

General Sales and Delivery Terms and Conditions of Ochsner Wärmepumpen GmbH (FN 85708t)

For our business partners, distributors and trade partners.

Version: May 2017

OCHSNER
HEAT PUMPS

1. Definitions

- 1.1 "Customer" refers to our contractual partner in terms of business partners, distributors and trade partners, and therefore businesses.
- 1.2 "Contract goods" are those services, goods or products of any kind ordered from us by the customer.
- 1.3 "Job order" is the contract created by our offer or the customer's order and our order confirmation and/or fulfillment.
- 1.4 "End user" is our client's customer.
- 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 transactions, deliveries, goods, services and offers made by us are subject to these Terms and Conditions. The customer expressly acknowledges that we hereby reject any and all divergent provisions made in an order or in any other business papers of the customer. A customer's divergent conditions terms are not recognised by us and shall apply only if confirmed in writing, even if we fail to give express notice of said objection in each instance. These terms and conditions shall serve as a framework agreement for all future transactions with the customer.
- 2.2 In the event the terms in the various contract documents do not agree, the following order of precedence shall apply:
 - the job order;
 - these General Terms and Conditions;
 - Austrian or other quality standards as agreed upon in writing between us and the customer;
 - other statutory provisions.

3. Contract

- 3.1 Our offers and price lists are non-binding and are subject to change and constitute solely a solicitation of an order. Customer orders are binding offers to make a contract with us. Customer orders are binding upon the customer upon receipt by one of our staff members.
- 3.2 Contracts shall become effective only with our written confirmation or when we fulfil said order in a manner determined by us (e.g. delivery/dispatch of the contract good). All other agreements made at a later date or other side agreements shall become effective only after 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.
- 3.3 The technical information in our documents to be considered only approximate values, if not otherwise expressly pledged as binding. The right to make modifications and deviations caused by construction or production conditions is reserved. 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 fulfillment, including those for materials, energy, transportation, outside labour, financing, etc. entitle us to increase the prices accordingly. The customer may not for this reason attempt to withdraw from the contract or claim that the basis of the transaction has changed. Unless otherwise agreed in writing, all prices are exclusive additional expenses.
- 4.3 The offer price 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 Tasks ordered, but not included in our offer, may be performed at our discretion in accordance with our terms and at our standard rates.

5. Delivery, Transfer of Risk

- 5.1 Agreed delivery periods on principle commence when we send an order confirmation. This time to deliver does not, however, commence until we have received and confirmed all technical or other information, documents, advance payments or any other thing required of the customer.
- 5.2 The delivery period shall be extended if changes to the design requiring more outside goods and services are necessary due to customer requests. Additional costs shall be incurred by the customer.
- 5.3 The delivery deadline is considered met if the contract goods leaves our shop (or, for drop-ship sales, our supplier's warehouse) before the deadline or if we have notified the customer that the good will be ready to delivery by the same date. Downtimes in the transport vehicle or train car are charged to the customer, unless caused by us through gross negligence or wilful misconduct.
- 5.4 We will strive to meet promised delivery dates, but they are not binding. Delayed shipments do not entitle the customer to rescind the contract or to assert claims for warranty, errors or damages. We are entitled to make partial or advance deliveries and invoice the same separately.
- 5.5 We ship our products ex-works, i.e. the transport must as a rule be organised by the customer and the liability risk is transferred to the customer once the goods are loaded into the transport vehicle in our shop. We do nonetheless offer our customers transport services, but delivery is still considered ex works. We reserve the right to choose transport method and route with all liability disclaimed. In particular, there is no obligation to choose the cheapest mode of transport.
- 5.6 The packaging of all deliveries, in whole or in part or in advance, shall be done 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 current transport costs price list. 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 or other events beyond our control, particularly supply-chain delays entitle us to extend the deadlines accordingly or to cancel the unfulfilled part of the contract to the exclusion of any legal claims, particularly of warranty, error and damages. This applies even if the events occur at a time when we were already in default.

