

General Terms and Conditions of Sale and Delivery (GTCSO)

1. General considerations and scope of application:

- 1.1. These general terms and conditions of sale and delivery (in short: GTCSO) apply to all legal transactions and all deliveries and services of Ognios GmbH (in short: Ognios) even if direct reference is not made to this. Deviating general terms and conditions of contractual partners only apply with the explicit consent of Ognios. These GTCSO apply as a master agreement.
- 1.2. For consumer transactions as defined by Sec. 1 of the Austrian Consumer Protection Act (KSchG), these GTCSO only apply to the extent that they do not contradict the provisions of the KSchG. The following provisions are especially not applicable in relation to consumers: Limitation of warranty, Limitations of liability, Exclusion of set off, Exclusion of a right of retention, Jurisdiction clause, and Partial invalidity.
- 1.3. Subsequent amendments and modifications to the agreement and these terms require written confirmation from Ognios in order to be valid.
- 1.4. These GTCSO are displayed in the business premises of Ognios and are available at www.ognios.com for viewing or downloading.

2. Offer:

- 2.1. Our offers, whether they are written, oral or made on the telephone, are subject to confirmation and are non-binding so that neither warranty claims nor liability can be derived from our offers. Our offers only become content of the agreement if explicit reference is made to them in the order confirmation. Technical modifications and other modifications are permitted within reasonable limits. Offers in catalogues, prospects, etc. are non-binding and only become content of the agreement if explicit reference is made to them in the order confirmation.
- 2.2. No documents given along with an offer may be reproduced and/or given to third parties without the consent of Ognios. These documents are to be immediately returned to Ognios upon request if the order for which the documents were given is to another company.

3. Conclusion of an agreement:

- 3.1. An agreement only comes into force by a written order confirmation or delivery by Ognios.
- 3.2. If there are more than two months between the conclusion of an agreement and the performance of the delivery, Ognios is authorised to pass on price changes that happened in the meantime, including wage increases resulting from collective agreements or from other costs necessary for production of goods and services (material, energy, transport, etc.).

4. Reservation clause:

- 4.1. Ognios performs the agreement subject to the proviso that performing the agreement is not contrary to national or international export or re-export regulations such as embargoes or sanctions.

5. Delivery, transfer of risk and place of performance:

- 5.1. Ognios complies with promised delivery dates under the condition of normal operation. Delivery delays from unforeseeable and unalterable circumstances such as cases of force majeure, armed conflicts, interventions and prohibitions by authorities, delays during transport and customs, transport damages, a lack of energy or raw materials, labour disputes as well as failures or delays of a relevant supplier that cannot be substituted on the market extend the delivery deadline for the duration of the time that the circumstances exist regardless of whether the circumstances occur for Ognios itself or for an important supplier.
- 5.2. The delivery deadline begins with the date of the order confirmation provided that the contractual partner has fulfilled all business, technical and other requirements and makes advance payment or provides collateral if agreed. Should these requirements not be met, the delivery deadline begins when the requirements are fulfilled.
- 5.3. The contractual partner must obtain official licences, especially export licences. If they have not been obtained, the delivery deadline is extended accordingly.
- 5.4. Ognios is authorised to make partial deliveries and to invoice them. If delivery on-call is agreed in the agreement, the goods are regarded as having been called at the latest one year after the conclusion of the agreement, the risk is then transferred, and warehousing costs can be charged.
- 5.5. Even in the event that formal acceptance is agreed, the goods are regarded as completely accepted at the beginning of normal use at the latest.
- 5.6. Unless otherwise agreed, delivery is regarded as EXW according to the 2010 Incoterms.
- 5.7. Use and risks concerning performance and price are transferred when the goods are transferred at the agreed place of performance or when the goods are transferred to a third party commissioned by the contractual partner. This also applies to partial deliveries. In the case of transport by third parties, transfer to the freight forwarder is decisive for the transfer of risk in any case.
- 5.8. In the case of delivery to an unoccupied building site, the delivery is assumed to be sound and complete. In this sort of a case, the contractual partner must provide the proof that the goods were damaged or incomplete at delivery.

6. Payment, invoicing, prohibition of offsetting:

- 6.1. Insofar as not otherwise expressly agreed, prices are understood to be plus value added tax in the statutory amount and EXW at A-5020 Salzburg.
- 6.2. Unless other payment terms are agreed, half of the price is due when the order confirmation is received, and the rest is due at delivery. In every case, the value added tax contained in invoices is to be paid within 30 days after the invoice is issued. Transportation and all costs associated therewith will be billed separately.
- 6.3. Partial invoices are due upon receipt. This also applies to invoices for subsequent deliveries or other agreements that occur above and beyond the originally agreed prices. This is independent from the agreed payment terms for the main delivery.

- 6.4. Payments are to be made in the agreed currency without any deductions, free of any charges to Ognios.

