

General terms and conditions - ONERGYS GmbH

for deliveries and services within the Federal Republic of Germany

1. Scope of application

- 1.1 These General Terms and Conditions (hereinafter the "Terms") are applicable in relation to companies in the sense of section 14 BGB (German Civil Code) and legal persons under public law and public separate estate (*öffentlich-rechtliches Sondervermögen*).
- 1.2 These Terms apply exclusively. General terms and conditions of the Customer which differ from, conflict with or supplement these Terms shall apply only if and to the extent that we have expressly consented to their application in writing. This requirement of consent shall also apply, for example, if we, being aware of the Customer's general terms and conditions, nevertheless accept an order without reservation. These Terms shall also apply to future business between the parties.
- 1.3 Individual agreements formed with the Customer in specific cases (including collateral agreements, supplementary agreements and amendments) shall always take precedence over these Terms. The content of such agreements is to be determined by reference to our written confirmation.
- 1.4 Material statements and notices which the Customer is required to give to us subsequent to formation of the contract (e.g. setting deadlines, notices of defects, declarations of cancellation, reduction of payment) must be in writing.
- 1.5 In case of doubt the German version of these Terms shall be binding.

2 Offer and formation of contract

- 2.1 All offers by ONERGYS are subject to change and are non-binding.
- 2.2 The customer submits a binding offer by placing merchandise in the virtual shopping basket, performing the order process and clicking the confirmation button "Finalize order with binding payment obligation".
- 2.3 Unless otherwise clear from the order, we are entitled to accept an offer by e-mail or by regular mail within a period of 14 calendar days after it is delivered to us. This requirement is fulfilled when our declaration has been delivered to the customer in time.
- 2.4 The scope of delivery and services is to be set by our written confirmation of order or amendment. Oral agreements on the other hand are not binding.

3 Prices and payment terms

- 3.1 All prices are quoted net before value added tax (*Umsatzsteuer*) at the statutory rate. Prices also do not include any packing and shipping costs.
- 3.2 If the goods need to be shipped, the Customer shall bear transportation costs, i.e. packing and shipping costs, ex warehouse in Geldern, Germany. These costs can be viewed by clicking the link "Shipping and Costs"; on our website www.onergys.de and shall also be indicated in the course of order processing. Costs of any transportation insurance requested by the Customer must also be added. The customer shall bear the costs of customs clearance, fees, taxes and other public charges.
- 3.3 The purchase price is payable net within 8 days of the invoice date. It can be paid in the form of sale against cash or, subject to approval by ONERGYS, on invoice.
- 3.4 After payment has become due, default interest is charged at a rate of eight percentage points above the relevant basic interest rate per annum. We reserve the right to assert claims for further damages.

4 Collection, delivery

- 4.1 The customer must collect the ordered merchandise within one week of receipt of written notification that the complete order is ready for collection. Collection shall be from our premises – which is also place of performance – unless otherwise expressly agreed.
- 4.2 We can also ship the ordered merchandise to some address indicated by the customer at the customer's request and cost. Delivery shall in this case be ex-warehouse, i.e. place of performance shall in this case also be our plant in Geldern, Germany. Unless otherwise agreed, we are entitled to choose the method of shipping (in particular shipping firm, route, packing) at our own discretion. We ship the ex-stock merchandise without delay on completion of the purchase contract (with payment on invoice) or after receipt of the invoice amount (with sale against cash) and shall also order immediately any merchandise not in stock; the latter will also be shipped without delay after it is delivered to us. If the ordered merchandise is not in stock, we shall indicate the probable delivery time in the course of the order procedure; this notification is non-binding. If goods not in stock cannot be shipped to the customer within four weeks of the order being received, the customer shall be entitled to withdraw from the contract accordingly. We shall in each case notify the customer of delivery of the merchandise.
- 4.3 The danger of accidental loss and accidental deterioration of the merchandise is transferred to the customer when received by the customer or by some agent appointed to collect the goods, but at the latest when the customer is in default of acceptance. When the goods are shipped, the risk of accidental loss and accidental deterioration is transferred to the customer once they are collected by the transportation firm, forwarding agent or some agent commissioned to carry out transportation.
- 4.4 If the customer is in default of acceptance, we shall be entitled to demand compensation for any resulting damage including additional expenses (e.g. storage costs). We reserve the right to assert further claims. In the event of the customer being in default of acceptance, we are also entitled to withdraw from the contract.
- 4.5 The customer shall notify us without delay of any change in the delivery and/or billing address.

