

# General terms of delivery and sale

of Wilhelm Oberaigner GmbH, A-4154 Nebelberg, Daimlerstraße 1  
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These general delivery terms are fundamentally conceived for legal transactions between companies. In the case where they exceptionally form the basis for legal transactions with consumers within the meaning of Section 1 Consumer Protection Act, BGB1 (General Civil Code) 140/79, they shall only apply to the extent that they do not contradict the provisions of the main section of this law. Wilhelm Oberaigner will hereafter be referred to as the delivering works.

## I. General

1. These delivery and sale terms form a material component of every offer and every contract. They shall apply, as long as the contractual parties have not expressly agreed something different in writing.
2. A legal binding of the delivering works only occurs through the confirmation of the offer by the company or by signing the contract.

## II. Prices

1. The prices are understood to be net prices in Euro, ex-works, without packaging and without discounts, if not expressly agreed otherwise. Price increases due to a rise in production costs (price of materials, wages, general overheads, etc.) between order placement and delivery will be invoiced.
2. All ancillary costs of the contract, such as financing costs, costs for the legal registration of security for the purchase price claim, fees, interest and similar, are for the account of the purchaser.

## III. Payment terms

1. One third of the purchase price is to be paid upon placement of the order, with the remainder to be paid upon delivery, if nothing different has been agreed. All payments must take place in cash, exempt from charges and without deductions. Cheques and bills of exchange will only be accepted by special agreement and only in lieu of payment, not in place of fulfilment. Collection and discounting fees are for the account of the purchaser. the seller has a right to reject offered payments in the form of cheques or bills of exchange, without providing a reason. Upon exceeding a payment deadline and with acceptance default, the company is entitled to charge default interest at a rate of 7.5 % above the respective base rate of the European Central Bank. With non-fulfilment of the contract by the purchaser, the delivering works are entitled to either demand compensation for the loss suffered and lost profit or a contractual penalty in the amount of 10% of the agreed purchase price.
2. All purchased items shall remain the property of the seller until all obligations of the purchaser under the purchase contract have been fulfilled. As long as the reservation of ownership is in place, the purchaser is prohibited from selling, pledging, mortgaging, leasing or otherwise surrendering the purchased items without the written consent of the seller. The purchaser consents that all payments made shall first be applied to repair costs, then to spare parts claims, then to interest and other ancillary fees and only finally to the goods that are subject to reservation of ownership.
3. To the extent that a third party should revert to the delivery purchase item which is subject to reservation of ownership, the purchaser must immediately inform the delivering works by registered letter.
4. For the duration of the reservation of ownership, the purchased item must be insured by the purchaser, at the request of the seller, to its full value against all risks, including fire. The insurance policies are to be beneficially assigned to the seller.
5. The purchaser is obligated, for the duration of the reservation of ownership, to keep the purchased item in a proper condition and to have repairs that become necessary – apart from emergencies – carried out in the repair workshops of the seller or in a recognised workshop of the delivering works.
6. In the event of payment default and infringement of another contractual provision, an event of default takes place, which entitles the delivering works to immediate withdrawal from the contract.
7. The setting off of asserted counterclaims by the purchaser against the delivering works with purchase price instalments or a right of retention against the delivering works does not take place.

The purchaser is particularly not entitled to withhold payments due to warranty claims or other claims not recognised by the delivering works.

#### **IV. Delivery**

1. The delivery periods, to the extent that they are not expressly agreed as fixed dates, are subject to confirmation.
2. The delivery period begins with the contract becoming effective, however never prior to payment of the agreed down-payment or first instalment.
3. In the case of an agreed change to the order, the delivering works are entitled to adjust the delivery date.
4. The delivering works reserve the right to design and shape changes during the delivery period.
5. The information in the descriptions regarding services, weights, operating costs, speeds, etc., are to be regarded as approximated information.
6. Salvage resulting from repairs, alterations and body construction, becomes the property of the delivering works, without requiring separate notification of the customer.
7. An indemnity claim by the purchaser for non-fulfilment or due to default is excluded to the extent that these circumstances are not due to deliberate or gross negligence by the delivering works.
8. The delivering works reserve the right to withdraw from the contract if circumstances regarding the economic situation of the ordering party become known to it after order confirmation and prior to delivery, through which its claim no longer appears to be sufficiently secured.

