

Terms and conditions for purchases

July 2016

1. Validity of our Terms and Conditions

- 1.1. No purchase order, proposal, quote or offer (collectively, "Order") submitted by Optima Machinery Corporation ("Customer") shall be binding upon Customer until accepted in writing by an authorized representative of the supplier identified in the Order ("Supplier"). Customer's performance of its obligations under any Order is conditioned upon Supplier's acceptance of the terms and conditions set forth herein and Supplier's agreement to be bound by and comply with these terms and conditions ("Terms and Conditions") and such acceptance and agreement shall be deemed to have occurred upon acceptance of the Order by the Supplier as set forth above. These Terms and Conditions, the terms on the Order and all referenced attachments constitute the entire agreement between Customer and Supplier, and no amendment or modification shall be binding on Customer unless signed by an authorized representative of Customer. The failure of Customer to object to provisions contained in any purchase order, proposal or other document of Supplier shall not be construed as a waiver by Customer of these Terms and Conditions or an acceptance of any such provisions. Any conflicting or additional terms and conditions set forth by Supplier in a purchase order, proposal, quote, offer or other document prepared by or proposed by Supplier are not binding upon Customer, and Customer hereby expressly objects thereto. These Terms and Conditions shall apply to all future orders and business transactions with Supplier.
- 1.2. Supplier delivers the product and services identified in the Order subject to these Terms and Conditions, unless other specific written agreements between Supplier and Customer have been made. Supplier automatically recognizes these conditions as binding without requiring special instructions to this effect. These conditions remain valid even if Orders are placed on the basis of price lists or verbal offers. Customer's written acknowledgment of an Order shall determine the content of any respective agreement and any performance due thereunder. There shall be no oral ancillary agreements.

2. Form of the Order

- 2.1. Orders shall only be valid if made in writing or in a form equivalent to written form. The acceptance of Orders, as well as any amendments or modifications thereof or of any other agreement entered into between the parties, are not valid until confirmed in writing by Customer.
- 2.2. Verbal Orders, Orders by telephone or by telecommunications media must be confirmed by Customer in writing.

3. Validity of Orders

- 3.1. Customer's Order shall become invalid, if, upon transmission of Customer's Order to Supplier, Supplier does not receive a written confirmation within ten (10) days from the Order date (or, if Customer's confirmation is required under Section 2.2, from the date of such confirmation) at the latest. In this case, Customer's Order shall be deemed not to be placed.
- 3.2. Obvious inaccuracies in an Order (e.g. recognizable errors in typing or in calculation) give Customer the right to void the Order. Furthermore, Customer is entitled to claim consent from Supplier, that the Order shall be deemed to have to be performed with content as recognizably intended by the parties. Customer, in Customer's sole discretion, shall have the right to require Supplier to deliver the ordered product in another design and type.

4. Prices and Terms of Payment

- 4.1. All prices shall be fixed prices, and shall be DAP (Incoterms 2010), including free delivery to the delivery place indicated by Customer, and further including, all freight, transport insurance, customs duties, domestic or foreign sales, use, excise or similar taxes and other transportation costs, and any installation costs, all of which shall remain the sole responsibility of Supplier.
- 4.2. Invoices must be transmitted to Customer's address, Attention: Purchasing Department, in duplicate. Invoices must not be enclosed with the delivered product. Invoices, as well as any correspondence in the course of the business relationship, shall indicate Customer's Order number, Customer's Order date, Customer's material number, the reference used and any other further details required by Customer.
- 4.3. The invoices must show whether the Order has been duly performed or which quantities or units are yet outstanding for delivery. Every Order shall be invoiced separately.
- 4.4. Invoices shall be paid at Customer's reasonable discretion within thirty (30) days after acceptance of the subject products and services and receipt of a complete invoice from Supplier. Customer has the right to pay any invoice within ten (10) days after acceptance of the subject products and services and receipt of a complete invoice from Supplier and, if Customer elects to do so, Customer shall be entitled to take a two percent (2%) discount, which shall be applied by Customer against the purchase price.
- 4.5. With respect to invoices for premature deliveries accepted by Customer, the due date as agreed upon by the parties shall be decisive. In case the invoiced delivery arrives later than the invoice, the arrival date of the delivery shall be deemed as the invoice date.
- 4.6. In case of incorrect or defective products or services, Customer is entitled to withhold Customer payment in the respective amount until due performance. Any payments made by Customer shall not be deemed an acknowledgment or acceptance of the product or service as being in conformity with the Order.
- 4.7. Supplier shall not be entitled, without Customer's prior written consent, which may be unreasonably withheld, to assign any of Supplier's claims against Customer to third parties or to collect such claims by third parties.

