



Terms of sale and delivery

of Oberaigner Powertrain GmbH, A-4155 Nebelberg, Daimlerstrasse 1, Austria
in the version dated 16/11/18

These General Terms of Sale have been drawn up fundamentally for legal transactions between companies. If, as an exception, legal transactions are also based on consumers as laid out in Article 1 of the Consumer Protection Act, BGBl. 140/79 (in the applicable version), they will be valid only inasmuch as they do not contradict the compulsory stipulations of the initial major component of this law. Oberaigner Powertrain GmbH is hereinafter referred to as the supplier works or vendor.

I. General points

1. These terms of sale and delivery are a significant constituent of every tender and every contract. They shall apply unless the parties to the contract have specifically agreed otherwise, in writing.
2. Legal binding of the supplier works becomes applicable only upon signature by the company of the tender or upon signature of the contract.

II. Prices

1. Unless specifically agreed otherwise, in writing, the prices are net prices in Euros, ex supplier works, excluding packaging and undiscounted. Price increases as a result of production cost increases (material prices, wages, general expenses, etc.) between the purchase order and delivery shall be invoiced.
2. All incidental costs involved in the contract, such as financing costs, the costs of land-registry safeguarding of the purchase price claim, charges, interest etc. shall be borne by the purchaser.

III. Terms of payment

1. The purchase price is to be paid before delivery (PREPAYMENT), unless agreed otherwise, in writing. All payments to be paid net, free of costs and without deduction. Cheques and bills of exchange are accepted only in the case of special written agreement and only for payment, not in lieu of performance. Collection and discount expenses are to be borne by the purchaser. The vendor can reject payments offered by cheque or bill of exchange, without statement of reasons.

If the payment deadline is exceeded and if the handover is delayed, the supplier works is entitled to charge default interest to a level of 8% above the applicable base rate of the European Central Bank. In the event of non-fulfilment of the contract by the purchaser, the supplier works is entitled to demand either the damages incurred and the loss of profit, or a contractual penalty to a level of 15% of the agreed purchase price.

2. All purchase items remain the property of the vendor until all the obligations of the purchaser arising from the purchase contract have been covered in full. As long as the retention of title is in force, sale, hypothecation and chattel mortgaging must be reported to the supplier works by the purchaser, immediately and by email, and is prohibited without a written approval from the vendor. The purchaser declares his agreement to the fact that all payments which he makes will first be used to offset repair costs, then to cover replacement parts demands, then to cover interest and other ancillary charges, and only then, finally, to be used for payment for the goods covered by retention of title.
3. If the purchase items supplied under retention of title are to be the subject of third party procurement, the purchaser must inform the supplier thereof immediately, in advance, by email and also by means of registered letter, and must support the supplier works in the enforcement of its retention of title, to the extent that one may expect from a diligent business organisation. The enforcement costs are to be borne by the purchaser.
4. The retention of title remains with the supplier works even if the purchase items are mixed, blended, processed or converted in any other way with other objects of the purchaser or third parties.
5. During the period of validity of the retention of title, the purchaser must insure the purchase items to their full value against all risks, including fire. The insurance policies are to be vinculated (placed under transfer restrictions) to the favour of the vendor.
6. During the period of validity of the retention of title, the purchaser is obligated to keep the purchase items in good order and to have any repairs which may become necessary undertaken immediately - with the exception of emergencies - in the vendor's repair workshops or in a workshop recognised by the supplier works.
7. In the event of default of payment, and in the event of an infringement of any other contractual stipulation by the purchaser, there will be a failure to meet the payment target, which entitles the supplier works to immediate withdrawal from the contract.
8. Offsetting of alleged purchaser counter-claims against the supplier works with purchase price instalments or the right of retention against the supplier works is prohibited. In particular, the purchaser is not entitled to retain payments associated with warranty claims or other claims not recognised by the supplier works in writing.

IV. Delivery

1. The delivery periods are non-binding provided that they have not been agreed as being fixed, specifically and in writing.
2. The delivery period starts with the delivery of the base vehicle in the supplier works, but never before payment of the agreed down-payment or the first instalment.
3. In the event of an agreed change to the order, the supplier works is entitled to re-negotiate the delivery period.
4. The supplier works reserves the right to design and form changes during the delivery period.
5. The details in the descriptions concerning output, weight, operating costs, speeds, etc. are to be seen as approximate values. They are not specifically promised product characteristics.
6. Parts removed and used material generated in the event of repairs, conversions, coachbuilding or refits, are transferred to being the property of the supplier works, without the requirement for separate communication of the fact to the customer.
7. Damages claims by the purchaser based on non-fulfilment or because of default are excluded, provided that these conditions are not attributable to wilful or grossly-negligent actions by the supplier works.
8. The supplier works also reserves the right to withdraw from the contract in the event that they become aware of situations in the commercial conditions of the purchaser that make it appear that their demands can no longer be guaranteed.

