

General Terms and Conditions of OTA Oberflächentechnik Anlagenbau GmbH (Updated 08/2008)

1. General terms and conditions

All deliveries, services, offers and contracts by OTA Oberflächentechnik Anlagenbau GmbH, hereinafter referred to as OTA, are subject to the terms and conditions specified here. These terms and conditions shall be deemed accepted upon conclusion of contract, at the latest, however, upon receipt of the goods or other services. Changes or amendments to the contract are subject to written confirmation by OTA. We do not accept any contrary provisions that may be contained in the customer's own terms and conditions. The customer's rights under this contract are not transferable except with OTA's express permission. If any provision is or becomes invalid or ineffective, this shall not affect the validity or effectiveness of any other provision.

2. Offers, orders

Until the customer's final order has been received in writing, all offers made by OTA are binding for the specified validity period of the offer only. The type and quantity of goods and services supplied shall be determined in OTA's confirmation of order. Any documents accompanying an offer are for the information of the orderer only and do not constitute a confirmation of any kind.

Should the price for a product or service change during the delivery period due to increased material prices or changes to standard wages and salaries, the parties shall commit themselves to promptly negotiate price adjustments in line with these changes. Minor deviations which do not affect the assured features of the product or service as set down in the contract are permissible.

3. Delivery

Delivery agreements must be made in writing. Obligations to deliver are subject to the provision that goods and services are delivered to OTA by its suppliers on time. OTA shall provide proof of appropriate materials planning.

The customer may only claim compensation for damage caused by delay and/or for damages from non-performance if there is willful intent or gross negligence on the part of OTA.

4. Terms of payment

All goods and services must be paid within 30 days of invoice date net and to the full amount to OTA's payment office, subject to assessment of the customer's creditworthiness. In the case of new customers or a negative credit rating, OTA is entitled to request payment upon delivery. Repairs, technical services and advisory services are payable immediately.

Checks will only be accepted as conditional payment and payment shall not be deemed executed until the check has been honored.

For orders for goods and services exceeding a total of 10,000.00 EUR incl. VAT, the following terms of payment shall apply:

- 30 % upon receipt of order confirmation

- 60 % upon delivery

- 10 % 30 days upon acceptance

OTA is entitled to correct obvious typing or calculation errors - if necessary retroactively.

Part-deliveries may be invoiced separately.

In the event of delayed payment, OTA is entitled to claim default interest from the due date onwards at the rate of interest charged by the bank to OTA. This shall not affect any other rights of OTA under valid law. Default interest is due for payment immediately. If a customer is still in default of payment after OTA has granted this customer a reasonable period of grace, OTA shall be entitled to withdraw from the contract or to claim damages for non-performance. Should the customer's financial situation deteriorate significantly, all claims arising from the business relationship shall become due for immediate payment.

The orderer does not have the right to retain payments, and set-off of claims is only permissible if such claims have been established as being final and absolute or are undisputed.

5. Retention of title and anticipatory assignment

OTA shall retain title to the delivered goods and services and such title shall not pass to the customer until all present and future claims in connection with this contract and with this business relationship have been settled. The customer may only resell the goods subject to retention of title after obtaining written approval from OTA, and only in the regular course of business under extended retention of title. The customer is not entitled to pledge or assign any goods and services of OTA as security.

Should a third party gain access to the goods subject to retention of title, the customer shall bring OTA's ownership to this third party's knowledge and shall inform OTA immediately. The customer is responsible for preventing third parties from gaining access. In case of delayed payment in connection with the delivery in question and/or future deliveries and services, or in connection with insolvency of the customer, OTA shall, upon assertion of its retention of title, be entitled to access the customer's premises and take possession of the goods subject to retention of title. This shall not affect any other rights of OTA. Assertion of retention of title or attachment of a delivery by OTA shall not be considered as withdrawal from the contract.

If goods and services are resold with the permission of OTA, the customer here and now assigns the claims resulting from such resale to OTA as security up to the amount due to OTA. The customer is entitled to collect outstanding payments within the course of his regular business. OTA may take back said permission for justifiable reasons. At the request of OTA the customer shall provide information on the assigned claims and the respective debtors. The assignment may be disclosed at any time.

If the value of the assigned securities exceeds OTA's claims by more than 10 % in total, OTA is obliged to release the excess amount to the customer upon the latter's demand.

