



**OBERAIGNER**  
Powertrain

**General Terms and Conditions for Contracting of Oberaigner Powertrain GmbH valid from 03/2024**

These **General Terms and Conditions for Contracting** (hereinafter also: "GTC") govern the services of Oberaigner Powertrain GmbH (hereinafter "Contractor") in the framework of contract processing. They are essentially intended for transactions between companies. Should they be applied, in exceptional cases, to transactions with consumers within the meaning of § 1 para. 1 clause 2 of the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*, KSchG), they shall apply only insofar as they do not contradict provisions of the first part of this act.

**I. Scope**

1. These GTC apply to all contracts and services between the Principal and the Contractor regarding contract processing. GTCs of the Principal only apply if this was explicitly confirmed in writing by the Contractor before the signing of the contract. The Contractor explicitly declares its intent to only enter into contracts on the basis of these GTC. Should individual provisions of these GTC conflict with the GTC of the Principal, the present GTC of the Contractor shall apply. The non-conflicting provisions of the respective GTCs shall both remain in force. The Principal explicitly acknowledges that the Contractor as of now rejects any and all deviating provisions in an order or other contractual papers of the Principal. Deviating conditions of the Principal, as well as agreements made verbally or over the telephone, shall not be accepted and only apply following written confirmation by the Contractor.
2. The Principal and the Contractor agree that these GTC do not apply only to the first transaction between them; rather, the application of these GTC to all further transactions is hereby explicitly agreed.
3. Through the placement of the order, the Principal declares its agreement with the contents of these GTC. Through the placement of the order, the Principal declares that it has read these GTC and has at least had the opportunity to acquaint itself with their contents.
4. Verbal declarations of any kind have no validity. Verbal declarations or deviations from these GTC are only valid if the Contractor has agreed to them in writing.
5. Order confirmations and notices of shipment shall only be sent by the Contractor upon explicit written request by the Principal.

**II. Offer, prices, shipping**

1. The Contractor's offers are only binding if the order is demonstrably received by the Contractor in writing before the term of validity cited in the offer, unless another deadline is cited in the offer. Should an order be placed without a prior offer, the Contractor may claim the fee corresponding to its price list or its usual prices. For orders placed or executed on short notice, the Contractor is entitled to add a surcharge to its price list pricing or its usual prices.
2. The Contractor only guarantees the price for a period of three months from the date of the offer. Thereafter, the Contractor is therefore entitled to request a fee that is higher than that agreed upon upon conclusion of the agreement or defined in Item II.1) of this agreement.
3. The delivery times cited in the offer are not binding. The delivery time starts at the earliest from the transmission of the order confirmation or the provision of all of the Principal's materials

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(if agreed). The timely provision of material by the Principal (if such provision was agreed) is a precondition for the start of the delivery deadline and the observance of the suggested delivery date. Should questions arise relating to the processing, the delivery deadline begins only once the Contractor has resolved all open questions. This is the case when the Contractor informs the Principal in writing that the technical questions regarding the processing have been resolved from the Contractor's point of view. Delivery deadlines/dates agreed to shall be observed by the Contractor to the best of its abilities but are not binding. Delivery delays shall only entitle the Principal to withdraw from the agreement if it has in writing granted the Contractor an extension of at least 8 weeks and this extension has expired, meaning that the Contractor provided no binding delivery date during this extension. Delivery delays do not entitle the Principal to assert warranty claims, claims on grounds of error, or damage compensation claims.

The Contractor is entitled to carry out and charge for partial or advance deliveries. Delivery deadlines/dates shall be reasonably extended should technical reasons or official requirements or requests on the part of the Principal require (additional) changes to the processing, or should a test operation (if planned) be impossible, or not possible until a later point in time, for reasons for which the Contractor is not responsible. The Principal shall bear any additional costs arising therefrom.

4. Should delays arise during the execution of a project for which the Contractor is not responsible, the Principal shall be informed of this. In such cases, new delivery dates shall be agreed and previously agreed delivery dates are voided.

5. Should it not be possible to complete a system in a foreseeable time frame due to process, mechanical, electric or other reasons for which the Contractor is not responsible, the Contractor is entitled to charge the Principal for expenses incurred to date in accordance with the agreement. The Contractor is furthermore entitled to declare its withdrawal from the agreement if the problems that emerged cannot be resolved in a reasonable time at a reasonable cost.