- 5.8 Once we have provided notice to the customer that the goods are ready to be delivered, but no later than the departure of the same from our warehouse or from the warehouse of our supplier, the customer shall assume the risk for any changes to the price and performance regardless of any separate pricing agreement for the delivery or any subsequent deliveries as agreed. 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; we are in this instance 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 delivery and acceptance of any transport costs, the place of fulfillment is deemed to be the headquarters of our company.
- 5.9 Transport damages must be noted on the bill of lading. The burden of proof of damages 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 expressly agrees with 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. Payments for services rendered are due immediately. Unless otherwise stipulated in writing or by statute, the retention of payments is not recognised and shall be considered payment default. Payment in kind or by cheque will be accepted only by special agreement. We reserve the right to apply any incoming payments to any and all receivables at our discretion.
 - 6.2 If the customer defaults on payment, we are relieved of any 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 pay default interest at the rate of 1% per month regardless of the amount of outstanding indebtedness together with any additional bank interest in the customary amount. The customer shall also pay all reasonable collection costs. For each warning notice served by us, the customer agrees to pay a minimum of €20 each.
 - 6.3 If after the contract is in force, 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 independently 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 indemnify and hold 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 all necessary permits as well as the assembly and installation of our contract goods and shall to indemnify and hold harmless with regard to any claims against the customer's end users. The customer is required to perform the installation and train the end user in the system according to statutory provisions and the state of technology 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 no direct warranty claim has been made against us.
- ## 9. Retention of Title
- 9.1 We shall retain title to all 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 reason for default. An order consisting of several partial deliveries shall be considered a single order, with the title of all goods delivered retained until payment of all receivables is received in full. Unless we have exercised our unilateral right to revoke the contract, the assertion of the right to retain title does not constitute a revocation of 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 pledge or other lien on the property by third parties immediately. The customer is obliged to pay the costs and measures to eliminate such lien, 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 interest.
 - 9.5 The customer hereby assigns a security interest in the sale of all goods to which we hold title or an ownership interest until such time as our claims are satisfied. We accept this assignment. The customer is obliged to notify us immediately of the name and address of its customer and the status and amount of the receivables resulting from the resale. The customer shall inform its customers of the assignment of interest in their payables. Furthermore, the customer is required to post this assignment of an interest in its receivables in a clearly marked manner. We are entitled at any time to notify the customer's end user of the assignment. Any assignment fees are borne by the customer.
 - 9.6 All amounts received in cash sales of goods to which we hold title shall be transferred by the customer to us up to the amount payable to us at the current time for current deliveries; we hereby authorise the customer to keep these amounts separately in trust for us.

