

# **General Terms of Sale and Delivery of Ortlinghaus-Werke GmbH**

## **1. Scope of application**

### 1.1

The General Terms of Sale and Delivery of Ortlinghaus-Werke GmbH (referred to below as "Ortlinghaus") apply exclusively. Conditions of the contractual partner of Ortlinghaus (referred to below as the "purchaser") which contradict or deviate from these Terms of Sale and Delivery are not recognised, unless Ortlinghaus has expressly approved the application of such deviating conditions in writing. Our Terms of Sale and Delivery also apply even if Ortlinghaus delivers to the purchaser without reservation, in the knowledge of the purchaser's conditions which contradict or deviate from these Terms of Sale and Delivery.

### 1.2

Our Terms of Sale and Delivery also apply to all future transactions with the purchaser. The buyer recognises these Terms of Sale and Delivery upon issue of order, although at the latest upon receipt of the goods.

### 1.3

The Terms of Sale and Delivery apply only to business undertakings.

### 1.4

Auxiliary agreements, as well as changes and supplements to and the rescission of the contract, require the written form.

## **2. Offer and confirmation of order**

### 2.1

Offers made by Ortlinghaus are always free of obligation. Orders placed by the purchaser are not regarded as accepted until confirmed by Ortlinghaus in writing. Amendments and other accords are likewise not binding unless these are confirmed by Ortlinghaus in writing. Solely the written confirmations of order or the offers made by Ortlinghaus are decisive for the execution of orders.

### 2.2

If the order is to be qualified as an offer in accordance with § 145 BGB (German Civil Code), Ortlinghaus has 4 weeks to accept it. The contract enters force at the latest upon delivery of the ordered goods, or in the case of part deliveries, upon dispatch of the first delivery.

### 2.3

If the purchaser requests individual price quotations, these are subject to remuneration. In case an order is issued, the payments due for these will be offset against the purchase price. If the purchase contract concluded becomes invalid for whatever legal reason, the obligation to remunerate price quotations continues to exist.

### 2.4

The documents, drawings, details of weights and measurements, samples etc. accompanying offers are rough estimates and do not represent any quality

characteristics. Ortlinghaus is entitled to deviate from the descriptions given in its offers, insofar as such deviations are not of a fundamental or significant nature and do not restrict the purpose of the contract.

## 2.5

If Ortlinghaus produces parts to customer specifications, the drawings made by Ortlinghaus and approved by the purchaser are decisive. Deviations from approved drawings must be agreed separately and any additional costs incurred on this account are subject to remuneration.

## 3. Protected rights

### 3.1

Ortlinghaus reserves the right of title and copyright to all depictions, drawings, calculations and other documents. This particularly applies to written documents which are designated "confidential". The purchaser may not make such available to third parties unless it has obtained prior approval from Ortlinghaus in writing.

### 3.2

If goods are produced to the purchaser's drawings or other specifications and a third party pursues protected rights on this account, the purchaser shall release Ortlinghaus in their internal relationship from all such claims.

## 4. Parts beyond the delivery range of Ortlinghaus

### 4.1

If the project work or advice given to Ortlinghaus concerning parts beyond the delivery range of Ortlinghaus (e.g. on the input or output side), such recommendations or advice are not binding on Ortlinghaus. Any claims to recompense, regardless of their legal reason, are excluded, unless these concern malice aforethought or an act of gross negligence.

## 5. Prices

### 5.1

Unless regulated otherwise in the confirmation of order, prices stated are always "ex works" and do not include packaging. Packaging is invoiced separately.

### 5.2

All prices cited are net, value-added tax will be added at the prevailing rate. Costs of acceptance from classification societies will be invoiced separately.

### 5.3

Ortlinghaus can charge any additional expenses incurred due to subsequent requests for change to the purchaser.

### 5.4

If events occur after the contract has been concluded that make the cost price of manufacturing or shipping the goods more expensive for Ortlinghaus (in particular, increases in the Ortlinghaus buy-in prices or wage rises), Ortlinghaus is entitled to increase its prices accordingly.

## **6. Terms of payment**

### **6.1**

Invoices are due for payment within 20 days of the invoice date without deductions. Discount is not granted unless this has been expressly confirmed by Ortlinghaus in writing.

