

**§ 1 Scope of the Terms**

- (1) The subject General Terms and Conditions of Business shall be valid for all contracts concluded with entrepreneurs (§14 BGB *German Civil Code*), legal persons of public law and special funds regulated under public law (hereinafter: **Customer**) and form the basis of all offers and contracts of OPTOCRAFT GmbH (hereinafter: **OPTOCRAFT**) on the finalization and delivery of goods. Any purchasing conditions of the Customer and any other deviating conditions shall only be binding if explicitly accepted in writing by OPTOCRAFT.
- (2) All goods-related services and/or deliveries (hereinafter: **Delivery**) as well as all offers of OPTOCRAFT are performed exclusively under inclusion of the subject General Terms and Conditions of Business in ongoing as well as in future business relationships, even if not again explicitly agreed upon. The subject General Terms and Conditions of Business shall be considered to be accepted by the Customer at the latest when accepting the Delivery.

**§ 2 Offer / Conclusion of the Contract**

- (1) All offers are not binding and are subject to prior sale.
- (2) All offers and amendments, modifications or supplements relating to the respective offer shall be in writing. Telephonic or verbal offers or supplements as well as offers or supplements made by E-Mail (or telephone) shall only apply as far as they conform with the written offer.
- (3) Through the order of goods the Customer declares with binding force his determination to purchase the ordered goods. OPTOCRAFT shall be entitled to accept the order corresponding to an offer within 2 weeks from receipt. Acceptance can be declared either in writing or it ensues from the beginning of the order processing.
- (4) It is exclusively the offer that determines the properties and conditions of the Delivery to be performed. The correct and complete self-supply remains reserved. With regard to the Delivery to be performed by OPTOCRAFT the specifications cited in the respective offer shall apply as the properties and conditions agreed upon. Drawings, representations, measures, weights and other service data shall only be binding if they are part of the offer. Official statements, praises or advertisements made by OPTOCRAFT, however, do not describe contractual quality details of the goods.
- (5) Source codes of the operating software are not delivered and are not part of the Delivery. If in the scope of rectifications or maintenance OPTOCRAFT provides the Customer with amendments or a new edition of the software, which replaces the originally provided software, they are subject to the provisions of this agreement. Antivirus software is not included in the scope of the Delivery.

**§ 3 Terms of Delivery / Delay in performance**

- (1) The terms of delivery indicated in orders or confirmations of order shall be non-binding. All terms agreed upon shall only be binding if they have been confirmed explicitly and in writing as fixed terms. Terms of delivery shall be valid from the registered office of OPTOCRAFT. They are considered to be fulfilled if the goods have been reported to be ready for shipment on the agreed date. Partial Deliveries which are reasonably acceptable to the Customer shall be permissible.
- (2) OPTOCRAFT shall be exempted from the obligation to deliver as long as the Customer is in delay with already due payments or any other acts required for finalizing the goods. Delays in Delivery, which occur without the fault of OPTOCRAFT, for example based on force majeure, shall entitle OPTOCRAFT to extend the term of delivery by an adequate period, or to partially or completely withdraw from the obligation to deliver. If in such cases the date of delivery should exceed more than 60 days, the Customer shall be entitled to completely or partially withdraw from the unfulfilled part of the contract. The Customer shall not be entitled to derive any claims for damages from this.
- (3) If during the processing of the order it turns out that the estimated period of processing is not sufficient or a fixed term cannot be observed, OPTOCRAFT shall submit to the Customer – while indicating the reasons – modification proposals as a basis for an amicable extension of the period of processing or a postponement of the term, respectively.
- (4) If OPTOCRAFT shall be in delay with Delivery, the Customer – as far as he shows probable cause that he suffered a loss resulting from this – shall be entitled to demand compensation of 1 % for each full week of delay however, in total not exceeding a maximum 10 % of the price for that part of the Delivery, which could not be put into appropriate operation because of the delay.
- (5) Claims for damages of the Customer because of delay in Delivery as well as claims for damages in fulfilment of performance, which exceed the limits cited in para. 4, shall be excluded in all cases of delayed Delivery, also after expiration of a time limit for Delivery possibly set for OPTOCRAFT. This shall not apply where compulsory liability applies in cases of intent, gross negligence or due to injury of life, body or health; an amendment of the burden of proof to the disadvantage of the Customer is not associated therewith. A right of termination of contract for the Customer due to delay in performance and apart from the aforementioned constellations shall only exist, where OPTOCRAFT is responsible for the delay of the Delivery.
- (6) At OPTOCRAFT's request the Customer shall be obliged to declare within an adequate deadline whether he will terminate the contract due to the delay in Delivery and/or demand damages in fulfilment of performance or insist upon Delivery.