5 Set-off, right of retention

- 5.1 The customer is entitled to set off counterclaims only if they are undisputed or have been established with legal effect.
- 5.2 The customer has a right of retention only in relation to counterclaims from the same contractual relationship

6 Reservation of title

- 6.1 The merchandise remains the property of ONERGYS GmbH until all payments have been received in full.
- 6.2 In the event of the customer being in breach of contract, including default of payment, we are entitled to demand return of the delivered merchandise.
- 6.3 The customer must treat the merchandise with all due care, to provide suitable insurance and, where necessary, carry out maintenance.
- 6.4 As long as the purchase price has not been paid in full, the customer must notify us in writing without delay if the merchandise is encumbered with any third party rights or otherwise exposed to disposal by a third party.
- 6.5 The customer is entitled to resell the merchandise covered by the above reservation of title as part of its normal business. In such a case, the customer here and now cedes to us all its claims from such a resale, irrespective of whether this resale takes place prior to or after some processing of the merchandise with reserved title. Without prejudice to our right to collect the claim ourselves, the customer shall also be authorised to collect the claim on our behalf after the claim has been ceded. In this regard, we undertake not to collect the claim as long and as far as the customer meets his payment obligations, no petition for start of insolvency or similar proceedings has been filed and payments have not been discontinued.
- 6.6 If and insofar as the aforementioned collateral exceeds the value of the claims to be secured by more than 10%, we shall be obliged to release the securities at our discretion when requested by the customer.

7. Guarantee, notice of defect

- 7.1 The customer is obliged to examine the merchandise without delay on collection or delivery. If a defect emerges during this examination or subsequently, we are to be notified accordingly in writing as early as possible, in which regard the time the notice of defect is sent shall be decisive. The rights of the customer in this regard are conditional on the customer fulfilling his examination and notification rights. If the customer fails to fulfil these, the merchandise shall be considered approved, unless ONERGYS concealed the defect maliciously. Merchandise with obvious defects may not be fitted, connected or combined with moveable items.
- 7.2 The customer shall allow us an opportunity without delay to inspect the defect and shall follow our instructions on limiting costs and damage. The defect merchandise shall be returned to us for the purpose of inspection free to our premises, i.e. the customer shall bear transportation costs.
- 7.3 The guarantee period for merchandise we deliver is 12 months from the time risk is transferred. This shall not apply if the delivered item is a construction item or the item was used for a construction in line with its regular intended use and caused a defect therein. The statutory statute of limitations shall also continue to apply for recourse claims on the part of the customer in the case of sale of consumer goods. There shall be no guarantee in the case of delivery of used goods, subject to the regulation under section 8.
- 7.4 There is no guarantee when the defect is due to the merchandise we delivered not being properly assembled or used for some purpose for which it is not intended.
- 7.5 In the case of defects, the customer may retain the agreed purchase price only to a reasonable extent in relation to the defects established.
- 7.6 Delivery of replacement or repair shall not lead to a new start of the period of limitation if we provide this replacement or repair only by way of goodwill.
- 7.7 We shall bear the material costs necessary for examination and rectification provided a defect actually existed. If, however, the customer's request for rectification of a defect turns out to be unjustified, we can demand that the customer refunds the costs we incurred in this regard. We shall on the other hand not bear dismantling and refitting costs.
- 7.8 The guarantee shall no longer apply if the delivered item has been modified in some way not intended by the manufacturer and the damage is causally linked to this modification. This shall apply also and especially if some elements from a third party are fitted into the item we deliver when they are not intended or approved for that purpose or vice versa.
- 7.9 If rectification measures have failed, or if a period set by the customer for rectification has elapsed without success or is dispensable according to statutory regulations, the customer can withdraw from the contract or reduce the purchase price accordingly. There shall, however, be no right to withdraw from the contract in the event of a minor defect.
- 7.10 In urgent cases of danger to plant safety and to avoid disproportionately greater damage or if we are in default with the rectification of defects, the customer shall be entitled to rectify the defect itself or have it removed by a third party and demand that we reimburse the necessary costs. We must always be notified without delay in such a case. We are not liable for the consequences of incorrect rectification or other modification of the delivered item by the customer or a third party.
- 7.11 The customer cannot obtain indemnification from us if it has entered into agreements with its customer going beyond statutory claims and rights regarding defects.