#### **V. Fulfilment and conditions of acceptance**

1. The delivery is fulfilled:
  - a) for deliveries ex-works:

upon submission of the notification of readiness for shipment. The purchaser must examine and accept the purchased item at the agreed acceptance location – if not agreed otherwise, in the delivering works - immediately after receiving the notification of readiness. If this acceptance takes place within eight days, the purchased item is regarded as being properly accepted;
  - b) for deliveries with an agreed shipment destination:

with departure from the delivering works.
2. If the purchaser expressly or silently waives the inspection, the purchased item is regarded as been properly delivered and accepted upon leaving the delivering works.
3. All risks, including that of accidental loss, are transferred to the purchaser, who must arrange the necessary insurance cover himself/herself on his own account, at the time of fulfilment. At this point in time, the purchased item is regarded as having been transferred to disposal authority of the purchaser, within the meaning of Section 6 of the Product Liability Act and thus is placed onto the market. Insurance protection is only arranged by the delivering works if this has been expressly agreed in detail. This also applies for vehicles handed over for conversion or repair, from the time of handover until the time of fulfilment. If the delivering works specify a collection period and this is exceeded by the purchaser, a storage fee can be charged.
4. The dispatch always takes place ex-works for the account and risk of the purchaser.

#### **VI. Warranty**

1. Upon fulfilment of the payment obligations, the delivering works only provide a warranty to the first purchaser, for freedom from defects according to the respective state-of-the-art of technology for the delivered vehicle component in works labour for:
  - a) single-track vehicles, for a period of 12 months after delivery, however, a maximum of up to total driving output of 6,000 km;
  - b) double-track vehicles, for a period of 12 months after delivery, however, a maximum of up to total driving output of 10,000 km;
  - c) Heavy goods vehicles, buses and tractors, for a period of 12 months after delivery, however, a maximum of up to total driving output of 20,000 km.

The warranty is excluded if the total permissible weight is exceeded or the axle pressure or the load capacity or chassis carrying capacity underlying the purchase contract are exceeded. At the option of the

delivering works, the warranty is either carried out by repairing the parts sent in, free of postage and carriage, or through the replacement of the same. In all cases, parts are only replaced, which display a defect in the material or workmanship. The wages and costs for installation and removal are to be borne by the purchaser.

2. There is no responsibility by the delivering works for parts that they have not produced, however, they are prepared to assign to the purchaser entitlement to defect claims against the producer. No compensation is granted for broken glass.
3. Warranty claims are only taken into consideration if they are asserted with the delivering works, or with the responsible official workshop, within eight days after discovery of the defect. The presumption regulation of Section 924 ABGB (Austrian Civil Code) is excluded. The existence of a defect at the time of handover is to be proven by the accepting party (purchaser). The warranty lapses if the purchaser does not observe the regulations of the delivery works regarding treatment of the vehicle (operating instructions) and particularly does not have the inspections properly carried out, which are prescribed in the customer service books issued by the delivery works.
4. No claim exists for conversion or reduction.
5. Natural wear and tear and damage due to improper treatment or disasters are excluded from the warranty.
6. The warranty lapses if the purchased item has been changed by external parties or through the installation of parts of external origin.
7. No warranty is granted for used vehicles.
8. No warranty is granted for repair works.
9. In the case of onward sale within the guarantee period, the guarantee obligation lapses.

## **VII. Indemnity and product liability**

1. Indemnity claims are excluded in cases of slight negligence. The existence of gross negligence must be proven by the injured party.
2. However, in any case, compensation for losses due to late delivery, subsequent damage, indirect or collateral losses, lost profit, losses due to production failure, currency/exchange rate loss, lost interest or interest losses are excluded.  
Claims for recourse pursuant to Section 12 of the Austrian Product Liability Act/a corresponding provision of the respective applicable product liability law, are also excluded.
3. The purchased item only offers the security that can be expected on the basis of permit regulations, operating instructions, regulations of the delivering works regarding the treatment of the delivery item (instruction manual) – particularly with respect to the prescribed inspection – and other possible instructions.
4. In any case, all indemnity claims expire within one year from the contractually defined warranty period.

