

General Terms and Conditions of ONERGYS GmbH

Applicability

These General Terms and Conditions ("GTC") apply in relation to businesses in the definition of Sec. 14 BGB [German Civil Code], and to legal entities of public law and public-law investment funds.

Our GTC apply exclusively. Deviating, contradicting or supplementing GTC of the customer shall only become part of the contract, if and insofar as we have expressly agreed to their applicability in writing; this also applies, for example, if we accept an order unconditionally in awareness of the customer's GTC. These GTC also apply to future transactions between the Parties. Even if we refer to correspondence, which contains or refers to the general terms of the customer or a third party, this shall not constitute an agreement to the applicability of such general terms and conditions. Individual agreements made in the specific case with the customer (including side agreements, additions and changes) shall take precedence over these GTC. Our confirmation in written or text form shall be decisive for the content of such agreements with the customer. Legally relevant declarations and notifications, which shall be given to us after the customer's signing of the contract, require the written form for validity (e.g. setting of deadlines, notices of defect, and declarations of withdrawal or reduction).

Offer and conclusion of the contract

All offers of ONERGYS are non-binding and subject to change. The buyer will make a binding offer by placing products into the virtual shopping cart, going through the order process, and confirming the order by clicking the button "Order subject to payment." Unless stated otherwise in the order, we are entitled to accept this offer sent by email or post within a period of two weeks from receipt by us; the receipt of our declaration by the customer shall be decisive for observation of the period. Our order or change confirmation in text or written form shall be decisive for the scope of the delivery or service. The contract text will be stored by ONERGYS and be sent to the customer after the customer transmitted its order in text form (e.g. email, fax or letter). In addition, the contract text will be archived on the website of ONERGYS where it can be retrieved free of charge by the customer in its password-protected customer account after entering the relevant login details, provided that the customer has created a customer account in the ONERGYS online shop before transmitting an order. Before the binding submission of the order via the ONERGYS online order form, customers can correct their input throughout the process using the usual keyboard and mouse functions. Moreover, all input will be displayed once more before the order is finalised in a confirmation window in which corrections can also be made using the usual keyboard and mouse functions. German and English are available as languages for concluding the contract. Additions and changes to the agreements having been entered, including our GTC,

require the written form for validity. With the exception of managing directors or authorised signatories, our employees are not permitted to make verbal agreements differing from the written agreement. Transmission by means of telecommunications, in particular fax or email is sufficient to satisfy the requirement of the written form.

Our information about the object of the delivery or service (e.g. weights, dimensions, utility values, capacity, tolerances, and technical data) as well as our descriptions of the same (e.g. drawings and illustrations) on the ONERGYS website shall be decisive only as approximate data, unless the usability for the contractually intended purpose requires a more exact match. They are not guaranteed properties but descriptions or characterisations of the delivery or service. Deviations that are common in retail and deviations that occur due to legal regulations or technical improvements, and the replacement of components by equivalent parts shall be permissible, insofar as they do not compromise the usability for the contractually intended purpose.

Prices and payment modalities

All prices are stated in net values plus the value added tax in the statutory amount. Costs incurred for packaging and shipment, if any, are not included.

If the products are shipped, the customer shall bear the transport costs, i.e. packaging and shipment costs ex-warehouse in Geldern; these costs can be viewed on our website at www.energys.de and they will be stated in addition in the course of the order process. Costs of any transport insurance requested by the customer would be incurred in addition. Any customs duties, fees, taxes and other public levies shall be borne by the buyer. The purchase price shall become due without deduction within 8 days from the issuance of the invoice. It shall be paid in advance and can only be remitted by payment against invoice if this has been expressly agreed previously with ONERGYS. Upon the due date, default interest in the amount of eight percentage points above the respective base interest rate p.a. will be charged. Claims of higher interest and further damages remain unaffected in the event of default.

Collection, delivery

The buyer shall collect the ordered products within one week from receipt of the notification, in written or text form, stating that the complete order is ready for collection at our site – which shall also be the place of performance – unless expressly agreed otherwise. On request and at the cost of the customer, we will also ship the ordered products to a location determined by the customer. In that case, the delivery will be made ex-warehouse, i.e. the place of performance in this case will also be our operating site in Geldern. Unless agreed otherwise, we shall be entitled to determine the type of shipment at our equitable discretion (in particular, transport companies, route of shipment, packaging). We will ship the products

in stock in the warehouse directly upon the signing of the purchase agreement (if payment is made against invoice) or upon receipt of the invoice amount (if payment is made in advance), and we will also order any products not in stock without delay; we will also ship the latter as soon as they are received by us. If the ordered products are not in stock, the expected delivery period will be indicated as information provided without commitment in the course of the order process. If products not in stock are not shipped to the customer within four weeks following the order, the customer shall have a right of withdrawal in this respect. We shall inform the customer of the shipment of the products in all cases. The risk of accidental loss or accidental deterioration of the products shall transfer to the customer on the handover to the customer or to any person assigned with the collection, whereas at the latest as of the date when the customer is first in delay of acceptance. In case the products are shipped, the risk of accidental loss and accidental deterioration of the products, as well as the risk of delay shall transfer already on delivery of the products to the freight forwarder, the carrier or other person assigned with the performance of the shipment.