5. Date of Delivery and Delay in Delivery

- 5.1. Designated delivery dates shall be binding upon Supplier. The delivery date or the period of delivery shall only be deemed complied with provided the subject product arrives by the delivery date at the delivery place indicated by Customer.
- 5.2. If the Supplier recognizes that the agreed upon delivery date cannot be met for whatever reason, Supplier shall immediately notify Customer thereof in writing, indicating the reasons and the duration of the delay.
- 5.3. In case of any delay in delivery, Customer is entitled to claim a contractual penalty in the amount of 0.5 % of the purchase price, however not more than five percent (5 %) in total and any such penalty shall be reduced from the purchase price. Customer reserves the right to pursue any and all other rights, remedies and legal claims it may have against Supplier.
- 5.4. In case an agreed delivery date is not met by Supplier, Customer is entitled, after the lapse of any reasonable extension determined by Customer, to rescind the Order, without prejudice to any and all other rights, remedies and legal claims Customer may have against Supplier. If the Supplier is responsible for the delay, Customer is furthermore entitled, at Customer's discretion, to make a claim against Supplier for any damages incurred due to the delay or, after lapse of the above-mentioned extension, to make a claim for damages instead of performance or compensation for frustrated expenses.
- 5.5. Acts of God, strikes and lockouts or other unforeseeable occurrences beyond the reasonable control of Supplier shall discharge the Supplier from their obligation to timely deliver the product, but only for the duration of the disturbance and only within its scope. The Supplier shall immediately notify Customer of the reason for the delay and any other information Customer may require. Supplier shall adapt their obligations to the changed circumstances in good faith. If the ordered product is no longer utilizable by Customer for its intended purpose due to a delay caused by such circumstances, Customer shall be discharged from Customer's obligation to accept the ordered product and shall be entitled to rescind the Order without any further liability to Supplier.

- 5.6. In case any ordered product is delivered earlier than the agreed upon delivery date, Customer reserves the right to send back the ordered product, at the cost of Supplier. In case Customer decides not to send the ordered product back upon premature delivery, the ordered product shall be stored at Customer's business premises until the delivery date, at the expense of Supplier and at the Supplier's own risk.

6. Delivery and Passing of Risk

- 6.1. The ordered product shall include a bill of delivery, which shall state the details of Customer's Order, as well as a detailed description of the scope of delivery including article, type, quantity, etc. In the event that Supplier does not comply with the aforementioned obligation, delays in the processing of the Order by Customer are unavoidable, and Customer shall not be responsible therefor.
- 6.2. Supplier shall transmit installation and operation instructions to Customer separately and with indication of Customer's Order number, no later than the delivery date. In the event Supplier fails to do so, the Supplier shall be liable for all damages incurred by Customer as a result thereof.
- 6.3. Customer will accept partial deliveries only after Customer's written agreement thereto. In case of agreed partial deliveries, such quantity outstanding for delivery shall be indicated.
- 6.4. The place of passing of the risk of loss shall be at the delivery place indicated by Customer.

