General Conditions of Sale of ONI-Wärmetrafo GmbH

Valid from August 2015

§ 1 General / Scope

1. Our General Conditions of Sale apply exclusively for our delivery of goods and services (contract of sales, - of manufacture or – for work and materials); any contrary terms and conditions employed by the Client or any terms and conditions deviating from our Conditions of Sale shall not apply unless we have expressly agreed in writing to their applicability. Such deviations shall apply only to the transaction/order for which they were agreed. Our Conditions of Sale also apply where we execute the delivery concerned to the Client without any reservations although being aware of such contrary and deviating terms and conditions of the Client.

2. All arrangements made between us and the Client for the purpose of executing this agreement, shall be recorded in the contract/order confirmation together with these General Business Conditions.

3. Our Conditions of Sale shall apply only to contracts with entrepreneurs within the meaning of sec. 310 sec. 1 of Germany's Civil Code (*BGB*).

4. Our Conditions of Sales shall also apply to all future transactions with the Client.

§ 2 Quotation / Bidding Documents

1. All quotations are subject to change and are non-binding. The right of prior sale of products and quantities declared to be on stock is expressly reserved.

2. Any individual arrangements with the Client (incl. subsidiary agreements, additions and modifications) shall always take precedence over these General Business Conditions. The content of such arrangements shall require a written contract or our written confirmation.

3. We reserve the property rights and copyrights in illustrations, drawings, calculations and other documents; the latter may only be used for the production based on our delivery and must be returned at once upon completion of the order.

4. We reserve the right to make minor changes or changes due to technical progress in construction, design and performance that do not affect the function of the item as compared with the details stated in our catalogue, brochures and/or the internet.

§ 3 Prices / Payment Conditions

1. Except as stated otherwise in the order confirmation, our prices are to be understood "ex works" or ex warehouse (EXW ICC Incoterms 2010) Lindlar/Niederhabbach excl. packaging, delivery, erection, commissioning and other additional costs (e.g. customs duties); these are charged separately.

2. Our prices are exclusive of the statutory VAT which is stated separately in the invoice at the rate applicable on the day of invoicing.

3. We reserve the right to execute delivery only against advance payment or cash on delivery.

4. Unless stated otherwise in the order confirmation, the price shall be due for payment within 14 days net (without deduction); after expiry of this term the Client is in default. This shall also apply to separately invoiced part deliveries. In case of late payment, the statutory regulations shall apply. This shall be without prejudice to any right to claim for further loss/damage.

5. Cheques are only accepted on account of performance; the costs of discounting and drawing shall be borne by the contracting party.

6. The Client shall only be entitled to set off claims if his counterclaims have either been legally binding established by a court or accepted by us. Furthermore he shall have the right to retain payment only to the extent that his counterclaim is based on the same contractual relationship.

§ 4 Delivery time

1. Any delivery times and dates are without obligation and only binding if agreed expressly. Where a specified delivery time has been expressly agreed, it shall begin once all technical and commercial details have been clarified.

2. Compliance with delivery dates and times on our part shall presuppose timely delivery of all documents necessary for execution of the order and performance of the contractual obligations of the Client, in particular, observance of the agreed payment conditions. If these prerequisites are not met in a timely manner, or if the Client causes changes or modifications to the ordered goods, the delivery times or dates shall be extended by a reasonable period.

3. Should we be unable to meet the agreed delivery date for reasons for which we are not responsible (non-availability of consideration), we will immediately notify the Client, specifying the expected new delivery date. If the consideration remains unavailable in this new delivery period, we shall have the right to terminate the contract either in whole or in part; any counter-consideration of the Client will be reimbursed at once. In particular, late delivery of our own supplier shall be deemed a case of non-availability if a congruent covering transaction was made, neither we nor our supplier are at fault, or we are not obliged to ensure procurement in a individual case.

4. The occurrence of a delay in delivery shall be determined pursuant to statutory provisions. In any case, however, a delivery reminder by the Client shall be required. Should we be late in delivery, the Client may claim liquidated damages in an amount of 0.5 % of the net price (delivery value) for each completed calendar week of delay, but not more than 5 % of the delivery value of the goods that are behind schedule. We shall be entitled to furnish proof that the Client has not incurred any loss/damage at all or that the loss/damage is significantly lower than the aforementioned lump sum.

5. Any claims of the Client for damages due to delayed performance as well as any claims for damages instead of performance that exceed the limits stated in item 4, shall be excluded in all delayed delivery cases after a delivery deadline set by us has expired. This shall not apply to cases of intent, gross negligence or injury to life, body or health. The Client shall be entitled to terminate the contract in line with the statutory regulations only where the delay in delivery is attributable to us.

6. We shall be entitled to make partial deliveries wherever these are reasonable for the Client. Partial deliveries shall always be deemed to be separate transactions.

