

General Conditions of Sale

Valid since 01.03.2004



Earl-H.-Wood-Strasse 1
79618 Rheinfelden, Germany
Tel. +49 (76 23) 74 05-0
Fax +49 (76 23) 74 05-1 60
E-mail: mail@osypka.de
Internet: www.osypka.de

I. General, scope

1. Business with our clients shall be based solely on the following terms of business, sale, supply and payment. Our offers and the performance of the contract in question, in particular the goods and services provided by us in accordance therewith, shall be subject to the present terms of business. Clients who place /orders and sign agreements with us expressly accept the present terms of business.
2. In the case of business with dealers, legal entities or special federal funds, our terms of business shall also apply to all future transactions with these clients.
3. We shall not be bound by any of the client's terms of business which contradict or differ from our terms of business, unless we have expressly agreed to their application in writing, whereby any differences acknowledged shall, in principle, only apply to the current contract. Our terms of business shall apply even where we provide goods and services to the client without reservation in the knowledge that their terms of business contradict or differ from ours.

II. Contracts

1. Our offers, prices, estimates and other undertakings shall be construed as subject to confirmation unless given in writing and expressly described as binding.
2. Any descriptions, technical data, diagrams, drawings, measurements, weights or performance data which form part of an offer subject to confirmation shall be for illustration purposes only and shall be non-binding, unless they are expressly described as binding.
3. Unless the client stipulates on the order that the goods in question must be supplied solely to a specific design or that the data and specifications provided must be adhered to strictly under all circumstances, we shall assume that we are entitled to supply designs which have been technically modified during the course of ongoing technical development, provided that the client can reasonably be expected to accept them, taking into account the legitimate interests of both sides.
4. Orders are accepted solely on written confirmation from us or performance thereof. Our invoices shall always be construed as written confirmation of an order.

III. Copyright and user rights

1. We hereby reserve unrestricted rights of ownership of and copyright to diagrams, drawings, calculations, estimates and other documents and these shall not be divulged to third parties. This applies in particular to written documentation marked "confidential" and our express written consent must be obtained before passing on any such documentation to third parties. We may divulge documentation supplied by our client to bona fide third parties to whom we outsource the supply of goods or partial services.
2. Planning documents and other drawings and papers pertaining to offers shall be returned to us immediately on request if the contract is not awarded to us.

IV. Prices

1. Our prices are quoted in EURO (€), unless otherwise stated. Prices are ex-warehouse and do not include freight, customs duty, insurance, packaging, installation, assembly or other standard ancillary costs.
2. Prices are quoted net of statutory value added tax, which shall be charged on the net price at the rate in force on the date of invoice.
3. Where contracts have an agreed term of longer than four months, we reserve the right to raise prices in line with increases in purchasing, manufacture, supply or assembly costs. Proof of such increases shall be provided to the client on request.

V. Delivery and delivery lead times

1. Delivery lead times shall commence on the date on which the order is confirmed, but not before all the documentation or information required in order to perform the contract has been received. Subsequent amendments or additions requested by the client shall extend delivery lead times accordingly.
2. In the case of force majeure or similar unforeseen, unusual incidents for which neither party is to blame (e.g. war, blockade, fire, natural disaster, riot, staff shortage as the result of sickness, strike, lockout, disruption to operations or transportation, sourcing or energy supply problems or official intervention), we shall be entitled to a reasonable extension to the delivery lead time. Delivery lead times shall be extended by the duration of the disruption.
3. We shall be entitled, to a reasonable extent, to deliver part consignments. The client may only withdraw from the entire contract if part consignments are delivered where partial performance of the contract is of no interest to the client. We may invoice for part consignments and partial services separately and may suspend further performance of the contract in the event of late payment of a part consignment.

VI. Acceptance, returns

1. If, on expiry of a reasonable period of grace, the client refuses acceptance or expressly states that there is no intention of accepting, we may withdraw from the contract and demand inclusive compensation equal to 25% of the value of the contract, whereby the client shall be free to prove that we sustained no or substantially lower losses. We shall be entitled to claim compensation for any exceptionally serious losses in one-off cases which far exceed the said inclusive compensation.
2. The client or the client's authorized personnel shall be required to confirm acceptance in writing on receipt of our goods by signing their name in full.
3. We shall only accept returned goods subject to express reservation and in accordance with the Medicinal Product Orders in force at the time. Returns must be agreed with us in advance. Any costs incurred, such as carriage, packaging or our suppliers' reconditioning and return charges shall be passed on to the client. In principle, sterile goods shall not be returned.

