

**General sales and delivery terms and conditions  
of Ochsner Wärmepumpen GmbH (FN 85708t)**

For our business partners, distributors and trade partners.

Version: October 2022

**OCHSNER**  
HEAT PUMPS

**1. Definitions**

- 1.1 "Customer" refers to our contractual partner in terms of business partner, distributor and trade partner, and therefore to businesses.
- 1.2 "Contract Goods" are services, goods and/or products of any kind ordered from us by the Customer.
- 1.3 "Job Order" is the contract validly created on the basis of our offer or the Customer's order and our order confirmation and/or fulfilment.
- 1.4 "End User" is our Customer's client or the system operator.
- 1.5 The supplied products have been designed and developed for domestic use. They are thus household appliances within the meaning of the Machinery Directive. Appliances for "domestic use" can also be used for commercial and industrial purposes if they are suitable for the intended purpose and the conditions prevailing at the deployment location and if the manufacturer's safety instructions are observed.

**2. Scope**

- 2.1 All legal transactions, deliveries, goods, services and offers made by us are subject to these Terms and Conditions of Sale and Delivery. The Customer expressly acknowledges that we hereby reject any and all conflicting provisions made in an order or in any other business papers of the Customer. A Customer's conflicting terms and conditions are not recognised by us and shall apply only if we have confirmed them in writing, even if we fail to give express notice of said objection in each instance. These Terms and Conditions of Sale and Delivery shall serve as a framework agreement for all future transactions with the Customer.
- 2.2 In the event that the terms in the various contract documents are contradictory, the following order of precedence shall apply:
  - the Job Order;
  - these General Terms and Conditions of Sale and Delivery;
  - any quality standards expressly agreed upon in writing between the Customer and us;
  - other statutory provisions.

**3. Contract**

- 3.1 Our offers and pricelists are non-binding and are subject to change and solely constitute an invitation to treat. Customer orders are binding offers to enter into a contract with us. Customer orders are binding upon the Customer upon receipt by us; receipt by one of our staff members shall suffice.
- 3.2 Contracts shall become effective only upon our written confirmation or when we fulfil said order in a manner determined by us (e.g. delivery/dispatch of the Contract Goods). All other agreements or side agreements, including those made at a later date, shall become effective only upon our written confirmation. Our employees are not authorized to make legally binding declarations on our behalf if they have not been granted a special power of attorney for said purpose which has been communicated to the Customer.
- 3.3 Any technical information provided in our documents shall be deemed to constitute only approximate values unless expressly pledged as binding. We reserve the right to make construction and/or production-related modifications and deviations. Obvious spelling and arithmetic errors in quotations, order confirmations and invoices may be corrected by us at any time.

**4. Prices**

- 4.1 All prices quoted by us are subject to change and are quoted, except where expressly stated otherwise, in euros (EUR) without VAT. Unless otherwise agreed in writing, cost estimates are created without any guarantee for accuracy.
- 4.2 Any changes in labour costs due to collective bargaining or shop-level agreements or statutory regulations, as well as changes to other costs relevant to cost centres or contract fulfilment, including those for materials, energy, transportation, outside labour, financing, etc., entitle us to increase the prices accordingly. - Price escalation clause - The Customer may not for this reason withdraw from the contract or claim that the basis of the transaction has lapsed (*Wegfall der Geschäftsgrundlage*). Unless otherwise agreed in writing, all prices are exclusive of additional expenses.
- 4.3 The offer prices shall apply only to orders of the entire offer. It is assumed that the goods or services can be provided in a single process. Additional costs arising from unforeseen disruptions of supplies or services will be billed separately. This also applies to delays in commissioning caused by incomplete site preparations.
- 4.4 Services ordered, but not included in our offer, will be performed in accordance with our terms and at our standard rates on the basis of time/costs incurred.

