

GENERAL TERMS AND CONDITIONS OF SALE Orbitalum Tools GmbH, Singen

[OT_AVB_20200201_EN]

- 1 VALIDITY
- 1.1 These general terms and conditions of sale apply to all deliveries from Orbitalum Tools to the purchaser. They also apply to all future business, even if no express reference to these general terms and conditions of sale is made.
- 1.2 Any additional conditions or conditions which differ from these conditions, in particular the general purchasing conditions of the purchaser or any verbal agreements only apply if they have been confirmed by Orbitalum Tools in writing.
- 1.3 All forms of communications which facilitate verification in text form, e.g. telefacsimile, e-mail etc., are regarded equally as the written form.
- 2 QUOTATIONS
- Quotations from Orbitalum Tools are only binding if they are accepted unchanged, unconditionally and within the acceptance period included in the quotation.
- 3 SCOPE OF DELIVERY
- 3.1 Orbitalum Tools reserves the right to make changes to the product range.
- 3.2 The order confirmation is authoritative with regard to the scope and implementation of the delivery.
- 4 DATA AND DOCUMENTS
- 4.1 Technical documents, such as drawings, descriptions, figures, any specifications of dimensions, properties or weights, and references to standards, are for information purposes only and do not constitute warranty promises. Orbitalum Tools reserves the right to make appropriate changes in cases in which it appears to be in the interest of technical progress.
- 4.2 All technical documents remain the intellectual property of Orbitalum Tools and must only be used for the purposes agreed and specified by Orbitalum Tools.
- 5 CONFIDENTIALITY, DATA PROTECTION
- 5.1 The contractual partners shall treat any commercial and technical information of the other contractual partner which is not in the public domain and to which they gain access as a result of their business relationship, as confidential, and shall neither make it accessible to third parties nor use it for their own purposes.
- 5.2 Within the scope of the contractual relationship with the purchaser Orbitalum Tools shall process any personal data in accordance with the legal regulations.
- 6 REGULATIONS AT THE PLACE OF DESTINATION, EXPORT CONTROLS
- 6.1 The purchaser must make Orbitalum Tools aware of the local and legal regulations and any other regulations which relate to implementation of the delivery and adherence to the regulations for safety and approval.
- 6.2 The purchaser is responsible for adherence to export control regulations in the event that the products be re-exported.
- 7 PRICE
- 7.1 Unless otherwise agreed, prices are quoted without value added tax, ex works, in accordance with the Incoterms of the ICC (current issue) and including standard packaging. All additional costs, e.g. costs for freight, insurance, export permits, transit permits, import permits or other permits and certification, shall be covered by the purchaser. The purchaser is also responsible for bearing the costs of all types of taxes, duties, fees and customs charges.
- 7.2 If the costs for packaging, freight, insurance, duties or other additional costs are included in your quotation or list price or indicated separately in the quotation or in the order confirmation, Orbitalum Tools reserves the right to adjust the valuations accordingly in the event of a change to the tariffs.
- 7.3 A net minimum order value of EUR 100.00 applies.
- 7.4 Orbitalum Tools reserves the right to make changes to list prices at any time.
8. PAYMENT TERMS
- 8.1 Payments must be made by the purchaser at the location of the Orbitalum Tools operation issuing the invoice, without any deductions, such as discount, expenses, taxes or fees, and in accordance with the agreed payment terms.
- 8.2 The purchaser has the right to set off and retain receivables which are based on the same contractual relationship. The purchaser shall only have the right to set off and retain receivables which are not based on the same contractual relationship, if the receivables are undisputed or legally established as final and absolute. In particular the absence of non-essential parts of the delivery which however do not render use of the delivery impossible, shall not give the purchaser the right to make retentions.
- 9 RESERVATION OF PROPERTY RIGHTS
- 9.1 Ownership of the supplied objects does not transfer to the purchaser until full payment has been made. The purchaser is responsible for complying with any special prerequisites or special formal requirements which apply in relation to the validity of the reservation of property rights in the destination country. Orbitalum Tools has the right to retain delivery until the reservation of property rights is effective and proof of compliance with the formal requirements has been provided.
