



General Terms and Conditions of OTT Hydromet GmbH for the Purchase of Goods and Services

hereinafter referred to as OTT, applicable as of October 2010

The German version of these General Terms and Conditions are legally binding. The Company cannot be held responsible for any misunderstanding or misinterpretation arising from the translation in English language.

1. Basis for the order

1. Exclusivity clause: OTT Hydromet GmbH (OTT) will order goods and services only on the basis of its General Terms and Conditions of Purchase. These are part of the General Terms and Conditions to be found online at OTT's website. No other terms and conditions shall be incorporated into the contract, not even if OTT raises no express objection to them. If OTT accepts the goods/services without raising any express objection, this may on no account be construed as OTT having accepted the Contractor's terms and conditions of delivery. The present General Terms and Conditions of Purchase shall also govern future deliveries made within the framework of the ongoing business relationship.

2. Revocation of the order: If the Contractor does not accept OTT's order in writing within 10 working days, OTT is entitled to revoke or amend the offered terms at any time free of charge.

3. Clause governing the written form: Only written orders are legally binding. Orders placed verbally or by telephone must be subsequently confirmed in writing in order to be legally valid.

4. Enquiries/offers: In the enquiries sent to the Contractor OTT will generally request a binding and gratuitous offer valid for at least 120 calendar days.

2. Prices

1. The agreed prices are fixed prices and exclude all subsequent claims of whatsoever kind. If nothing else has been agreed, the shipping and packaging costs shall be borne by the Contractor. If the prices are quoted ex works or ex Contractor's sales depot, they must be shipped at the lower cost unless OTT has stipulated a specific mode of transport. Additional costs incurred by failure to comply with a shipping requirement shall be borne by the Contractor. If prices are quoted with free delivery to the recipient, OTT may also determine the mode of transport. Additional costs for any fast-track delivery service that may be necessary in order to meet the delivery deadline shall be borne by the Contractor.

2. If no prices are mentioned in the order, the Contractor's current listed prices shall apply, less the usual deductions. The type of pricing shall not affect the agreement concerning the place of performance.

3. Subcontracting orders to third parties

Subcontracting orders to third parties is not allowed unless OTT has approved such a procedure in writing. Any unauthorised subcontracting shall entitle OTT to rescind the contract in part or in full and to claim damages.

4. Provision of materials by OTT

1. The provision of materials by OTT represents an absolute exception. The Contractor will be charged for such materials. They must be stored separately free of charge, labelled, administrated and set aside. They may only be used for orders from OTT. The Contractor must compensate OTT for any reduction in value or any loss. This shall also apply to the provision of order-related materials at a charge.

2. Any processing or reshaping of the materials shall be carried out on OTT's behalf. OTT shall become the direct owner of the new or reshaped item. If this should not be possible for legal reasons, OTT and the Contractor are in agreement that OTT shall become the owner of the new item at every point in time during the processing or reshaping. The Contractor shall hold the new item in safe custody free of charge for OTT, taking the utmost care. Technical modifications, other modifications to components and changes of subcontractor must be sampled and approved in writing by OTT.

5. Tools, moulds, samples, confidentiality, inventory, modifications etc.

1. Tools, moulds, samples, profiles, drawings, standard specification sheets, printer's copies and gauges provided by OTT and the items made with them may neither be passed on to third parties without OTT's written consent, nor may they be used for any purposes other than the contractual purpose. They must be held in safe custody free of charge, protected against unauthorised inspection or use, kept in a good state of maintenance and insured against damage and loss. Without prejudice to further rights, OTT may demand that they are handed over if the Contractor violates these obligations.

In the context of the inventory, these materials provided by OTT must be reported to OTT of the Contractor's own accord at the beginning of each December, using an inventory document.

2. The Contractor shall not disclose information obtained from OTT to third parties, unless this information is in the public domain or the Contractor lawfully gains knowledge of it in another way.

3. The Contractor must immediately notify OTT in writing of any proposed changes in the composition of the processed materials, of changes in construction and/or in execution and also if a different supplier is or different suppliers are engaged to supply goods or services equivalent to those so far provided for OTT. The changes shall require OTT's written consent.

6. Packaging

The goods must be packed in such a way that damage during transport is avoided. Packaging materials may only be used to the extent necessary in order to achieve this purpose. Only environmentally friendly packaging materials may be used. The Contractor shall accept the return of the packaging as prescribed by law.

7. Confidentiality clause

1. The Contractor must treat the contract as confidential and may not draw attention to its business relations with OTT in its advertising materials before OTT has given its written consent.
2. The Contracting Parties undertake to treat all commercial or technical details disclosed under the business relationship as a business secret if such details are not in the public domain. The same obligation must be imposed on subcontractors.

