

General Terms and Conditions of Sale and Delivery of OHB System AG

I. Scope

1. The following General Terms and Conditions of Sale and Delivery of OHB System AG, Bremen, hereinafter called "OHB", shall exclusively apply to any and all supply and performance.
2. The above shall apply even if the customer submits a contractual offer or a confirmation on the basis of business conditions of its own which deviate from the above. Any deviating business conditions of a customer even if not expressly rejected shall in no case become contents of a contract unless OHB has expressly consented to them. This also applies in case OHB delivers or performs without objections.

II. Offer, Conclusion of a Contract

1. An order shall be legally binding only after its written acknowledgement by OHB. Only such acknowledgement shall be relevant for the contents of a contractual relationship and the scope of delivery.
2. Characteristics and intended use will be governed solely by the description of the supply, performance or products. Any alternative agreements must be confirmed in writing. Any amendments, modifications or collateral agreements shall only be binding after their confirmation in writing by OHB.
3. OHB shall be entitled to render and invoice partial performances, if and when this is not detrimental to the purpose of a contract or unacceptable for the customer.

III. Conditions of Payment, Prices

1. The prices quoted in EUROS in the order confirmation shall exclusively apply plus value-added tax at the current statutory rate.
2. The prices shall be ex works OHB including packaging, if any, plus delivery costs, transportation insurance and any and all other charges according to acknowledgement of order.
3. Payments shall be made in cash or by transfer. Unless otherwise agreed, all OHB's invoices are payable immediately and without deductions. In the event that an invoice is not paid within 10 days of receipt, OHB is entitled to demand interest in respect of arrears from the 11th day onwards, at a rate 5 % - or, if the customer is not a consumer, 8 % - above the Deutsche Bundesbank base rate. OHB may however, at any time, demonstrate that it has incurred greater loss as a result of the arrears in payment. The customer may, however, demonstrate that OHB has incurred no loss or only a substantially lower loss. Any acceptance of bills of exchange or cheques shall be made only subject to clearance; any and all costs of discounting or collection shall be borne by the customer.
4. If, after an order is placed, justified doubts arise concerning the customer's unconditional ability to pay, OHB shall be entitled at any time to demand immediate cash payment instead of the agreed payments, or to demand a security, or to withdraw from the contract. The right to compensation remains unaffected.

IV. Right of Retention, Setoff

1. The customer shall only be entitled to assert a right of retention within one and the same contractual relationship. Apart from this, any and all rights of retention, arising out of any legal relationship, vis-à-vis OHB shall be excluded in commercial transactions, with the exception of § 320 of the Civil Code.

2. The customer shall only be entitled to offset claims against OHB where these have been acknowledged or legally determined.

V. Delivery Periods, Delays, Impossibility

1. Unless otherwise agreed, the delivery period will begin with receipt of OHB's order confirmation. OHB's adherence to the delivery period presupposes that all commercial and technical questions between the contracting parties have been resolved and that the customer has fulfilled all its obligations, such as making any advance payment agreed, obtaining the necessary official certifications or permits etc. If this is not the case, the delivery period will be extended accordingly. This will not apply if OHB is responsible for the delay.
2. The delivery period will be deemed to have been adhered to if the article to be delivered has left OHB's works by the end of the period or OHB has notified the customer that it is ready for dispatch.
3. If dispatch of the article to be delivered is delayed for reasons for which the customer is responsible, the customer will be invoiced for the costs resulting from the delay, beginning one month after OHB has notified the customer that the article is ready for dispatch.
4. Inasmuch as a timely performance of a contract is impossible for OHB on account of force majeure, labour disputes or exceptional circumstances such as energy shortages, stoppage of traffic, unforeseen technical difficulties with construction and/or manufacture or other disruptions to procurement, manufacture or delivery which are beyond OHB's control and which can be evidenced to have a material influence on the performance of OHB's contractual obligations then the delivery period shall be extended by the time elapsed between the occurrence and the removal of an obstacle. The above shall also apply if such circumstances occur with a supplier of OHB.
5. If the delivery period is not adhered to, the customer must grant OHB a reasonable extension period of at least three weeks.

6. If and when OHB fails to adhere to the delivery period or extension period for reasons of ordinary negligence, without gross negligence or malice aforethought on OHB's part, OHB will be liable solely for the invoice value of the quantity of goods which were not delivered within the specified period, and at most for the amount of negative interest [loss sustained as a result of trusting in the validity of the agreement].

VI. Passage of Risk

1. The risk shall pass to the customer at the latest when the delivery, or components thereof, leaves OHB's works or warehouse. The above shall even apply if and when part-deliveries are made or if and when OHB is responsible for additional services such as transportation, erection, installation or commissioning.
2. If and when delivery is delayed for reasons under the customer's control, the risk shall pass to it on the day the merchandise is ready for dispatch. In addition OHB shall be entitled to charge to the customer the cost incurred for any storage - when merchandise is stored at OHB's works, 0.5 percent of the invoice amount, for each month - starting one month after the customer has been notified that the merchandise is ready for dispatch. Furthermore OHB shall have the right after a reasonable fixed deadline has expired unsuccessfully to dispose of the merchandise elsewhere and to make delivery to the customer within an extended period of time.

