

# General Terms and Conditions of Trade of opsira GmbH, 88250 Weingarten, Germany

(Version 0020720 – As per July 22, 2020)

## § 1 Scope

1. Our General Terms and Conditions shall apply for all contractual services and obligations of opsira GmbH based on contract concluded between ourselves and the contractual partner.
2. Our General Terms and Conditions shall exclusively apply; we do not recognize any conflicting or diverging terms of the contracting partner which run contrary to our General Terms and Conditions, unless we have expressly agreed to their validity in writing. Our General Terms and Conditions shall also apply if we carry out a delivery unconditionally despite being aware of diverging terms of our contractual partner which run contrary to our General Terms and Conditions.

## § 2 Offer – Conclusion of Contract – Bidding Documents

1. The order of the contractual partner is a binding offer, which we are entitled to accept within four weeks by sending our confirmation of offer or by delivery of the goods. Other offers submitted by us are subject to change without notice.
2. We retain ownership and copyright to all illustrations, drawings, calculations and other documents even if these are not expressly subject matter of the contract. This also applies to written documents which have been designated confidential. The contractual partner must receive our express prior permission in writing before passing them on to any third party or parties.

## § 3 Subject of agreement

1. The subject of agreement is exclusively that given in a written order or written confirmation of order.
2. Insofar as a written offer with a catalogue of services, a technical description and detail drawings has been submitted by opsira GmbH, this together with all components of the written confirmation of order shall become part of the contract. In the event of discrepancies concerning the exact services/obligations to be performed, the following shall be authoritative in the order given here
  - catalogue of services
  - technical description
  - detail drawings.
3. Any technical data or descriptions given in the product information or in advertising material from opsira GmbH shall only become part of the contract if they have expressly been included into the contract in writing and such data or descriptions do not constitute any warranty with respect to the nature, quality or durability of products, unless the company opsira GmbH gives a specific warranty with respect to the nature, quality or durability of the products in writing. The illustrations, drawings, declarations of weight and indications of measurement given in descriptions are only approximations, unless they have expressly been referred to as binding. The company opsira GmbH is also entitled to allow a third party or parties to carry out its obligations.

## § 4 Time of Performance

1. The date of performance and period of performance are non-binding, unless the company opsira GmbH has expressly given the assurance in writing that they are binding. Force majeure or interruptions to the normal course of operations due to riot, strike, lockout, or the like which affect the company opsira GmbH or its contractual partners and which are not the fault of opsira GmbH or its contractual partners but temporarily prevent the company opsira GmbH or its suppliers from fulfilling its obligations on the date or within the period of performance agreed upon, shall extend the dates or delivery periods agreed upon by the period of the disturbance of operations. If such an interruption results in a delay in performance of more than four months then the contractual partner is entitled to withdraw from the contract to the exclusion of any claims for damages arising out of dereliction of duty pursuant to § 275 Abs. 4 BGB [German Civil Code].
2. For opsira GmbH to be able to adhere to its contractual obligations the punctual and proper fulfilment of obligations on the part of the contractual partner is necessary.
3. If the non-binding date for delivery/performance has expired due to negligence on the part of opsira GmbH, the contractual partner is entitled eight weeks after expiry of this non-binding date or period to demand in writing that opsira GmbH deliver or perform within a reasonable period.
4. All reminders or appointment of dates by the contractual partner must be made in writing to be effective. Insofar as the assertion of rights by the contractual partner requires the appointment of a reasonable additional period, this period shall not be less than two weeks at the least.
5. In the event that the additional period granted expires without effect, this expiry shall only entitle the contractual partner to withdraw from the contract or terminate the contract in any form if the contractual partner has previously expressly threatened this as a consequence of the expiry of the additional period and has stated this in writing at the time of granting the additional period.
6. If opsira GmbH is in default and can only be accused of simple negligence, then the claim of the contractual partner for compensation of pecuniary losses, irrespective of their cause in law, shall be limited in the event of simple negligence on the part of opsira GmbH to not more than 10% of the price or the remuneration for that part of the services/obligations which could not be utilized or not utilized according to contract.

## § 5 Contribution of the Contractual Partner

The contractual partner shall prepare the working environment for the subject of agreement according to the specifications given by opsira GmbH. Additional costs for opsira GmbH arising from incorrect or inadequate preparations must be borne by the contractual partner. If the measures are not carried out in time, then the period until fulfilment of obligations shall be extended in accordance with a new arrangement, which must be concluded between the customer and opsira GmbH. If the parties do not come to an arrangement, this will not affect the rights of opsira GmbH.