7. Warranty

- 7.1. Supplier guarantees the use of the best appropriate material for correct, proper, appropriate and safe workmanship, design and assembly measures, as well as for the compliance with the warranted capacity, efficiency, power requirements, etc. of the ordered product. Any ordered product delivered by the Supplier and any of their performances must comply with (i) the present state of technology, (ii) the applicable standard of environmental compatibility with the applicable legal provisions, (iii) with all regulations and guidelines of the appropriate authorities, and (iv) with all regulations and guidelines of applicable employers liability insurance associations and trade associations. No deviation from any of the foregoing, including any applicable laws, rules, regulations and guidelines, shall occur without Customer's prior written consent thereto.
- 7.2. In case of delivery of circuitry, control systems and programs, if the ordered product is not completely suitable to assume the function as it is designed for and as agreed upon, then a defect shall be deemed to exist.
- 7.3. Customer shall only accept ordered product under the reservation of a quantity and quality control. Customer shall have a duty to examine the ordered product only with regard to obvious or easily recognizable deviations from quantity and quality. Customer will use its best efforts to promptly notify the Supplier of any recognized deviations. Any complaint by Customer with respect to a defect in the ordered product shall be considered to be made in due time, if it is received by the Supplier within a notice period of thirty (30) business days from the receipt of delivery or, in case of hidden defects, thirty (30) business days from the discovery of the defect.
- 7.4. In case of defects, any Customer claims made pursuant to these Terms and Conditions shall be unrestricted, and Customer shall have the right to make a claim for any and all damages, losses, liabilities, obligations, costs and expenses (including attorneys' fees) incurred by Customer. The place of warranty shall be the delivery place indicated by Customer.
- 7.5. In case Supplier fails to make delivery of a substitute product approved by Customer or fails to repair the defects, Customer shall have the right to replace or repair of defects itself or by third parties at the expense of the Supplier. The same shall apply in urgent cases, if the Supplier cannot be reached or if Supplier is not able to provide for the repair of the defects or for the replacement within the time period determined by Customer.
- 7.6. Warranty claims shall be subject to a limitation period of thirty-six (36) months from passing of the risk, unless otherwise agreed. In the case of a repair or replacement of parts, the limitation period shall start again and run for a period of thirty-six (36) months after the date of repair or replacement.

8. Product Liability, Release from Liability and Liability Insurance

- 8.1. Insofar as the Supplier is liable for product liability, Supplier shall release, indemnify and hold Customer harmless from any liability, damage, claim, obligation, loss, demand, cause of action, cost and expense (including attorneys' fees) threatened against or incurred by Customer, upon demand of Customer.
- 8.2. Upon Supplier's liability for damages in the meaning of section 8.1, the Supplier shall also be obliged to indemnify and hold harmless Customer against and from any and all claims, liabilities, losses, obligations, demands, damages, causes of action, costs and expenses, (including attorneys' fees) which result from or are in connection with a product recall implemented by Customer. Customer will as far as can reasonably be expected inform the Supplier about the object and scope of the product recall to be implemented and will give them the opportunity to state their position. Customer shall retain any and all rights, remedies and causes of action against Supplier.
- 8.3. The Supplier shall maintain liability insurance with a coverage amount of no less than of Five Million U.S. Dollars (\$5,000,000) per personal injury and damage to property. In the event Customer is entitled to claims and damages in excess of the aforementioned coverage amount, such damages and claims shall remain unaffected by the foregoing insurance coverage limit.

