

General Conditions of Supply Orbitalum Tools GmbH, Singen

Divisions Orbitalum and Orbimatic (01.2010_EN)

- 1 General**
- 1.1 These General Conditions shall apply to all Products supplied by Orbitalum Tools GmbH to the Purchaser. They shall also apply to all future business even when no express reference is made to them.
- 1.2 Any deviating or supplementary conditions especially Purchaser's general conditions of purchase and verbal agreements shall only be applicable if accepted in writing by Orbitalum Tools.
- 1.3 The written form shall be deemed to be fulfilled by all forms of transmission, evidenced in the form of text, such as telefax, e-mail, etc.
- 2 Quotations**
- Quotations shall only be binding if they contain a specifically stated period for acceptance.
- 3 Scope of Delivery**
- 3.1 Orbitalum Tools's product range is subject to change.
- 3.2 The confirmation of order shall govern the scope and execution of the contract.
- 4 Data and Documents**
- 4.1 Technical documents such as drawings, descriptions, illustrations and data on dimensions, performance and weight as well as the reference to standards are for information purposes only. They are not warranted characteristics and are subject to change.
- 4.2 All technical documents shall remain the exclusive property of Orbitalum Tools and may only be used for the agreed purposes or as Orbitalum Tools may consent.
- 5 Confidentiality, Protection of Personal Data**
- 5.1 Each party shall keep in strict confidence all commercial or technical information relating to the business of the other party, of which it has gained knowledge in the course of its dealing with the other party. Such information shall neither be disclosed to third parties nor used for other purposes than those for which the information has been supplied.
- 5.2 In the context of the contractual relation with the Purchaser personal data may be processed. The Purchaser agrees to the disclosure of said data to third parties such as foreign subcontractors and suppliers etc.
- 6 Local Laws and Regulations, Export Controls**
- 6.1 The Purchaser shall bring to the attention of Orbitalum Tools all local laws and regulations at the place of destination which bear connection with the execution of the contract and the adherence to relevant safety regulations and approval procedures.
- 6.2 In case of re-exports, Purchaser shall be responsible for compliance with pertinent export control regulations.
- 7 Price**
- 7.1 Unless agreed otherwise, the prices shall be deemed quoted net, exclusive VAT, ex works (according to Incoterms of the ICC, latest version) including standard packing. All supplementary costs such as the cost of carriage, insurance, export, transit- and import licences etc. shall be borne by the Purchaser. The Purchaser shall also bear the costs of all taxes fees duties etc. connected with the contract.
- 7.2 If the costs of packing, carriage, insurance, fees and other supplementary costs are included in the tender price or contract price or are referred to specifically in the tender or confirmation of order, Orbitalum Tools reserve the right to revise their prices accordingly should any change occur in the relevant tariffs.
- 7.3 In case of net orders below EURO 50,- a handling charge of EURO 25,- applies.
- 7.4 The list prices are subject to change.
- 8 Terms of Payment**
- 8.1 The Purchaser shall make payment in the manner agreed by the parties without any deductions such as discounts, costs, taxes or dues.
- 8.2 The Purchaser may only withhold or off-set payments due against counter claims which are either expressly acknowledged by Orbitalum Tools or finally awarded to the Purchaser. In particular, payment shall still be made when unessential items are still outstanding provided that the Products already delivered are not rendered unusable as a result.
- 9 Retention of Title**
- 9.1 The Products shall remain the property of Orbitalum Tools until the Purchaser shall have settled all claims, present and future, which Orbitalum Tools may have against him.
- 9.2 Should the Purchaser resell Products to which title is reserved, in the ordinary course of business, he shall hereby be deemed to have tacitly assigned to Orbitalum Tools the proceeds deriving from their sale together with all collateral rights, securities and reservations of title until all claims held by Orbitalum Tools shall have been settled. Until revoked by Orbitalum Tools, this assignment shall not preclude Purchaser's right to collect the assigned receivables.
- 9.3 To the extent the value of the Products to which title is reserved together with collateral securities exceeds Orbitalum Tools's claims against the Purchaser by more than 20%, Orbitalum Tools shall re-assign the above proceeds to Purchaser at his request.
- 10 Delivery**
- 10.1 The term of delivery shall commence as soon as the contract has been entered into, all official formalities such as import and payment permits have been obtained and all essential technical issues have been settled. The term of delivery shall be deemed duly observed when, upon its expiry, the Products are ready for despatch.
- 10.2 Delivery is subject to the following conditions, i.e. the term of delivery shall be reasonably extended:
- a) if Orbitalum Tools are not supplied in time with the information necessary for the execution of the contract or if subsequent changes causing delays are made by the Purchaser.