8. Modification clause and work involved in correcting faulty documents

OTT may request that modifications are made to the items supplied or to the agreed services, even after the contract has been formed, as long as this is reasonably acceptable for the Contractor. In the case of such a contractual amendment both Parties must give reasonable consideration to the effects, particularly higher or lower costs and delivery dates. This must be recorded in writing.

9. Delivery dates, late delivery, force majeure, premature delivery, part-deliveries

1. The agreed delivery dates are binding. The critical factor in determining whether the delivery date or the delivery period has been complied with shall be the date when the goods reach the point of reception or place of use indicated by OTT, or the punctual completion of a successful acceptance test.
2. If the Contractor realises that an agreed date cannot be met for any reason, this must be immediately reported to OTT in writing, stating the reasons and indicating the probable duration of the delay.
3. The Contractor must compensate OTT for all direct and indirect damage caused by the delay.
4. If the agreed delivery date cannot be kept for reasons that are the fault of the Contractor and if OTT has set an extended deadline which has expired to no avail, OTT may either claim damages due to non-performance, obtain a replacement from a third party at no extra cost or rescind the contract. This shall not affect further statutory rights that OTT may have.
5. The Contractor may only argue that OTT has failed to deliver necessary documents if the Contractor has sent OTT a written reminder that these documents have not been delivered and they have not been received within a reasonable time.
6. Force majeure and industrial disputes involving a number of companies shall release the Contracting Parties from their contractual obligations in relation to the goods/service for the duration of such a disruption and to the extent of their effect. The Contracting Parties must immediately provide the necessary information in as far as this is reasonable, and must adapt to the altered circumstances, modifying their obligations accordingly in good faith.
7. If the goods are delivered earlier than agreed, OTT reserves the right to return them at the Contractor's expense. If the goods are not returned in such a case of premature delivery, they shall be stored by OTT until the delivery date at the Contractor's risk and expense. In the case of premature delivery OTT reserves the right to withhold payment until the due date agreed.

8. In as far as no date has been mentioned, 12:00 hours on Friday of the specified calendar week shall be deemed the latest possible delivery date.

9. OTT will only accept part-deliveries if this has been specifically agreed. If part-deliveries have been agreed, the volumes still outstanding must be indicated.

10. Deliveries shall be carried out according to the routing order.

10. Invoices

1. Invoices must be submitted to OTT separately and in proper form, along with all accompanying documents and data after the goods and services have been supplied.

2. Invoices which have not been properly submitted shall not be deemed received until they have been corrected. A proper invoice is one that is free of errors and verifiable for OTT. It must comply with the applicable legal requirements and contain the OTT order number, the OTT article number, the OTT position number and the name of the article plus inspection certificates and certificates regarding the product.

11. Payments

1. The payment period for invoices shall not commence until the goods/service have been supplied, the agreed certificates and documents have been delivered and a proper, correct and verifiable invoice has been received.

2. If certificates regarding the testing of materials, inspection certificates or similar have been agreed, these shall form an important part of the delivery/service and must be sent to OTT together with the invoice.

3. If nothing else has been agreed, payment shall be remitted within 30 days less a 2 percent cash discount or net within 90 days, calculated from the date of the delivery/service and on submission of a proper, error-free and verifiable invoice.

4. In the case of defective goods/services OTT shall have the right to withhold payment in an amount equivalent to the value of the defect, until the Contractor has properly performed its obligations.

5. Payments shall not mean that the goods/services have been recognised as complying with the terms of the contract.

12. Contractual penalty

1. In the case of default OTT shall have the right to demand 0.5 percent of the value of the order per calendar day as a contractual penalty as long as the Contractor is in default.

2. The total sum of the penalty shall be limited to a maximum of 10 percent of the total value of the order. Even if OTT accepts delayed deliveries from the Contractor, OTT will nevertheless demand the penalty.

3. The deduction of the contractual penalty shall neither release the Contractor from its contractual obligations in relation to the goods/service nor will this exclude the assertion of claims for damages in excess of the penalty.

4. The penalty will be charged directly according to the schedule determined by OTT in the form of a debit note.

13. Reservation of title and other security interests

The Contractor shall not be entitled to an extended reservation of title vis-à-vis OTT in any form.

14. Technical properties

Technical properties made known in the form of a data sheet, specifications, a technical instruction sheet or similar shall be considered contractually guaranteed characteristics of the item to be delivered/of the service.

The Contractor shall be responsible for ascertaining the current technical status.

15. Technical documentation

In as far as this is required in the order, OTT shall be sent the following items free of charge on the acknowledgement of the order:

- binding dimension drawings and complete technical data (in duplicate);
- assembly, operating and maintenance instructions;
- lists and drawings of spare parts;
- documents in German and/or English;
- test reports and certificates of compliance.

