

GENERAL TERMS AND CONDITIONS OF SALE FOR THE BUSINESS PARTNERS OF OCTOGON GMBH (A LIMITED LIABILITY COMPANY)

Effective: March 2019



In these general terms and conditions of sale, the term 'contract' refers to the agreement between octogon GmbH (a limited liability company), Peter Tunner-Straße 19, 8700 Leoben, Austria, VAT number: ATU73792602 (hereinafter referred to as 'Supplier') and the purchaser. The agreement is the result of an order placed by the buyer who purchases goods from the supplier. These conditions of sale apply to all such contracts unless they have been modified or excluded with the express written consent of the supplier. The applicability of general terms and conditions set up by the buyer is excluded in any case, regardless of whether or not the supplier has expressly rejected them or not. Should the contractual partner's terms and conditions mention articles, which are not covered in this contract, then only the relevant dispositive law shall be applied and in no case a condition of the contractual partner's contract that deviates from this shall be applied.

1. Offers

- 1.1. Offers as well as prices, specifications and delivery dates in the supplier's offers are only non-binding information and only bind the supplier if all technical requirements have been agreed on and the supplier has accepted the buyer's order. Offers lose their validity if they have not been accepted by the buyer within 60 days and only if no shorter period is specified in the offer.
- 1.2. The period of validity of limited offers in the supplier's online sales portal is made visible there (special offers area). Despite careful stocking, it can happen that items sell out faster than expected. The supplier therefore does not issue a delivery guarantee for these items. The following applies: Offer good, while supplies last. A contract for the unavailable goods is not concluded.

2. Orders

- 2.1. All orders must be placed in good faith, binding, and contain precise prices and quantities as well as agreed on delivery dates. An order only obliges the supplier if it has been accepted by the respective party in writing, regardless of whether the order was submitted because of the supplier's offer or not. Orders placed by customers in the web shop on the internet are an offer asking the supplier to conclude a purchase contract. This must first be accepted by the supplier sending an electronic order confirmation to the buyer, whereby the written order confirmation is decisive for the scope of the supplier's services. The decision as to whether the supplier accepts an order is at the supplier's discretion. Place of fulfillment for deliveries and payments (also for bills of exchange and checks) is Leoben. An order is considered accepted by the buyer if he does not expressly state in writing that he does not agree to the conditions of the order confirmation within 14 days of the delivery of the order confirmation from the supplier, even if it differs from the original order resp. mail order. In any case, the conditions in the supplier's order confirmation apply to the order resp. mail order.
- 2.2. The General Conditions of Sale only apply to entrepreneurs (refer to § 1 KSchG [EPA]).
- 2.3. The supplier's employees are not entitled to make additional agreements or to give assurances that go beyond the content of the concluded contract. The content of the order confirmation of the supplier

determines its performance obligation.

3. Prices and taxes

Prices are ex-factory, including shipping at the supplier, but excluding packaging, packaging fees, insurance, and taxes, especially VAT, and transport costs. These costs and charges can be added to the sales price at the supplier's discretion or they can be invoiced separately and are to be paid by the buyer.

4. Shipping and delivery, delay and failure to deliver

4.1. Deliveries are made FCA (Free Carrier), octogon GmbH, Peter Tunner Straße 19, A-8700 Leoben, Incoterms 2010. Unless the buyer issues a different instruction in writing with his order, octogon GmbH will arrange for the goods to be transported by a transport company. The goods are transported at the buyer's risk and the buyer bears the transport costs (calculated based on the net order value).

4.2. The risk of loss and damage to the goods is demised to the buyer as soon as the goods (cleared for export if necessary) have been loaded onto the means of transport provided. This also applies if partial deliveries are made or we have taken on other services (e.g. shipping or assembly).

4.3. In the event of delay and non-delivery, the supplier is only liable if a reasonable grace period set by the buyer has passed without the supplier having fulfilled his obligations. The supplier's obligation to compensate the buyer for delay or non-delivery is limited to 0.5% for each entire week in which the delay occurred, but in any

case, to a maximum of 5% of the part of the total delivery that is subject to such delay or such non-delivery. Meaning it only affect the parts of the delivery which could not be used in a timely manner or not in accordance with the contract. This limitation does not apply if the delay or non-delivery was caused intentionally by the supplier.