- b) if Orbitalum Tools are prevented from performing the contract by force majeure. Force majeure shall equally be deemed to be any unforeseeable event beyond Orbitalum Tools's control which renders Orbitalum Tools's performance commercially unpractical or impossible, such as delayed or defective supplies from sub contractors labour disputes, governmental orders or regulations, shortages in materials or energy, serious disturbances in Orbitalum Tools's works, such as the total or partial destruction of plant and equipment or the breakdown of essential facilities, serious disruptions in transport facilities, e.g. impassable roads. Should the effect of force majeure exceed a period of six months, either party may cancel the contract forthwith. Orbitalum Tools shall not be liable for any damage or loss of any kind whatsoever resulting therefrom, any suspension or cancellation being without prejudice to Orbitalum Tools's right to recover all sums due in respect of consignments delivered and costs incurred to date.
- c) if the Purchaser is in delay with the fulfilment of his obligations under the contract, in particular, if he does not adhere to the agreed conditions of payment or if he has failed to timely provide the agreed securities.
- 10.3 If for reasons attributable to Orbitalum Tools the agreed term of delivery or a reasonable extension thereof is exceeded, Orbitalum Tools shall not be deemed in default until the Purchaser has granted to Orbitalum Tools in writing a reasonable extension thereof of not less than one month which equally is not met. The Purchaser shall then be entitled to the remedies provided at law, it being, however, understood that, subject to limitations of Art. 17, damage claims shall be limited to max. 10% of the price of the delayed delivery.
- 10.4 Part shipments shall be allowed and Orbitalum Tools shall be entitled to invoice for such partial deliveries.
- 10.5 If the Purchaser fails to take delivery within a reasonable time of Products notified as ready for despatch, Orbitalum Tools shall be entitled to store the Products at the Purchaser's expense and risk and to invoice them as delivered. If Purchaser fails to effect payment, Orbitalum Tools shall be entitled to dispose of the Products.
- 10.6 Should Purchaser cancel an order without justification and should Orbitalum Tools not insist on the performance of the contract, Orbitalum Tools shall be entitled to damages in the amount of 10% of the contract price, Orbitalum Tools's right to prove and claim higher damages remaining reserved. Purchaser shall be entitled to prove, that Orbitalum Tools has suffered no or a considerably lower damage.
- 11 Packing**
- 11.1 If the Products are provided with additional packing over and above the standard packing, such packing shall be invoiced separately.
- 11.2 To the extent the Purchaser, pursuant to the German Packing Regulation, is returning transport packing to Orbitalum Tools, he bears the costs of transport and disposal.
- 12 Passing of Risk**
- 12.1 The risk in the Products shall pass to the Purchaser as soon as they have left Orbitalum Tools's works (EX WORKS, Incoterms ICC, latest version), even if delivery is made carriage-paid, under similar clauses or including installation or when carriage is organized and managed by Orbitalum Tools.
- 12.2 If delivery is delayed for reasons beyond Orbitalum Tools's control, the risk shall pass to the Purchaser when he is notified that the Products are ready for despatch.
- 13 Carriage and Insurance**
- 13.1 Unless agreed otherwise, the Purchaser shall bear the cost of carriage.
- 13.2 The Purchaser shall be responsible for transport insurance against damage of whatever kind. Even when such insurance is arranged by Orbitalum Tools it shall be deemed taken out by the order of and for the account of the Purchaser and at his risk.
- 13.3 Special requests regarding carriage and insurance shall be communicated to Orbitalum Tools in due time. Otherwise carriage shall be arranged by Orbitalum Tools at their discretion, but without responsibility, by the quickest and cheapest method possible. In case of carriage-paid delivery transport arrangements shall be made by Orbitalum Tools. If the Purchaser specifies particular requirements, any extra costs involved shall be borne by him.
- 13.4 In the event of damage or loss of the Products during carriage the Purchaser shall mark the delivery documents accordingly and immediately have the damage ascertained by the carrier. Not readily ascertainable damages sustained during carriage shall be notified to the carrier within six days after receipt of the Products.
- 14 Inspection, Notification of Defects and Damages**
- 14.1 The Products will be subject to normal inspection by Orbitalum Tools during manufacture. Additional tests required by the Purchaser shall be agreed upon in writing and shall be charged to the Purchaser.
- 14.2 It shall be a condition of Orbitalum Tools's obligation under the warranties stated hereinafter that Orbitalum Tools be notified in writing by the Purchaser of any purported defect immediately upon discovery. Notice concerning weight, numbers or apparent defects is to be given latest within 30 days from receipt of the Products, notice of other defects immediately latest within 7 working days after discovery, in any event within the agreed warranty period.
- 14.3 Purchaser shall not dispose of allegedly defective Products until all warranty and/or damage claims are finally settled. At its request, defective Products are to be placed at Orbitalum Tools's disposal.