§ 5 Transfer of Risk, Acceptance, Default of Acceptance

1. Delivery is ex works, which is also the place of performance. Delivery of the goods to another destination is possible at the request and expense of the Client (delivery to a place other than the place of performance). Failing other arrangements, we are entitled to determine the type of transport (in particular carrier, transport route, packaging).

2. The risk of accidental loss or accidental deterioration of the goods shall pass to the Client at the moment of handover at the latest. In the case of a delivery to a place other than the place of performance, however, the risk of accidental loss or accidental deterioration of the goods shall pass as soon as the goods have been delivered to the carrier, the forwarding agent or any other person or entity designated to carry out the consignment. The same applies to partial deliveries. Wherever technical acceptance has been agreed, this is crucial for the passage of risk. For the rest, the statutory provisions of the law on work and services *(Werkvertragsrecht*) shall apply accordingly to an agreed acceptance.

Default in taking delivery or use of the goods by the Client without a claim being made shall be deemed equivalent to handover or acceptance of the goods.

3. If the Client is in default in taking delivery or if he fails to provide an act of assistance or if our delivery is delayed for other reasons for which the Client is responsible, we shall be entitled to demand compensation for the resulting loss/damage including additional expenses (e.g. storage costs) for which we charge lump sum compensation in an amount of 0.5 % of the net price (delivery value) for each completed calendar week of delay, but not more than 5 % of the delivery value of the goods that are behind schedule, starting with the acceptance date.

Furnish of proof of a higher damage as well as statutory claims (particularly compensation for additional expenses, reasonable damages, termination) shall remain unaffected; the lump sum, however, shall be offset against any further going monetary claims. The Client shall be entitled to furnish proof that we have not incurred any damage or that the damage is significantly lower than the aforementioned lump sum.

§ 6 Liability for defects

1. Any claims of the Client based on defects are subject to the Client having fulfilled his statutory obligations of examination and notification of defects (secs. 377, 381 of Germany's Commercial Code *(HGB*)). If a defect is revealed during the examination or at a later time, this has to be reported to us in writing and without delay. Notice is deemed to be given without delay, if it is made within 5 workdays; to meet the deadline, timely dispatch of the notification of defects shall suffice. Apart from this obligation of examination and notification, apparent defects shall be reported to us by the Client in writing 2 workdays after delivery; to meet the deadline, timely dispatch of the notification of defects shall suffice here as well. If the Client fails to perform the proper examination and/or report the defect, any liability on our part for the unreported defect is excluded.

2. In the event that a delivery item shows a defect, we may choose between cure, i.e. repair of the defect, or delivery of a new item that is free of any defect. Our right to refuse to provide cure pursuant to the statutory regulations remains unaffected.

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3. We shall be entitled to make cure conditional upon payment of the price due by the Client. In any case the Client shall be entitled to withhold a reasonable amount of the price for the defect.

4. The Client shall grant us the necessary time and opportunity in particular to render cure and to hand over the faulty goods for examination. In case of replacement delivery, the Client shall return the defective goods to us pursuant to the statutory regulations. Cure includes neither removal of the defective goods nor subsequent re-installation if we were not originally responsible for installation.

5. We shall bear the expenses required for examination and cure, in particular transport, workmen's travel, labour and material costs (excl. removal and installation costs) if a defect does exist. Any costs that occur in the course of cure due to the fact that the goods were delivered to a place other than the place agreed in the contract shall be borne by the Client. These extra costs shall be paid by the Client in advance. If the Client's demand for remedy of a defect proves to be unjustified, we shall be entitled to demand reimbursement of the resulting costs from the Client.

6. If cure has failed twice or if a reasonable period of time granted in writing by the Client for cure has elapsed without result or is not required by law, the Client shall be entitled to terminate the sales contract or reduce the price. However, the Client shall not be entitled to terminate the contract in case of a minor defect.

7. Claims for compensation on the part of the Client on account of a material or legal defect are excluded. This shall not apply to instances of malicious concealment of the defect, absence of a guaranteed quality, injury to life, body, health or freedom or to a wilful or gross negligent breach of an obligation on our part. Any further going or other claims by the Client on the grounds of a material defect other than those governed by these General Business Conditions are not permitted.

8. In cases of emergency, e.g. where there is a risk to operational safety or where a disproportionate loss/damage is to be avoided, the Client shall have the right to remedy the defect himself and demand reimbursement by us of the objectively required associated costs. The Client shall notify us of such self-help immediately, where possible in advance. The right to self-help shall not apply where we were entitled to refuse cure pursuant to the statutory regulations.

9. Claims for defects become statute-barred 12 months after transfer of risk (§5) or in case of a contract of manufacture after acceptance of performance (*Abnahme*) handover of our goods to the Client. Any return shall be subject to our authorization. The above deadline shall not apply, if the law prescribes longer periods pursuant to secs. 438 para 1 no. 2 (Buildings and objects used for buildings) *(Bauwerke und Sachen für Bauwerke)*, 479 para 1 (Recourse claims) *(Rückgriffsanspruch)* and 634a para 1 no. 2 (Construction defects) *(Baumängel*) of Germany's Civil Code (*BGB*). Any cure rendered by us does not start a new limitation period.

