

GENERAL DELIVERY AND PAYMENT TERMS OF OCTO ACTUATORS GMBH

§ 1

General

- (1) Quotations and deliveries are made and services performed exclusively in accordance with the following terms and conditions, which constitute an essential part of every quotation and contract..
- (2) Contrary terms and conditions of business and purchasing conditions of the customer are only binding upon us when expressly acknowledged in writing.
- (3) Provided that no contrary conditions have been agreed, we are bound by the quotation for a period of one month, beginning with the receipt of the quotation.
- (4) We shall inform the customer in writing of amendments to these terms and conditions. They shall be deemed to have been accepted should the customer not object in writing. We will draw attention to this consequence when notifying amendments. The customer must send us his objection within one month of the notification of the amendments.

§ 2

Scope of the delivery, overseas transactions

- (1) The scope of and / our delivery or our service shall be governed by the written order confirmation. Should a quotation binding for a particular time be accepted within the time limit and should no order confirmation have been received on time, this quotation is binding. Side agreements and amendments also require our written confirmation to be valid.
- (2) Changes in the implementation of the order which promote technical improvement and which do not increase the price are permissible.
- (3) Documents forming part of our quotations, such as samples, diagrams and drawings as well as information on weight and size serve, unless expressly specified as binding, only as approximations. We retain rights of ownership and copyright to cost estimates, drawings and other documents. These documents may not be made accessible to third-parties without our consent.
- (4) The parts delivered correspond to the standards and regulations prevailing in the Federal Republic of Germany. We give no warranty that possible foreign third party industrial property rights are not infringed by our products. The customer is responsible for any testing and acceptance of the parts delivered in accordance with foreign standards and regulations which may be necessary. Should such tests be performed in our factory they shall be performed at the customer's expense by acceptance companies licensed for this purpose in Germany.

§ 3

Prices

- (1) Our prices are ex factory prices. We accept no guarantee for the usage of a particular kind of packaging desired by the customer.
- (2) Turnover tax at the currently prevailing rate shall be added to the prices for goods delivered and services performed within Germany.
- (3) The prices confirmed by us in writing are valid. Relevant increases in prices and costs or wage increases occurring between this confirmation and the delivery entitle us to raise the price to the extent of these increases.
- (4) Should nothing to the contrary have been expressly agreed, our invoices are payable net and without deduction of costs within 30 days of the invoice date.

- (5) Payments of foreign transactions shall be made either by means of a bank guarantee or by irrevocable letter of credit, confirmed by a bank. In addition, we also have the right, or reserve the right, to demand pre-payments.
- (6) In the event of payment arrears and until payment is actually received, we will charge interest at the rate of 8% over base rate.
- (7) The customer waives his right to withhold payment, deriving both from a current contract as well as from earlier or other transactions. The setting-off of counter-claims is only permissible to the extent that such claims are acknowledged by us and due for payment or have been established in law.
- (8) All levies, fees, taxes and costs for technical inspection etc. on deliveries abroad are payable by the customer. This shall also apply to the costs of the validation of certificates of origin, consular invoices etc. which may be required.

§ 4

Delivery periods and dates

- (1) Unless delivery dates given have been specified as firm dates, we will use our best efforts to keep to the dates given.
- (2) The delivery period shall begin with the issue of the order confirmation or with the date given in it; not however before the customer has procured documents, permits, approvals he is required to produce and before any agreed pre-payment has been received.
- (3) The delivery period shall be deemed to have been kept when the object to be delivered leaves the factory or we have notified our readiness to deliver before the expiry of this period.
- (4) Should, exceptionally, our supplier not have delivered goods properly or on time and this situation not be our fault, we shall endeavour to agree a new and appropriate delivery date with the customer. We reserve the right, should it not be possible to reach an agreement with the customer, to partially or completely annul the contract.
- (5) Part shipments are permitted.
- (6) Unforeseen events, both in our factory and in third-party operations upon which the manufacture and / or the transport of the object to be delivered are to a significant degree dependent and which are not the result of intent or gross negligence on our part, such as, for example, industrial disputes, war and civil disorder, intervention by public authorities, transport bottlenecks, shortages of raw materials and energy as well as all major fire, water and machine damage, relieves us, having immediately informed the customer accordingly, of the obligation to keep to the delivery period. The delivery period shall then be extended accordingly. Should, as a result of the circumstances described, the delivery or the service become impossible or unreasonable, we shall be relieved of our obligation to deliver.
- (7) Provided that neither we nor our agents have infringed essential contractual obligations nor acted with intent or gross negligence, the customer may not derive claims for compensation from the fact that the delivery period has been extended or we have been relieved of the obligation to deliver.
- (8) Should the delivery be delayed on account of actions on the part of the customer and after a grace period of one month has elapsed since notification that the order is ready for shipment, he will be invoiced with the storage costs incurred. We are moreover entitled, at our option, after an adequate grace period has been set and has expired without positive results, to dispose of the object to be delivered in some other way and to deliver the order to the customer after an appropriately extended period.

