

GENERAL TERMS AND CONDITIONS

of the
"Optimist" Handelsgesellschaft m.b.H.

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1 Scope of Application

- 1.1 Unless expressly agreed otherwise in writing, the present General Terms and Conditions (in the following referred to as „T&C“) shall apply to all present and future transactions between us and our contractual partner.
- 1.2 Our contractual partner accepts that - in case he uses T&C – our terms are applicable in case of doubt, even if the terms and conditions of the contractual partner remain uncontradicted.
- 1.3 Actions performed by us in fulfillment of the contract shall not be considered to a consent to contractual terms deviating from our T&C. Should any uncertainties remain when interpreting the contract, those have to be so resolved in a way that those contents shall be deemed agreed upon that are commonly agreed upon in comparable cases.

2 Offer

- 2.1 Our offers are non-binding. The contract shall only be considered concluded when a written order confirmation was sent by us or as soon as we commence to fulfill the contract in accordance with our offer.

3 Protection of Plans and Documents / Confidentiality

- 3.1 Plans, drawings, cost estimates or other documents, such as prospectuses, catalogues, samples, presentations and similar, remain our intellectual property. Any use, in particular any forwarding, duplication, publication and making available, including the establishment of copies, be it only copies of parts of the documents, requires our express consent.
- 3.2 All documents mentioned above may at any time be demanded back by us and have, in any case, to be immediately returned to us unsolicitedly if the conclusion of the contract fails.
- 3.3 Apart from that, our contractual partner undertakes to keep the know-how he gains knowledge of due to the business relationship secret vis-à-vis third parties.

4 Price (Purchase Price, Work Wages)

- 4.1 Unless otherwise agreed, we are entitled to invoice the work performance to be provided by us in accordance with its occurrence and the expenses incurred by us in connection therewith. For each working hour, including travel time, EUR 50.00 are charged. Commenced hours, also such of travel times, are invoiced as full hours.
- 4.2 The contractual partner accepts that invoices issued to him are also generated and sent electronically.
- 4.3 In case that no justified objection is introduced against our invoice within 2 weeks in writing, the invoice shall be deemed approved.
- 4.4 We are expressly entitled to also draft partial invoices, provided that the service is performed in parts.

4.5 All prices indicated by us are to be considered as prices excluding value added tax, unless otherwise expressly indicated. In case of settlement, the statutory value added tax shall be added to these prices.

5 Indexation clause

5.1 The stability of value of the claim, including the ancillary claims, shall be expressly convened. The Consumer Price Index of 2015, published on a monthly basis by the Statistik Austria, or any other index replacing such is used to calculate the stability of value.

5.2 The index figure calculated for the month of the conclusion of the contract shall serve as reference value for this contract. Upward and downward fluctuations of the index figure of up to 3 % (exclusively) remain unconsidered and are only invoiced as regards the complete amount in case this margin has been exceeded. Any exceeding of this margin, up or down, requires recalculation of the margin, the first index figure ranging outside of the respectively applicable margin always forming the basis not only for the new establishment of the amount claimed but also for the calculation of the new margin. The amounts resulting thereof have to be commercially rounded to one decimal place.

6 Payment Conditions (Maturity, Partial Payment, Discount)

6.1 The purchaser/principal undertakes to already entirely pay the purchase price/work wages upon conclusion of the contract.

6.2 The payment shall only then be considered in time if the amount is received by us or, respectively, credited to our account on the maturity date.

6.3 Should the purchaser/principal not pay a partial payment within the payment deadline convened for an eventual deduction of a discount, be it only one, he loses his right to claim a discount not only regarding this partial payment but also regarding all partial payments already paid or to be paid later on.

6.4 Even in cause of default in payment of the purchaser / principal without his fault, we are entitled to annually charge default interests amounting to 10 % above the base rate.

7 Transportation – Assumption of Risk

7.1 The risk is transferred to the purchaser upon selection and provision of the delivery. If desired by the purchaser, we organize transportation. Transportation (including the loading) is carried out at the risk and the expenses of the purchaser. We are free to choose the type, the route and the carrier, unless the purchaser timely expresses special desires. Upon receipt of the delivery, the purchaser has to immediately direct complaints in connection with the transportation to the last freight carrier. At the request and at the expenses of the purchaser, we obtain insurance against the common risks of transportation for the deliveries in accordance with his instructions.