- 9.2 The purchaser must neither pledge the object of supply nor assign it as collateral before transfer of ownership. In the event of seizures, confiscation or other enactments by third parties the purchaser must indicate the reservation of property rights and notify Orbitalum Tools immediately.
- 9.3 In case of actions by the purchaser which are contrary to the contract, in particular in the event of payment delays, following the issuing of a reminder Orbitalum Tools shall have the right to withdraw all objects of supply subject to the reservation of property rights. The purchaser is obliged to surrender the affected objects of supply. Neither the demand to surrender nor the seizure of the object of supply by Orbitalum Tools constitute cancellation.
- 9.4 In the event that an application to open insolvency proceedings against the assets of the purchaser is filed, Orbitalum Tools shall have the right to cancel the contract and to the immediate return of the object of supply subject to reservation of property rights.
- 9.5 If the purchaser has its registered office in the Federal Republic of Germany, the following also applies:
- a) Contrary to clause 9.1, Orbitalum Tools reserves ownership of the objects of supply until all receivables from the purchaser from the current business relationship have been paid.
- b) Contrary to clause 9.2, under the following conditions the purchaser shall have the right to sell on or further process the objects of supply subject to reservation of property rights in the regular course of business:
- The purchaser must sell on the objects of supply subject to reservation of property rights if the objects of supply have not already been completely paid for by the third-party purchaser. Authorization to resell does not apply in the event of payment delay by the purchaser. With completion of the contract with the third-party purchaser the purchaser transfers all receivables generated from the resale or on other legal grounds in relation to the objects of supply subject to reservation of property rights to Orbitalum Tools. In case of connection/processing with other moving objects and the generation of common ownership the transfer only applies to Orbitalum Tools' share of receivables in accordance with joint ownership.
- c) The purchaser remains authorized to collect receivables transferred to Orbitalum Tools after transfer as long as he complies with his payment obligations to Orbitalum Tools. Orbitalum Tools has the right to demand at any time that the purchaser disclose the transferred receivables and their debtors. In such cases the purchaser must provide Orbitalum Tools with all the required details of collection, surrender the required documents for this purpose and notify the debtor of the transfer.
- d) The processing of reserved goods is always carried out by the purchaser on behalf of Orbitalum Tools as the manufacturer. If the reserved object is mixed, blended, connected or processed with objects which are not the property of Orbitalum Tools, Orbitalum Tools acquires (joint) ownership of the new object with the proportion of the invoice value in relation to the other processed objects at the time of processing. If the goods are mixed, blended, connected or processed with other moving objects to form another uniform object, and if the other object is to be regarded as the main object, the parties shall be deemed to have agreed that the purchaser shall transfer proportional ownership to Orbitalum Tools, as long as the main object belongs to the purchaser. The purchaser holds the property or jointly owned property on behalf of Orbitalum Tools. The same also applies for the generated object in the event of mixing, blending, connection or processing as for the reserved goods.
- e) Orbitalum Tools commits to release the securities due to Orbitalum Tools in so far as their invoice value does not exceed (remaining) receivables from Orbitalum Tools still open temporarily by more than 20%.
- f) If the objects of supply from Orbitalum Tools are facilities firmly connected to the ground or included in a building, the connection or inclusion only occurs for a temporary purpose.
- 10 DELIVERY, IMPOSSIBILITY
- 10.1 The delivery period begins as soon as the contract has been completed, all authority formalities, such as import and payment permits have been obtained and the essential technical issues have been cleared up. The delivery period or the delivery deadline shall be deemed met if the delivery has been prepared for dispatch when the period elapses or the deadline arrives.