We shall not be liable for the impossibility of the delivery or delays in the delivery, insofar as these are caused by force majeure or other events not predictable on the date of the signing of the contract (e.g. business disruptions of any kind, difficulties in procuring material or energy, transport delays, strikes, legitimate lockouts, lack of workforce, energy or raw material, difficulties in the obtaining the regulatory approvals, measures by authorities or the failed or incorrect or belated delivery by suppliers), which are outside of our responsibility. If such events significantly complicate or make the delivery or service impossible for us and if the obstruction not only persists temporarily, we shall have a right of withdrawal. In case of obstructions persisting temporarily, the delivery or service periods shall prolong or the delivery or service dates shall be postponed by the period of the obstruction plus an appropriate lead time. If the customer is delayed with acceptance, we shall be entitled to demand compensation for the loss incurred for this reason, including any additional expenses (e.g. storage costs). Further claims remain reserved. We are entitled furthermore to withdraw from the contract in case the customer is in delay with acceptance.

Changes in the delivery and/or invoice addresses shall be notified to us without delay.

Offsetting, withholding

The customer shall be permitted to offset only insofar as its counterclaims are uncontested or found valid by final judgment. The customer shall be entitled to claim rights of repayment only based on counterclaims arising from the same contractual relationship.

Reservation of title

Up until the complete receipt of all payments, the products shall remain the property of ONERGYS GmbH. We have the right to take back the products in case of breaches of

contract by the customer, including any delay in payment. The customer shall treat the products with care, insure them appropriately, and service them if required. If the purchase price has not been paid in full, the customer shall inform us in writing without delay, if the products are encumbered with the rights of third parties or if they have otherwise come under the control of third parties. The customer has a right to resell the products that are subject to the reservation of title in the course of ordinary business. However, for this purpose, the customer assigns all claims arising from such a resale on the present day already, regardless of whether the resale takes place before or after any processing of the products delivered subject to the reservation of title. Notwithstanding our right to collect these receivables on our own, the customer shall also remain authorised to collect the receivable after the assignment. In this context, we undertake not to collect the receivables for as long and insofar as the customer fulfils its payment obligations, and no application for the opening of insolvency or similar proceedings has been filed, and no payment suspensions have occurred.

Insofar as the aforementioned collateral exceeds the receivables to be secured by more than 10%, we shall be obligated to release the collateral at our choice on the customer's request.

Warranty, notice of defects

The buyer is required to immediately inspect the collected or delivered products. If a defect is found in the inspection or at a later time, we shall be notified immediately thereof; in this respect, the date on which the notice of defect was sent shall be decisive. The customer's warranty rights require that it has performed its duties to inspect and notify of defects. If the customer fails to do this, the products will be deemed approved, unless ONERGYS had fraudulently concealed the defect. Products with obvious defects may not be installed, combined or mixed with movable objects. The customer shall give us the opportunity without delay to inspect the defect and it shall observe our information regarding the minimisation of costs and damage. The warranty period for products delivered by us is 12 months from the transfer of risk, for which purpose the date of the handover of the products to the customer is agreed as the date of the transfer of risk in case of collection by the customer from ONERGYS and the handover of the product to the transport person by ONERGYS in case shipment has been agreed previously, unless a deviating contractual agreement is made in the specific case. This shall not apply if the object delivered by us is a building or an object, which has been used for a building according for its customary use and which has caused its defectiveness. The statutory limitation periods shall remain unaffected also in case of recourse by the customer relating to a purchase of consumer goods. In case used products are delivered, the warranty, subject to the provision under no. 8, is excluded. The warranty is excluded if the defect is based on the fact that the products delivered by us have not been assembled correctly or they have been used contrary to their intended purpose. The

warranty is likewise excluded if the defect is based on the fact that the operating conditions or installation regulations of the respective manufacturer of the delivered object are not at all or not correctly observed. If the customer claims a defect of the delivered object, it shall be obligated to cooperate in the investigation of whether a defect is in fact present at all. This includes (but is not limited to) the transmission of analysis reports of the production media and fuels and/or excerpts from the operating journal and/or control logs. In any case, the burden of proof for a defect being present shall remain on the customer. If defects are present, the customer may withhold the agreed purchase price only to an extent that is in an appropriate relation to the defects that have occurred. A replacement delivery or repair shall then not lead to a restart of the limitation period if we perform it merely in fair dealings. The expenses becoming necessary for the purposes of inspection and reworking, in particular costs for transport, travel and material, shall be borne by us if a defect is in fact present. If a notice of defect by the customer proves to be unjustified, however, we may request the costs caused by this to be refunded by the customer. We shall not bear the costs for deinstallation and installation in contrast.