6. Transfer of risk

All risks are transferred to the orderer upon the delivery leaving the supplier's plant or being made available to the customer.

7. Guarantees (excluding software)

For defects and nonconformities of goods and services at the time of transfer of risk, OTA shall at its own discretion provide guarantee by way of repair or by way of replacement of the parts in question. After repeated failed attempts to remedy the defect or nonconformity or to deliver replacements, the customer may at his own discretion demand a reduction in price or, provided that the guarantee does not refer to performed construction work, demand repudiation of contract. Guarantee claims are non-transferable. The guarantee period is 12 months from the date of delivery to the customer. In the case of installation by OTA, the guarantee period starts on the day the installed equipment is ready for operation. If the customer is in delay of acceptance or fails to fulfill his obligation to co-operate, the guarantee period shall commence at the agreed date of acceptance or, respectively, one month after OTA has given notice that the equipment is ready for installation, as far as this has been agreed upon. The guarantee becomes invalid if the delivered item is manipulated or used inappropriately or without authorization, unless such actions have been permitted in writing by OTA. For devices purchased from sub-suppliers the guarantee is limited to the guarantee agreed upon between OTA and the respective sub-supplier. The guarantee is limited to direct and immediate services. Freight/transport costs as well as additional packing in cases of insufficient packing shall be paid by the customer.

8. Defects and nonconformities

Complaints about incomplete or incorrect delivery or notices of apparent defects and nonconformities which are verifiably attributable to a condition that occurred before transfer of risk, as well as notices of inferior material or poor workmanship must be submitted in writing immediately, at the latest, however, within 14 days of receipt of the goods. Any defects and nonconformities which become apparent at a later date must be notified upon detection of such, at the latest, however, within 6 months of receipt of the goods. In case of a justifiable notice of defect, retention of payment is only permissible to an amount representing an adequate and reasonable ratio between defect and purchase price. If all parties to the trading transaction have the status of merchants the buyer may only retain payment when the submitted notice of defect is justified beyond any doubt. Assertion of notice of defect, including such as are justified, shall not interrupt or delay the course of the guarantee as such.

9. Liability for features

Only those features which have been expressly agreed upon in writing with an authorized representative of OTA shall be guaranteed. This shall not apply if events which were unforeseeable or could not be sufficiently assessed at the time have occurred due to certain developments. In cases where warranty applies to contractual specifications of the goods or services, the customer's warranty claim is limited to subsequent remedy. Repudiation of contract or reduction of the purchase price pursuant to §8 of these General Terms and Conditions can only be granted for goods that consisted of finished part products at the time the order was accepted and does not apply to innovations at the commission of the customer.

10. Limitation of liability

OTA only assumes liability for claims for damages occurring due to default in performance of contract, forbidden action, organizational negligence, or culpa in contrahendo, if OTA or its vicarious agents are guilty of willful intent or gross negligence.

OTA does not assume any liability for indirect damage, consequential damage or lost profit. Irrespective of these claims, in the event of damage the customer is obliged to give OTA the opportunity to correct the defect in order to mitigate damage, and to adhere to any instructions issued by OTA regarding technical issues. Claims for damages are limited to the simple value of the goods at the time of delivery.

11. Software license and guarantees

All rights to the utilization of software created by OTA remain the property of OTA. If a customer fails to comply with these license terms, OTA shall have the right to terminate the license after issuing a fruitless warning notice, and to demand return of the software together with all parts and copies. The license is deemed as issued upon delivery of the software. The terms applying to the software are deemed as accepted upon acceptance of the delivery. In the case of third-party commercial software, the license terms of the respective producer shall apply. Application/utilization rights are limited to comparable use of a printed work/book. According to the state of the art, software is never absolutely error-free in terms of structure. In the case of minor errors, instructions on how to avoid impacts of the error (workarounds) are also considered to be adequate subsequent remedy. OTA only assumes liability for ensuring that the program features fulfill the customer's requirements as set down in the requirement specifications. According to the state of the art, interruption-free or error-free operation or the complete elimination of all potential faults cannot be ensured within the scope of program maintenance. No liability whatsoever is accepted for the replacement or loss of data resulting from a software delivery. The customer is obliged to backup and safeguard his data.

12. Place of performance/place of jurisdiction

Place of performance is 12277 Berlin, place of jurisdiction is Berlin. Contracts are governed exclusively by the laws of the Federal Republic of Germany.