4.4. The supplier reserves the right to make partial deliveries and to invoice each partial delivery separately.

4.5. In the event of partial non-fulfillment, a withdrawal from the contract is only possible if the buyer can prove that the partial service is not of interest to him. In other cases, the buyer can only demand a reasonable discount of the purchase price.

4.6. If neither party is responsible for the non-delivery, the supplier is entitled to partially appropriate remuneration for the work performed. If the completion of the contract becomes impossible after the buyer has refused to accept it, or if the buyer is responsible for the non-delivery, the buyer is still obliged to pay the purchase price.

4.7. All other claims are subject to items 5, 10 and 12.

5. Unpredictable events

5.1. The supplier is not liable for delay or non-delivery, regardless of whether these occur in relation to the entire service or parts thereof, if they are based on an unforeseen event beyond the control of the supplier, in

particular war, failure or delays in means of transport, state acts, judicial acts, labor disputes, accidents, fire, explosion, storm or other acts of force majeure, lack of manpower, fuel, raw materials or machinery or technical failure if the supplier takes due care to avoid the aforementioned events as far as possible. This provision also applies if such an unforeseen event occurs at a subcontractor of the supplier. If such an unforeseen event occurs, the supplier is entitled to distribute the goods produced among his customers.

- 5.2. If the delivery is delayed at the request of the buyer or is delayed due to circumstances beyond the control of the supplier, the buyer will be charged for the storage costs from the beginning of one month after the notification that the products are ready for delivery. In the case of storage at the supplier, at least 0.5% of the amount invoiced for each month of storage. However, after a reasonable period set by the supplier, the supplier may otherwise dispose of such products, deliver to the buyer at an appropriate later date, withdraw from the contract or demand compensation.

6. Passage of risk and change of ownership

- 6.1. The risk of loss of the products passes to the buyer when the products leave the delivery point of the supplier or his sub-suppliers, even if the delivery is made in installments or the supplier has agreed on to provide other services such as deliveries or transport, installation or documentation. The buyer is responsible for his own transport insurance. If delivery is delayed for reasons for which the buyer is responsible, the risk of loss passes to the buyer at the time the buyer has been informed that the products are ready for delivery.
- 6.2. Without prejudice to the transfer of risk in accordance with Section 6.1, ownership of the products is only transferred to the buyer when the supplier has received full payment of all main and ancillary claims for the products. This retention of title also serves as security for all remaining claims from the previous business relationship until they have been paid in full. The buyer is authorized to use the delivered products in the normal course of business or to resell them, but is not entitled to assign or pledge these products to third parties before all of the above-mentioned claims have been settled in full. To further secure all claims of the supplier, the buyer shall in advance assign all his claims to the supplier until all claims, connected to the contract that is subject to these general terms and conditions of sale, have been paid in full. This includes all claims arising from the resale of the products delivered by the supplier or any other claims made by his customers resp. purchasers regarding these products.
- 6.3. Until the ownership changes: (a) the buyer must insure the products against theft, destruction, damage by fire and water and against any other damage. If the buyer fails to prove that the products have been insured, the supplier has the right to insure the products at the buyer's expense; (b) the products are to be kept in good, orderly condition and functional; (c) the buyer must ensure that the

products are not subject to any mortgage, encumbrance, lien or other security of any kind, regardless of how they were created or arose. The buyer may neither use nor assign the products as security. The buyer must refrain from all other actions that could affect ownership of the products. If the products, which have not yet officially changed ownership to the buyer, are attached or confiscated or in any way recovered or accessed by a third party, the buyer must notify the supplier immediately.

- 6.4. The supplier has the right at any time to offset payments by the buyer, regardless of any allocations or provisions of the buyer, against all outstanding claims against the buyer. The selection of the respective claim remains the responsibility of the supplier.
- 6.5. Until ownership of the products passes to the buyer, the supplier has the right to refuse delivery if the buyer becomes insolvent or insolvency proceedings have been initiated against the buyer, if such proceedings are rejected due to lack of assets, or (if the buyer is a company) if the buyer has gone into liquidation that is subject to a comparable circumstance under foreign law.
- 6.6. If the buyer is in breach of contract, in particular is in default of payment, the supplier can demand the return of the products. Such withdrawal of the products by the supplier does not constitute a withdrawal from the contract.
- 6.7. If the products, which have not yet become the property of the buyer, are treated or processed or mixed or

blended with other goods, the supplier acquires ownership of the new goods produced by the treatment or processing to the extent that the value of the products, the ownership of which was reserved, is included in the value of the new goods at the time of treatment or processing.