The warranty shall expire if the object of delivery is modified in a manner not intended by the manufacturer and the damage is causally related to the modification. This shall apply, in particular, also to the installation of parts of third-party origin into the delivered object, which are neither intended nor approved for this.

If the reworking fails or if an appropriate period to be set by the customer for the reworking has passed unsuccessfully, or if such a deadline can be omitted pursuant to the legal regulations, the customer may withdraw from the purchase agreement or reduce the purchase price. However, no right of withdrawal shall apply in the event of a minor defect. The customer shall have the right to correct the defect on its own or assign third parties to do so, and demand compensation of the required expenses from us only in urgent cases of impending danger for the operating safety, or so as to avert disproportionately great damage, or if we are in delay with the repair of defects. In such a case, we shall be informed promptly nonetheless. We shall not be liable for the consequences of improper reworking or other modifications of the object of delivery by the customer or third parties. Insofar as the customer has made agreements with its buyer beyond the statutory claims of defects and warranty rights, it cannot claim that it is being held harmless by us.

Liability

In case of intent or gross negligence by us or by our representatives or vicarious agents, we shall be liable pursuant to the legal regulations and, in the same way, in case of culpable breach of essential contractual duties, i.e. our obligation to deliver a defect-free object.

Unless an intentional breach of contract is given, our liability for damage compensation shall be limited to the predictable damage that is typical for the contract. In particular, we shall not

be liable for lost profit and/or consequential damage from defects. Insofar as we provide technical information or provide advice, and this information or advice is not included in the scope of service owed by it as agreed under the contract, this is done free of charge and precluding any liability. Liability for culpable injury to life, body or health, and liability pursuant to the Product Liability Act remains unaffected.

Unless expressly provided otherwise above, our liability shall be excluded. This also applies in favour of our employees, workers, vicarious agents and representatives.

Export control

Our deliveries and services are subject to the proviso that performance is not opposed by any obstructions due to national or international regulations, in particular export control regulations, embargos or other limitations. The contractual partners undertake to provide all information and documents that are needed for the export/transport/import. Delays due to export inspections or approval processes shall cause the suspension of deadlines and delivery periods. If necessary approvals are not granted, the contract shall be deemed not concluded regarding the affected parts; damage compensation claims brought to this extent and for reason of the aforementioned failure to meet deadlines are precluded. The customer shall observe the respectively applicable regulations of the export control law when transferring products delivered by us to third parties. Whenever transferring such products to third parties, it shall observe the export control regulations of the Federal Republic of Germany, the EU and the USA. Before the transfer of the products delivered by ONERGYS to third parties, the customer shall check and ensure by suitable measures that it does not violate any embargo imposed by the Federal Republic of Germany, the EU, the USA and/or the United Nations – also in consideration of any restrictions for domestic transactions and any circumvention prohibitions – by such transfer to third parties or the brokerage of contracts in connection with such products. The customer shall ensure that such products are not intended for prohibited uses or for any uses requiring approvals, which relate to the defence industry, or nuclear or weapons technology, unless the required approvals have been received. The customer shall furthermore ensure that the regulations of all applicable sanctions lists of the EU and the USA are observed.

If required for potential export control inspections, the customer shall immediately make all information regarding the ultimate recipient, the final location, and the intended use of the products delivered by us, as well as the applicable export control restrictions in this regard available to us without delay on request. The customer shall indemnify ONERGYS to the full extent from all claims brought by third parties against ONERGYS for a failure to comply with obligations under export control regulations by the recipient and it undertakes to compensate ONERGYS for any damages caused by this.

Data privacy

Both Parties may process and store the data relating to the respective purchase or supply agreements only within the scope of the applicable legal regulations. The details are provided in the Data Privacy Statement, which is accessible on our website.

General provisions, place of jurisdiction, place of performance

The contract language is German. These General Terms and Conditions and the respectively concluded purchase agreement shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The place of performance and the exclusive – as well as the international – place of jurisdiction for all disputes arising directly or indirectly from or in connection with an order by the customer from ONERGYS shall be Geldern. However, we are also entitled to file suit at the customer's general place of jurisdiction.

ONERGYS GmbH, Geldern (Germany)

As of **January 2021**

You can download [our GTC here](#).