## **VIII. Development services and associated rights**

If the supplier should be mandated with the provision of development services of any kind, in addition to the above provisions, the provisions described in detail below shall also apply:

1. The supplier shall have exclusive entitlement to the rights to the development results and any prototypes produced. This shall specifically relate to all copyrights and/or exploitation rights to any plans, formulae, technical drawings and documentation, as well as to findings gained and information and furthermore, the rights, to produce the development results under normal operating conditions, put them into circulation, keep them for sale, use them or otherwise exploit them. The development results/prototypes shall be exclusively produced by the supplier for the purpose of assessment and evaluation by the purchaser as to whether and to what extent operational production should be carried out, from a technical and/or commercial point of view.
2. The purchaser shall be obligated to secrecy vis-à-vis third parties and external parties, for an unlimited time period, with respect to the development results and any prototypes produced. He shall exclusively use the development results, all documents prepared and the findings and information gained from them for assessment and evaluation of the development results and shall refrain from any other use and from forwarding them to third parties, to an unlimited extent.
3. If the purchaser should request operational production/exploitation of the development results, a written agreement shall be formed separately in respect of the detailed implementation, the scope of the rights to be acquired by the purchaser and the amount of the licence fees to be paid by the

purchaser and other fees. Any necessary mandatory licences within the meaning of Article 36 PatentG (Patent Act) or other necessary licences or approvals for the exploitation of the development result, regardless of whether these are known or unknown, must be obtained by the purchaser, in this case, at his own expense and risk, no liability or warranty of the supplier, of any kind, shall exist in this respect and shall also be expressly excluded.

If a respective agreement cannot be reached between the contractual parties regarding the exploitation of the development results, the rights within the meaning of Par. 1 shall remain entirely with the supplier.

4. The purchaser shall be obligated, during the entire development period, to work extensively together with the supplier and to cooperate, thereby promoting the provision of development services by the supplier, as much as possible. In particular, upon request, the purchaser shall immediately provide to the supplier all information, specifications, plans and other technical documents requested by the supplier, regardless of which type, that are regarded by the supplier as being necessary or advantageous, in order to achieve as good a development result as possible. The supplier shall, of course, treat these documents and information with strict confidentiality.
5. With respect to the technical and commercial exploitation of the development results, the supplier shall not assume any liability or warranty. It is exclusively the task of the purchaser to independently examine the development results in respect of their technical and commercial suitability for the intended purposes and to decide on their further exploitation within the meaning of Par. 3. Through the placement of a development order, the supplier also does not owe the production of a specific item or the creation of a specific result, but rather, the effort to find a respective technical solution for the technological task that is set.
6. The supplier shall endeavour to perform the development activity within the relevant agreed deadlines. If it should become foreseeable for the supplier, during the development activity, that the agreed timeframe should not be sufficient, it must inform the purchaser accordingly, the contractual parties shall then arrange an adequate extension of the time period provided to the supplier, taking into consideration the respective estimates of the supplier.
7. If inventions are made during the course of the development activities, the supplier shall be entitled to have these inventions nationally and/or internationally patent protected or utility patent protected, at its own discretion and expense. In the case that the supplier should decide not to have the invention protected, the purchaser shall be entitled to demand the application for a patent or utility patent by the supplier, in which case the purchaser must, however, compensate the supplier for all costs, fees and outlays incurred in this respect.

#### **IX. Severability clause**

The possible invalidity of individual provisions does not affect the validity of the remaining provisions. The parties are obligated to replace the invalid provision with a valid provision that comes closest to it, in terms of intent and purpose.

#### **X. Legal jurisdiction**

The legal jurisdiction is the court of law responsible for the location of the delivering works in 4154 Nebelberg.

Austrian law applies, with the exclusion of the UN Convention on the International Sale of Goods (CISG).