V. Fulfilment and acceptance terms

1. The delivery is considered to be fulfilled:
 - a) for deliveries ex works:
upon submission of the readiness for shipment statement. The purchaser is obligated to inspect and accept the purchase items immediately upon receipt of the indication of readiness, at the agreed acceptance location - in the suppliers works, unless agreed otherwise. If this acceptance is carried out within a period of 8 days, then the purchase items are deemed to be properly accepted.
 - b) for deliveries with an agreed delivery location:
upon leaving the supplier works.

2. If the purchaser declines the inspection, explicitly or implicitly, then the purchase items is deemed to be properly delivered and accepted upon leaving the supplier works.
3. All risks, including coincidental demise, are transferred to the purchaser at the point of fulfilment, and the purchaser must effect the necessary insurance cover himself, and at his own cost. At this point, the purchase items are considered to be transferred to the authority to dispose of the purchaser, as laid down in Article 6 of the Product Liability Law, and thus are placed on the market. Insurance cover will only be procured by the supplier works if this has been specifically agreed in writing. This also applies to vehicles handed over for conversion or repair, from the point of hand-over to the point of fulfilment. If the supplier works sets a deadline for collection, and if this is exceeded by the purchaser, a storage fee may be charged.
4. Delivery is always ex supplier works to the cost and risk of the purchaser.

VI. Guarantee

1. The supplier works provides the initial purchaser with a guarantee, provided that the payment obligations are fulfilled, covering freedom from faults corresponding to contemporary state-of-the-art technology of the delivered vehicle components in work for:
 - a) single-track vehicles, for a period of 12 months from the date of delivery, but to a maximum total mileage of 6,000 km;
 - b) twin-track vehicles, for a period of 12 months from the date of delivery, but to a maximum total mileage of 10,000 km;
 - c) trucks, buses and tractors, for a period of 12 months from the date of delivery, but to a maximum total mileage of 20,000 km.

The guarantee is excluded if the permissible total weight, the axle pressure, the payload based on the purchase contact, or the chassis carrying capacity is exceeded. The guarantee will be fulfilled, according to the choice of the suppliers works, either by repair of the parts sent in by the purchaser at the cost and risk of the purchaser or by replacement of the same. In all cases, only those parts will be replaced that exhibit a fault in the material or in the workmanship. The wages and costs incurred by the installation and removal are to be borne by the purchaser.

2. This liability does not apply to parts not produced by the supplier works, but the supplier works is prepared to assign the liability due to them by the producer on account of the fault to the purchaser. Glass replacement does not form part of the liability.

3. Guarantee claims will only be considered if they are raised with verification, within a period of eight days of discovery of the fault, with the supplier works or with the official workshop responsible. The compensation arrangement in Article 924 ABGB is excluded. The presence of a fault at the time of acceptance must be proven by the acceptor (purchaser). The guarantee becomes void if the purchaser does not comply with the supplier works regulations concerning handling of the vehicle (operating instructions) and, in particular, if they do not have the inspections stipulated in the customer service booklets issued by the supplier works carried out properly.
4. There is no entitlement to annulment and mitigation.
5. Natural wear and damage attributable to negligence, improper handling and accidents are excluded from the guarantee.
6. The guarantee becomes void if the purchased items are modified by other companies or by the installation of parts of third party origin.
7. No guarantee is provided for used vehicles.
8. No guarantee is provided for repair work.
9. The guarantee obligation becomes void if the goods are sold on during the guarantee period.

VII. Damages and product liability

1. Damages claims are excluded in cases of slight negligence. The injured party must demonstrate the presence of gross negligence.
2. In all cases, however, the reimbursement of damages is excluded as a result of late delivery, consequential losses, indirect or mediated damages, loss of profit, damages arising from production standstill, losses from currency and exchange rates, loss of interest and interest charges. Recourse claims against the supplier works as per Article 12 of the Austrian Product Liability Law or a corresponding stipulation of the product liability statute applicable in each case are also excluded.
3. The purchase items only offer such safety as may be expected based on approval regulations, operating instructions, regulations issued by the supplier works concerning the treatment of the delivery items (operating instructions) - in particular, with regard to the stipulated inspections. The customer is obligated to comply with all of the regulations concerning the purchase items - including those of the manufacturer - and to use the purchase items, including all parts and any possible software, only as intended.
4. All damages claims against the supplier works shall expire within a period of one year, in all cases.