- 6.5. In the case of default of payment, Ognios is authorized to claim its own dunning costs of €35.00 per reminder and collection and attorney costs provided that they are for taking appropriate legal action. This also includes a lump sum of €50.00 for business conducted with companies regardless of actual collection costs exceeding the lump sum.

- 6.6. The contractual partner is not authorised to offset asserted counterclaims with claims of Ognios, even if the counterclaims were raised due to complaints of defects, or to retain payment unless the counterclaims have been recognised as final by a court.

- 6.7. In the event of default of payment, Ognios can retain performance of its own obligations or other services regardless of other rights until this payment is made, or Ognios may claim an appropriate extension of the delivery deadline. Furthermore, Ognios is authorised to make all open claims from the specific legal transaction or other legal transactions due immediately and to claim statutory default interest. After a contractual partner is in default of payment two times, Ognios is authorised to make the performance of other agreements dependent on prepayments or the provision of collateral.

- 6.8. Ognios is authorised to solely transmit invoices by electronic means.

7. Retention of title:

- 7.1. The delivered goods remain the property of Ognios until all claims from the delivery (including interest and additional costs) have been paid. In the case of default of payment as well as when there is reasonable worry about the solvency of the customer, Ognios is authorised to recover the goods subject to reservation of title without rescinding the agreement by doing so. Appropriate transportation and handling costs are billed for all returns of goods. The contractual partner transfers all of its claims to third parties as of now provided that they result from the resale or processing of the goods until the fulfilment of all of Ognios' claims against the contractual partner from purchase price claims and all other claims on account of payment.

8. Warranties:

- 8.1. Provided that the agreed payment terms are complied with on the part of the contractual partner, Ognios is obligated, as described in more detail below, to remove all defects that substantially affect functionality and existed at the time of transfer, provided that the defects stem from a construction defect, material defect or defective workmanship.
- 8.2. A two-year warranty period is regarded as agreed even if the goods are firmly attached to the ground. The assumption period of Sec. 924 ABGB (Austrian Civil Code), by which defects were already present at transfer, is shortened to three months.
- 8.3. The warranty periods begin with the time of the transfer of risk according to Item 5. If the transfer of risk is delayed for reasons not in the sphere of influence of Ognios, the warranty period begins their readiness to deliver or perform.
- 8.4. Warranty claims may only be asserted if the defects that have occurred, insofar as they are recognisable upon delivery, are notified immediately or otherwise within a reasonable period in writing and that the notification is verifiably received by Ognios. To do so, the appropriate documents and/or data, if necessary, must be made known.
- 8.5. Ognios can choose whether the warranty obligation will be complied with at the place of performance or whether Ognios will have the goods sent to itself for rectification. If Ognios complies with the warranty obligation at the premises of the contractual partner, support staff, lifting devices, scaffolding and materials are to be provided, if required. Replaced parts become the property of Ognios.
- 8.6. If goods are produced on the basis of construction information, plans, models or other information of the contractual partner, Ognios is only liable for manufacturing in accordance with the information, plans and models. However, Ognios has no warning obligation regarding the information provided.
- 8.7. Defects resulting from directives, mounting, unsuitable set up, noncompliance with the installation requirements and terms of use, overtaxing, unsuitable handling and maintenance, unsuitable materials or consumable materials that do not originate from Ognios are excluded from liability.
- 8.8. Liability for damage from third party actions, atmospheric discharges, surges and chemical influences are explicitly excluded from liability.
- 8.9. Wear parts are explicitly excluded from the warranty obligation.
- 8.10. Manipulations to the goods by the contractual partner or third parties lead to the expiration of all warranty claims provided that they were not explicitly approved by Ognios in writing.
- 8.11. The warranty provisions also apply analogously to any other legal reason, especially to claims for damages.

9. Liability:

- 9.1. Outside of the scope of application of the Austrian Product Liability Act, Ognios is only liable in the case of intent or gross negligence, and the contractual partner is obligated to produce proof of the existence thereof. Provided that mandatory statutory regulations do not contradict this, liability in cases of gross negligence is limited to the net order value of the goods affected or €150,000.00, whereby the lower amount applies. For each claim, liability is limited to 25% of the net order value of the goods affected or €50,000.00, whereby the lower amount applies.
- 9.2. Liability for minor negligence is, therefore, excluded except in the case of personal damage. Likewise, liability for consequential damage, indirect damage, damage of a purely financial nature, such as lost profits, savings not achieved, loss of interest, loss of production, financing costs, any expenditure of the contractual partner, costs for extra energy use, losses or damage to data and information as well as damages to the contractual partner because of third party claims is excluded.