6. The Contractor's offers and price lists are not binding and are subject to change. Figures and data in business documents, catalogues, brochures etc. are only indicative. They are only binding if we as the Contractor explicitly confirm them in writing. The Contractor is in particular entitled to modify or cancel technical data, prices, colours, shapes, materials, services, designs, equipment, models and the like without prior notice or explanation. The information stated in catalogues, price lists, newspapers, brochures, company information material, prospectuses, advertisements, at trade fair stands, in newsletters, advertising letters or other media regarding the services of the Contractor do not constitute offers by the Contractor, and the Principal may not refer to them as binding claims.

7. The prices listed in the offer are without the statutory value-added tax and, in line with the agreed Incoterms (EXW 2020), do not include packaging and shipping costs. Unless otherwise agreed, payment shall be due upon collection by the Principal against transfer to the bank account. Should, in exceptional cases, a delivery be made without simultaneous transfer of the agreed fee to the bank account, the fee shall be due within 30 days from receipt of the invoice and shall be transferred to the Contractor without any deductions or charges, even and including if a notification of defect was made. A notification of defect does not entitle to partial or full retention of the agreed fee.



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0. Interest of 15% per annum is agreed for payment arrears. Should the Contractor claim additional interest, it is entitled to request its reimbursement. Furthermore, should the Principal be in arrears of payment, it shall reimburse all costs arising from the delay, such as in particular dunning expenses, collection attempts and any legal fees from court or out-of-court proceedings. Should the Principal be in arrears of payment, the Contractor is entitled to withdraw from the agreement of parts therefore with immediate effect without setting a grace period; all other damage claims of any kind of the contractor remain unaffected. The withdrawal is valid through unilateral declaration. In the event of arrears of payment, or should there be reasonable grounds to doubt the creditworthiness of the Principal, the Contractor is further entitled to withdraw from still unfulfilled delivery and service obligations, or to request down payments for these. The Contractor shall assign received payments to the various claims at its own discretion. In the case of new customers or late payment, the Contractor reserves the right to deliver against advance payment or to ship cash on delivery. The Contractor is entitled to cede claims arising from the transactions.

1. Unless explicitly agreed otherwise, the Principal shall deliver the material to be processed (insofar as provision of the material was explicitly agreed) to the Contractor free of charge. The place of performance for all services (particularly warranties) is therefore the Contractor's works.

2. If, in exceptional cases and despite the agreement on the Incoterms (EXW 2020), and with the Contractor's consent, the Principal commissions the shipping of the item, the Principal hereby as of now declares its consent to the Contractor selecting the form of packaging and shipping. The costs of the packaging and shipping (including insurance) as well as the risk of loss and damage upon completion of the item shall be borne by the Principal. Should special packaging be necessary, this shall be separately agreed and tendered. This requires further coordination and agreements between the Principal and the Contractor. Once the required coordination has been carried out and the information is available, the Contractor shall, if necessary, revise the offer without undue delay to include all transport packaging and any packaging requirements. The packaging, including of partial or advance deliveries, shall in such cases be the customary packaging. Costs for packaging in excess of this shall be borne by the Principal. Any shipping shall be at the Contractor's discretion. In particular, the type of shipping and the shipper remain at the Contractor's discretion, under exclusion of any liability. In particular, there shall be no obligation to select the cheapest and/or fastest shipping route. Express and air freight surcharges shall be charged separately. The Contractor is not obligated to take out transport insurance for the goods. At the Principal's request and expense, the shipment may be insured by the Contractor against breakage, transport and fire damage.

3. The Principal guarantees the annual volume stated in the offer. Should the actually required volumes deviate from this assurance by more than +/- 15%, the Contractor reserves the right to carry out a reasonable recalculation and to accordingly adjust the price, possibly with retroactive effect.

4. The Contractor is entitled, in the event of a corresponding agreement between the parties pursuant to Item 10 of these GTC, to request payment of the packaging and shipping costs as well as cash on delivery from the Principal should the item be shipped. The Principal shall be deemed in default of acceptance if it fails to accept the product at the agreed time. In the case of default of acceptance, the Contractor's performance shall be deemed fulfilled and the fee shall be due.