- 10.2 The obligation to deliver is subject to the following reservations, i.e. the delivery period is extended appropriately or the delivery deadline is postponed:
- a) if Orbitalum Tools does not receive specifications which are required for implementation of the order, in good time or if the purchaser subsequently changes them and this causes a delay in delivery;
- b) if Orbitalum Tools is prevented from delivering by force majeure. Force majeure is constituted by unforeseeable circumstances for which Orbitalum Tools is not responsible, which render delivery unreasonably difficult or impossible for Orbitalum Tools, such as delivery delays or faulty supply deliveries from designated sub-suppliers, industrial dispute, measures taken by the authorities, a lack of raw materials or energy, considerable operating faults, either as a result of complete destruction of the plant or of important departments due to the failure of indispensable production systems, severe transportation disruption, e.g. as a result of roadblocks. In the event that these circumstances endure more than six months, both parties shall have the right to withdraw from the contract. Claims for compensation for damages on the part of the purchaser are excluded;
- c) if the purchaser is in arrears with fulfillment of his contractual obligations, in particular if he does not comply with the payment terms or does not provide agreed securities in good time.
- 10.3 If the exceeding of the agreed or appropriately extended delivery period is caused by Orbitalum Tools, Orbitalum Tools shall not be considered to be in arrears until the purchaser has set Orbitalum Tools an appropriate follow-up period which must be of at least one month in length, taking into account the legal exceptions, and this period has elapsed unexploited. Further demands from delivery default are defined exclusively as per clause 17.
- 10.4 Partial deliveries are permitted. Orbitalum Tools has the right to issue partial invoices for partial deliveries.
- 10.5 If the purchaser does not call off goods declared as ready for dispatch in good time, Orbitalum Tools shall have the right to store the goods at the expense and risk of the purchaser and invoice the goods as delivered. In the event that the purchaser fails to pay for the goods, Orbitalum Tools shall in particular have the right to dispose of the goods otherwise.
- 10.6 In the event that the purchaser cancels an order and Orbitalum Tools does not insist on fulfillment of the contract, Orbitalum Tools shall have the right to compensation for damages to an amount of 10% of the value of the order in question (fixed-rate compensation for damages) and for the proven damage in excess of this amount. The purchaser has the right to demonstrate that Orbitalum Tools has not incurred any damage or has incurred considerably lower damage than the amount of the fixed-rate claims for compensation for damages.
- 10.7 The purchaser has the right to withdraw from the contract in case of partial impossibility if partial performance is verifiably of no interest to the purchaser. If this is not the case, the purchaser must pay the corresponding contract price for the partial performance. Otherwise clause 17 applies. If impossibility occurs during default of acceptance or due to sole or predominant culpability on the part of the purchaser, he shall remain obliged to make payment, taking into account any saved expenses on the part of Orbitalum Tools. If impossibility is not caused by either contractual partner, Orbitalum Tools shall have the right to a proportion of the remuneration in accordance with its performed work.

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- 10.8 In the event of a cancellation of work performances by the purchaser as per § 649 BGB, in addition to the right to remuneration for any services already provided, Orbitalum Tools shall have the right to payment of the remuneration for services not yet provided by the purchaser of at least 10% of the net price of total remuneration. Orbitalum Tools has the right to demonstrate that the actual incurred damage is higher and/or that higher expenses have been generated, and demand these from the purchaser in place of the fixed amount. The purchaser has the right to demonstrate that no damage has been incurred or the actual incurred damage is much lower and/or that much lower expenses have been generated than the fixed amount.
- 11 PACKAGING
- 11.1 If the products are packaged in additional packaging which goes beyond standard packaging, the packaging in question shall be charged separately. Orbitalum Tools reserves the right to select the type of packaging.
- 11.2 If the purchaser returns the packaging used for transportation of the supplied goods to Orbitalum Tools in accordance with the Packaging Ordinance, the purchaser shall bear the costs for utilization and transportation to the location for utilization specified by Orbitalum Tools.
- 12 TRANSFER OF RISK, ACCEPTANCE
- 12.1 The risk is transferred to the purchaser ex works (EXW) as per the Incoterms of the ICC (current issue), even when the delivery is made carriage paid, subject to similar clauses or including installation, or if transportation is organized and managed by Orbitalum Tools.