7.2 Should the risk be transferred differently than described under point 7.1 due to a separate agreement to the contrary and should the transfer of risks be delayed for reasons for which we do not exclusively bear responsibility or should the purchaser fall into default of acceptance, the risk shall be transferred to the purchaser pursuant to point 7.1 . Upon occurrence of the delay, the delivery shall be stored at the expenses and at the risk of the purchaser. We are entitled, but not obliged, to have the stored delivery insured at the expenses of the purchaser. The purchaser shall only then have the right to claim delivery if he has reimbursed us all expenses, costs and fees connected with its storage and an eventual insurance and if he has paid us an adequate compensation for the expenses connected therewith.

7.3 If events in the sense of point 7.2 substantially change the economic significance or the content of a delivery or if events adversely affect our business, we are entitled to withdraw from the contract and claim damages.

7.4 The provisions of this point 7 shall also apply per analogy in case that products are made available by way of loan or lease.

8 Retention of title

- 8.1 The goods remain our property until the purchase price and all costs and fees are entirely paid. It shall only be permissible to resell them if we were notified thereof in time beforehand indicating the name or, respectively, the company name and the exact business address of the purchaser and if we consented in the sale. In case of our consent, the purchase price claim shall be deemed assigned to us and we are at any time entitled to inform the third-party debtor of this assignment. In case of several claims on our part, payments of the debtor shall primarily be allocated to such of our claims that are not secured by a retention of title or any other means of security (anymore).
- 8.2 In case of default, we shall be entitled to assert our rights resulting from the retention of title. It is convened that the assertion of the retention of title shall not be considered as withdrawal from the contract, except we expressly declare to withdraw from the contract.

9 Performance and Default

- 9.1 Place of performance shall be the seat of our enterprise not only for our services but also for the counter-performance.
- 9.2 All delivery deadlines are non-binding, unless agreed upon otherwise. Minor exceedances of the delivery deadlines have to be in any case accepted by the purchaser/principal, without being entitled to claim damages or invoking its withdrawal right.
- 9.3 Should our contractual partner be in default of acceptance, we are entitled to store the goods at our site for which we are entitled to charge a storage fee of EUR 100.00 for every commenced calendar day.
- 9.4 The provisions of this point 9 shall also apply per analogy in case that products are made available by way of loan or lease.

10 Unilateral Modifications of Services

- 10.1 The purchaser has the right to withdraw from the contract without indicating any grounds (sec. 909 of the Austrian Civil Code; ABGB) against payment of a cancellation fee (a fine) of 20 % of the purchase price/work wage.
- 10.2 Objectively justified and adequate modifications of our service or, respectively, delivery obligation, in particular adequate delivery deadline or short-term exceedances of the payment deadline on our part, shall be considered approved in advance.
- 10.3 Objectively justified and minor modifications that do not concern the price may be made by us. This shall in particular apply to such exceedances in the delivery deadline. As soon as the exceedance of the delivery deadline can be effectively estimated, however a week before the initially convened delivery date, we will notify the contractual partner on how long the delay may last.

11 Warranty

- 11.1 Apart from those cases in which the right to exchange exists by law, we reserve the right to meet the warranty claim resorting to repair, replacement or price reduction, the choice of which is ours.
- 11.2 The acquirer always has to prove that the defect has already existed at the time of handover.
- 11.3 The goods have to be verified immediately after delivery. Any defects detected thereby also have to be notified immediately to the seller, but within 7 days after delivery at the latest, indicating the nature and the extent of the defect.
- 11.4 Hidden defects have to be notified immediately after they have been detected. Should a defect not be notified or not be notified in time, the goods shall be deemed approved of. The assertion of any warranty or damage claims as well as the right to void the contract on the grounds of error for defects shall be excluded in these cases.
- 11.5 The warranty period shall be 12 months upon delivery/service.