**5. Delivery, transfer of risk**

- 5.1 As a general rule, agreed delivery periods commence when we send an order confirmation. The delivery period in question does not, however, commence until we have received and confirmed all technical or other information, documents, advance payments or any other item required from the Customer in order for us to fulfil our obligations.
- 5.2 The delivery period shall be reasonably extended if, at the request of the Customer, changes to the design are necessary which require additional goods and services. Any resulting additional costs shall be borne by the Customer.
- 5.3 The delivery deadline is considered met if the Contract Goods leaves our warehouse (or, for drop-shipment sales, our supplier's warehouse) before the deadline has expired or if, by that time, we have notified the Customer that the Contract Goods are ready to be delivered. Downtimes of the transport vehicle or train car are charged to the Customer unless caused by us through gross negligence or wilfully and knowingly.
- 5.4 We will strive to meet promised delivery dates, but they are not binding. Delayed shipments do not entitle the Customer to withdraw from the contract or to assert claims for warranty, avoidance on account of mistake or damages. We are entitled to make partial or advance deliveries and invoice them separately.
- 5.5 We ship our products ex works in accordance with the Incoterm EXW; i.e. as a rule, the transport must be organised by the Customer and the liability risk transfers to the Customer as soon as the goods are loaded into the transport vehicle in our shop. While we do offer our Customers transport services, any delivery is still considered ex works. We reserve the right to choose the transport method and route and we do not accept any liability whatsoever. In particular, there is no obligation to choose the cheapest mode of transport.
- 5.6 All deliveries – including partial and/or advance deliveries – are packaged in the customary manner. Costs for packaging, shipping, customs and other services are billed separately. We are entitled to charge a shipping and freight fee as listed in our transport costs pricelist as amended from time to time. Express and air cargo surcharges will also be invoiced separately. Transport insurance will only be purchased on behalf of and at the cost of the Customer. We are not obliged to insure goods for transport.
- 5.7 Operational disruptions and events caused by force majeure as well as other events beyond our control, particularly supply-chain delays and the like on the part of our upstream suppliers entitle us either to extend the deadlines accordingly or to withdraw from the unfulfilled part of the contract to the exclusion of any legal claims, particularly for warranty, avoidance on account of mistake and damages. This applies even if the events occur at a time when we were already in default.

- 5.8 Once we have notified the Customer that the goods are ready to be delivered, but no later than upon departure of the same from our warehouse or from the warehouse of our supplier in the case of direct supplies, the risk as to price and performance transfers to the Customer regardless of any separate pricing agreement for the delivery; this shall also apply if we have agreed to make any subsequent deliveries. If the shipment of goods ready to be delivered or the agreed delivery is rendered impossible for reasons beyond our control, we reserve the right at our discretion to store the goods at the expense and risk of the Customer, such storage constituting delivery as defined herein; in this instance we are in particular entitled to undertake such storage ourselves at the customary market prices or to store the goods ready for dispatch with a third party on behalf and billable to the Customer. Regardless of any agreement as to the place of delivery and acceptance of any transport costs, the place of fulfilment is deemed to be the headquarters of our company.
- 5.9 The Customer must note any transport damage on the waybill. The burden of proof of damage not noted thereon lies with the Customer.
6. **Payment Terms, Default, Offsets, Overseas Shipments**
- 6.1 We are entitled to send our invoices electronically. The Customer hereby expressly agrees to this form of transmission. The invoice must be paid in advance, unless a different due date has been agreed in the Job Order. The invoice amount must be received no later than three days prior to the planned delivery ex works (EXW). Payments for services rendered are due immediately. Unless otherwise agreed in writing or required by statute, the retention of payments is not recognised and is deemed to constitute payment default. Bills of exchange or cheques will be accepted only by special agreement. We reserve the right to apply any incoming payments to any receivables at our discretion.
- 6.2 If the Customer defaults on payment, we are relieved of all further service and delivery obligations and entitled to withhold any outstanding deliveries or services or to demand advance payments or securities. In addition, the Customer shall be strictly liable to pay default interest at the rate of 1% per month; we are entitled to claim any additional bank interest in the customary amount. The Customer shall also pay reasonable reminder and collection costs. For each reminder issued by us, the Customer undertakes to pay a minimum of EUR 20.
- 6.3 If after the contract has been entered into, the Customer's financial assets suffer a significant deterioration or it becomes known that circumstances are likely to reduce the Customer's creditworthiness in our view, all receivables become immediately payable. All further deliveries will then be made only against advance payment.
- 6.4 The Customer is expressly forbidden from retaining or off-setting payments for counterclaims of any sort.
- 6.5 For export transactions, the Customer bears the sole responsibility for obtaining and maintaining the necessary export, customs and other approvals and the like at its own expense. We provide no warranty or guarantee whatsoever that the Contract Goods will be approved for export. Furthermore, the Customer shall return all export and customs documents and the like to us in the original, otherwise the Customer shall pay all applicable VAT.
- 6.6 For non-contractual interruptions in delivery not caused by us, we are entitled to prepare partial invoices.