- 12.2 If dispatch is delayed for reasons for which Orbitalum Tools is not responsible, the risk is transferred to the purchaser at the point of notification of availability for dispatch.
- 12.3 If an acceptance declaration by the purchaser is legally required or has been agreed for the transfer of risk, the following applies:
- The work performances from Orbitalum Tools shall be deemed accepted two weeks after notification of availability for acceptance unless the purchaser lodges a written claim for considerable existing defects with Orbitalum Tools within this period.
 - The purchaser shall only have the right to refuse acceptance in the event that the defect eradicates or considerably reduces the contractually required use of the product and/or its value. If the product is affected by defects which do not justify refusal of acceptance, the product must be accepted on condition that the defects be eliminated.
 - Refusals of acceptance or conditions made of acceptance must be issued immediately, in writing and with an indication and description of the defect which is the subject of the claim.
 - Use of the object of supply by the purchaser for its proper use shall be deemed as acceptance.
- 13 TRANSPORTATION AND INSURANCE
- 13.1 In the absence of alternative agreements, shipping shall be performed at the expense of the purchaser. Shipping costs are invoiced together with the goods. Specified special dispatch methods (e.g. express, fixed-delivery freight) shall be charged to the purchaser.
- 13.2 Insurance against damage of any kind is the responsibility of the purchaser. Even if it is to be arranged by Orbitalum Tools, it is deemed as included in the order and for invoicing to the purchaser.
- 13.3 Orbitalum Tools must be notified of any special requests regarding shipping and insurance in good time. Shipping will otherwise be performed at the discretion – but not responsibility – of Orbitalum Tools, as quickly and as cost-effectively as possible. Orbitalum Tools shall process carriage-paid shipping fully at its own discretion. In the event that the purchaser issues special guidelines, any additional costs shall be at the purchaser's expense.
- 13.4 In case of damage or loss of products during transportation, the purchaser must make note of the appropriate caveat in the delivery documents and immediately have the forwarder provide a report. The forwarder must be notified of any transport damage not immediately identifiable within six days after receipt of the products.
- 14 INSPECTION, NOTIFICATION OF DEFECTS, NOTIFICATIONS OF CLAIMS
- 14.1 The products are inspected by Orbitalum Tools during production to the usual extent. In the event that the purchaser requests further inspections or testing, these must be agreed in writing and paid for by the purchaser.
- 14.2 The above does not give the purchaser dispensation from his obligation to inspect and register claims as per § 377 HGB.
- 14.3 Faulty parts must in every case be stored until the warranty claims and claims for compensation for damages have been clarified definitively, and made available to Orbitalum Tools on request.
- 14.4 On request Orbitalum Tools must be afforded the opportunity to assess the defects or damage or have them assessed by third parties before the start of repair work.
- 15 GOODS RETURNS TO ORBITALUM TOOLS ON A GOODWILL BASIS
- 15.1 Orbitalum Tools is not obliged to accept the return of any products delivered in proper condition and in accordance with the contract.
- 15.2 Returns are made as a gesture of goodwill and are only accepted by Orbitalum Tools if they are requested and approved in advance and the products are delivered in new condition, in the original packaging and freight paid. Non-approved returns shall be delivered back to the customer at his expense.
- 15.3 Consumables, special productions or discontinued products shall not under any circumstances be accepted for return.
- 15.4 For returns with a value of less than 150.00 EURO no credit note shall be issued.
- 15.5 The value of each item must be at least 50.00 EURO.
- 15.6 For every return a processing charge of 25% of the value of the goods or a minimum of 50.00 EURO shall be deducted in every case.
- 16 LIABILITY FOR MATERIAL DEFECTS, VIOLATIONS OF PROPERTY RIGHTS AND COPYRIGHT
- 16.1 Orbitalum Tools commits to repair or replace at its own discretion all faulty parts of its delivery as quickly as possible and free of charge, in particular those which become damaged or unusable as a result of poor material, faulty engineering or design, as long as these are not produced in accordance with the specifications of the purchaser or modified by the purchaser. Replaced parts shall become the property of Orbitalum Tools.
