

# Terms and Conditions

## General Terms and Conditions

of OAS Open AutomationSystems GmbH, Am Forst 26, 74889 Sinsheim Germany

### Section 1 Parties to the contract, general

1. The following General Terms and Conditions (GTCs) apply to all contracts concluded via our online shop between OAS Open AutomationSystems GmbH, Am Forst 26, 74899 Sinsheim-Eschelbach, Germany – hereinafter referred to as OAS – and the contracting party– hereinafter referred to as Customer.
2. Customers within the meaning of these GTCs are exclusively entrepreneurs, legal entities under public law or special funds under public law. An entrepreneur within the meaning of these GTCs is a natural or legal person or partnership with legal capacity who, when concluding a legal transaction with OAS, acts in the exercising of his or her commercial or independent professional activity (Section 14 BGB [German Civil Code]).
3. The General Terms and Conditions of the Customer are not binding on OAS. OAS does not accept conditions of the Customer that are contrary to or deviate from the terms and conditions of OAS. OAS hereby expressly contradicts the inclusion of the Customer's GTCs. The Customer's GTCs shall not apply even if OAS, being aware of conflicting or deviating conditions of the Customer, carries out the deliveries to the Customer without reservation and fulfils the contract.

### Section 2 Applicable law, contractual language

For all contractual relations between the Customer and OAS, only the law of the Federal Republic of Germany shall apply, excluding the provisions of international private law (EGBGB [the Introductory Act to the German Civil Code]) and conflict of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is excluded and is not applicable to the contractual relationship.

The contractual language is German.

### Section 3 Conclusion of contract

1. The product descriptions and representations contained in the online shop of OAS do not represent binding offers, but are an invitation to submit a legally binding offer to conclude a purchase contract by the Customer.
2. If the Customer has chosen one or more products in the online shop, the Customer can submit his or her offer by using the online order form in the online shop. To initiate the ordering process, the Customer has to click on the button "To the order". Incorrect entries can be corrected by re-entering the order data. Clicking on the button "Proceed to checkout" will take the Customer to the registration form.

Before finalizing the order, the Customer has to register in the online shop, entering all the necessary registration data to complete the registration. Before finally submitting the registration data, the Customer is shown all the order data including the ordered products after clicking on the button "Send registration". They can be corrected at any time by re-entering them using the usual keyboard and mouse functions.

By clicking on the button "Commit to pay", which concludes the order process, the Customer makes a legally binding offer with regard to the products contained in the order form.

An automated email confirming receipt of the Customer's order, along with the acceptance of the order, is dispatched straight after the button has been clicked on. At the same time, the Customer will receive the General Terms and Conditions, which thus become part of the contractual relationship.

Order processing and any contact usually take place via email. The Customer shall ensure that the email address provided by him or her is correct and that emails sent by OAS can be received at this address. This applies, in particular, to the use of so-called SPAM filters, where the Customer has to ensure that the emails sent can be delivered to third parties commissioned by OAS or charged by OAS to handle the order processing.

### Section 4 Delivery conditions, transfer of risk, rights of use for software

1. Delivery of the products ordered is done by shipping the products to the delivery address indicated by the Customer in the order, unless otherwise agreed.

2. In the case of a sale by delivery to a place other than the place of performance (*Versendungskauf*), the risk of accidental loss and accidental deterioration of the products ordered is transferred upon delivery of the ordered products to a suitable transport person at the place of business of OAS.
3. If delivery to the Customer is not possible, the products ordered will be returned to OAS. The Customer bears the costs of the unsuccessful delivery if he or she is responsible for the attempt to deliver being unsuccessful.
4. Partial deliveries are permissible insofar as they are reasonable for the Customer.
5. The choice of the dispatch method, the dispatch routes and the person or company entrusted with the dispatch will be determined at the discretion of OAS, unless OAS receives specific instructions from the Customer.
6. Unavoidable events, such as war, riots, natural disasters, *force majeure* or an interruption of operations at OAS or at the suppliers of OAS, e.g. strike, lawful lockouts, official measures or shortage of materials, for which OAS is not responsible and which could not be foreseen and avoided, even by applying the utmost reasonable care, entitle OAS to extend the delivery period for the duration of the hindrance. OAS shall inform the Customer immediately upon becoming aware of such events and of the probable duration of the impediment to performance. If the aforementioned events lead – without OAS being at fault for this – not only to a temporary hindrance to performance, but also to the impossibility of performance, both OAS and the Customer shall be entitled to withdraw from the contract. In such cases, OAS shall not be liable for the impossibility of delivery or the delay in delivery.