8 Liability

8.1 We are liable according to statutory requirements in the case of malice aforethought or gross negligence by us or our representatives or vicarious agents; as well as in the case of culpable infringement of essential contractual obligations, i.e. generally our obligation to deliver an item free of defects.

8.2 The above shall also not prejudice our liability due to culpable damage to life or limb or health and liability according to product liability law (*Produkthaftungsgesetz*).

8.3 We are otherwise not liable for damage that did not arise on the delivered item itself; our liability for damages is furthermore also limited to predictable damage normal for the kind of contract in question.

8.4 We shall have no liability unless expressly regulated otherwise above. This also applies for our employees, workers, vicarious agents and representatives.

9 Data protection

Consent to collection, storage, processing, making available and use of personal data in relation to the order

9.1 Compliance with statutory data protection regulations
We undertake in relation to the customer's order and processing of the purchase to comply with statutory data protection regulations with a view to achieving adequate protection and security for customer data.

9.2 Collection, storage, processing, making available and use of necessary data
We undertake in relation to the customer's order and processing of the purchase to comply with statutory data protection regulations with a view to achieving adequate protection and security for customer data.

9.2.1 Visits to our website
Our website www.onergys.de can be used without the need to provide personal data. Access data without reference to any particular person will be stored merely for the purpose of statistics; these are automatically transmitted by your browser to our server with each access to our website. These relate to websites that you access, the date and time the page is accessed, the page linking to our website and the Internet provider, the operating system, IP address, browser type and version and volume of data transmitted. These data are stored separately from data that you enter manually.

The data collected in this way cannot be assigned to a specific person.

9.2.2 Order procedure
We are entitled to collect, store, process, make available to certain parties and use personal data of the customer (e.g. shipping service providers, the seller's bank) within the framework of applicable data protection regulations.

For this purpose, the customer agrees to the collection, storage, processing, making available and use by the seller of the necessary personal data arising in the course of order processing. The purchase agrees in particular to the forwarding of personal data to the shipping service providers working on our behalf and, if necessary in the particular case, to our bank. We record your consent in this regard. If the customer does not grant its consent in this regard, the order cannot be carried out.

Personal data in the sense of section 3 (1) BDSG (German Data Confidentiality Act) are data that contain information regarding the personal and material situation of a certain or identifiable natural person. Specifically, the following data will be obtained as part of the processing of the purchase order:

- name
- address
- delivery address, if different
- e-mail address
- banking data

All the required information that is not made available to other persons, such as e-mail address, will be marked accordingly.

9.3 Confirmation by e-mail
The customer gives his consent, which can be rescinded at any time, to us confirming to him without restrictions his entered personal data by e-mail as part of our order confirmation, in particular his address and bank connection. The customer undertakes that only he, or somebody authorised by him, can access his e-mail account. The customer is aware that only limited confidentiality can be guaranteed for unencrypted e-mails.

9.4 Facebook
Plug-ins of the social network Facebook are integrated in this website. These can be recognised by the Facebook logo or the "Like" button.

When you visit our website, a direct connection is made to Facebook. Facebook is in this way notified that you have visited our website with your IP address. If you click on the "Like" button while you are logged in with Facebook, you can link to the content of our website on your Facebook profile. This allows Facebook to assign your visit to our website to your user account. If you do not wish to have this, simply log out from your Facebook user account. Further information in this regard can be found in the Facebook data protection declaration under <http://de-de.facebook.com/policy.php>.