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5. The Principal explicitly waives the offsetting of any counter-claims against the Contractor against the fee as agreed or as defined according to Item II.1) of this agreement. The same applies for the offsetting of any asserted price deductions or other warranty claims.

6. Insofar as nothing else is agreed for the respective contract, the following Incoterms

apply: **INCOTERMS 2020 - EXW Nebelberg Austria**

7. The valid, known and available data and documents at the time of the offer shall form the basis for the offer. Changes to the underlying data (scope of parts, scope of testing, acceptance criteria etc.) during the project shall be assessed (with regard to feasibility, costs and schedules) and new offers may be issued. The Contractor assures the implementation of the wishes of the Principal in accordance with the agreement to the extent possible in the event of any changes to the underlying data; however, the Contractor also reserves the right to reject the order.

8. In the event that an order is later cancelled, all costs incurred to date by the Contractor shall be reimbursed by the Principal.

9. Outside of the offer, only those terms and conditions explicitly negotiated and signed by both parties shall be considered valid. Further contract items require the written approval of the Contractor and do not constitute a part of the offer.

10. Unless explicitly agreed, the Contractor's offer does not include compliance with cleanliness and residual dirt requirements or specific protection against corrosion.

11. Required raw materials, such as materials for rods, flat bars or the like, to manufacture parts may be provided by the Contractor if so agreed; parts for further processing (in particular cast and forged parts) of any kind shall be provided by the Principal. Other agreements require a written agreement between the Contractor and the Principal.

0. The Contractor's offer does not include any development work, and in particular no calculation, testing, design optimisation and system optimisation. Should this be desired, this requires a written declaration of the Principal.

**III. Right of lien, retention right, retention of ownership**

1. Upon handover of the material for processing and other objects handed over, the Principal grants the Contractor a right of lien for these materials, for the items manufactured from them and for the objects handed over. The goods in the Contractor's possession that are subject to the right of lien serve to secure all claims of the Contractor against the Principal, including those arising from other transactions. Once the fee is due, the Contractor is entitled at all times to auction or sell the pledged property as it sees fit.

2. Furthermore, in order to secure any claims from this and other transactions, the Contractor shall have the right to retain the goods handed over for processing and the manufactured piece until all open claims, including those arising from Item II.6) of this agreement, have been settled.

3. All goods and products shall remain the property of the Contractor until payment has been made in full by the Principal. In the event that the Principal sells



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the goods and products that are in the possession of the Contractor, or if third parties assert rights of any kind to these goods and products, the Principal shall indemnify and hold harmless the Contractor with regard to these claims.

**IV. Necessary information provided by the Principal**

1. For contract work, the Principal shall provide, demonstrably and in writing, the following information to the Contractor when placing written orders: designation, number of pieces, annual volume, duration of the contract, materials, scope of services, a standard work drawing in 2D and, if requested by the Contractor, in 3D, the offer number if the order was preceded by an offer, and the desired deadline for completion.

2. For contract processing, the Principal shall, in addition to the information required for contract work, provide the Contractor with information on the raw materials and semi-finished parts to be handed over to the Contractor, and shall also provide the latter with a delivery slip for these. The Principal shall also name the work steps to be carried out.

3. Should the information under Items IV.1) and 2) not be provided to the Contractor in writing, or should it be incomplete or unclear, the Contractor shall carry out its work without any obligation to inquire about the missing or unclear information with the Principal. Written information that is not provided at the same time as the order and the work pieces is not relevant. Should the Principal have failed to provide this information in writing, or should this information be incomplete or unclear, the Contractor provides no warranty. In this case, the Contractor is also released from damage compensation obligations.

**V. Property rights, sketches, designs**

1. The Principal shall be liable to the Contractor for ensuring that the execution of the order and the use of the provided sketches, designs and similar instructions or aids for execution of the order do not violate any national or international property rights of third parties, in particular patents, copyrights and design rights. The Principal shall indemnify and hold harmless the Contractor in the event that third parties assert such violations of their rights.

2. The Contractor assumes no liability for loss of or damage to the provided work pieces, sketches, designs, implements and objects handed over. Should the Principal wish to have these insured, such an insurance shall only be taken out following an explicit order by, and at the expense of, the Principal.