OAS shall inform the Customer of such events immediately after becoming aware of them. In the event of a withdrawal, OAS shall immediately refund to the Customer any payments already received. In this case, claims for damages are excluded.

7. If a delivery period specified by OAS has been exceeded for reasons for which OAS is to blame, OAS shall only be deemed to be in delay after a reasonable period of grace set by the Customer expires without result. The statutory rights of withdrawal to which the Customer is entitled remain unaffected by this. Any claims for damages asserted by the Customer shall be governed exclusively by the provisions of Section 8 Liability.
8. Upon full payment of the agreed remuneration, the Customer shall receive, unless otherwise agreed, the non-exclusive and non-transferable right to use the standard software with the agreed performance features, in unchanged form, on the agreed equipment. As far as OAS uses standard software of third parties, the delivery conditions of the third party apply and have to be observed and complied with by the Customer. Unless otherwise agreed, the Customer is not entitled to any rights to the source code.

## Section 5 Prices and terms of payment

1. All the prices quoted by OAS are final prices, that is to say that the final prices include all price components including German statutory value added tax (VAT). Additional delivery and shipping costs are itemised in the respective product presentation in the online shop. Moreover, depending on the Customer's wishes, delivery, transaction, installation, assembly or training costs may be incurred. In the case of cross-border deliveries, additional costs, such as customs duties, taxes or similar charges, may also be incurred.
2. Payments can be made
  - by bank (direct debit) or
  - by bank transfer or advance payment.
3. Payment is only deemed to have been made when OAS or a third party authorised by OAS to do so can dispose of the amount. In the event of any default of payment, the statutory provisions shall apply. The Customer is not entitled to assign claims against

OAS to third parties without the consent of OAS. The Customer is not entitled to offset claims other than those that are undisputed or legally established or to assert a right of retention against the claims of OAS. Furthermore, the right of retention presupposes that only such claims that are based on the same contractual relationship are concerned. The Customer's right to assert claims for unjustified enrichment remains unaffected by these regulations.

### **Section 6 Retention of title**

1. OAS reserves the title to the product until all the payments arising from the business relationship with the Customer have been received. In the case of current invoices, this also expressly applies to the claim from the respective surplus. Cheques and bills of exchange shall only be surrendered on account of performance and shall only be regarded as payment in this sense after final satisfaction.
2. The Customer is prohibited from pledging or transferring by way of security of the delivered products under reservation of title. In the case of seizure or other interventions by third parties, the Customer must inform OAS immediately in writing thereof, so that OAS can take legal action according to Section 771 ZPO [Code of Civil Procedure]. If the third party is not in a position to reimburse OAS for the legal and out-of-court costs of such an action, the Customer shall be liable for the loss.
3. The Customer shall be entitled to resell the product, collect the proceeds from the resale, use the product or incorporate the product into an object only in the normal course of business and only in accordance with the following provisions:
4. The Customer assigns to OAS all claims amounting to the invoice amount of the product (including VAT) from the resale of the product. OAS hereby accepts this assignment. If it is not possible to transfer claims to OAS for legal or factual reasons, the Customer shall not be entitled to resell the product before full payment of the purchase price.

The Customer remains authorised to collect the claim even after assignment. This shall not affect the authority of OAS to collect the claim itself. However, OAS shall not collect the claims itself as long as the Customer meets his or her payment obligations, is not in default of payment and, in particular, no application to open insolvency proceedings has been made and/or the authorisation to collect the assigned claims by the Customer according to item 8 has not expired of its own accord or OAS revokes the collection authorisation for other reasons.

However, if this is the case, OAS can demand that the Customer informs OAS of the assigned claims and his or her debtors and provides all the details required for collection, furnishes the relevant documents and discloses the assignment to the debtors (third parties).

5. The product that is subject to retention of title shall be sufficiently insured by the Customer against fire, burglary and water damage. Claims asserted against the insurer arising from the relevant damage event relating to a delivered product under retention of title are already assigned to OAS by the Customer, as of now, in the amount of the value of the product (invoice amount including VAT). OAS hereby accepts this assignment. The Customer must inform the insurer of the assignment of the claim.
  