9.5 Google +1
You can use the Google +1 button to publish information worldwide. Google stores both the information that you have given a recommendation for certain content and the information regarding the website that you viewed when clicking +1. Your recommendation can be shown as reference in Google services together with your profile name and your photograph, such

as in search results or in your Google profile, or at other points in websites and advertisements in the Internet.

Google records information regarding its +1 activities in order to improve Google services for you and others. To use the Google +1 button, you require a Google profile, which must contain at least the name selected for the profile. This name will be used in all Google services. In certain cases, this name can also replace another name, which you have used in dividing the content through your Google account. The identity of your Google profile can be shown to users that know your e-mail address or who have other identifying information relating to you.

In addition to the purposes of use explained above, the information you provide will be used according to the applicable Google data protection regulations. Google will possibly publish summarised statistics relating to the +1 activities of its users or provide these to users and partners, such as publishers, advertisers or associated websites.

9.6 Google Analytics
This website uses Google Analytics, a web analysis services of Google Inc. ("Google") in order to provide the website operator with evaluations of use of the website content. Google Analytics uses so-called "cookies", i.e. text files that are stored in your computer and that enable analysis of your use of the website.

The information generated by the cookie on your use of this website (including your IP address) is transferred to Google server in the United States and stored there. Google uses this information to evaluate your use of the website, to compile reports on website activities for website operators and in order to provide further services associated with use of the website and the Internet.

Google may also make this information available to third parties, if this is required by law or if third parties are employed by Google in processing these data. Google will under no circumstances connect your IP address to other data collected by Google. You can prevent installation of cookies by a suitable setting of your browser software. We must point out, however, that in this case you may not be able to use all functions of this website in full.

By using this website you declare your consent to the data collected by Google relating to you being processed in the way explained above and for the aforementioned purposes.

You can discontinue the collection and storage of data at any time with effect for the future by installing a browser add-on (<https://tools.google.com/dlpage/gaoptout?hl=de>).

9.7 Econda
To assist in organising and optimising this website to meet requirements anonymised data will be collected and stored by solutions and technologies of econda GmbH (www.econda.de) and on the basis of these data user profiles using pseudonyms are generated. For this purpose, cookies can be used that allow the an Internet browser be recognised. User profiles will, however, not be combined with data relating to the person behind the pseudonym without the express consent of the site visitor. In particular, IP addresses are rendered illegible direct after they are received, which renders impossible any assignment of user profile to IP address. Visitors to this website can cancel this collection and storage of data at any time with effect for the future, under www.econda.de/econda/datenschutz/widerruf-datenspeicherung.html

9.8 Newsletter
The customer has the opportunity of registering for a newsletter. If he does so, he also consents to regular transmission of a newsletter to his e-mail address.

9.9 Other use of data
There shall be no other use or forwarding of personal data to any third party, unless the user has given his express consent to this in advance or the seller is obliged by law to make the data in question available.

9.10 Deletion and correction of data
The customer can at any time withdraw the consent he formerly granted regarding storage and use of his personal data or demand correction of the personal data we store.

Cancellation is to be addressed to:

ONERGYS GmbH
Nordwall 39
47608 Geldern
info@onergys.de

Personal data of the customer that are necessary for processing some purchase order placed before the cancellation is received shall be deleted only after this purchase order has been executed.

9.11 Information on stored data

The user is entitled at any time to access the personal data stored by ONERGYS regarding his person at no cost. This information shall be provided in writing. The request for information is to be submitted using the e-mail address indicated by the user to: info@onergys.de

10 General provisions, legal venue, place of performance

10.1 Contract language is German.

10.2 The present General Terms and Conditions and the individual purchase contracts are subject exclusively to the law of the Federal Republic of Germany. United Nations Convention on Contracts for the International Sale of Goods shall not apply.

10.3 Place of performance and exclusive – including international – legal venue for all disputes arising directly or indirectly from or in relation to an order placed by the customer with ONERGYS is Geldern, Germany. We are, however, also entitled to file legal action at the general jurisdiction of the customer.