### **6.2**

Regardless of the purchaser's contradictory conditions of payment, Ortlinghaus is entitled to offset payments against the oldest, nominal debt. If costs or interest have already been incurred, Ortlinghaus is entitled to first offset payments against these costs, then against the interest and finally against the main debt.

### **6.3**

The purchaser has no right of offsetting, unless its counter-claims have been established by a court of law, are undisputed or have been recognised by Ortlinghaus in writing, or such counter claims originate from the same contractual relationship. The purchaser's right of retention is limited to claims arising from the contractual relationship.

### **6.4**

Cheques are only ever accepted to facilitate payment. Payment by bill of exchange requires separate agreement. A bill of exchange is accepted only under the reservation of purchase by the Central Regional Bank of North Rhine/Westphalia. Acceptance of bills of exchange does not represent a deferment of our claims; Ortlinghaus remains entitled at all times to demand cash payment at the date of the claim's maturity step by step in return for the bill. Bill stamp charges are borne by the buyer. The same applies to discount charges from the date of maturity of the invoices.

### **6.5**

Ortlinghaus is entitled to demand default interest at a rate of 8 percentage points above the basis rate of interest in accordance with § 247 BGB (German Civil Code). The right to demonstrate higher default damages is expressly reserved.

## **7. Delivery/delivery date/default**

### **7.1**

Delivery dates and deadlines are not agreed as binding unless such have been expressly assured in the offer. Ortlinghaus is not bound by the delivery date or deadline if the purchaser fails to fulfil its obligations (down payments, provision of necessary documents etc.) in good time. The objection of a non-fulfilled contract is reserved.

### **7.2**

Delivery deadlines start to run at the earliest upon the date that the contract is concluded in writing. A prerequisite for the start is that all technical questions have been clarified.

### 7.3

If the purchaser makes subsequent requests for changes, Ortlinghaus is released from its obligation to observe delivery dates or deadlines.

### 7.4

The delivery deadline is met if the delivery item has left the Ortlinghaus works by this date, or if Ortlinghaus has notified readiness to ship the goods.

### 7.5

The purchaser accrues no claims from late deliveries, unless these concern malice aforethought or gross negligence on the part of Ortlinghaus. This particularly applies to delayed deliveries caused by an Act of God. In such a case, the agreed delivery date or deadline is postponed by the duration of the obstacle to delivery.

### 7.6

If the purchaser is in default of acceptance or infringes other obligations of cooperation, Ortlinghaus is entitled to demand recompense for the losses incurred on this account, including any extra expenditure. Ortlinghaus is furthermore entitled to set a reasonable period of grace for the purchaser to accept the goods. If it fails to do so, Ortlinghaus can withdraw from the contract and demand damages instead of performance.

## **8. Reservation of title**

### 8.1

Ortlinghaus reserves the ownership of all parts it delivers until all payments due under the delivery relationship have been received in full, including obligations which arise in the future. In case the purchaser is in violation of contract, particularly in case of default of payment, Ortlinghaus is entitled to demand the return of the purchase item.

### 8.2

The purchaser is obliged to treat the delivered parts with care and to insure them against all forms of damage and deterioration, to their as-new value, at own expense for the duration of the reservation of title. Ortlinghaus retains the right to insure the goods itself at the purchaser's expense.

### 8.3

The purchaser shall also bear the costs of inspection and maintenance work during the reservation of title, even if such work is performed by Ortlinghaus.

### 8.4

If the goods are seized or are otherwise the object of third party intervention, the purchaser shall notify Ortlinghaus of this writing, in order to allow Ortlinghaus to defend its rights. If the third party is unable to refund the judicial and extrajudicial costs of such action, the purchaser is liable for these.

### 8.5

The purchaser is entitled to resell the purchase item in a regular business transaction. However, it even now assigns to Ortlinghaus all its claims to the end amount invoiced by Ortlinghaus (including value-added tax), which accrue to the

purchaser against its buyer or a third party from the resale, regardless of whether the purchase item was or was not further processed before it was sold on; Ortlinghaus already now accepts the assignment. The purchaser retains its right to collect such claims, even after onward shipment. This does not affect the right of Ortlinghaus to collect such claims itself, although it shall refrain from doing so as long as the purchaser uses the income generated to meet its obligations of payment, is not in default of payment and, in particular, that no application has been made to open insolvency proceedings and no moratorium on payments has been declared.