6. If the products are sold by the Customer alone or together with products not belonging to OAS, the Customer hereby assigns the claims arising from their resale in the amount of the invoice amount of the product (including VAT) to OAS, with OAS having priority. OAS hereby accepts this assignment. If the resold product is co-owned by OAS, the assignment of the claim shall extend to the amount corresponding to the proportional value of the co-ownership of OAS. The value of the product is the invoice amount (including VAT). If the Customer installs the product in the object of a third party, the Customer hereby assigns the assignable claims against the third party or the person concerned in the amount of the invoice amount of the product (including VAT) to OAS, with OAS having priority. OAS hereby accepts this assignment.

7. Likewise, the customer assigns to OAS, with OAS having priority, those claims in the amount of the invoice amount of the product (including VAT) to which he or she is entitled against a third party on account of the destruction, damage, theft or loss of the product. OAS hereby accepts this assignment.
  
8. Upon the cessation of payments, the application for or the opening of insolvency proceedings, with the implementation of out-of-court debt settlement proceedings, as well as in the event of the protest of a cheque or bill of exchange, the authorisation to collect the assigned claims as well as the right to resell and collect the assigned purchase proceeds and to use or install the product automatically expires, without OAS having to expressly revoke the direct debit authorisation, the resale or the right to install and use the product.
  
9. At the Customer's request, OAS undertakes to release the securities to which it is entitled to the extent that the realisable value of the securities of OAS exceeds the claims to be secured (including VAT) by more than 10%; OAS is responsible for selecting the securities to be released.

## **Section 7 Liability for defects**

1. The liability of OAS for material defects and defects of title (hereinafter referred to as Defects) presupposes that the Customer has duly complied with his or her obligations to inspect and give notice of Defects according to Section 377 HGB [German Commercial Code] in the individual case. Recognisable Defects must be reported in writing without delay, but at the latest within a period of 10 working days from the products being delivered to the Customer. Hidden Defects must be reported in writing, at the latest within 10 working days after the Defect being discovered. Timely dispatch of the notice of Defects shall be sufficient for compliance with the deadline. The above obligation to notify a Defect shall apply to the Customer with regard to obvious Defects, even if there is no obligation to inspect and give notice of Defects pursuant to Section 377 HGB [German Commercial Code], with the proviso that obvious Defects must be notified to the Customer in writing within 14 working days of

delivery of the products at the latest. Timely dispatch of the notice of Defects shall be sufficient for compliance with the deadline.

2. In the event of a material Defect, the Customer is entitled to choose whether to rectify the Defect or to deliver a defect-free item (replacement delivery) as part of subsequent performance. If OAS is not prepared or not in a position to remedy the Defect or to deliver a replacement, especially if this is delayed beyond reasonable time limits or if the remedy of the Defect/replacement delivery fails in any other way, the Customer is entitled to choose to withdraw from the contract or to demand a reduction and/or compensation. The Customer may only claim damages within the framework of the provisions in Section 8 Liability.
3. OAS may refuse the type of subsequent performance chosen by the Customer without prejudice to Section 275 (2) and (3) BGB [German Civil Code] if it is only possible to do so at disproportionate costs. In particular, the value of the item in a defect-free condition, the significance of the Defect and the question of whether another type of subsequent performance could be resorted to without significant disadvantages for the Customer must be taken into consideration. In this event, the Customer's claim is limited to the other type of subsequent performance; the right of OAS to also refuse this under the conditions of sentence 1 remains unaffected.
4. The expenses required for the purpose of subsequent performance – in particular transport, travel, labour and material costs – shall be borne by OAS, insofar as they are not increased by the fact that the products are taken to a place other than the contractually agreed place of performance. Subsequent performance does not include removal or installation if OAS was not originally contractually obliged to install the product and no strict liability for damages exists.
5. If the Customer receives faulty operating instructions, OAS shall only be obliged to supply faultless operating instructions and this only if the Defect in the assembly instructions prevents proper assembly.



6. OAS shall not assume liability for Defects in the event of Defects resulting from natural wear and tear, improper handling after the transfer of risk and improper or a lack of maintenance as well as the use of unsuitable equipment.
7. Customary deviations do not constitute defects of the products.
8. No liability is assumed for the suitability of OAS products for a certain purpose of use if the concrete possibility of use does not result from the written operating instructions attached to the products or if the suitability for a certain purpose of use has not been expressly affirmed in writing by OAS.  
In any event, the Customer is obliged to check the suitability of the products of OAS for the intended use in detail in advance.
9. Without the consent of OAS, no changes may be made to the defective product and it may not be used. Returns are to be agreed upon.
10. Further claims for damages due to a Defect shall only exist in accordance with the provisions in Section 8 Liability.