- (7) If shipment or Delivery is delayed by request of the Customer by more than one month after indication of the readiness of shipment, storage charges can be debited to the Customer for each commenced month in the amount of 1 % of the price of the objects of Delivery, not exceeding, however, a total of 10 % of the all-round price. The contracting parties are free to prove higher or lower storage costs. OPTOCRAFT shall be entitled to revocation of contract either after setting an adequate time limit or to effect a covering sale or to insist on performance.
- (8) When delivering abroad, OPTOCRAFT shall not be liable for unpredictable official import and export restrictions.

#### **§ 4 Secrecy and Data Protection**

- (1) The contracting parties shall not provide access to third parties to information of technical or business type, which has been communicated between the parties and which is explicitly designated to be secret. The aforesaid obligation shall persist after termination of the contractual relationship for a period of 3 years.
- (2) Para. 1 shall not apply to information, which is generally accessible, or which in the course of contract becomes generally accessible without the fault of the other contracting party or where confidential treatment has been waived in writing by the protected contracting party.
- (3) OPTOCRAFT shall collect, process and store individual-related data of the Customer only as far as this is necessary for performance of the contract.

#### **§ 5 Shipment / Passing of risk**

- (1) Place of performance for the Delivery is the registered office of OPTOCRAFT. If OPTOCRAFT ships the goods by request of the Customer to another place, the risk passes to the Customer with placing the goods at disposal for shipment and notification of the readiness of shipment to the Customer, however, at the latest with the transfer of the delivery item to the person executing the shipment.
- (2) Also if Delivery "free on board" has been agreed upon, shipment is carried out at the risk of the Customer. Shipment is insured only upon explicit instructions by and at the expenses of the Customer.
- (3) If it is agreed upon that the Customer picks up the goods, the risk passes to the Customer with placing the goods at the disposal for pick up and notification to the Customer of the readiness for pick up.
- (4) If on demand of the Customer the shipment is delayed, the risk passes to the Customer with the notification of the readiness for shipment and the goods are stored at the Customer's charge.
- (5) A loss of the Delivery for which OPTOCRAFT is not responsible after passing the risk to the Customer shall leave the payment obligation of the Customer unaffected.

#### **§ 6 Installation / Mounting**

- (1) The Customer shall provide for at his own expense that at the agreed date of Delivery the consignment can be duly delivered, in particular that the necessary hard- and software periphery is available in functional and sufficiently dimensioned manner.
- (2) The Customer shall bear responsibility for installation of the operating software delivered by OPTOCRAFT and which is to be installed via standard cards by the Customer himself.
- (3) If installation, mounting or taking into operation is delayed by circumstances for which OPTOCRAFT is not responsible, the Customer shall bear to an adequate extent the expenses for the waiting period and for additionally necessary travels of OPTOCRAFT or of the mounting workers.
- (4) The Customer shall immediately certify to OPTOCRAFT on a weekly basis the duration of the working time of the mounting workers as well as the completion of installation, mounting or taking into operation.
- (5) The Delivery is considered to be tacitly accepted by the Customer upon expiration of two weeks from receipt of the complete Delivery, unless the Customer in advance declares in writing denial of acceptance to OPTOCRAFT. To meet the deadline, timely mailing of the denial declaration shall suffice. Acceptance is considered to be equally effected, - if applicable after termination of an agreed test phase - if the Delivery has been permanently used.

#### **§ 7 Warranty**

- (1) Directly after receipt the Customer has to test the Delivery for integrity, completeness and quality and has to promptly report in writing any defects to OPTOCRAFT. As far as any damages have been assessed at arrival of the goods, which have been caused during shipment, before unloading a certification of the forwarding agent has to be obtained serving as a document for a claim for damages to be filed with the forwarding agency. This shall also apply for transport by ship and rail.
- (2) If a defect becomes apparent at a later date only, this is to be reported in writing to OPTOCRAFT promptly after its discovery. If this report does not happen, the Delivery is considered to be accepted in view of this defect and to be executed according to the contract. If the notice of defect is wrong, OPTOCRAFT can demand damages from the Customer for the expenses caused from it. The Customer shall be obliged to keep rejected goods at the disposal of OPTOCRAFT.
- (3) In case of a duly given and legitimate notice of defect OPTOCRAFT shall warrant at its own discretion at first by rectification, replacement (supplementary performance) or by crediting the Customer. For removal of the defects OPTOCRAFT is to be granted adequate time and opportunity; if this is refused OPTOCRAFT shall be freed from warranty in this respect.

