

General Terms and Conditions of OCS Optical Control Systems

Position as at: October 2010

Section 1 General

The following terms and conditions as well as the supplementary German Engineering Federation's terms and conditions for deliveries, installations and repair work ("VDMA Liefer-, Montage- und Reparaturbedingungen") shall apply to all deliveries and services of OCS and its subcontractors to all bodies corporate under private and public law.

Other general terms and conditions, e.g. those of the counterparty, shall not apply, even if they have not been expressly excluded by OCS. Any amendments and ancillary agreements for deviations from these General Terms and Conditions must be approved in writing by OCS in order to be incorporated as part of the contract.

These General Terms and Conditions shall also apply if OCS performs deliveries and/or services in the knowledge that the counterparty has conflicting or differing terms and conditions. In this respect, the counterparty's acceptance of the service shall be deemed as an implied declaration of recognition of these General Terms and Conditions as part of the contract.

As a precautionary measure, the general terms and conditions of the counterparty shall be excluded.

Section 2 Offers and prices

1. All offers submitted by OCS are non-binding and subject to change. A contract is not concluded until a written order confirmation is provided by OCS. Until this time, OCS reserves the right to prior sale of the scope of the offer, either in full or in part.
2. The scope of the delivery and service is that defined in the order confirmation provided by OCS. OCS reserves the right to make technical changes to the contractual item which do not have a negative impact on its function or quality, insofar as this is deemed necessary in order to guarantee or improve its use in accordance with regulations.
3. OCS is exclusively responsible for any property rights, copyright and rights of use (esp. rights of duplication and distribution) pertaining to the offers and related documents.
4. All offers produced by OCS and related documents (drawings, operating instructions, technical datasheets, etc.) may not be made available to third parties without the written approval of OCS and must be returned immediately in the event that no contract is concluded.
5. Unless agreed otherwise, all offer prices are quoted are net, ex works, plus applicable sales tax and insurance, shipping and packaging costs.

Section 3 Delivery times, delivery and acceptance

1. Delivery times may be reasonably extended, especially in respect of possible delays, in cases of force majeure and all unforeseen complications following conclusion of the contract for which OCS is not responsible. The same shall also apply in the event of irregularity in performance on the part of our upstream suppliers (esp. delayed deliveries).

2. Any impossibility and/or inability to perform for which OCS is not responsible shall release OCS from its delivery obligation.

3. Delivery dates and delivery times shall be binding if OCS confirms them as binding in writing. The delivery period starts once the counterparty receives the order confirmation and all commercial and technical details have been clarified.

4. Partial deliveries by OCS are permitted to a reasonable extent and are to be paid for accordingly by the customer.

5. In the event of unauthorised withdrawal from the contract, the customer undertakes to pay OCS compensation for expenses and losses to the sum of 20% of the underlying contract value.

Section 4 Transfer of risk, acceptance of goods and service, material defects, complaints and warranty

1. The risk of accidental loss or deterioration is transferred to the purchaser at the latest at the time the goods are shipped. The same shall also apply to partial deliveries and in cases of assumption of transport and insurance costs or other costs incurred in connection with the goods to be delivered.

2. Risk shall also be transferred to the purchaser if OCS advises the purchaser that the goods are ready for shipment and the goods are not delivered for reasons for which OCS is not responsible.

3. In the case of deliveries and services performed by OCS, the customer is responsible for ensuring that the goods or services are checked for completeness (compliance with the delivery papers) and for any external defects, and immediately informing OCS of deviations and/or defects.

4. A prerequisite of any claims for defects by the purchaser is the proper performance of the purchaser's obligation to examine the goods and give notice of any defects in accordance with Section 377 of the German Commercial Code (HGB). Insofar as no complaint is received by OCS within 3 days after delivery, the delivery shall be deemed as proper acceptance, unless the defect was not noticeable despite careful examination.

In the case of shipments ordered by OCS, the recipient is required to note any transit damage directly on the (electronic) notice of receipt provided by the carrier and to inform OCS of this without delay on the same day. In the event of what is known as hidden damage, the purchaser is required to report this to the carrier and notify OCS as soon as it is discovered. Possible claims for replacement or remedy are subject to the shipment agreements and related transfer of risks.

5. If the delivered goods are to be installed by OCS or a subcontractor and/or assistant employed by OCS, the declaration of acceptance must be provided by the customer immediately on the premises. If no declaration of acceptance is provided, this shall nonetheless be regarded as given if the delivered and installed goods are put into operation by the customer. Defects resulting from incorrect or inadequate installation are to be reported immediately to and in the presence of the installer or representative, fixed in writing and countersigned by both parties.

6. Neither OCS nor its subcontractor or assistant is responsible for examining possibly inadequate or unprofessional preliminary works by third parties required for the installation. Any claim for damages arising from this is expressly excluded.

7. Warranty claims by the counterparty, provided OCS is responsible for them, are limited to claims within the specified period for remedy of defects or, if preferred by OCS, replacement. In the case of failure of the remedial or replacement action, OCS undertakes to repeat said remedial action or replacement delivery. As in the case of a possible failure of the second attempt at remedy, if OCS does not make the second attempt to remedy or replace goods delivered, the customer is entitled to either a price reduction or cancellation.

8. Claims for damages by the counterparty, irrespective of their legal basis, are limited to deliberate or grossly negligent behaviour by OCS. This applies especially to services or installations or resulting consequential damages caused by a defect. Insofar as liability for damages against OCS is excluded, this exclusion also applies to representatives, employees and assistants of OCS.

Section 5 Reservation of title

1. The object of sale remains the property of OCS until it has been paid for in full. The purchaser may neither pledge the object of sale nor assign it as security to a third party prior to the complete transfer of title. Any existing pledges or other interventions by third parties must be reported to OCS immediately.

2. If, however, the goods under reservation of title are resold by the counterparty prior to payment in full, the customer undertakes to assign the claim for the sum of the gross sale amount to OCS. The counterparty of OCS is required to inform the third party of said assignment at the time of the resale.

However, OCS undertakes to refrain from collecting the assigned accounts receivable from the customer's resale if the customer fulfils its contractual payment obligations arising from the purchase agreement, does not default on payment, and no application for initiation of insolvency proceedings has been filed against it.

3. If the object of sale is processed or combined with other items, or the like, that are not the property of OCS, OCS acquires co-ownership of the new item at the ratio of the value of the object of sale to the other items being processed at the time of processing. The same regulations apply to the new item created through processing/combination/mixing as to the object of sale delivered subject to reservations.

Section 6 Place of performance, place of jurisdiction, severability clause

1. If the counterparty of OCS is a business person, the place of jurisdiction is the location of the registered office of OCS.

2. Should individual terms and conditions of the agreement concluded between the contracting parties be or become ineffective or unenforceable, this shall not affect the effectiveness of the remaining terms and conditions and parts of the contract. The contracting parties undertake to establish a uniting as well as effective and enforceable provision that approximates as closely as possible the intended contractual purpose of the ineffective part.