VIII. Development service and its associated rights

If the supplier works is tasked with the fulfilment of any type of development service, then the following more closely explained stipulations apply, in addition to the above stipulations:

1. The rights to the results of the development and, if needs be, the prototypes generated, belong exclusively to the supplier works. This applies in particular to all the copyrights and/or exploitation rights to any schedules, formulae, technical drawings and documentation, and to the knowledge and information gleaned, and, in addition, to the rights to manufacture the results of the development commercially, to bring them onto the market, to reserve them, to use them or otherwise to exploit them.
2. The purchaser is obligated, without time restriction, to comprehensive confidentiality concerning the results of the development and, if needs be, the prototypes generated with regard to third parties and to parties external to the company. He is permitted only to use all the documents generated and the knowledge and information gleaned from them exclusively for the assessment and evaluation of the results of the development, and must refrain from any other use and disclosure to third parties, without exception.
3. If the purchaser desires commercial manufacture or exploitation of the results of the development, a separate written agreement must be drawn up concerning more detailed execution, the scope of the rights to be acquired by the purchaser and the level of licence fees to be paid by the purchaser and any other charges. If needs be, any compulsory licences as laid down in Article 36 of the Patent law, or any other licences or approvals necessary for the exploitation of the results of the development, regardless of whether they are known or unknown, the purchaser must obtain these at his own cost and risk; there is no associated liability or guarantee on behalf of the supplier works, of any kind, and this is explicitly excluded. If a relevant agreement cannot be made between the parties to the contract concerning the exploitation of the results of the development, then the rights as laid down in Para. 1 remain entirely with the supplier works.
4. The purchaser is obligated to collaborate comprehensively with the supplier works throughout the development period, and to cooperate in order to promote, as far as possible, the development service delivery by the supplier works. In particular, the purchaser must immediately make available to the supplier works, upon request, all the information, specifications, schedules and other technical documentation, regardless of form, that the supplier works considers to be necessary or beneficial for achieving as good a result of the development as possible. The supplier works will, of course, handle these documents and information with strict confidence.

5. The supplier works accepts no liability or guarantee of any kind for the technical and commercial usability of the results of the development. It is the sole responsibility of the purchaser to check the results of the development himself for their technical and commercial suitability for the intended purposes, and to decide about their additional exploitation as laid down in Para. 3. The supplier works is not responsible, as a result of the issuing of a development order, for the manufacture of a specific object or the creation of a specific result, but only for the attempt to find an appropriate technical solution for the technical task in question.
6. The supplier works will attempt, if needs be, to fulfil the development activity within the agreed deadlines. If it becomes apparent to the supplier works, during the development activity, that they cannot produce a solution within the agreed time period, they must inform the purchaser accordingly; the parties to the contract will then agree an appropriate extension of the period available to the supplier works, taking into consideration the corresponding estimates provided by the supplier works.
7. If discoveries are made in the course of the development activities, then the supplier works is entitled to have these discoveries protected, according to their own estimation and at their own cost by national and/or international patent law or utility model law. If the supplier works decides not to have the discovery protected, the purchaser is, however, entitled to request the application for a patent or utility model by the supplier works, and, in this case, the purchaser must, however, reimburse the supplier works for all the costs, charges and expenses arising in this regard.

IX. Data protection

1. OBERAIGNER POWERTRAIN GMBH processes the data related to your person for contract fulfilment or for the execution of pre-contractual actions in accordance with Article 6 Para 1 lit. b DSGVO, and for information and marketing purposes in accordance with Article 6 Para 1 lit. a and f DSGVO. We cannot conclude or fulfil the contract with you without this data.
2. It is necessary to forward your person-related data to internal and external service providers for the purposes of contract implementation. The above-mentioned third parties are commissioned as order processors by OBERAIGNER POWERTRAIN GMBH as laid down in Article 28 DSGVO and are obligated to ensure data security in accordance with Articles 24 and 32 DSGVO.
3. Your data will be processed exclusively within the EU.
4. We save the person-related data referring to you exclusively within the framework of legal obligations.



5. Every person who submits person-related data to OBERAIGNER POWERTRAIN GMBH has, in accordance with Chapter III DSGVO, the right to information in accordance with Article 12/13 DSGVO, intelligence in accordance with Article 15 DSGVO, and to the correction or deletion of person-related data and to the limitation of the processing in accordance with DSGVO. In the event of a complaint in accordance with Article 77 DSGVO, you can also consult the relevant authority (Data Protection Authority, Wickenburggasse 8, 1080 Vienna, Austria). Please use the email address datenschutz@oberaigner.com to satisfy your data subject rights. We will process your request in good time after successful identity verification.

X. Final provisions

1. The supplier works is entitled to forward customer details to third parties commissioned by the supplier works, provided that it is necessary for the fulfilment of the order.
2. If any of the individual stipulations should become ineffective, this does not have any effect on the remaining stipulations. The parties are obligated to replace the ineffective stipulation by an effective stipulation that is as close as possible to the original in sense and purpose.

XI. Place of jurisdiction

The place of jurisdiction is the competent court in the location of the supplier works. Austrian Law applies, to the exclusion of UN Sales Convention.