**VI. Warranty**

1. The warranty extends for six months and starts from the handover of the work piece to the Principal or its provision at the Contractor's site.

2. Warranty is excluded if the Principal fails to hand over to the Contractor error-free and correct parts, materials, plans, sketches or data sheets, or the information that the Principal provides pursuant to Item IV.1) and 2) is incomplete or unclear. As the provided parts, materials, plans, sketches, data sheets etc. are not inspected upon handover to the Contractor, the Principal must, in any litigation, prove that these were in an error-free and proper condition and that they corresponded to the state of the art.

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3. When processing provided work pieces, no warranty or liability is granted for lack of roundness, shape and bearing tolerance errors or similar. Consequently, should the work piece handed over require renewed processing or production, the Principal shall bear the associated costs for this separately. The agreed fee shall also be due should it be found, after processing of the provided parts and materials, that the characteristics requested in the order cannot be obtained despite proper processing/assembly.

4. Should errors arise in the provided materials, work pieces or parts during their processing, the Contractor is entitled to withdraw from the agreement and to invoice its performances to date, or, if technically possible, to remedy the errors in the materials, work pieces or parts handed over at the Principal's expense and to continue their processing. Provided materials shall also be considered to have an error if they have unusually large deviations or irregularities (in particular with regard to geometry, hardness, material defects).

5. Obvious (clearly identifiable) defects, including the lack of assured or guaranteed properties, as well as transport damages shall be reported in writing without undue delay, at the latest within 5 work days (Monday to Friday) from reception of the goods; hidden defects shall be reported in writing without undue delay but at the latest within 5 work days from their discovery (but at least within the agreed warranty period). Should the Principal fail to report the defects on time and in the appropriate form, the goods shall be deemed accepted. The time of receipt by the Contractor shall be decisive for the timeliness of the notification. The same applies for deviations of the delivered goods from the order, such as incorrect measurements or incorrect products (mistaken delivery). In the event of a complaint, the Principal shall be obligated to first accept the goods and properly unload and store them. The Principal must ensure the traceability of the batches. Notifications of defects and complaints that are made verbally, over the telephone or not without undue delay, and notifications of defects without simultaneous handover of the goods subject to the complaint to the Contractor, shall not be considered.

6. Notifications of defects and complaints shall be made at the headquarters of the Contractor, and the Principal shall hand over the goods subject to the complaint together with the written complaint. The Contractor is entitled to carry out, or have carried out, any examination it deems necessary, even if this renders the goods or work pieces unusable. In the event that this examination yields that the Contractor is not responsible for any errors, the Principal shall bear the costs of this examination.

7. Should the Principal make changes to the goods or work pieces handed over without the prior written consent of the Contractor, the Contractor's warranty obligation expires.

8. When warranty claims are asserted, the Contractor is entitled to correct the defect in a reasonable amount of time instead of accepting a price reduction. The Contractor is further entitled to issue credit to the Principal in the amount of the (pro rata) fee for the work subject to the complaint in place of correcting the defect or accepting the asserted claim to a price reduction.

9. All costs arising from the correction of the defect, such as e.g. transport costs and travel expenses, shall be borne by the Principal.



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**VII. Liability**

1. Damage compensation claims, regardless of their legal basis (e.g. non-fulfilment, detrimental reliance, delay, defect, consequential damage), and recourse claims, regardless of their legal grounds, are excluded insofar as the circumstances triggering the damage/recourse were not caused by willful or grossly negligent conduct of the Contractor. Excluded from this is liability for damages that is mandated by law (e.g. personal injury).

2. Compensation for indirect damage, business interruption, consequential damage and financial loss, unrealised business transactions and damage caused by third-party claims against the Principal is excluded in all cases.

3. The Contractor's fault must in every case be demonstrated by the Principal.

4. In any case, the Contractor's liability is limited in its amount to the amount of the fee as agreed or as defined according to Item II.1) and that was invoiced (minus VAT). The contract work and contract processing assumed by the Contractor are only accepted by the Contractor with this restriction on liability. Any liability of the Contractor that extends beyond this is explicitly excluded.

5. Should the defective manufacture or processing be due to incorrect, incomplete or unclear information (Item IV.1) and 2)) provided by the Principal or due to the principal failing to hand over error-free and correct parts, materials, plans, sketches, data sheets etc., the Contractor's liability is excluded.