16. OTT's rights in the case of defects, warranty and product liability

1. The Contractor warrants that all goods/services shall comply with the latest state of the art, the relevant laws and the rules and guidelines laid down by the authorities, employers' liability insurance associations (*Berufsgenossenschaften*) and professional associations. If departures from these rules should be necessary in the individual case, the Contractor must obtain OTT's written approval. The Contractor's obligation under the warranty shall not be curtailed by this approval. If the Contractor should have reservations about the type of execution required by OTT, OTT must be notified in writing immediately.

2. In as far as it is commercially and legally possible, the Contractor promises to use environmentally friendly products and processes in relation to its goods/services, also in the case of supplies or ancillary services provided by third parties. The Contractor shall be liable for the environmental compatibility of the products and packaging materials supplied and for all consequential damage resulting from any violation of its statutory obligations in relation to disposal.

3. OTT will immediately notify the Contractor in writing of any obvious defects in the goods/services as soon as they have been discovered in the normal course of business, but no later than within 30 calendar days after OTT has received the consignment.

4. The Contractor must rectify any defects in the goods and services reported during the warranty period, including failure to achieve the guaranteed quality and shall do so immediately on request and free of charge (including all secondary expenses). OTT may choose between a correction of the defect or a replacement. If the defects are rectified, the Contractor must bear all expenses necessary for this purpose, particularly transport, travelling and manpower expenses and the cost of materials. This shall also apply if higher expenses are incurred because of the purchased item being taken to a place other than the place of performance. OTT may exert its statutory rights in addition.

5. If the Contractor does not comply with its obligations under the warranty within a reasonable period specified by OTT and is at fault, OTT may take the necessary measures itself or have them taken by third parties at the Contractor's risk and expense – notwithstanding the Contractor's obligations under the warranty. In urgent cases OTT, after agreement with the Contractor, may carry out improvements itself or have them carried out by a third party. OTT may rectify minor defects without prior agreement - in compliance with its duty to mitigate – without this affecting the Contractor's obligations under the warranty. OTT can charge the Contractor for the necessary expenses. The same applies if there is a risk of an unusually large amount of damage.

6. The warranty shall be valid for a period of 24 months, as from the date of the passage of risk. It shall not end before the expiry of the period specified in section 479 paragraph 2 of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*), which shall apply accordingly.

7. If any claims are made against OTT due to an infringement of official rules or due to domestic or foreign product liability regulations or laws due to defects in its services or products and these defects are due to the services/products provided by the Contractor, OTT shall be entitled to demand compensation from the Contractor in as far as this damage has been caused by the services/products provided by the Contractor. Such damage also includes the cost of a product recall. The Contractor shall mark the items to be delivered in such a way that they are permanently identifiable as the Contractor's products or shall label them in a different way at OTT's request.

8. The Contractor shall take out insurance with adequate coverage to protect itself against all risks in connection with product liability, including the product recall risk and submit a copy of the insurance policy to OTT on request.

17. Industrial property rights

1. The Contractor guarantees that all goods/services shall be free of third-party property rights and, in particular that no patents, licences or any other industrial property rights of third parties shall be infringed by the delivery and use of the goods and services.

2. The Contractor shall indemnify OTT and its customers against claims made by third parties due to any infringements of industrial property rights and shall bear all costs that OTT incurs in this connection.

3. OTT shall have the right to obtain a licence from the entitled party so that it may use the goods and services in question. This shall be done at the Contractor's expense.

18. Laws

1. The Contractor shall ensure that the export laws in its home country are not broken by the agreed delivery/services. The Contractor shall hold OTT harmless against all breaches of the laws specific to its country.

2. Pursuant to the German Foreign Trade Act (*Außenwirtschaftsgesetz, AWG*), the German Arms Control Act (*Kriegswaffenkontrollgesetz, KWKG*) and similar laws, the Contractor shall immediately notify OTT whether the goods it is to deliver require an export permit.

3. The Contractor must comply with the regulations and laws of its home country and those of the EU, particularly the REACH Regulation.



19. Final provisions

If any parts of these terms and conditions should be void, this shall not affect the validity of the remaining terms and conditions. The invalid clause shall be replaced by one that is lawful and which comes as close as possible to the commercial and legal purpose of the invalid clause.

20. Proper law, place of jurisdiction, place of performance

1. The place of performance for supplies and services is Kempten/Allgäu, Germany, or a different place to be determined by OTT.

2. In the event of legal disputes under this Agreement the law of the Federal Republic of Germany shall apply. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

3. The place of jurisdiction for legal disputes between the Contracting Parties under this Agreement is Kempten/Allgäu, Germany.