§ 5

Transfer of risk and acceptance

- (1) Risk shall pass to the customer at the moment the parts ordered are shipped ex work/ex warehouse. The same shall apply should part shipments be made or should we have assumed other services, e.g. shipping costs or the transport of the goods. This shall also apply when the delivery is carried out with our own vehicles or when the service is performed within the same location.
- (2) In the event of delivery free destination, the unloading of the equipment from the transport vehicle and the disposal of the packaging supplies are not part of our services.
- (3) Should the dispatch of the goods be delayed due to circumstances which are the responsibility of the customer, risk shall be pass on the day the goods are ready for shipment.
- (4) Notwithstanding the rights contained in § 7, objects delivered shall be accepted by the customer, even when they show minor defects.
- (5) Unless any special agreement has been made, we are free to choose the method of transport, the routing and the packaging material used.
- (6) We shall insure the shipment on the customer's written instructions in his name and for his account against theft, breakage and transport, fire and water damage.

§ 6

Reservation of title

- (1) The objects delivered remain our property until all claims arising from the business relationship with the customer are fully paid (reserved goods). Should a current account be maintained, reservation of title shall serve to secure our net outstanding receivables. This shall also apply when payment of specified receivables is made. Should we have entered into contingent liabilities in connection with a shipment (e.g. bill of exchange or cheque), reservation of title shall not end until all commitments entered into have ended.
- (2) Pledging or the collateral assignment of the reserved goods to third-parties is not permitted. In the event of the attachment or other impairments of our rights by third-parties, the customer shall expressly draw attention to our reservation of title and shall notify us immediately.
- (3) The treatment or processing of the reserved goods occurs on our behalf as manufacturer within the meaning of § 950 of the German Civil Code (BGB), without any obligations on our part. The processed goods shall be deemed reserved goods within the meaning of this provision. In the event of the processing or the combination of the reserved goods with other objects by the customer, we have rights of co-ownership in the new product equivalent to the share of the invoice value of the reserved goods to the invoice value of all other objects used (including the reserved goods). Should our title be eliminated as a result of combination or processing, the customer transfers to us with immediate effect his title to the new stock or the new object up to the value of the invoice value of the reserved goods. He shall store the goods on our behalf at no cost. Rights of co-ownership thus created shall be deemed to be reserved goods within the meaning of this paragraph.
- (4) The customer is only entitled to re-sell or otherwise dispose of the reserved goods when he has purchased them from us for purposes of re-sale and provided that the re-sale occurs in the course of his normal business activities at his normal terms and conditions and provided that he is not in arrears in his obligations to us. The customer herewith assigns all claims to us, including possible securities, up to the value of our claims against him arising from the re-sale. Should the reserved goods be sold together with other goods which are not our property, this assignment of claims from the re-sale shall be valid up to the value of the reserved goods. Should the customer re-sell reserved goods which were processed or combined with other goods which are not our property, the assignment shall apply up to the value of our share of the co-owned property.

- (5) The customer is entitled, subject to revocation on our part, to collect receivables arising from the re-sale. This entitlement to collect the receivables may be revoked should the customer not properly fulfil his payment obligations. The customer is required, should we demand this, to inform his customers of the assignment in our favour and to make all information and documents necessary for collection available to us. We are moreover entitled, at the customer's expense, to disclose the assignment to his customers. Our receivables shall become due immediately should the customer re-sell goods without entitlement.
- (6) We are required, should the value of securities held by us exceed our total receivables by more than 20%, at the request of the customer or of a third-party affected by our excess of securities, to release securities of our choosing accordingly.
- (7) In the event of conduct by the customer which is not in conformity with the contract, particularly arrears of payment, and after having issued reminders and set an adequate period for payment, we are entitled to recover the object delivered and the customer is required to return it at his own cost. The assertion of retention of title and the recovery of the object delivered shall only constitute an annulment of the contract should we expressly declare this to be so. We are also entitled, should the customer not fulfil his obligations and paying the greatest possible regard to the customer's interests, to sell the reserved goods at a time of our choosing and without resorting to action through the courts. The sale may only take place when we have given the customer at least 14 days prior warning of our intention.
- (8) Should the validity of reservation of title be subject outside the Federal Republic of Germany to formalities or other conditions or legally not be possible, the customer shall ensure that we are granted suitable security.