**7. Resale, Customer Responsibilities**

- 7.1 We grant the Customer the right to sell the Contract Goods. The Customer is an independent business operating in its own name and at its own responsibility. The Customer buys and sells the Contract Goods exclusively in its own name and at its own cost and is not authorised to make legally binding agreements on our behalf unless separately authorised.
- 7.2 If this provision is breached by the Customer, the Customer is obligated to fully indemnify and hold us harmless with regard to any third-party claims, regardless of their legal basis.
- 7.3 The Customer expressly acknowledges that it is solely responsible for planning, technical conception and dimensioning, obtaining any necessary permits as well as the assembly and installation of the Contract Goods provided by us and shall indemnify and hold us harmless with regard to all claims. The Customer is required to perform the installation and train the End User in the system according to statutory provisions and the state of the art in a proper and professional manner. In the event that the Customer does not provide the same within a reasonable period, we are entitled to provide it at the Customer's cost.

**8. Support Services to End Customers**

- 8.1 If we provide services directly to the End User, these are billable and shall be paid by the End User directly to us, provided there is no direct warranty claim against us.

**9. Retention of Title**

- 9.1 We shall retain title to all Contract Goods supplied by us in whole or in part until full payment of the purchase price plus interest and additional charges has been received, regardless of the legal basis. An order consisting of several partial deliveries shall be considered a single order, with the title to all goods delivered retained until payment of all receivables under this legal transaction is received in full. Unless we have exercised our right to withdraw from the contract – a right we may exercise unilaterally – the assertion of the right to retain title does not constitute a withdrawal from the contract and does not remove the Customer's obligations, especially to pay the amounts due.
- 9.2 The Customer is entitled to assign as part of its business dealings its inchoate rights to Contract Goods subject to our retained title but is not entitled to offer said goods as security or allow liens to be placed against the same. This right of the Customer can be revoked by us at any time.
- 9.3 The Customer must notify us of any third-party pledge or other third-party encumbrance on the property immediately. The Customer is obliged to pay the costs and take the measures required to eliminate such interference, in particular court and other legal costs.
- 9.4 The retention of title also extends to products resulting from processing. If our goods are processed or combined with other materials or with land, we acquire a proportional co-ownership interest in the resulting products and the added value. The Customer is obliged to inform its customers of this legal consequence.
- 9.5 For purposes of securing and fulfilling our claims, the Customer hereby assigns all claims arising from the sale of goods to which we hold an ownership interest – where applicable to the extent of our co-ownership interest. We accept this assignment. The Customer is obliged to notify us immediately of the name and address of its customers and the status and amount of the claims resulting from the resale. The Customer shall inform its respective customer of the assignment of the claims and provide evidence thereof. Furthermore, the Customer is required to record this assignment of claims to us in its business records in a suitable manner. We are entitled at any time to notify the Customer's End User of the assignment. Any assignment fees shall be borne by the Customer.