### Section 8 Liability

1. Unless otherwise stated below, the liability of OAS for further damages not caused to the defective product itself is excluded.  
This applies in particular to claims for damages arising from *culpa in contrahendo* due to other breaches of duty or for compensation for material damage arising from tort in accordance with Section 823 BGB [German Civil Code]. This shall also apply if the Customer, instead of a claim for compensation for the damage, demands compensation for useless expenses instead of performance, reimbursement of costs for a business interruption, reimbursement of costs for a loss of production, recall costs or compensation for lost profit or other cost reimbursement.
2. The above exemption from liability shall not apply to the following:
  - claims of the Customer based on the assumption of a guarantee for the quality of the products,
  - damage due to injury to life, body or health caused by OAS or its legal

representatives or vicarious agents

- other damage resulting from a grossly negligent or intentional breach of duty by OAS or one of its legal representatives or vicarious agents
- liability under the Product Liability Act,
- a Defect that was fraudulently concealed by OAS.

3. The above exemption from liability shall also not apply if OAS culpably breaches an essential contractual obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner may regularly rely. In this case, however, the liability is limited to the foreseeable, typically occurring damage.

### **Section 9 Statute of limitations**

1. The period of limitation for material defects and defects of title is – in deviation from Section 438 (1) 3 BGB – 12 months, calculated from delivery of the products to the Customer.

The above limitation period shall not apply if the law provides for longer limitation periods according to Sections 438 (1) 2, 634 a (1) 2 BGB and according to Sections 478, 479 BGB; likewise, it shall not apply to claims arising from a guarantee or due to injury to life, body or health by OAS or its legal representative or vicarious agent. Likewise, the limitation shall not apply in the case of liability for other damage resulting from an intentional or grossly negligent breach of duty by OAS or its legal representative or vicarious agent. Furthermore, the limitation shall not apply in the event of fraudulent concealment of a Defect. Likewise, the limitation period shall not apply to claims under the Product Liability Act and insofar as OAS culpably violates an essential contractual obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner may regularly rely.

2.

The regulation on the suspension of the statute of limitations, interruption and the restart of the limitation periods in accordance with the statutory provisions remains unaffected by this.

3. The foregoing limitation periods of the law on sales shall also apply to contractual and non-contractual claims for damages asserted by the Customer which are based on a Defect of the product, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases.
4. However, claims of the Customer in accordance with Section 8 Liability Item 2 and Item 3 shall become statute-barred exclusively according to the statutory periods of limitation.

### **Section 10 Court of jurisdiction, final provisions**

1. If the Customer is an entrepreneur and fulfils the characteristics of a merchant, the following applies:

The court of jurisdiction for all disputes arising from this contract is the registered office of OAS in Sinsheim-Eschelbach. However, OAS shall also be entitled to sue the Customer at his or her place of jurisdiction.

2. Should one of these provisions be invalid or unenforceable, this shall not affect the validity of the remaining provisions.

## Provider identification

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## Use of customer data/data protection

1. Without the Customer's express consent, data will be used exclusively for processing the order and stored on the computer system within the framework of the business relationship. Any transfer of the Customer's data to companies charged with the delivery will only take place to the extent that it is necessary for the processing of the order. Otherwise, the data will be treated as strictly confidential and will not be made available to third parties. If the Customer does not want OAS to use the data for internal purposes, the Customer is entitled to object to this use at any time by sending a corresponding email to [sales@oa-systems.de](mailto:sales@oa-systems.de).
2. OAS shall not use or pass on customer data beyond the scope regulated in Item 1.
3. After full payment of the purchase price and after the complete processing of the contract, OAS will store the customer's data, taking into account the retention periods under tax and commercial law. After these retention periods pursuant to tax and commercial law have expired, the customer data will be deleted. For questions regarding data processing, collection or use, the Customer may contact OAS. Every Customer has the right, at any time, to free information about his or her stored

personal data, their origin and recipients and the purpose of the data processing as well as a right to the correction, blocking or deletion of this data. In all these cases the Customer may contact OAS free of charge in writing or by email (OAS Open AutomationSystems GmbH, Am Forst 26, 74899 Sinsheim-Eschelbach, email: [sales@oa-systems.de](mailto:sales@oa-systems.de)).