- 9.3. Ognios is not liable for damage that results from unsuitable or improper use, natural wear and tear or from incorrect or negligent treatment, especially such as noncompliance with the terms for mounting, putting into service, and use. Ognios is especially not liable for dismantling and assembly costs or additional costs for regulatory approval requirements.
- 9.4. In the event that contractual penalties are agreed, the contractual partner's claims that exceed the contractual penalties from any conceivable title are excluded.
- 10. Lapsing of claims of the contractual partner:**
- 10.1. All claims of the contractual partner lapse provided that they are not asserted in court within three years after accepting the goods or services and providing that other deadlines are not mandatorily prescribed by law.
- 11. Withdrawal of the agreement:**
- 11.1. The contractual partner can withdraw from the agreement provided that a delivery has been delayed because of gross negligence on the part of Ognios and an appropriate grace period has expired without a result. A withdrawal must take place by registered mail for any other ineffectiveness.
- 11.2. Ognios is authorised to withdraw the entire agreement, not yet performed parts of the agreement or partial services if the performance of the agreement becomes impossible due to reasons within the sphere of influence of the contractual partner or if the contractual partner is in default in spite of an appropriate grace period being set and also if there are justified concerns regarding the solvency of the contractual partner, and if, in accordance with Item 6., valid prepayments were not made or collateral was not provided.
- 11.3. Ognios is also authorised to withdraw from the entire agreement, not yet performed parts of the agreement or partial services if the contractual partner does not comply with export regulations in accordance with Item 14. If the originally agreed delivery deadline is extended by more than half due to circumstances stated in Item 5.1., whereby a minimum level of four months is used, Ognios is authorised to withdraw from the agreement without claims being able to be derived therefrom.
- 11.4. Ognios is authorised to withdraw from the agreement if insolvency proceedings or comparable legal proceedings have been filed or instigated in respect of the assets of the contractual partner and if dissolving the agreement to prevent severe economic disadvantages to Ognios is necessary or if the start of insolvency proceedings is dismissed. In the event that insolvency proceedings are started, Ognios is definitely not obliged to perform advanced services, but services are only to be performed reciprocally and simultaneously.
- 11.5. As a consequence of the withdrawal, services and partial services that have already been performed can be made due according to the agreement. This includes services that have not yet been undertaken and payment for preparatory services. Alternatively, Ognios can make use of reservation of title.
- 11.6. The contractual partner waives the assertion of claims from errors, the basis of business ceasing to exist or *laesio enormis*.
- 12. Rights of use and copyrights:**
- 12.1. Even in the event that Ognios develops project-related, specific software features for the contractual partner, Ognios is the sole owner of the reproduction, distribution, processing and all copyrights in relation to the contractual partner. Ognios is especially authorised to implement these features in standard software without paying remuneration to the contractual partner.
- 12.2. All goods and project-related documents such as templates, plans, illustrations and catalogues are the intellectual property of Ognios, and the express consent of Ognios is required to disclose goods and project-related documents. The contractual partner must indemnify and hold Ognios harmless if production is made according to directives of any type from the contractual partner and if this infringes the industrial property rights of third parties due to the directives.
- 13. Disposal:**
- 13.1. If the contractual partner has its registered office in Austria, it undertakes to provide Ognios with all information so that Ognios can comply with the statutory obligations for disposing electrical and electronic equipment.
- 14. Export regulations:**
- 14.1. If the contractual partner intends to resell or pass on goods of Ognios, it obligates itself to comply with the applicable provisions of national and international export and re-export regulations. This is especially pertains to the regulations of the Republic of Austria, the European Union, the United Kingdom and the United States.
- 14.2. If government agencies request information as part of reviews such as of the intended purpose of the goods, the receiver and the final destination, the contractual partner undertakes to make this information known.
- 15. Data protection:**
- 15.1. **Ognios processes personal data of the contractual partner according to its privacy policy. This privacy policy is accessible to the contractual partner at <https://www.ognios.com/datenschutz/> and can be downloaded.**
- 15.2. **The contractual partner confirms having taking note of the privacy policy stated under 15.1.**
- 16. Newsletter:**
- 16.1. Ognios only sends information and advertisements of its own products and services by electronic mail (email newsletter) if the contractual partner has given its separate consent in advance to do so.
- 16.2. Consent to the sending of the newsletter can be revoked at any time, e.g. by email, with the effect that as of the receipt of the revocation data processing for sending the newsletter stated under Item 16.1. no longer takes place. The revocation shall not affect the lawfulness of the processing carried out on the basis of the consent up to the revocation.
- 17. Place of jurisdiction, applicable law and partial invalidity:**
- 17.1. For all disputes arising from this agreement, it is expressly agreed that the **competent court for A-5020 Salzburg** shall have jurisdiction for the specific type of claim.
- 17.2. Austrian law applies to the exclusion of the reference norms of international private law and the UN Convention on Contracts for the International Sale of Goods.
- 17.3. The ineffectiveness of individual provisions does not cause the entire GTCSD to become invalid. The remaining provisions remain in force. The legally ineffective, invalid and/or void provision shall be replaced by a provision that corresponds to the provision to be replaced as much as possible in a legally permissible manner.