## § 6 Reservation of the Right to Rescind the Contract

The company opsira GmbH is entitled over and above its statutory rights of rescission to terminate the contract if a petition is filed to begin insolvency proceedings against the assets of the contractual partner, or if the contractual partner is required to make an affirmation under oath pursuant to § 807 ZPO (Code of Civil Procedure), or if insolvency proceedings are instituted against the contractual partner's assets or such proceedings are dismissed for insufficiency of assets. If non-delivery by a supplier for which the supplier must be held responsible makes it impossible for opsira GmbH to fulfil its obligations, then opsira GmbH is entitled to withdraw from the contract if opsira GmbH has made every effort within reason to procure the articles which it would otherwise have received from the defaulting supplier.

## § 7 Handover and Acceptance

1. The contractual partner is obliged to take acceptance of the contractual goods or services on request by opsira GmbH. If the contractual partner does not comply with this request within a reasonable period of time, then opsira GmbH is entitled to demand reimbursement for damages, including any additional costs accruing. The company opsira GmbH reserves the right to put forward further claims for damages.
2. All deliveries are affected at the risk of the contractual partner. With the transfer of the goods to a forwarding agent or a freight carrier, at the latest when the goods leave the premises of opsira GmbH or fourteen days after the customer receives notice that the goods are ready to be shipped, the risk of accidental loss or destruction passes to the customer, unless delivery of the goods to the contractual partner was expressly agreed upon.
3. The granting of an additional period is not required if the contractual partner is clearly unable to comply with its payment obligations from the contract.

## § 8 Reservation of Title

1. The company opsira GmbH will retain title to all goods supplied until all claims arising out of the business relationship with the contractual partner have been satisfied, as far as these existed at the time of conclusion of the contract (including claims arising from follow-up orders, repeat orders or orders for replacement parts).
2. The contractual partner must inform opsira GmbH without delay about execution proceedings by any third party or parties affecting the articles to which opsira GmbH retains title and the contractual partner must hand over all documents required for an intervention; this also applies to any other encroachments. Irrespective of this, the contractual partner must inform the third party or parties at the outset of opsira's retention of title to the goods. The contractual partner shall bear the costs of any intervention by opsira GmbH if the third party or parties are unable to recompense opsira GmbH for its costs in connection with the intervention.
3. In the event that goods to which opsira GmbH retains title are sold or rented out, the contractual partner already now assigns all claims from the sale or rent against its customer to opsira GmbH as security, until all claims of opsira GmbH have been satisfied. If the value of the security exceeds the claims of opsira GmbH against the contractual partner by more than 20 %, then opsira GmbH must, on request by the contractual partner, release a commensurate proportion of the securities to which it is entitled, whereby the choice of securities to be released rests with opsira GmbH.

## § 9 Software Utilization

Insofar as the delivery from opsira GmbH includes software, the contractual partner shall be granted a nonexclusive right to use the delivered software including the software documentation. The software is made available to the contractual partner for use only together with the articles delivered. The contractual partner is prohibited from using the software on more than one system. The customer may only copy, rework, translate or transform the object code of the software into source code within the scope of what is legally permissible (§ 69 a ff. UrhG [German Copyright Act]). The customer undertakes not to remove any manufacturer's designations – in particular, not to remove any copyright notices – and not to alter them without having received the prior express permission of opsira GmbH. All other rights to the software and the documentation including the rights to any copies remain the property of opsira GmbH. The customer is prohibited from granting sublicenses. In the event that the subject of agreement is sold, the contractual partner shall be entitled to transfer the software delivered together with the subject of agreement including documentation to the buyer. The contractual partner undertakes to pass on the above-mentioned limitations of utilization to the buyer in the sales contract.

## § 10 Prices, Terms of Payment

1. The prices agreed upon in the offer or the confirmation of order shall apply, plus the statutory value-added tax at the time of issuing the invoice.
2. Prices are ex works excluding packaging, loading, transportation and insurance.
3. Invoices from opsira GmbH are payable without deduction within fourteen days of issue. Partial performance will be invoiced at the time of acceptance by the customer.
4. All claims of opsira GmbH will fall due immediately if the customer fails to comply with the dates and terms of payment without having consulted opsira GmbH and without cause or if opsira GmbH receives information that the financial circumstances of the contractual partner have significantly deteriorated. The rights of opsira GmbH as outlined in § 4 above remain unaffected.
5. The contractual partner is only entitled to offset charges or claims of opsira GmbH against indisputable claims or claims which have become res judicata.