- 14.4 At its request, Orbitalum Tools shall be given the opportunity to inspect the defect and/or damage, prior to commencement of remedial work, either itself or by third party experts.
- 15 Returns to Orbitalum Tools**
- 15.1 Orbitalum Tools is not obliged to take back Products which have been supplied in compliance with the contract.
- 15.2 Returns, at Orbitalum Tools's discretion, shall be accepted only following prior agreement between the parties and if the Products returned, at Purchaser's cost and risk, are new and still in original packing. Returns rejected by Orbitalum Tools shall be sent back to Purchaser at his cost.
- 15.3 No returns shall be accepted in case of consumables, custom-made or phase-out Products.
- 15.4 Returns having an order value of less than EURO 150,- shall not entitle to any credit.
- 15.5 Returns of Products having an order value of less than EURO 150,- are not accepted.
- 15.6 In case of returns Purchaser shall be charged with a handling fee of the higher of 25% of the original order value or EURO 50.
- 16 Warranty**
- 16.1 At the written request of the Purchaser, Orbitalum Tools undertake to repair or replace at their discretion, as quickly as possible and free of charge all Products supplied which demonstrably suffer from faulty design, materials or workmanship or from faulty operating or installation instructions. Replaced parts shall become property of Orbitalum Tools. For Products which are manufactured to specifications, drawings or patterns supplied by the Purchaser, Orbitalum Tools's warranty shall be restricted to proper materials and workmanship.
- 16.2 The Purchaser shall be entitled to cancel the contract or to demand a reduction in the contract price if also a second attempt to repair or replace the Products has failed.
- 16.3 For Products or essential components manufactured by a third party and supplied by Orbitalum Tools under this contract, Orbitalum Tools's warranty is limited to the warranty provided by said third party.
- 16.4 This warranty shall not apply to damage resulting from normal wear and tear, improper storage and maintenance, failure to observe the operating instructions, overstressing or overloading, unsuitable operating media, unsuitable construction work or unsuitable building ground, improper repairs or alterations by the Purchaser or third parties, the use of other than original spare parts and other reasons beyond Orbitalum Tools's control.
- 16.5 Ancillary claims of Purchaser in connection with the repair or replacement of defective Products, in particular for costs incurred for transport, dismantling and reinstallation, etc., shall be limited to EURO 25'000 per order. Such claims are excluded to the extent they have increased due to the fact that the Purchaser has forwarded the Products, after their supply by Orbitalum Tools, to other places, unless such forwarding has been in compliance with the intended use of the Product.
- 17 Limitation of Liability**
- 17.1 Unless otherwise provided herein, all claims for damages of Purchaser, arising for any reason, in particular for breach of contract or negligence, are excluded.
- 17.2 The aforementioned limitation of liability shall not apply to the extent Orbitalum Tools's liability is mandatory at law, e.g. pursuant to the Products Liability Act, in case of wilful intent or gross negligence of Orbitalum Tools's officers and managers (Leitende Angestellte), as well as in case of breach by Orbitalum Tools of essential obligations under the contract. In such case Orbitalum Tools's liability – exception being made for wilful intent or gross negligence of its officers and its managers (Leitende Angestellte) – shall be limited to the damage that could reasonably be foreseen. In addition, the limitation of liability shall not apply in case of damages resulting from personal injury, health hazards or death or in case an expressly guaranteed characteristic of the Product is missing, to the extent such guarantee was intended to protect Purchaser from damages resulting from the Product.
- 17.3 To the extent Orbitalum Tools's liability is excluded or limited, such exclusion or limitation shall extend also to its affiliated companies as well as to the personal liability of the officers, employees and agents of Orbitalum Tools and its affiliated companies.
- 18 Statute of Limitations for Warranty and Damage Claims**
- As far as legally permitted, no action or claim may be brought by the Purchaser on account of any alleged breach of warranty or any other obligation of Orbitalum Tools after the expiration of twelve (12) months from receipt of the Products by the end user or at the latest within eighteen (18) months of the Products being despatched by Orbitalum Tools.
- 19 Severability**
- Should any term or clause of the contract in whole or in part be found to be unenforceable or void, all other provisions shall remain in full force and effect and the unenforceable or void provision shall be replaced by a valid provision, which comes closest to the original intention of the unenforceable or invalid provision.
- 20 Place of Performance and Jurisdiction**
- 20.1 Place of performance is Singen, Germany.
- 20.2 Any civil action based upon any alleged breach of this contract shall be filed and prosecuted exclusively in the courts of having jurisdiction over Orbitalum Tools. Orbitalum Tools however reserves the right to file actions in any court having jurisdiction over controversies arising out of or in connection with the present contract.
- 20.3 The contract shall be governed by German law (HGB and BGB) without regard to conflict of law provisions that would require the application of another law.

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