

General Terms and Condition of Business of OpenStorage AG

(updated in July 2003)

1. GENERALLY

German law applies to all business transactions. Foreign customers are irrevocably subject to German jurisdiction. Orders are only binding after written confirmation. Events of force majeure, smog, strike, lockout, lack of raw materials, disruption of transport, fabrication and operation - irrespective of whether in our own company or in the case of a supplier - as well as circumstances for which we are not responsible, entitle us to either withdraw or delay the fulfilment. Claims for compensatory damages of any kind are excluded in such cases. Individual customer's contrary conditions of purchase only apply if these have been expressly confirmed by us in writing. The acceptance of our confirmation of order means that the order is placed according to our terms and conditions of business. Any customer's conditions of purchase which contradict these terms and conditions are unbinding for us, even if the customer has based the order on them and we have not expressly contradicted their content.

2. EXTENT OF THE DELIVERY DUTY

Quotations are given without engagement and they are subject to alteration and interim sale. Our written confirmation is decisive for the extent of supply. The ordered goods will be delivered in the usual version and quality. The right is reserved to make technical alterations. The respective manufacturer's licensing agreements apply to software products. If we become aware of facts after accepting the order, which indicate that the customer's ability to pay is unfavourable, then we will be entitled to either alter the conditions of payment or not to carry out the delivery. A claim for compensatory damages by the customer is excluded in this respect.

3. PRICES

All prices are understood to be purely net ex-store in Wiesbaden and they are given without engagement and are subject to alteration. The calculation and invoicing will take place at the price which is valid on the day of delivery, plus the value-added tax that is applicable at the point in time of delivery.

4. PAYMENTS

Condition of payment: direct debit or cash on delivery. Agreements about diverging conditions of payment are possible after Creditreform¹ has checked the credit standing but they will include an extra charge per article. If the customer falls into arrears, then interest will be charged on the arrears from the date of invoice. If facts become known that indicate the customer's financial difficulties, then invoices which are still unsettled will be due for payment immediately. Representatives and agents are only entitled to recover the debt with a written power of attorney. Payments will be credited against the oldest debt. Cheques will only be accepted for the sake of payment and subject to deducting the customary expenses of collection and discount. We reserve the right to make a further delivery dependent upon cash on delivery, if the required date for payment is exceeded repeatedly.

5. PACKAGING AND DESPATCH

The despatch takes place basically ex-store on the recipient's account and at his risk. The order's minimum value is € 100.00.

The costs of packaging, despatch, processing the order and any surcharge for a lesser quantity per delivery are graduated as follows.

Debit-note customers:

Less than 300 Euro 5.00 Euro
More than 300 Euro frei Haus

Invoice customers:

Less than 500 Euro 5.00 Euro
More than 500 Euro frei Haus

Cash-on-delivery customers:

Less than 500 Euro 10.00 Euro
More than 500 Euro 5.00 Euro

We charge € 5.00 per delivery for cash-on-delivery consignments. We recharge our own costs for palletted consignments and deliveries abroad. The passage of risk takes place when the delivery is accepted. The transport insurance is € 750.00 per parcel. A transport insurance policy will only be arranged for high insurances at the customer's request and it will be charged to him. All previous agreements are inoperative herewith.

6. PERIOD OF DELIVERY

The possibility of delivery remains reserved in all cases. We carry out partial deliveries on request. Orders that are received without information about a date will be delivered as quickly as possible. A claim for compensatory damages cannot be asserted because of non-fulfilment or because the agreed date of delivery has been exceeded. Cases of force majeure, e.g., strike and lockout, etc., as well as disruptions of fabrication and operation, or disruptions of the transport - irrespective of whether this occurs in our own company or with a subcontractor - exempt us in every case from an obligation to comply with the date of delivery and they entitle us to withdraw from the contract. The assertion of claims for compensatory damages of any kind is excluded.

7. RETURNS

Returned deliveries will only be accepted if an agreement has been made for this purpose beforehand and a RMA number has been issued. The customer has to bear the transport costs in this case. The credit note for the returned goods will be issued and it is subject to deducting the costs which we have incurred.

8. CUSTOMER'S COMPLAINTS

Customer's complaints can only be considered within 8 days after receipt of the delivery. If such a complaint is justified, then the replacement delivery will be made after the criticized parts have been returned. Further claims - especially claims for compensatory damages - are excluded. No liability is accepted for damages which occur because of improper handling.

9. WARRANTY AND REPLACEMENT DELIVERY

We warrant that our products are not marred by defects, which also includes the lack of assured characteristic features. The warranty claim will be time-barred after expiry of the guarantee period that is foreseen by our suppliers and after delivery to the customer. Our warranty duty for defective deliveries or services is limited to repair or replacement delivery at our discretion. Our warranty obligation for goods that we have not manufactured is limited to the assignment of our warranty claims against the manufacturer. Replaced parts pass into our ownership.

We accept the cost of work that is incurred for the purposes of repair, insofar as a criticized defect is acknowledged. The customer bears all other costs of the repair. Every warranty duty lapses if repair work or other work is carried out on the defective products without our approval. We do not accept any warranty for defects which are attributable to normal wear and tear, or to improper handling. The same warranty exists for repair work and replacement deliveries as for the original delivery or service: namely, only until expiry of the warranty period which is applicable to them. If remedy of the defect by a repair or replacement delivery fails, then the customer can demand a reasonable reduction of the purchase price. If an agreement about the amount of reduction does not materialize, then the customer can also rescind the contract. All of the customer's further claims, or claims other than those which are foreseen in these conditions - irrespective of whatever legal reason - are excluded.

10. RESERVATION OF OWNERSHIP

The delivery takes place subject to reservation of ownership. Debt claims that arise because of resale apply as assigned to us (extended reservation of ownership). The buyer assigns his rights of ownership or co-ownership to us, in the case that our products are mixed or processed. The buyer has to notify us immediately about any third-party access to the assigned debt claims or rights. The reserved ownership as well as all of the goods that have been delivered by us and are in the buyer's possession will apply as security of our debt claim's balance in the case of a current account.

11. CALL-FORWARD NOTICES

We offer a time limit of 12 months for called-forward orders from the day of ordering, insofar as nothing else is agreed expressly. If the time limit for acceptance has expired, then we are optionally entitled to either deliver the goods and to present the invoice, or to withdraw from the contract, or to demand compensatory damages because of non-fulfilment.

12. OTHER ARRANGEMENTS

Verbal arrangements are legally ineffective. Any agreement that diverges from our conditions must be made in the written form. Our silence applies as refusal. Written altered conditions only apply to the affected order. The customer recognizes that our terms and conditions of sale and delivery are binding by ordering or accepting our delivered goods.

13. PLACE OF PERFORMANCE¹ AND PLACE OF JURISDICTION²

The place of performance is our place of business³. Wiesbaden is the place of jurisdiction for both parties, even for legal proceedings about bills of exchange⁴ and cheques.

¹ domicilium executandi

² domicilium disputandi

³ registered office

⁴ promissory notes