- (4) Upon a defect in title OPTOCRAFT shall warrant at its own discretion at first by rectification, by acquiring a right of use from the damaged third party, or by modifying the goods accordingly, so that the defect in title is removed thereby. For this purpose OPTOCRAFT is to be granted adequate time and opportunity; if this is refused OPTOCRAFT shall be freed from any warranty in this respect. The Customer has to promptly report in writing to OPTOCRAFT the claims asserted by a third party and in other respects not to accept the infringement of intellectual property rights. OPTOCRAFT shall be entitled to reserve all defense measures and possibilities of settlement. If the Customer stops use of the goods delivered by OPTOCRAFT in view of the claims asserted by the third party, the customer has to inform the third party that the stop of use does not imply acceptance of the infringement.
- (5) If the rectification fails, if it is economically unreasonable or if it is refused by OPTOCRAFT for other grounds, the Customer - irrespective of any claims for damages - can demand lowering of the remuneration (reduction) or that the performance of the contract be reversed (revocation). The Customer is entitled to revocation only in case of significant defects. The Customer shall not be entitled to demand substitution for useless expenses.
- (6) Defects may also be eliminated by telephonic or written or electronic instructions given to the Customer.
- (7) The Customer shall not be entitled to any claims to the extent that a defect consists in a merely irrelevant deviation from the properties and conditions agreed upon, or in a merely irrelevant impairment of usability, with regard to natural wear or tear, which after passing of the risk arises from faulty or negligent treatment, excessive strain, inadequate operating means or due to special external influences, which are not presumed according to the contract, as well as with non-reproducible software errors.
- (8) If amendment or repair works are effected by the Customer or by third parties, OPTOCRAFT shall be free of warranty claims in this respect; this shall not apply as far as the works have been effected according to written instructions of OPTOCRAFT.
- (9) Any further warranty claims are excluded. Claims due to defects of the Delivery become statute-barred after one year after Delivery, unless these are claims based on injury of body, life and health. Mandatory legal statutes of limitation and liability remain unaffected thereof.
- (10) For the rest § 8 shall apply for claims for damages.

#### **§ 8 Other Claims for Damages/ Limitations on Liability**

- (1) Regardless of the legal ground, OPTOCRAFT shall be liable – as far as no other deviating arrangement has been agreed – only for intent and gross negligence. This limitation on liability shall apply also for vicarious agents with respect to contractual or tortious liability. In case of infringement of substantial contractual obligations liability shall be limited to substitution of the direct average loss predictable according to the type of Delivery and typical for this type of contract, unless liability is compulsory for a different legal ground as cited above. In other respects liability for financial losses is given only with substantial defects and is limited to the predictable loss.
- (2) In no event OPTOCRAFT shall be liable for potential losses, which result directly or indirectly from failures and/or omissions on part of the Customer during or after execution of the order and which fall into the field of responsibility of the Customer. In particular, OPTOCRAFT shall not be liable for losses, which result from handling errors of the Customer at the Delivery itself or which have been caused otherwise, unless the handling error is exclusively attributed to the vague and mistakable operating instructions.
- (3) An amendment of the burden of proof to the disadvantage of the Customer is not associated with the aforesaid regulations.
- (4) Further individually negotiated limitations of liability remain unaffected. The aforesaid limitations of restriction shall not concern claims of the Customer for product liability or warranties granted explicitly and in writing by OPTOCRAFT. The limitations of liability shall further not apply in case of fraudulent intent or damages to the physical and mental health or loss of life attributable to OPTOCRAFT.
- (5) As far as the Customer does not refer thereto explicitly in advance, OPTOCRAFT may assume that all data of the Customer, which they may encounter, is saved. OPTOCRAFT shall not assume liability for lost data of the Customer.