0. Should specific process or safety guidelines, standards or conditions apply to the Principal's area of activity, the latter is obligated to notify the Contractor of these without having to be requested to do so. This also applies for specific conditions defined by the authorities or by law (in particular reporting obligations, export controls etc.). Should this duty to inform be violated, the Principal shall be liable to the Contractor for any negative consequences arising therefrom.

1. The obligation to indemnify for damages arising from the Austrian Product Liability Act (*Produkthaftungsgesetz*; PHG) as well as product liability claims that could be derived from other provisions is excluded to the extent permissible by law. The Principal is obligated to transfer the exclusion of liability for product liability claims to any contractual partners. Recourse of the Principal against the Contractor from claims pursuant to the Product Liability Act (PHG) is excluded. The Principal shall conclude a sufficient insurance policy for product liability claims (minimum insured sum 2 million euros per claim) with global coverage (including USA and CAN) and shall indemnify and hold harmless the Contractor in this regard.

**VIII. Prototype inspection and quality**

1) Unless otherwise agreed in writing by the Principal and the Contractor, the processing service shall be executed under the regulations of ISO9001. Offers only include a sample inspection but not the costs for 100% controls or the drawing up and transmission of inspection certificates. Should such controls be required for ppm minimisation or processing in accordance with IATF 16949 be desired, the Contractor requires further information in writing (including requirements of the target market, possibly agreement

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regarding requalification inspection etc.) in order to be able to calculate the surcharge. The properties of the prototypes accepted by the Principal form the basis for any following deliveries.

**IX. Economic reservations**

1) The prices take into account the prices to be expected for the year stated in the offer. The Contractor reserves the right to make reasonable adjustments to the prices if after conclusion of the agreement or after an order was placed the price level changes (in particular for material, energy and/or labour costs).

**X. Tolerated processing waste**

1. The Contractor shall be granted 2 pieces for adjustment (potential waste) for prototype processing and 2% waste for series  $\geq 50$  pieces/at least 1 piece for very small orders  $< 50$  pieces per order without offsetting raw part costs.

2. This presupposes that the quality of the delivered raw parts is adequate, corresponds to the (latest) state of the art and enables the stable achievement of the design requirements.

3. Waste parts are labelled and returned separately.

**XI. Provision of tools, equipment and machines**

1) The tools, equipment and machines purchased to carry out the order remain the property of the Contractor. Deviating agreements require the written agreement of the Contractor and Principal.

**XII. On-site assembly**

1. Should parts require on-site assembly by the Contractor, this must be agreed in writing by the Principal and the Contractor.

2. The Contractor reserves the right to define reasonable fees for the on-site assembly of components based on the scope of the work, the complexity of the assembly and the associated costs.

**XIII. General provisions**

1. Should a provision of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining contents of this agreement. With regard to the legally invalid provisions, the contracting parties agree to close the gap with a provision that comes as close as possible to the invalid provision and that is standard in the industry. In the event of conflicts between the German and the English versions of these GTC, the German version takes precedence.

2. The exclusive place of jurisdiction for legal disputes concerning all services of the Contractor, including alleged claims of the Principal, shall be the court having subject-matter jurisdiction in 4020 Linz.

3. Any changes or additions to this agreement including the GTC must be in writing in order to be legally binding. A waiver from this written form requirement also requires the written form. It is noted that no side-agreements were made.



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4. This agreement is exclusively subject to Austrian law. Conflict of law provisions of international private law and the UN Convention on the International Sale of Goods (CISG) are hereby explicitly excluded.

5. The Contractor shall not be obligated to store or save printed materials, assemblies, data carriers including the data, films, papers, etc. upon conclusion of the order, unless such a specific agreement has been made with the Principal; in this case, the Principal bears the costs and risks of this storage.

6. Should inventions be generated during the contract work, the Contractor is entitled to have these inventions patented or the design registered, nationally or internationally, at its own expense and at its own discretion. Should the Contractor decide not to register the invention and informs the Contractor [sic.] of this in writing, the Principal is entitled to request that the Contractor submit a patent or registered design; in this case however, the Principal must reimburse the Contractor for all costs, expenses and fees arising in this context.

Nebelberg, March 2024