9. Intellectual Property Rights

- 9.1. The Supplier guarantees that the delivery and the use of the ordered products do not violate any intellectual property rights of any third parties. The Supplier confirms that Supplier is aware that the final products may be distributed worldwide.
- 9.2. The Supplier shall be exempt from liability under Section 9.1, if the ordered products were manufactured solely in accordance with designs, models or similar descriptions or indications provided by Customer.
- 9.3. The parties shall give each other prompt notice after gaining knowledge of any violation risks and of alleged violations, and shall give each other the opportunity to ward off corresponding claims by common consent.
- 9.4. The Supplier shall, upon Customer's request, inform Customer about the use of published or unpublished, owned or licensed intellectual property rights with regard to the delivered products, and any corresponding applications.
- 9.5. Supplier agrees that it shall defend any suits that may be instituted by any party against Customer for all alleged infringement of any intellectual property rights relating to the ordered products. In case the ordered product subject to such lawsuit is held to infringe any U.S. patent or other intellectual property rights and its use thereof is enjoined, Customer may at its option: (A) require Supplier to obtain for the Customer the right to continue using the ordered products, or (B) require Supplier to replace the same with non-infringing equipment, or (C) require Supplier to modify the ordered products so that it is non-infringing, or (D) require Supplier to remove the ordered products and refund the purchase price to Customer. Supplier shall indemnify and hold Customer harmless from any and all losses, claims, demands, actions, damages, obligations, liabilities, costs and expenses (including, attorney's fees) related to or resulting from any claims of infringement of intellectual property rights made by any third party against Supplier or Customer. The covenants contained in this paragraph shall be deemed personal to Supplier, and may not be assigned or conveyed to any other party.

10. Samples and Drawings

- 10.1. The Supplier shall, upon Customer's request, provide lists of any and all spare parts, with corresponding illustrations for the parts or products to be delivered.
- 10.2. Parts or products which the Supplier has developed in accordance with Customer's indications or with substantial assistance from Customer (e.g. in the course of tests, etc.) must not be transmitted or made known to third parties without Customer's prior written consent, which may be unreasonably withheld.
- 10.3. All documentation which has been delivered by Customer to the Supplier for the purpose of performance or Customer's Orders remain Customer's property and must be returned to Customer, at Supplier's sole cost, after due performance of the Order. The Supplier has no right to retain any such documentation. Such documentation must not be copied or made accessible to third parties who are not involved in the performance of the Order and such documentation shall not be used for any purposes other than for the production of the part or product identified in the Order.

11. Confidentiality

- 11.1. The parties agree that they shall keep confidential any business and technical details of which they should gain knowledge in the course of their business relationship to each other.
- 11.2. Possible sub-contractors or ancillary suppliers shall be obliged accordingly.
- 11.3. The parties agree that they shall not inform any third parties about their business relationship with each other, and that they shall not use such information for the purposes of promotion, without the prior written consent of the other party.

12. Spare Parts

For the duration of ten (10) years following Order placement, Supplier shall, within reasonable terms and within competitive pricing, supply Customer with parts, spares and adequate technical solutions. If Supplier ceases manufacturing of the parts or if cessation is foreseeable, Supplier shall, no later than (6) months before cessation, inform Customer of the parts at issue, so Customer can react respectively within its ongoing ordering process. Upon cessation, Supplier shall forward a full set of designs to Customer, to allow Customer to continue manufacturing of the parts and spares on its own. Nothing contained herein shall be construed as creating an exclusive relationship between Supplier and Customer and Customer shall be free to contract with or obtain services from any other supplier for any parts or products, Customer may require, in Customer's sole discretion.

13. Miscellaneous

- 13.1. Place of delivery and place of payment shall be 1330 Contract Drive, Green Bay, Wisconsin, 54304, unless the delivery shall be made to another place in accordance with the Order.
- 13.2. The contract resulting from the acceptance of the Order shall be interpreted in accordance with the laws of the State of Wisconsin. Supplier irrevocably submits to the exclusive jurisdiction of the Circuit Court of Brown County, Wisconsin, or the federal District Court for the Eastern District of Wisconsin, as selected by Customer, for any action or proceeding relating to the Order. No waiver of any of the provisions contained in the Order shall be valid unless made in writing and executed by Customer. Failure of Customer to insist upon strict performance of the terms of the Order shall not constitute a waiver of any of the provisions of the Order or waiver of any other default. The Order and the Terms and Conditions contain the entire understanding between the parties related to the transactions contemplated herein and supersede all prior or contemporaneous agreements or understandings. No modification, amendment, discharge or change of the Order shall be valid unless set forth in writing and signed by both parties. Neither party shall be deemed the draftsman of the accepted Order or these Terms and Conditions and such shall not be construed against one party in favor of the other by reason of draftsmanship. The Order is not assignable by Supplier.