#### **§ 9 Rights of Use, Intellectual Property Rights of Third Parties**

- (1) OPTOCRAFT shall reserve any intellectual property and copyright exploitation rights for offers, cost estimates, drawings and other documents (hereinafter: **Documents**) without restrictions. The Documents may be made accessible to third parties only after prior written consent by OPTOCRAFT and shall be promptly returned on demand if the order is finally not placed with OPTOCRAFT. Copyright for the operational software remains with OPTOCRAFT.
- (2) With regard to operational software contained in the Delivery the Customer shall have the simple, non-exclusive right to permanently use this software as a part of the Delivery with the agreed features in unaltered form on the agreed devices. Industrial subletting is generally prohibited. Copies of the software are only admissible, as far as this is necessary for the contractual use.

The Customer is entitled to make two backup copies from the software according to the state of the art. Backup copies on movable data carriers are to be marked as such and are to be provided with the copyright note of the original data carrier.

- (3) As far as general technical methods are developed or further improved within the scope of the processing of a Delivery, they may be used internally by the Customer, but may not be exploited externally. OPTOCRAFT may choose at its own discretion to protect the method as a patent, utility model or similar intellectual property rights. If OPTOCRAFT declares in writing to the Customer not to be interested in the protection of the intellectual property rights, the Customer is free to carry out the registration of intellectual property rights in his own name and at his own expenses. OPTOCRAFT shall not be liable for registrability of the method.
- (4) The Customer shall warrant that he holds the rights for the samples, drawings or other documents handed over to OPTOCRAFT and that by this handing over to and use by OPTOCRAFT within the scope of Delivery no intellectual property rights of third parties are infringed. The Customer shall comprehensively hold harmless OPTOCRAFT from claims for compensation of third parties as well as from all expenses based upon the use of documents handed over by the Customer. The obligation to hold harmless includes also the obligation to indemnify OPTOCRAFT comprehensively from costs for legal defence, in particular from court and attorney expenses.

#### § 10 Prices

- (1) The prices indicated in the offers of OPTOCRAFT are quoted unpacked in Euro, excluding the respective sales tax set by law and without freight ex premises of OPTOCRAFT GmbH in Erlangen. For Deliveries abroad OPTOCRAFT shall not be liable for taxes and duties incurring there.
- (2) If OPTOCRAFT has assumed installation or mounting of the Delivery and nothing else has been agreed upon, the Customer bears in addition to the agreed remuneration all necessary incidental expenses such as travelling costs, costs for the transport of necessary work means and the personal luggage as well as daily allowances.

#### § 11 Payments

- (1) Payments are to be effected to the account of OPTOCRAFT according to a separate installment plan agreed upon in writing, in other respect at the latest ten days after the date of invoice or after the date of request for payment, are due net, while indicating the invoice number. The payment shall only be considered to be effected, if OPTOCRAFT can dispose of the amount.
- (2) Due date of the purchase price and default consequences occur without reminder on that day, which results from the date of invoice and/or the term of payment.
- (3) If the due date is exceeded OPTOCRAFT shall be entitled without further reminder to demand default interests in the amount of 8 % above the base rate (§ 247 BGB *German Civil Code*) p.a. published by the Bundesbank (German Central Bank), unless OPTOCRAFT proves that a higher loss has occurred. The Customer shall be entitled to prove that no or a lower loss has occurred.
- (4) Also in case of any other terms of payment of the Customer OPTOCRAFT shall be entitled to appropriate payments at first to its older debts. The Customer will be informed on this. If expenses or interests have already been caused, OPTOCRAFT shall be entitled to appropriate the payments first to the expenses, then to the interests and at last to the primary debt.
- (5) Offset against the claims of OPTOCRAFT shall only be permissible if the counterclaim has not been contested or has become res judicata.
- (6) The Customer shall be entitled to refuse performance only in case his counterclaim is based on the same contractual relationship. In case of defects of quality and title payments may only be retained under consideration of § 7 and only to an extent, which is appropriately proportionate to the occurred defects.
- (7) If OPTOCRAFT shall become aware of circumstances, which decrease creditworthiness of the Customer more than only insignificantly, if reasonable doubts of his solvency arise or if terms of payment are not adhered to by the Customer, OPTOCRAFT can assert the immediate maturity of all claims or can request provision of securities. Under these circumstances OPTOCRAFT shall also be entitled to terminate the contract without notice. In such case OPTOCRAFT shall be obliged to release at free option all securities provided to OPTOCRAFT, as far as they exceed the value of the respective overall claim by more than 25 %.

