the remedial item(s) involved, including shipment thereof. The Seller undertakes to carry out disassembly and re-installation, insofar as this requires special skills in the case of the particular item involved. Otherwise, the delivery to the Buyer of the part properly repaired or a part in replacement of the defective part involved shall be considered as fulfilment by the Seller of his obligations in respect of the defect concerned.
- 8.5 If the Buyer or any third party repairs in an improper manner there is no liability of the Seller for the consequences. The same applies to modifications made without the Seller's prior consent.

- 8.6 If Seller's rectification attempt ultimately fails, or if such reasonable extension period in respect of a defect within the Seller's responsibility as the Buyer may have specified to the Seller for repair or replacement has - through the Seller's fault - expired without result, then:
- a) the Buyer shall be entitled to claim a purchase price reduction proportionate to the amount by which, in consequence of the Seller's failure, the value of the delivered goods/services may be diminished; or
  - b) where the defect is so fundamental that the Contract loses its value, wholly or partly, for the Buyer, the latter, after having so notified the Seller in writing, along with a warning of possible repudiation, shall be entitled to terminate the Contract in respect of such portion of the Contract goods/services as cannot in consequence of the Seller's failure be put to the intended use.
- 8.7 If the use of the supplied goods/services leads to an infringement of intellectual property rights the Seller will generally procure the right for the Buyer to continue using the delivery item, or modify the delivery item in a way that is reasonable for the Buyer and such that the infringement of intellectual property rights no longer persists. The Buyer shall inform the Seller without delay if a third party claims an infringement and agree with him on the further steps to be taken. The Seller's liability hereunder does not apply where the delivered item involved has been manufactured according to the Buyer's draft or instruction or where the Buyer modified the item without authority by the Seller.
- 8.8 Further remedies with respect to warranty cases are excluded as per section 11 below.

### **9. Seller's Responsibility in Respect of Additional Obligations**

The remedies provided by section 8 above and section 11 below shall also be the exclusive remedies available to the Buyer, if the delivered goods/services cannot through the Seller's fault be used by the Buyer in the manner specified in the Contract because any proposals or advice given before or after the conclusion of the Contract, or any additional obligations under the latter, especially instructions for operation or maintenance of the said goods/services, have not been executed or have been executed incorrectly.

### **10. Software products**

Where software products are included in the scope of delivery, the following shall apply additionally:

- 10.1 The Seller grants the Buyer a non-exclusive right to use the delivered software products solely on the system designated in the order confirmation.
- 10.2 In the event of any defect in the delivered software products, the Buyer may demand rectification thereof by the Seller outside the latter's plant only if it is technically necessary and economically justifiable to undertake rectification at the site of use, with any resulting extra costs to be borne by the Buyer. The Buyer must prove the existence of alleged defects on the basis of an unchanged version of the software. The Seller's liability for loss of data is limited to the expenditure which would have been required to reconstruct the data, had it been properly secured by the Buyer. Section 8 above and section 11 below shall apply mutatis mutandis. The Seller may claim remuneration if: he has become active on account of a notice of defect without the Buyer being able to prove the existence of the alleged defect; if remedying the defect is made more difficult by alterations to the software, made by the Buyer; if the defect in question is not attributable to the Seller.
- 10.3 The delivered software products and documents including any modifications thereto remain under the Seller's or his subcontractor's copyright, as applicable. The Buyer is not permitted to reproduce, transfer or use them otherwise than in conformity with the Contract. To modify the delivered software products, the Buyer must obtain the Seller's written consent. Where the warranty period is still in course, it shall cease from the time of modification without the Seller's consent.

## **11. General limitations of liability**

- 11.1 The Buyer shall have no other remedies available against the Seller than those expressly provided for in these General Delivery Conditions. Any remedies beyond the extent as aforesaid are excluded. In particular, this shall apply in the case of any loss or damage occurring not to the delivered goods/services themselves, such as loss of production, decrease in output, or loss of profit.
- 11.2 The foregoing exclusion of liability will not apply in the case of intent or gross negligence on the part of the proprietor of the Seller's company or of any of its executive staff and also in the case of damages due to culpable injury to life, body and death. Neither will it apply concerning defects whose presence was disclosed by the Seller maliciously or their absence guaranteed by the Seller as well as in case of defects in delivered goods to the extent as liability is provided under the product liability law for personal injury and property damage in relation to privately used items.
- 11.3 In the event of culpable fundamental breach of contract Seller shall also be liable for gross negligence by the Seller's employees and for slight negligence; in the event of slight negligence liability shall be limited to the contractually relevant, foreseeable damage or loss.

## **12. Miscellaneous**

- 12.1 The Seller may, after prior notification, inspect delivered Contract plant in operation at its place of use and show such plant to potential customers of his, unless it can be proved that this would be against important interests of the Buyer.
- 12.2 The Contracting Parties shall treat as confidential all business and company secrets, of which they may have obtained knowledge in the context of their mutual cooperation. This obligation shall also be valid after the Parties may have terminated their mutual cooperation.
- 12.3 All claims made by the Buyer - for whatever legal reasons - lapse at the end of twelve months, Claims for damages under Section 11.2 and 11.3 shall be governed by the statutory deadlines.

## **13. Settlement of Disputes; Governing Law**

- 13.1 The place of jurisdiction for all disputes shall be the business location of the Seller. If the place of business of the Buyer is outside Germany the suing party may have the possibility that all disputes arising in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) by one arbitrator without recourse to the ordinary courts of law. If the value in dispute exceeds EUR 50,000.00 the arbitral tribunal shall have three arbitrators.
- 13.2 The Contract shall be governed exclusively by the German law; however, an application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.