- 9.6 The Customer hereby transfers to us ownership in all amounts received from cash sales of goods to which we hold title up to the amount payable to us at the current time for deliveries of such goods; we hereby instruct the Customer to keep these amounts separately in trust for us.
- 9.7 If the Customer fails to fulfil his obligations or stops his payments, the entire balance shall become due immediately, even if there are any bills of exchange with later due dates. In this instance we are entitled to demand the immediate surrender of the Contract Goods to the exclusion of any right of retention. After repossessing the Contract Goods, we may at our discretion either sell the Contract Goods and credit the proceeds generated less 20% resale charges to the Customer's remaining obligations or take back the Contract Goods at the invoice price less any deductions for reduced value and invoice the Customer a customary rent for the period of time during which the supplied goods were in its possession.
- 10. Warranty, Incorrect Delivery, Product Liability**
- 10.1 The Customer shall notify us in writing of any defects in the Contract Goods immediately, but no later than within 3 days from delivery and before any further working or processing of the product so as not to preclude any warranty claims and/or claims for damages and/or avoidance on the ground of mistake. Such notice shall include a detailed description of the defects. Such notice does not, however, entitle the Customer to retain any amounts invoiced or parts thereof. In case of visible transport damage, the Customer is obliged to inspect the goods before accepting them and report visible transport damage without delay.
- 10.2 For defects not obvious during visual inspection upon delivery, the warranty period is two years from delivery and will not be extended or put on hold by repair attempts; this also applies to partial deliveries. Notice of such defects shall be provided in writing within 3 days from discovery of the defect so as not to preclude any warranty claims and/or claims for damages and/or avoidance on the ground of mistake, but such defects do not entitle the Customer to retain any amounts invoiced or parts thereof. For end customers and End Users, manufacturer's warranties of 2 up to 7 years are granted for heat pumps in connection with service contracts. These are subject to separate warranty provisions and separate service contracts.
- 10.3 Deviations of the delivered Contract Good from that which was ordered, such as incorrect dimensions or the wrong Contract Good (incorrect delivery), must be reported within 3 days of delivery and before any resale and/or further working or processing is undertaken. Otherwise, the Contract Goods shall be deemed accepted and may not be returned or exchanged.
- 10.4 All advice provided by us, whether orally or in writing, is not binding and does not release the Customer from the obligation to inspect the Contract Goods to check for their suitability for the intended purpose. We do not warrant that products in subsequent deliveries will be an exact match for those in the first delivery. Only Ochsner or an authorised service provider instructed by Ochsner in writing may put an Ochsner machine into service. The commissioning itself is limited to the components delivered by Ochsner and does not apply to the entire heating system or system components not supplied by Ochsner. No liability is assumed for the complete heating system or third party system components after there have been put into service.
- 10.5 The technical requirements for system design and installation for products supplied by us as found in manuals, operating instructions and the like are only current minimal requirements and make no claim to completeness. The Customer is obliged to comply with the relevant state of the art and current OCHSNER guidelines (provisions and requirements laid down in manuals, instructions, price lists or similar), otherwise all warranty claims and any express warranties provided by us will expire. In particular, we assume no warranty or liability for calculations made by the Customer on the efficiency of a Contract Good provided by us or the suitability of the same for the Customer's intended purposes, unless agreed separately in writing.
- 10.6 Also excluded is any warranty for disposable parts, such as filters, filter elements, anodes and electrical parts, circulation pumps, electric immersion heaters, valves and plate heat exchangers (for example, due to scaling, corrosion, dry run, unsuitable water quality) or parts installed on site. In cases of doubt, compliance with water quality regulations per the nationally applicable standard must be demonstrated by the Customer. In the case of tanks, the anti-corrosion anode must be shown to have been maintained. In addition, we point out that flying rust particles can occur on all parts exposed to the atmosphere.
- 10.7 The Customer shall always provide proof of defects in the Contract Goods at the time of transfer; the legal presumption of Section 924 of the Austrian Civil Code is explicitly excluded.
- 10.8 For Contract Goods received by us from our supply chain, we assume liability only within the scope of our existing warranty claims against our supplier.
- 10.9 We only warrant that items provided by us have the characteristics customarily expected for such goods. For any other characteristics, in particular those made in public statements such as advertising and in information supplied with the Contract Goods, we assume liability only if we have expressly warranted such characteristics in writing at the time the order was accepted.
- 10.10 Notwithstanding other provisions in these General Terms and Conditions of Sale and Delivery, liability under the warranty expires
- when the Customer or third parties make changes or repairs to the Contract Goods without our written consent,
  - when non-original accessories are used,
  - when the Contract Goods are not used as intended,
  - when installation and operating instructions are not followed,
  - if the system is put into service by anyone other than Ochsner's customer service or a service contractor authorised in writing,
  - in the case of defective auxiliary equipment such as insufficient flow rates or system bridges, lack of flow switch in heat source system and or heat sink system, the lack of electric immersion heater with heat source air, external control, interference with the control unit, pollution during construction, poor water quality, lack of hydraulic isolation, improper valves,
  - in the case of incorrect sizing and/or faulty construction of the heat source system,
  - if evaporators are not connected in accordance with the installation and connection guidelines.
- 10.11 We only warrant the functionality of our products but not their appearance. Any such warranty obligation shall apply exclusively to defective equipment parts, but not to the labour and travel costs required to correct the same.
- 10.12 We assume no liability for operating costs and noise emissions at the installation site as they depend on the system configuration, buildings, weather, user behaviour and control settings.
- 10.13 Unless otherwise separately agreed, the place of fulfilment for all services to be provided by us under warranty shall be the headquarters of our company.