7. Terms of payment

- 7.1. Each delivery represents an independent transaction. The buyer will be billed on the day of delivery. Unless otherwise noted on the supplier's invoice, the payment term is 30 (thirty) days from the invoice date without any deductions. If the buyer does not pay even after a reasonable grace period set by the supplier has expired, the buyer shall have to pay interest on the outstanding amount in accordance with § 1333 (2) of the General Civil Code, but at least 10% or, if this is higher, at the rate of interest which the supplier has to pay to his bank for an overdraft that has actually been drawn upon at this point in time. The right of the supplier to demand compensation for any further damage remains unaffected.
- 7.2. If the buyer has given the supplier an e-mail address, the latter may only send his invoices to the buyer in electronic form to this address, provided these electronic invoices meet the legal requirements.
- 7.3. The buyer may not refuse payment or declare offsetting due to counterclaims that are disputed by the supplier and have not been confirmed by a final judgment.

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- 7.4. If the buyer has not paid in accordance with the contract, the supplier can set a reasonable grace period and, if the buyer has still not paid after the grace period has expired, he can either insist on further payment or withdraw from the contract, but in any case, demand compensation.

8. Goods

The supplier may change specifications as long as the change does not impair the performance of the products to be delivered under the contract or in any other way does not inappropriately affect the interests of the buyer. In the same circumstances, the supplier may use appropriate substitutes for materials that are not available from sub-suppliers due to priority or unavailability of materials.

9. Software

The supplier has and retains full intellectual property rights at all times to all software, licenses, built-in programming routines and documentation of the same that are supplied by the supplier for use with the products, as well as to all copies made by the buyer (hereinafter collectively referred to as 'software'). The supplier grants the buyer a non-exclusive and non-transferable license for the use of such software exclusively in connection with the products. The buyer must take all reasonable steps to protect the supplier's rights to the software and may not transfer the software to third parties or make it available in any other way or sublicense it.

10. Warranty limitations

- 10.1. The supplier is liable for all material and manufacturing defects in the products under normal use for a period of one year from the date of delivery to the buyer, with the exception that the supplier is not liable for uninterrupted or error-free operation of the software or for the

correction of all program errors. In the event that the supplier grants the buyer a guarantee for the products delivered by means of a separate written declaration, all further warranty rights of the buyer against the supplier for these products are excluded. Any information about quality and quantities as well as quality samples of the products are only binding if the supplier has expressly assured this separately. It is the responsibility of the buyer to ensure that the products are suitable for the buyer's use and that such use is lawful. Even in the case of proven impracticability or uselessness, the buyer is obliged to pay the agreed price. Provided that a buyer notifies the supplier in writing of a defect in the products immediately upon discovery of a defect, or, if a defect was not recognizable during an inspection, at the latest within six months of delivery and the supplier reveals a material or manufacturing defects in the products (i.e. a defect that existed before the risk was passed to the buyer), the supplier will, at his discretion, either repair or replace the products. The right of price reduction or replacement is excluded. The supplier is entitled to a reasonable time for such repair or replacement of the products. The supplier's guarantee and liability for damages is in any case limited to a maximum of two years after delivery, regardless of whether errors were recognizable or hidden on the day of delivery. If the customer defaults on acceptance, the warranty period begins with this default of acceptance. The buyer must assert the legal consequences of the warranty within the warranty period by means of a lawsuit or objection, otherwise the

buyer's warranty rights are excluded. The out-of-court notification of a defect does not extend the above deadline for the objectionable assertion of warranty rights. The place of performance of the guarantee is the headquarter of the supplier in Vienna.