§ 7

Warranty, reporting of defects, liability

- (1) We assign herewith to the customer our claims against suppliers of essential products not produced by us. The customer may only make us liable for defects in such major products, when attempts to assert these claims in the courts against the outside supplier have previously failed.
- (2) Provided that no other arrangements are agreed in the contract, we give warranty only for technical data confirmed in writing. Particular properties shall only be deemed to have been assured when we have confirmed this assurance in writing.
- (3) The customer shall inspect the goods immediately upon receipt and report possible defects or shortages in writing within two weeks. Defects discovered later shall be reported to us immediately by letter or by fax.
- (4) No warranty will be accepted for damage resulting from inappropriate or improper use.
- (5) We fulfil our warranty conditions in that, at our option and at our reasonable discretion, we repair or replace those parts which are proved within the warranty period, due to circumstances arising before risk has passed – especially on account of a faulty method of construction, poor materials or unsatisfactory manufacture - to be unusable or considerably impaired in their use. Replaced parts become our property. We are only liable for essential parts not supplied by us to the extent that we have warranty claims against the suppliers.
- (6) Warranty begins on deliveries made by us at the time our readiness to ship is notified.
- (7) Provided that our senior management employees and agents are not guilty of intent and / or gross negligence, all further claims, irrespective of their legal justification, including especially the assertion of consequential damage claims, are excluded. Provided that we are not guilty of intentionally causing the damage, compensation for pure pecuniary losses such as loss of output, reduced output or foregone profit shall be limited by the general principles of good faith, for instance in cases of a disparity between the price of the article delivered and the size of the damages. We bear the burden of proof for the facts justifying exclusion or limitation of liability.

The above provisions shall not apply to cases in which we are liable under the Product Liability Law for personal and property damage to objects used privately caused by defects in the object delivered as well as the absence of qualities expressly guaranteed by us when this assurance was intended to secure the customer against damage not arising to the object delivered itself.

§ 8

The customer's right to rescind the contract

- (1) The customer may rescind the contract if we are finally unable to perform the complete service before risk has passed.
- (2) Should impossibility or inability of performance occur during a delay in the acceptance of the delivery or due to a fault on the part of the customer, he shall still be obliged to perform his side of the contract.
- (3) The customer shall also have the right to rescind the contract if a reasonable period of grace set by him for the repair and / or the delivery of replacement parts necessitated by a defect within the meaning of this contract for which we are responsible expires without results for reasons for which we are also responsible. The customer also has the right to rescind the contract when we are unable or unwilling to repair or deliver replacement parts.
- (4) Should a delay in performance have occurred within the meaning of § 4 of the delivery conditions and should the customer grant the supplier responsible for the delay an adequate period of grace, expressly stating that he will reject the delivery after the expiry of this period, and should the period of grace not be kept, the customer is entitled to rescind the contract.
- (5) Provided that the defects can be adequately repaired, all further warranty rights on the part of the customer, in particular those of a price reduction or the cancellation of the sale, are excluded. Attention is drawn with respect to further claims to the general liability clause in § 10.

§ 9

Our right to rescind the contract

- (1) We are entitled to partially or completely rescind the contract should unforeseen circumstances within the meaning of § 4 sections 6 to 8 arise and should these considerably change the commercial significance or the contents of the service to be performed or have a significant impact on our operation. The same shall apply should it subsequently become clear that it is impossible to fulfil the contract.
- (2) Claims for compensation on the part of the customer as a result of such a rescission are excluded. We are required to inform the customer immediately, should we wish to make use of the right of rescission.

§ 10

Liability

- (1) Provided that neither we, nor our senior management employees nor our agents are guilty of intent or gross negligence or of the infringement of an essential obligation and provided that the preceding clauses do not contain special provisions, compensation on the part of the customer is excluded, irrespective of the legal justification (for example, due to non-fulfilment, impossibility of fulfilment, active breach of an obligation and infringement of obligations at the time the contract was negotiated, an unlawful act, equalisation between jointly and severally liable debtors, failure to fulfil or inadequate fulfilment, subsequent improvements etc.). The exclusion of liability extends to all sorts of claim such as personal, property and pecuniary damage. In cases of pecuniary damage, compensation for lost production output and foregone profit is particularly excluded. Other provisions shall only apply when circumstances requiring insurance cover are present and our third-party liability insurance, upon which the general liability conditions are based, relieves us, up to the sum insured, of liability. We shall inform the customer of the sum insured under the third-party liability insurance when requested to do so.
- (2) Should we be liable under mandatory statutory provisions for damages incurred due to minor negligence, the amount of our obligation to pay compensation is limited to the sum insured under our third-party liability insurance.
- (3) We are available to the customer for the supply of information and advice according to the best of our knowledge. We shall however only agree a consultancy contract in writing and in return for a separate fee.

§ 11

Place of fulfilment and place of jurisdiction, applicable law

- (1) The place of fulfilment for all liabilities deriving from this contract is Grünsfeld.
- (2) Should the customer be a general merchant, a public law legal entity or a legal entity of public law special assets or have no domestic general place of jurisdiction, the place of jurisdiction for all disputes arising from relationships between ourselves and the customer – also for litigation relating to bills of exchange and cheques – is Grünsfeld,. We are also entitled to initiate litigation at the customer's head office.
- (3) The contractual relationships are subject solely to the law of the Federal Republic of Germany. The uniform laws for the international sale of movable goods and relating to the conclusion of such contracts of sale shall not be applicable.

§ 12

Saving clause

Should individual clauses of the above or parts thereof be or become invalid or should a contract concluded on the basis of the general purchasing conditions reveal an omission, this shall not entail the invalidity of the remaining clauses or parts thereof. An arrangement shall rather apply which, to the extent that this is legally possible, most closely approximates to what the parties concluding the contract intended or would have intended in context of the meaning and purpose of this contract had they considered the point.