- 10.14 We reserve the right to fulfil warranty obligations by exchange, repairs, price reductions or rescission (*Wandlung*) per our discretion.
- 10.15 The assignment of warranty and damage claims or the like is not permitted. The right of recourse pursuant to Section 933b of the Austrian Civil Code is excluded.
- 10.16 For damage caused to our Customer in the course of the business transaction, we assume a maximum liability equal to the value of the order in which the damage occurred and only in cases of gross negligence by us or one of our agents (Erfüllungsgehilfen), except for personal injuries, for which we assume liability in cases of slight negligence. Compensation for consequential damage, purely financial losses, profit lost and loss from claims of third parties is excluded.
- 10.17 Instructions found in instruction manuals or other product information must be strictly observed by the Customer to prevent any damage. We explicitly caution against a use of the product beyond its defined areas of application.
- 10.18 If our Customer is required by the Austrian Product Liability Act to assume liability, the Customer expressly waives recourse to us as set forth in Section 12 of the Austrian Product Liability Act.
- 10.19 If the Customer puts the goods supplied by us into circulation outside the European Economic Area, the Customer undertakes to exclude the right to compensation under the Austrian Product Liability Act vis-à-vis its purchaser, if such exclusion is possible according to the applicable statutes agreed between the Customer and its purchaser. In this case or if the Customer fails to make this exclusion, the Customer is obliged to indemnify and hold us harmless regarding third party product liability claims. The Customer undertakes to acquire adequate product liability insurance and shall submit a copy of the policy to us on request.
- 10.20 The return of Contract Goods is possible only under a return form issued by us (KR Form / RMA Form). Returns made without the return form will not be accepted by us and returned on a freight collect basis.
- 10.21 The return of Contract Goods including accessories or spare parts delivered in compliance with the job order is excluded.
- 11. Contractual Amendments, Withdrawal**
- 11.1 If unforeseen events significantly affect the commercial significance or the content of the contracted goods or services or have a significant impact on our operations or if it becomes clear after the contract takes effect that it cannot be fulfilled, the contract shall be reasonably amended. If this is not economically viable, we reserve the right to withdraw from the contract in whole or in part. If we want to exercise this right, we shall inform the Customer immediately after we become aware of the significance of the event, even if an extension of the delivery period was initially agreed with the Customer.
- 11.2 If there is a default of acceptance or for other important reasons, such as payment default on the part of the Customer, we are entitled without prejudice to any other claims to withdraw from the contract immediately after setting a 14-day grace period. The withdrawal becomes effective upon our unilateral declaration.
- 12. Privacy and Copyright**
- 12.1 The Customer consents to any personal data contained in the contract being stored and processed by us in fulfilment of this contract with the help of automated data processing systems.
- 12.2 All documents surrendered to the Customer, especially cost estimates, plans, drawings and other technical documents, as well as samples, catalogues, brochures, illustrations and the like remain our intellectual property at all times; the Customer does not obtain or acquire any rights whatsoever to them, including e.g. use or exploitation rights. The Customer is not entitled to make these documents available to third parties. These documents shall be returned immediately to us upon request.
- 12.3 The Customer agrees that we may use illustrations of the Contract Goods it has purchased for advertising purposes and present it in other ways, e.g. as a model; the design and mode of the presentation is left to our discretion.
- 12.4 For custom productions, the Customer warrants that the creation of the Contract Goods in accordance with the Contract or other services do not infringe third-party proprietary rights. The Customer shall hold us harmless and indemnify us completely against any third party claims in this respect.
- 13. Final provisions**
- 13.1 The Customer is obliged to immediately notify us of any changes to its company name, business address, tax identification number and the like without further request by us until such time as the transactions under this contract have been completely fulfilled by both sides. If this notice is not given, then notices sent to the Customer shall be deemed received if they have been sent to the last known address. The Customer shall be obligated to prove on a case-by-case basis that its notice of change was received.
- 13.2 The contract language is German.
- 13.3 The place of performance for all contractual obligations of the parties is the location of our headquarters in Linz, Austria, regardless of any agreement regarding the place of delivery and the assumption of any transport costs or the place of payment.
- 13.4 All transactions, and in particular those covered by these General Terms and Conditions of Sale and Delivery, are only subject to Austrian substantive law, excluding its conflict of laws provisions especially those under private international law insofar as these refer to the application of foreign law. If, in cases with a cross-border element, Austrian law provides for the application of special, international substantive laws that are also applicable in Austria – such as the United Nations Convention on Contracts for the International Sale of Goods – these do not apply and are explicitly excluded. This also applies to questions regarding the conclusion and interpretation of these Terms and Conditions and the contract.
- 13.5 The exclusive place of jurisdiction for our Customer for all disputes arising under or in any connection with this contract is the court with subject-matter jurisdiction in Linz, Austria. We reserve the right, however, to file suit against the Customer at our discretion in any other court which may have jurisdiction under national or international law.
- 13.6 If any provision of our General Terms and Conditions of Sale and Delivery is or becomes invalid, the validity of the remaining provisions shall not be affected. The parties undertake to replace the invalid provision without delay with another provision which most closely reflects the commercial purpose of the invalid provision. The same is true for any gaps.
- 13.7 The headings contained in these General Terms and Conditions of Sale and Delivery are for convenience only and must not be used as a guide to their interpretation.
- 13.8 No business development between us and the Customer and no delay or omission in exercising a right, redress or remedy granted herein shall be deemed a waiver of such rights. Every right, redress and remedy granted to us herein is cumulative and of equal rank besides and in addition to any other rights, redress or remedy granted by law.