- 10.2. The buyer must examine every delivery immediately and inform the supplier in writing within 2 weeks of delivery or (if the buyer is a merchant and acts in the context of his business operations) within one week of delivery, each with a precise description of the detected errors and defects detected during the respective inspections. Failure to notify the supplier in this way will result in the loss of all claims by the buyer for warranty and damages with regard to such errors that can be discovered during the investigation.
- 10.3. The buyer has the right to withdraw from the contract if the supplier does not improve or replace the products after a reasonable grace period set by the buyer has expired without result. The same applies if improvement or replacement is impossible or the supplier is not able to repair or replace the products.
- 10.4. The supplier does not guarantee products to which the buyer has made changes or repairs without the consent of the supplier. Excluded from the warranty are all defects that arise during non-observance of the installation or operating instructions, improper or false use of the product and/or external influences. Regardless of this, compensation for pure pecuniary

damage, consequential damage, indirect damage, losses, or lost profits is excluded in any case.

- 10.5. If the buyer is in default with any part of the purchase price or any other payment that he owes the supplier under this contract or otherwise, the supplier is released from any warranty and compensation obligations as long as the delay in payment persists.

11. Patent laws / copy and trademark rights

- 11.1. The supplier will support the buyer with regard to all lawsuits or proceedings brought against the buyer insofar as they are based on the assertion that products manufactured by the supplier infringe a European, German or US patent in their construction or design, provided that the buyer notifies the supplier immediately in writing of such claims, provides the supplier with complete and comprehensive information, and provides assistance in countering such claims. Should the products in their construction or design directly infringe a European, German or US patent or, in the opinion of the supplier, should there be a risk that the products could infringe such a patent, the supplier is entitled, at its option, either (a) to obtain the right to continue using the products without infringing the law, or (b) to replace the affected products with suitable, non-patent-infringing products or to modify them accordingly, or (c) to calculate the purchase price of the products for the buyer minus a loss of value of 20% (twenty percent) per year from delivery against return of the products to the supplier. The

supplier is not liable for any costs or expenses incurred by the buyer. The supplier is not obliged to provide support. He is not liable for costs and damages if the contract breach is due to compliance with the buyer's specifications or due to the connection with products that were not manufactured or developed by the supplier, or due to a change in the products after delivery to the buyer that was not approved in writing by the supplier. In addition, there is no guarantee or liability for damages on the part of the supplier to the buyer from alleged patent or property right infringements.

11.2. The entire content of the website, including text, graphics, photos, images, moving images, sounds, illustrations, and software, is the property of the supplier or its affiliated companies, licensees and/or content providers. This content is protected by copyrights and other rights. Their use is only permitted with the express consent of the supplier. All trademarks used on the website are – unless otherwise stated – trademarks of the supplier. These may not be used without the prior written consent of the supplier.

12. Limitation and exclusion of liability

12.1. With the exception of the warranty obligation contained in section 10 of these general terms and conditions of sale, the supplier is not liable for defects, non-performance, breach of secondary obligations, pre-contractual breach of duty, warranty, compensation, tort or for any other reason. This exclusion of liability does not apply if the supplier or a third party for whose actions the supplier is

responsible has acted willfully. In any case, the value of the supplier's liability is limited to the purchase price of the product delivered. This does not affect the validity of mandatory statutory provisions.

12.2. In the event of improper or negligent use or operation of the products or software by the buyer, any liability on the part of the supplier for warranty, compensation or other legal grounds is excluded.

13. Protected information

13.1. The buyer is required to ensure that protected information in the sense of the definition below is protected in his sphere and that there are corresponding binding agreements for employment and service relationships between the buyer and third parties. The buyer is required to use protected information only insofar as this is necessary for the use of the products. He will not disclose protected information to third parties and will not hand over any documents containing protected information or copies of the same to third parties unless the supplier has approved this in writing. This point 13 remains valid even after termination of the contract. In the event of a breach of this duty of protection, the buyer must indemnify the supplier completely and hold harmless against third parties.

13.2. Protected information within the meaning of the introductory paragraph is information or data from the supplier or a third party, to which the supplier is obliged to maintain confidentiality and which has been provided to the buyer in written,

graphic or machine-readable form and is marked as protected information or confidential. Copies or alternative forms of information or data from the supplier are considered protected information if at least one of these copies or alternative forms is marked as protected or confidential. If the buyer can prove that information was already in the buyer's possession or is accessible to the general public or is or has already become common knowledge in the branch of industry, unless this is due to misconduct by the buyer, this information then shall not be considered protected information.