- 9.7 If the customer fails to fulfil or ceases to perform his payment obligations, the entire balance shall be due immediately, even when drafts with later due dates are already in place. In this instance we are entitled to demand the immediate surrender of the contract good to the exclusion of any right of retention. After repossessing the contract goods, we may at our discretion either to sell the contract goods and apply the proceeds generated less 20% resale charges to the customer's remaining obligations or accept the contract goods at the invoice price less deductions for reduced value and invoice the customer the customary rent for the period of time which the 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 3 days after delivery and before any further working or processing of the product. Such notice shall include a detailed description of defects. With the exclusion of warranty and/or claims for damages and/or errors, such claims do not entitle the customer to retain payment in whole or in part. In case of visible damage in transit, the customer is obliged to examine the goods before acceptance of the cargo and report visible transport damage immediately.
- 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 is to be made in writing within 3 days from discovery of the defect, otherwise all claims to warranty, damages or error will be excluded, but do not entitle the customer to retain payment for the invoice in whole or in part. 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.
- 10.3 Deviations of the delivered product from that which was ordered, such as incorrect dimensions or the wrong item, must be reported within 3 days of delivery and before any resale 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, whether orally or in writing, is not binding and does not release the customer from examining the contract goods for their suitability for the intended purpose. We make no guarantee that products in make-up deliveries will be an exact match for those in the first delivery. Only Ochsner or an authorised service provider 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. An assumption of liability after the complete heating system or third-party system components is put into service is excluded.
- 10.5 The technical requirements for system design and installation for our products as found in manuals, instruction guides 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, otherwise all warranty claims and guarantees from us are null and void. 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, circulating pumps, electric rods, valves and heat exchangers (for example, due to scaling, corrosion, dry run, low water levels) or parts installed on site. Compliance with water quality regulations per VDI 2035 must be demonstrated by the customer. When put in storage, the corrosion protection anode must be 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 the product defects at the time of transfer; the legal presumption of §924 of the Austrian Civil Code is explicitly excluded
- 10.8 For contract goods received by us from our supply chain, we provide warranty only as part of our existing warranty claims against our supplier.
- 10.9 We only guarantee 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 such characteristics were expressly agreed in writing at the time the job order was accepted.
- 10.10 Notwithstanding other provisions in these General Sales and Delivery Terms and Conditions, the warranty is voided
- 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,
 - when the system data sheet is completed,
 - if the system is put into service by anyone other than Ochsner or a service contractor authorised in writing
 - with defective auxiliary equipment such as insufficient flow rates or system bridges, lack of flow switch in heat source system and/or heat utilization system, the lack of e-bar with air source, external control, interference with the regulation, pollution during construction, poor water quality, lack of hydraulic isolation, improper valves,
 - in incorrect sizing and / or faulty construction of the heat source system,
 - when evaporators are not connected to the supply and connector lines.
- 10.11 We guarantee only the functionality of our products and do not guarantee 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 levels 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 warranty services shall be the headquarters of our company
- 10.14 We reserve the right to fulfil warranty obligations by exchange, repairs, price reductions or conversions per our discretion.
- 10.15 The assignment of warranty and damage claims or the like is not permitted. The right of recourse pursuant to §933b of the Austrian Civil Code is excluded.
- 10.16 For damages caused to our customer in the course of this 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, except for personal injuries, for which we assume liability in cases of slight negligence. Compensation for consequential damages, 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 avoid any and all damages. We explicitly caution against a use of the product beyond its defined areas of application.
- 10.18 If our customer is required by the Product Liability Act to assume liability, the customer expressly waives recourse to us as set forth in §12 of the Product Liability Act.
- 10.19 If the customer takes the goods outside the European Economic Area, the customer is obliged to exclude the end user's right to replacement under the Product Liability Act, if such exclusion is possible according to the applicable statutes agreed between the customer and its end user. In this case or if the customer fails to make this exclusion, the customer is obliged to indemnify and hold us blameless regarding third-party product liability claims. The customer shall acquire adequate product liability insurance and will submit a copy of the policy to us on request.
- 10.20 The return of contract goods is possible only under a return licence issued by us. Returns made without the return form will not be accepted by us and returned unpaid.
- 10.21 The return of contract goods including accessories or spare parts delivered in compliance with the job order is excluded.
- 11. Amendments, Rescission**
- 11.1 If unforeseen events significantly affect the financial significance or the content of the contracted service or cause 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 amended accordingly. 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 circumstances causing such revocation, even if an extension of the delivery period has already been agreed with the customer.
- 11.2 If there is a default of acceptance or for other important reasons, such as payment default by the customer, we are entitled without prejudice to any other claims to rescind the contract immediately after a 14-day grace period. The rescission is effective by our unilateral declaration.
- 12. Privacy and Copyright**
- 12.1 The Customer agrees that the personal information contained in the contract is to be stored and processed by us in fulfilment of this contract with the help of automated data processing.
- 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 always remain our intellectual property; the Customer is not entitled to any right or claim whatsoever on them including e.g. use or exploitation rights. The Customer is not entitled to make these documents available to third parties under any circumstances. These documents shall be returned immediately to us upon request.
- 12.3 The customer agrees that we may use illustrations of the contract goods if ordered for advertising and other purposes, e.g. as a model; the design and mode of the presentation left to our discretion.
- 12.4 For custom productions, the customer guarantees that the contractual creation of the contract goods or other services does not infringe the rights of third parties. The customer shall hold harmless and indemnify us completely from any third party claims in this respect.
- 13. Concluding Provisions**
- 13.1 The customer is obliged to notify us of any changes to its company name, business address, its tax identification number with copies of official certificates without further request by us until such time as all such transactions between both sides are fulfilled completely. 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 that it served notice of its changed contact information.
- 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 for the place of delivery and the assumption of any transport costs or place of payment.
- 13.4 All transactions covered by these General Sales and Delivery Terms and Conditions are subject to Austrian substantive law, excluding its reference provisions especially to international private law, insofar as these refer to the application of foreign law. If Austrian statutes provide for the application of international substantive law, such as the CISG, when engaging in cross-border transactions, these do not apply and are explicitly excluded. This also applies to questions about the origin and interpretation of these Terms and Conditions and the contract.
- 13.5 The place of jurisdiction for all disputes arising under or in any connection to this contract is for our customers exclusively the Linz, Austria court responsible for substantive law. We reserve the right, however, to file suit against the customer in any other court at our discretion which may have jurisdiction under national or international law.
- 13.6 If any provision of our General Sales and Delivery Terms and Conditions 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 closely approximates the intended purpose of the invalid provision. The same is true for any missing provisions.
- 13.7 The headings contained in these General Sales and Delivery Terms and Conditions are for convenience only and are not considered keys to interpretation.
- 13.8 Any business development between us and the customer and no delay or omission in exercising a right, redress or remedy granted herein shall not be deemed a waiver of such rights. Every right, redress and remedy granted us herein is cumulative and equal to any other rights, redress or remedy granted by law.