#### § 12 Reservation of Title

- (1) OPTOCRAFT shall remain proprietor of the goods until complete payment of the agreed remuneration by the Customer and until fulfilment of all further claims from the existing business relation.
- (2) Prior to the complete passing of ownership the goods may principally not be pledged, assigned by way of security or be otherwise charged with rights of third parties. The Customer shall be entitled only within the scope of his proper business for resale and for association with other movable properties.

If the property of OPTOCRAFT should get lost by association, mixing or processing with other movable properties, the Customer shall be obliged already now to procure OPTOCRAFT (co-)ownership proportionally to the value (invoice value) while taking into consideration the ratio of the respective values of the associated properties to each other. The Customer shall keep free of charge the (co-)ownership of OPTOCRAFT and shall take care that the reservation of title of OPTOCRAFT shall persist as far as possible. Any goods for which OPTOCRAFT is entitled (co-)ownership, is called hereinafter **Reserved Goods**.

- (3) As a precaution the Customer shall already now assign to OPTOCRAFT the claims resulting with regard to the Reserved Goods from resale or any other legal ground. OPTOCRAFT herewith accepts the assignment. The Customer has to name the purchasers on demand.

If the value of the securing means exceeds the claim to be secured by more than 20 %, OPTOCRAFT shall be obliged to release the exceeding amount.

- (4) If jointly with the Reserved Goods foreign goods are disposed of at the all-round price, the assignment concerns that claim only in the amount of the price for the goods delivered by OPTOCRAFT. The Customer shall be entitled to collect the claim. This authority ends as soon as the purchaser does not meet the payment obligations as agreed upon. In this case OPTOCRAFT shall be entitled to collect itself the assigned claim.
- (5) In general the Customer shall be obliged to insure at his own expenses the Reserved Goods against the usual risks such as fire, water and theft. If the Customer does not comply with the insurance obligation in spite of OPTOCRAFT's reminders, OPTOCRAFT can effect the insurance at the Customer's expenses, can disburse the insurance premium and collect it as a part of the claim from the contract. In case of occurrence of the event insured against, the Customer shall assign with priority already now to OPTOCRAFT all his titles against the insurer or the injuring party. OPTOCRAFT herewith accepts this assignment. In case third parties make access to the Reserved Goods the Customer will refer to the ownership of OPTOCRAFT and will immediately notify OPTOCRAFT. Insofar the Customer has to reimburse any expenses and losses.
- (6) The taking back of the Reserved Goods by OPTOCRAFT does not require termination of the corresponding contract. In case of the Customer's behaviour which is contrary to the terms of this contract, in particular in case of default of payment, or if legal composition proceedings or insolvency is instituted against the assets of the Customer, OPTOCRAFT shall be entitled to taking back and the Customer shall be obliged to return or to assign his claims for return while excluding any right of retention. All expenses caused by taking back the goods shall be borne by the Customer.
- (7) The reservation of title continues in case of doubt until the Customer proves in each individual case that the goods are completely paid for.

### **§ 13 Final Clauses**

- (1) The subject General Terms and Conditions of Business and all legal relations between OPTOCRAFT and the Customer shall be governed by the law of the Federal Republic of Germany while excluding the UN-Convention on the International Sale and Purchase of Goods (CISG).
- (2) Any subsidiary agreements, modifications and amendments of the contract with the Customer including the subject General Terms and Conditions of Business shall be in writing. For contracts with Customers outside of Germany OPTOCRAFT shall be free to individually negotiate the terms of payment and delivery.
- (3) The written form required according to the subject General Terms and Conditions of Business is **not** observed by E-Mail correspondence.
- (4) The invalidity or unenforceability of individual provisions of the contract including the subject General Terms and Conditions of Business or the possible existence of loopholes in the provisions shall not affect the validity of the remaining provisions. The entire or partially invalid provision shall then be replaced by a provision whose economic purpose comes as close as possible to that of the invalid provision.
- (5) General place of venue shall be Erlangen / Nuremberg, unless mandatory law provides for another place of venue. OPTOCRAFT, however, shall reserve the right to bring any action against the Customer at his main seat of business, according to the applicable law of that place.
- (6) OPTOCRAFT shall be entitled at any time to amend the subject General Terms and Conditions of Business including all indications such as service descriptions, price lists, etc. If the Customer does not object within two weeks after announcement of an amendment, however at the latest at the effective date of an amendment, they become effective part of the contract.
- (7) With regard to the translations of the website, descriptions of products and applications published by OPTOCRAFT as well as the subject General Terms and Conditions of Business merely the German version shall be binding in case of any linguistic uncertainties or other cases of doubts.