VII. Transport, transfer of risks and dispatch

1. Delivery shall be effected on and at the client's account and risk. Risks shall transfer to the client at our dispatch warehouse, as and when the goods are handed over to the person effecting transportation and leave our warehouse for the purpose of dispatch. Risks shall also transfer to the client as stipulated above where free delivery has been agreed.

2. The client shall insure goods ordered or supplied for the purpose of inspection or testing or on a rental or loan basis and consignment goods against standard risks (fire, water and theft at the very least) at the client's own expense while the goods are in the client's care and shall return any goods that are not accepted by clients to us at the client's own expense and risk. Any reconditioning or repair costs incurred after their return shall be borne by the client.

VIII. Warranty and duty of inspection

1. The client shall inspect goods immediately on receipt thereof and shall file a written complaint of obvious defects within 7 working days of delivery or transfer of risk and of hidden defects within 7 days of discovery thereof, detailing each individual defect. Failure to comply shall render the client's warranty claims for damage null and void.
2. We shall be entitled to rectify defects for which we are to blame or replace the goods at our own discretion. Ownership of goods replaced shall devolve upon us. The client shall have no right to rectify defects and no claim to compensation for costs incurred in doing so.
3. If we refuse to rectify the defect or replace the goods, the client cannot reasonably be expected to agree to rectification or rectification is not successful, the client shall have the option of withdrawing from the contract or reducing the purchase price. Claims to compensation in lieu of performance are hereby excluded, unless the damage was caused deliberately or as the result of gross negligence.
4. Warranties shall not cover defects not already present in the item delivered when risks transferred to the client. In particular, we accept no liability for damage caused by unsuitable or improper use, defective assembly or commissioning by the client or a third party, natural wear and tear, defective or careless handling or maintenance, unsuitable work equipment, defective installation work or chemical, electro-chemical or electrical damage.

IX. Liability

1. Unless stipulated otherwise above, we accept no liability for compensation on any legal grounds whatsoever. In other words, we accept no liability for damage other than to the item actually supplied; in particular, we accept no liability for loss of earnings or other financial losses sustained by the client. The above disclaimer shall not apply to damage caused deliberately or as the result of gross negligence or to damage claimed as the result of injury to life, limb or health. Nor shall it apply to compensation claims enforced on the grounds of warranted properties not present or under a guarantee given by us. Finally, it shall not apply if we have negligently infringed a cardinal duty or material contractual duty, in which case our liability for compensation shall be limited to typical damages anticipated for the contract in question.
2. Where our liability is disclaimed or limited, this shall also apply to the personal liability of our salaried employees, contract employees, staff, representatives and vicarious agents.
3. The above terms shall not apply to claims under §§ 1 and 4 of the Manufacturer's Liability Law.

X. Retention of ownership

1. Goods delivered shall remain our property (reserved goods) pending full payment (where payment is made by check, pending full clearance of the check). In the case of dealers, we shall retain ownership of the goods delivered pending receipt of all payments pursuant to business transacted with the client. The client shall notify us immediately of any seizure or other third party intervention in writing, so that we may enforce our rights.
2. We hereby undertake to release the security required at the client's request insofar as the value of our security exceeds the accounts secured by more than 20%, hereby the choice of security to be released shall rest with us.

XI. Methods of payment

1. Unless agreed otherwise, our accounts shall be due for payment net without discount on receipt thereof. All payments shall be made charges paid.
2. We expressly reserve the right to refuse checks or bills of exchange. Discounting and bill charges shall be borne by the client and shall be payable immediately.
3. If the client is in arrears with payments, we shall be entitled to charge arrears interest at the legal amount stipulated in § 288 BGB. We shall be entitled to claim any proven higher losses caused by arrears.
4. The client may only offset sums against undisputed claims or claims recognized by declaratory judgment. The client's right to refuse performance of claims, which do not result from the contract in question until counter-performance is effected, is hereby excluded.

XII. Place of performance, applicable law and place of jurisdiction

1. The place of performance for all claims pursuant to business transacted with the client, in particular deliveries and payments, shall be Rheinfelden, unless the order confirmation states otherwise.
2. All legal relations between the parties shall be governed by German law. The Vienna UNICITRAL Convention on Contracts for the International Sale of Goods shall not apply.
3. The place of jurisdiction for any disputes pursuant to business transacted shall be Rheinfelden for clients who are traders, federal legal entities or special federal funds, for clients who move their domicile or place of habitual residence outside the territory of the Federal Republic of Germany once the contract has been signed and for clients whose domicile or place of habitual residence is not known when the complaint is filed. However, we shall also be entitled to sue clients before the courts with jurisdiction in the place in which they are registered.