VII. Retention of Title

1. OH B shall retain the title to all merchandise until all payments arising out of the supply contract have been received. OH B shall also retain the title to all merchandise, in commercial transactions, until any and all claims - present and future - arising from the business relationship with the customer have been paid in full (when payment is made by bills of exchange or cheques: until their full collection and payment of any extra charges).

2. If and when OH B's reservation of title ceases to exist because the merchandise is resold or processed, extended reservation of title shall apply: the customer hereby assigns to OH B any and all rights and claims arising from it.

3. Any security provided to OH B will be released on request, at OH B's choice, if its value persistently exceeds the claims by more than 20 %.

4. The customer shall forthwith inform OH B if and when third parties gain access to merchandise which is subject to reservation of title. Any cost of intervention that may then become necessary shall be borne by the customer.

5. If the customer is in arrears with payments OH B shall be entitled to withdraw after setting a time-limit of 10 days for performance. Once the merchandise has been surrendered, OH B shall have the right to sell the merchandise in the open market and to offset the proceeds against its claims.

VIII. Assignment

Any rights of the customer shall only be assigned after OH B's approval.

IX. Warranty

1. The time-limit for the remedying of defects shall be two years from the date of delivery for newly-manufactured merchandise, and one year for used and reconditioned goods.

2. The customer is obliged to forthwith inspect the delivered merchandise, to check that it is free of defects, upon receipt of the same. The customer must report any apparent defects to OH B in writing immediately, at the latest within one week of receipt of the merchandise. If apparent defects are not notified or not notified within due time or in due form, all warranty claims will be excluded.

3. OH B must be notified of hidden defects within one week after they have become apparent.

4. OH B shall only be liable in respect of advertising claims, or defects in the instructions for use, in relation to customers who are consumers.

5. Minor defects which do not significantly reduce the value or impair the fitness for use or serviceability of the merchandise shall be excluded from the warranty in commercial transactions.

6. In commercial transactions OH B shall be entitled to provide a remedy at its own choice. This means that OH B will decide whether to remove a defect or supply replacement merchandise. If the attempted remedy proves unsuccessful, OH B is entitled to make a second attempt at remedying the defect; in this case also, OH B will decide whether to supply new merchandise or remove the defect.

7. The customer shall be entitled to withdraw from the contract and claim compensation if two successive attempts to remedy a defect have failed.

Provided that there is no injury to life, limb or health, a claim to compensation shall only exist insofar as OH B is guilty of gross negligence or malice aforethought.

X. General Limitation of Liability

1. Provided that there is no injury to life, limb or health, OH B's liability for infringements of obligations shall be limited to those which are due to gross negligence or malice aforethought.

Liability for loss or damage arising from injury to life, limb or health caused by the intentional or negligent infringement of an obligation on the part of a legal representative / agent of OH B is neither excluded nor limited. This also applies to other loss or damage due to the intentional or grossly negligent infringement of an obligation on the part of a legal representative / agent of OH B; in the event of the negligent infringement of an obligation in this respect by OH B or its agents, liability will be limited to loss or damage such as is typical of the type of contract and is foreseeable.

2. OH B shall however be obliged to advise the customer immediately if it becomes apparent that is technically impossible to implement the specifications.

3. Where work orders are executed in accordance with the customer's specifications, liability is excluded, in particular, for the infringement of third-party proprietary rights. OH B shall not be obliged to carry out checks with regard to third-party proprietary rights.

XI. Disposal of WEEE

The customer is responsible for environmentally sound disposal of waste electrical and electronic equipment according to applicable legal provisions.

XII. Export control

Every single detail regarding OH B exports abroad will be agreed on individually, in writing and in time prior to the date of export by the relevant parties. All documents and papers necessary for OH B exporting goods and services will be set up subject to close agreement with the orderer. With regard to exports, the orderer is to provide services, documents or information and place those with no costs involved at the disposal of OH B.

XIII. Governing law, place of jurisdiction

1. All legal relationships between OH B and the customer shall be governed by the law of the Federal Republic of Germany. The United Nations Convention of Contracts for the International Sale of Goods dated 11 April 1980 is deemed inapplicable.

2. The place of jurisdiction shall be the court which has jurisdiction over OH B's registered office. This is currently Bremen. OH B is, however, entitled to assert its rights in the locality where the customer has its registered office.

XIV. Final Provisions

The ineffectiveness of individual provisions shall not affect the effectiveness of the remaining provisions, provided that the clause in question is severable. The contracting parties agree in such case to replace the invalid provisions by valid provisions whose economic effects reflect the intended effects of the invalid provisions.

All declarations affecting the effectiveness of the contractual relationship must be made in writing. Any alteration to the requirement for the written form must also be made in writing.