#### 8.6

If the goods delivered are inseparably mixed or combined with other objects not belonging to Ortlinghaus, Ortlinghaus then accrues co-ownership to the new or combined item in the ratio of the value of the goods delivered (end amount invoiced, including value-added tax) to that of the other object(s) at the date of their mixing or combination. The purchaser shall safeguard the sole or co-ownership created in this way for Ortlinghaus.

#### 8.7

At the purchaser's request, Ortlinghaus is obliged to release the securities furnished to it by the purchaser insofar as the realisable value of the securities exceeds the claims to be secured by more than 10% and the claims of Ortlinghaus remain secured by the purchaser's securities; Ortlinghaus is entitled to select the securities to be released.

### **9. Shipment, transfer of risk**

#### 9.1

Goods are shipped at the purchaser's risk. Risk is transferred to the purchaser at the latest upon dispatch of the goods, even if Ortlinghaus is to provide further services.

#### 9.2

If shipment is delayed due to circumstances beyond the control of Ortlinghaus, risk is transferred to the purchaser at the date of readiness to dispatch. If requested by the purchaser in writing, Ortlinghaus shall insure the shipment against breakage, transport, fire and water damage at the purchaser's expense.

#### 9.3

No transport packaging or any other kind of packaging pursuant to the German Packaging Ordinance will be taken back, with the exception of pallets. The purchaser is obliged to properly dispose of packaging at its own expense.

### **10. Liability for material defects/general liability**

#### 10.1

Ortlinghaus is not liable for damage attributable to improper handling, wear and tear, storage or other acts on the part of the purchaser or a third party.

#### 10.2

The purchaser is obliged to comply with its obligation of examination and notification of defects pursuant to § 377 HGB (German Commercial Code), even if the goods are resold.

### 10.3

Ortlinghaus is entitled to choose between rework and a substitute delivery.

### 10.4

The expenses required for subsequent fulfilment are not borne by Ortlinghaus, insofar as these expenses are increased because the goods have been transported after their delivery to a place other than the purchaser's regular business premises. This does not apply if the relocation corresponds to the intended use of the item.

### 10.5

If the customer fails to observe its obligation of examination and notification of defects or if the goods have been changed by processing, the purchaser's right of recourse against Ortlinghaus accrued from claims involving material defects (which the purchaser's buyers pursue against it) is excluded. The same applies if a defect claimed by the purchaser is attributable to the fact that the goods have been changed by processing carried out or ordered by the purchaser or by its buyer.

### 10.6

Legal claims accrued from material defects expire by limitation of time one year from the handover of the goods, unless Ortlinghaus, its legal representatives, employees or vicarious agents have deliberately concealed the defect or have caused it by malicious or grossly negligent behaviour; the periods prescribed by law for expiry by limitation of time apply in such cases. A guarantee of durability is not associated with this.

### 10.7

The liability of Ortlinghaus prescribed by law to recompense damages arising from material defects is unlimited if Ortlinghaus is culpable of infringing an obligation due to malice aforethought or gross negligence. Insofar as Ortlinghaus is culpable of infringing an obligation due to simple negligence and a material contractual obligations (obligations the proper fulfillment of which constitutes a condition sine qua non and on the fulfillment of which the customer regularly relies and may rely) has been culpably infringed, liability for damages is limited to the losses typically foreseeable in comparable cases. Otherwise liability is excluded.

### 10.8

The liability of Ortlinghaus under product liability laws and the legal liability of Ortlinghaus due to any loss of life, physical injuries or harm to health attributable to it remain unaffected by the foregoing limitations of liability. The periods prescribed by law for expiry by limitation of time apply in such cases.

## **11. Concluding provisions**

### 11.1

German law shall prevail exclusively over all legal relationships between Ortlinghaus and the purchaser to the exclusion of collision law and UN commercial law (CISG).

11.2

The place of jurisdiction for all legal disputes between Ortlinghaus and the purchaser is the headquarters of Ortlinghaus.