## § 11 Obligation of Rectification or Replacement

1. The company opsira GmbH guarantees that the services and goods provided by opsira GmbH are free of defects and that, to the best of opsira GmbH's knowledge, at the time of transfer of the agreed right of utilization to contractual partner they were not encumbered by any third party rights; an investigation in the form of a patent search also forms part of the order.
2. If the subject of the agreement or the service is defective, opsira GmbH has the right either to rectify the defect or to provide a replacement, whereby the choice of rectification or replacement shall rest with opsira GmbH, unless the parties have agreed otherwise in writing.
3. The right to demand rectification or replacement shall cease to exist if the contractual partner has either carried out improper repairs to the subject of agreement or has carried out other work or commissioned work on the subject of agreement, unless the contractual partner can prove that the defect is not due to these measures and has not been affected by these measures.
4. The company opsira GmbH is not liable for damages or failures which are due in particular to normal wear and tear, faulty start-up by the contractual partner, improper use and handling errors as well as failure to carry out necessary maintenance or maintenance recommended by the manufacturer.
5. In the event that repeated attempts at rectification or replacements by opsira GmbH should fail, the contractual partner is entitled to either demand a reduction of the purchase price or to withdraw from the contract. This also applies if the company opsira GmbH is not prepared to rectify the defect or to provide replacements for defective parts or if rectifications and replacements are delayed beyond any reasonable period of time for reasons for which the company opsira GmbH must be held responsible.
6. If this affects individual and separable obligations of opsira GmbH, then the rights of the contractual partner outlined above are limited to the separate and individual obligations without the contract being affected; this also applies if the company opsira GmbH is entitled to refuse performance of obligations because this would require time, effort and expenditure which are out of all proportion to the customer's interest in the fulfilment of obligations after opsira has given due consideration to the substance of the obligation and the principle of good faith. It is also necessary to take into consideration whether the company opsira GmbH can be held responsible for the impediment to performance.
7. If no defect can be discovered, then the contractual partner shall bear the costs of the investigation.
8. Claims based on material defects become statute-barred 12 months after the passing of risk.

## § 12 Liability

The liability of opsira GmbH for failure to comply with contractual duties and for tort is limited to intention and gross negligence and is furthermore limited to compensation for typical losses. This does not apply in the event of injuries to life, limb or health of the contractual partner, claims arising from violation of cardinal obligations or compensation for damage caused by delay (§ 286 BGB [German Civil Code]). In this respect opsira GmbH is liable for negligence of every degree. Insofar as the damages do not arise from injury to life, limb or health of the contractual partner, opsira GmbH is only liable for typical damages. Any liability for indirect damages or consequential harm caused by a defect is excluded.

## § 13 Disposal of Equipment

The contractual partner undertakes to dispose of the delivered goods after they are no longer in use at his own cost and in accordance with the statutory provisions and in due form and releases the company opsira GmbH from its obligation pursuant to § 10 II ElektroG (manufacturer's obligation to take back waste electrical and electronic equipment) and all claims in this connection. The contractual partner must contractually obligate any commercial third party to whom he passes on the delivered goods to dispose of these goods after they are no longer in use at the expense of the third party and in accordance with statutory provisions and in due form and, in the event that the goods are passed on again, to similarly obligate the new owner to dispose of the goods in proper form. If the contractual partner refrains from obligating the third party to whom he passes on the delivered goods to dispose of the goods in proper form and from placing the obligation on the third party to likewise obligate any subsequent buyers, then the contractual partner is obliged to take back the delivered goods at his own expense when they are no longer in use and to dispose of them in accordance with statutory regulations. The right of opsira GmbH to assumption/release by the contractual partner is not statute-barred until two years after the equipment has ceased to be utilized. The two-year period starts at the earliest on receipt of a written communication by the contractual partner informing the company opsira GmbH that the equipment is no longer in use.

## § 14 Collateral Agreements, Alterations and Amendments of the Contract

All oral agreements made by representatives or other auxiliary persons of opsira GmbH must be confirmed in writing by the company opsira GmbH.

## § 15 Venue and Applicable Law

If the contractual partner is a merchant, a legal person under public law or a special public-law fund, venue shall be the District Court of Ravensburg having jurisdiction at the offices of the company opsira GmbH. The company opsira GmbH is also entitled to bring an action against the contractual partner at the contractual partner's general court of jurisdiction. German law applies solely.

## § 16 Severability Clause

If one or more of the provisions of this agreement should be or become invalid, this will not affect the validity of the remaining provisions. The contracting parties must undertake to replace the ineffective cause by a valid provision which most closely approximates the ineffective clause.