10. Recourse claims by the Client against us shall apply only where the Client has not made any agreements with his customer that go beyond the defect claims mandatorily governed by law.

§ 7 Other claims for damages; Limitation

1. The Client has no claim for damages for whatever legal reason, in particular for infringement of duties arising out of the obligation and out of tort, unless claims for damages of the Client are expressly governed by these General Business Conditions.

2. The above shall not apply in the case of mandatory liability, e.g. under the German Product Liability Act *(Produkthaftungsgesetz),* in the case of intent, gross negligence, injury to life, body or health, or breach of material contractual obligations. Claims for damages arising from a breach of material contractual obligations shall however be limited to the foreseeable damage typical of the contract, unless they are due to intent or gross negligence or based on liability for injury to life, body or health.

3. To the extent that the Client has a claim for damages, this shall be barred upon expiration of the limitation period pursuant to § 4 no. 9. The same shall apply to the Client's claims in connection with actions undertaken to avoid damage (e.g. product recalls). In the case of claims for damages under the German Product Liability Act, the statutory limitation periods shall apply.

§ 8 Impossibility of performance; Adaptation of contract

1. To the extent that delivery becomes impossible, the Client shall be entitled to claim damages, unless we are not responsible for the impossibility. The Client's claim for damages shall, however, be limited to an amount of 5 % of the value of that part of the delivery which, due to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of mandatory liability based on intent, gross negligence or injury to life, body or health. The right of the Client to terminate the contract shall remain unaffected.

2. Where unforeseeable events (force majeure) or a delayed or improper delivery by our suppliers substantially change the economic importance or the contents of the delivery or considerably affect our operations, the contract will be adapted accordingly in a manner consistent with good faith. To the extent this is not justifiable for economic reasons, we shall have the right to terminate the contract. If we intend to exercise this right, we shall notify the Client thereof immediately after realisation of the consequences; this shall also apply where originally an extension of the delivery period was agreed with the Client.

§ 9 Reservation of title

1. Ownership of our goods remains with us pending payment in full of all current and future receivables under the contract and an ongoing business relationship (secured receivables).

2. Goods subject to reservation of title may not be pledged to third parties or transferred as security until the secured receivables are paid in full. The Client shall inform us immediately in writing if and to the extent that third parties have access to goods owned by us.

3. Should the Client infringe the contract, in particular by failing to pay the price due, we shall be entitled to terminate the contract pursuant to the statutory regulations and request the return of the goods under the reservation of title and the termination. Should the Client fail to pay the price due, we may apply these rights only after we have unsuccessfully set the Client an appropriate deadline for payment or if such a deadline is legally superfluous.

4. The Client shall be authorized to resell and/or process goods under reservation of title in the ordinary course of business. In this case the following terms shall apply in addition.

a) Reservation of title extends to products from the processing, mixing or combining of our goods to their full value, whereby we are deemed to be the manufacturer. If in the event of processing, mixing or combining with goods from third parties their title of reservation remains in place, we shall acquire a co-ownership according to the invoice values of the processed, mixed or combined goods. Apart from this, the same applies to the resulting product as to the goods delivered under reservation of title.

b) The Client already assigns to us any claims against third parties arising from the resale of the goods or the products either in whole or in the amount of any co-ownership share as security pursuant to the preceding paragraph. The assignment is accepted by us. The Client's obligations specified in sec. 2 apply also in relation to the assigned claims.

c) The Client remains authorized to collect the claim besides ourselves. We undertake to refrain from collecting the claim provided that the Client fulfils his payment obligations towards us, he is not in arrears with payment, no application for insolvency proceedings has been made, and no other lack exists in of his performance. If this is the case, however, we may require that the Client notifies us of the assigned claims and their debtors, that he provides all necessary information and documents for the collection and that he notifies the debtors (third parties) of the assignment.

d) If the recoverable value of the securities exceeds our claims by more than 10 %, we will release securities at our discretion as requested by the Client.

§ 10 Place of jurisdiction / Place of performance

1. Place of jurisdiction shall be Wipperfürth local court *(Amtsgericht Wipperfürth)* or Cologne regional court *(Landgericht Köln)* depending on their competence. We shall, however, also be entitled to sue the Client at his place of jurisdiction.

2. The national law of the Federal Republic of Germany, as applicable between German native residents, i.e. with the exception of the conflict-of-law rules and the UN Convention on Contracts for the International Sale of Goods (CISG), shall apply exclusively.

3. Except as stated otherwise in the order confirmation, the place of performance for all mutual rights and obligations shall be Lindlar/Niederhabbach.

4. Should any of the aforementioned provisions be or become ineffective, this shall not affect the validity of the remaining provisions. The contracting parties shall undertake to come to a legally valid arrangement that reflects the economic purpose of the ineffective provision as closely as possible.