11.6 The right of recourse pursuant to sec. 993b of the Austrian Civil Code (ABGB) is excluded.

12 Claims for Damages and Product Liability

12.1 Claims for damage in case of slight negligence are excluded. This shall not apply to personal damages. Claims for compensation become time-barred within 12 months upon knowledge of the damage and the author of the damage, in any case however within 10 years after the service or the delivery has been performed.

12.2 Subject to any mandatory legal provisions and the provisions expressly mentioned under point 12.1, all rights and claims of the contractual partner – arising out of any legal reason whatsoever – against us, our bodies, shareholders, employees, associated companies, representatives or vicarious agents, sub-contractors, suppliers and appointees shall be excluded, to the extent permissible by law. This exemption shall in particular be valid for claims resulting from loss of production, damage occasioned by delay, downtime, loss or deterioration of data or data carriers, costs of restoration of lost or deteriorated data, loss of profit or any other damages of direct or indirect nature, even if the possibility of such a damage was expressly pointed out to us.

12.3 Enforceable claims of the contractual partner are limited to the counter value of the amount which was paid to us as remuneration for our services by the contractual partner during the preceding 6 (six) months.

12.4 Any recourse claims the contractual partner or third parties may direct against us arising out of the title of “product liability” in the sense of the Austrian Act on Product Liability (PHG) are excluded, unless the person entitled to such recourse claims proves that the error was caused in our sphere und was caused at least grossly negligently.

13 Offsetting and Right of Retention

13.1 Offsetting counter-claims against our claims is excluded, unless they are expressly recognized by us or unless they were established by the court.

13.2 Justified complaints do not entitle to invoke a retention right regarding the entire but only regarding an adequate part of the invoiced amount.

14 Miscellaneous

14.1 All agreements, subsequent modifications, additions, side agreements etc. require the written form to be valid, thus also the original signature or the secure electronic signature.

14.2 Austrian substantive law shall be applicable to these T&C and to all transactions, these T&C apply to; the application of the UN sales law shall be excluded.

14.3 For all decisions regarding all disputes arising out of contracts, which these T&C apply to, the court having jurisdiction *ratione materiae* at the seat of our enterprise shall also be locally competent. We shall however have the right to also sue at the place of general jurisdiction of the contractual partner.

15 P.O.P Trainer(s) at Events

15.1 In case we make P.O.P. trainers available on a loan basis at congresses and other events for training and presentation purposes, those have to be positioned prominently at the event and in a way that is easily accessible.

15.2 In all event-related advertising media, the contractual partner has to point out in a prominent place the possibility to test the P.O.P. trainers, their application as well as the possibility to buy such via our website. We are entitled to lay out sales documents (prospectuses, order forms etc.) at the events in direct proximity of the P.O.P. trainers. The contractual partner has to immediately forward all requests of potential purchasers to us.

15.3 Upon our request, the contractual partner has to provide us at least 2 entry tickets to the event free of charge.

- 15.4 The contractual partner has to grant us access to the event location from 12:00 noon at the day preceding the event at the latest, so that we can prepare the P.O.P. trainers for operation.
- 15.5 If we also provide organ preparations for the training with the P.O.P. trainers at the event, this is made against payment of an adequate remuneration.
- 15.6 Should we - in the course of the event - make available persons for set-up and dismantling of the P.O.P. trainers or also make available tutors who assist and instruct event visitors when using the P.O.P. trainers, this is made against payment of a hourly rate by the contractual partner pursuant to point 4.1 or of an individually agreed upon higher remuneration as well as against reimbursement of all adequate costs and expenses (travel costs, costs for board and lodging etc.).
- 15.7 The contractual partner shall only then be entitled to claim a remuneration for its services provided to us in the course of the events, in particular for the granting of the right to present the P.O.P trainers at the event, if such was expressly agreed upon.
- 15.8 For all damages (also for incidental damages) of the P.O.P. trainers or caused through the P.O.P. trainers (e.g. due to dysfunctions) in the course of the event (including transportation damages), the contractual partner shall be exclusively liable, unless the damages were culpably caused by us or by persons commissioned by us.