14. Postponements and cancellations

Orders accepted by the supplier may only be canceled or postponed by the buyer with the written consent of the supplier if the buyer is a merchant and acts in the context of his business operations and if the buyer undertakes to pay the supplier an appropriate cancellation fee or a postponement fee. The supplier has the right to cancel orders accepted without a contractual penalty or payment, (a) if the buyer is in default of payment to the supplier under this contract or any other contract that is part of an ongoing business relationship between the parties, (b) if an act or omission of the buyer delays the performance of the supplier, provided appropriate notice given by the supplier has elapsed without result, (c) if the buyer has violated a provision of these general conditions of sale and has not remedied or compensated for the disadvantage resulting from this violation within a reasonable period set by the supplier or the violation is so fundamental that the supplier cannot be expected to hold on to the contract or (d) if the buyer fails to disclose in the course of the contractual relationship that he has lost his creditworthiness. In the event of such a cancellation, the supplier is entitled to a reasonable and proper cancellation fee.

15. Waiver of the rights and legal means

Failure to assert claims by the supplier in the event of a breach of these general conditions of sale by the buyer does not lead to any waiver of rights with regard to earlier or later breaches of similar or different provisions or to a change in the contract. All rights and remedies of the supplier are cumulative and not exclusively and can be exercised individually or simultaneously.

16. Governing law and place of jurisdiction

Austrian law applies exclusively – but excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and the provisions of international private law – for all disputes arising from a contractual relationship that is subject to these general conditions of sale. The exclusive place of jurisdiction for all disputes arising from a contractual relationship that is subject to these general terms and conditions of sale is the competent court of Leoben. If any provision of these general conditions of sale is ineffective, this does not affect the effectiveness of the remaining provisions.

17. Legal succession

This agreement binds and entitles the parties and their respective legal representatives, successors, and authorized assignees. The contract is personal for the buyer and the buyer may not assign his rights under it or delegate his obligations under it, be it in whole or in part, unless the supplier gives his prior written consent.

18. Subsidiary/Side agreements

In addition to the contracts subject to these general terms and conditions of sale, there are no verbal or written side agreements. Changes must be made in writing in any case, this also applies to a deviation from the written form requirement.

19. Notifications

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All notifications to be provided under a contract that is subject to these general conditions of sale must be in writing. If the buyer's contact details change, in particular the name, address and email address, the buyer is obliged to notify the change immediately in writing, by fax or by e-mail or by changing the information in the customer area of "My Account" on the internet. If the user fails to provide this information or if he provides incorrect data from the outset, in particular an incorrect e-mail address, the supplier can withdraw from the contract insofar as a contract has been concluded. A notification of the supplier is also legally effective with a delivery to the last known address of the buyer. The buyer is responsible for ensuring that the e-mail address provided by him is available from the time it is specified and that the receipt of messages is not excluded due to forwarding, shutdown or a full inbox. Deliveries to the last known address or e-mail address are deemed to have been received if the change in address or e-mail address has not been announced. If the buyer culpably violates the above obligations to keep the contact details up to date, he must compensate the supplier for the resulting damage.

20. Anti-terrorism and export control regulations

The buyer is obliged to comply with the applicable national, European, and international anti-terrorism and export control regulations. The buyer is also obliged to comply with the US ReExport regulations (EAR) and sanctions (OFAC) regarding the goods or technical data to which the US regulations apply. If an approval from the relevant competent authority should be required due to the cited provisions, the buyer is obliged to apply for this independently and at his own expense and to inform the supplier thereof.

21. Online invoicing

The buyer gives his express and irrevocable consent that he receives his invoices in a form

that meets the requirements for electronic invoicing according to § 11 Paragraph 2 UStG (Value Added Tax Act) exclusively online (online invoice). In case an online invoice has not been received by the customer or cannot be delivered, the supplier reserves the right to choose a different form of sending (e.g. by registered mail) in order to send the invoice again. The invoice is deemed to have been received as soon as the buyer can retrieve or take note of the invoice under normal circumstances. This is the starting time for all deadlines that are based on the receipt of the invoice, e.g. deadline for objections.

22. Severability clause

Should a provision in these general conditions of sale be or become ineffective, this shall not affect the effectiveness of the remaining provisions. Ineffective provisions will be replaced by legally permissible provisions that come closest to the economic purpose intended by the parties.