- 16.2 If a reasonable period for rectification due to a defect set by Orbitalum Tools elapses unsuccessfully, the purchaser – taking into account legal exceptions – has the right to withdraw from the contract or to an appropriate reduction of the price. In the event that there is a negligible defect, the purchaser shall only have the right to an appropriate reduction of the contract price.
- 16.3 Claims which do not relate to the culpability of Orbitalum Tools, in particular those resulting from natural wear, incorrect storage or maintenance, failure to adhere to operating guidelines, excessive strain, unsuitable consumables, deficient construction work, improper interventions by the purchaser or third parties, use of non-original parts and due to other reasons not caused by Orbitalum Tools, are not covered by the warranty.
- 16.4 Claims from the purchaser made for expenses required for the purpose of rectification are not covered if the expenses increase because the objects of supply have been subsequently moved to a location other than the delivery location, unless the relocation to the other location is in accordance with proper use of the objects of supply.
- 16.5 In the event that use of the object of supply within the periods specified in clause 18 leads to violation or property rights or copyright, in addition to possible compensation for damages taking into account clause 17, Orbitalum Tools affords the purchaser the fundamental right to further use or modifies the object of supply so that there is no longer any violation of property rights or copyright. If this is not possible at economically reasonable conditions (i.e. with an increase in manufacturing costs of up to 10%, including any license fees) or within a reasonable period, the parties shall have the right to withdraw from the contract with reimbursement of the mutually received services.
- 16.6 The obligations of Orbitalum Tools stated in clause 16.5 are subject to clause 17 and final in the event of violation of property rights or copyright.
- 16.7 The right to rectification and compensation for damages due to violation of property rights or copyright, as stated in clause 16.5, shall only apply if the purchaser informs Orbitalum Tools in writing immediately indicating and describing the asserted violations of property rights or copyright, the purchaser supports Orbitalum Tools to a reasonable extent to dismiss the asserted claims or enable Orbitalum Tools to carry out modification measures as per clause 16.5. Orbitalum Tools reserves the right to all measures to dismiss the claims, including out-of-court settlements, Orbitalum Tools is responsible for the violation of property rights or copyright, which is not the case, for example, if the violation is based on an instruction or specification from the purchaser or if the violation of property rights or copyright has been caused by the purchaser having modified the objects of supply without authorization or used it in a manner not in accordance with the contract.
- 17 LIMITATION OF LIABILITY
- 17.1 Unless these conditions state otherwise, all claims asserted by the purchaser against Orbitalum Tools, regardless of the legal basis, in particular due to violation of contractual obligations or unauthorized actions, are excluded.
- 17.2 This limitation of liability shall not apply in case of mandatory liability, e.g. in accordance with product liability law, also in case of intent, gross negligence by the legal representatives or management and in case of culpable violation of essential contractual obligations. In case of culpable violation of essential contractual obligations Orbitalum Tools shall only be liable for the contractually typical, reasonably foreseeable damage – except in cases of intent or gross negligence. The limitation of liability shall not either apply to damages resulting from loss of life, physical injury or health damage and in the absence of a guaranteed condition if the warranty specifically has the purpose of safeguarding the purchaser from damages which have not occurred on the supplied products themselves.
- 17.3 If the liability of Orbitalum Tools is excluded or limited, this also applies for any corporations associated with Orbitalum Tools and for the personal liability of staff, employees, personnel, legal representatives and agents of Orbitalum Tools and corporations associated with Orbitalum Tools.
- 17.4 Liability for violation of property rights of third parties is excluded in particular for the provision of services in accordance with the stipulations of the purchaser. Orbitalum Tools does not have an auditing duty with regards to the property rights of third parties.
- 18 LIMITATION OF CLAIMS FOR COMPENSATION FOR DAMAGES AND MATERIAL DEFECTS
- Claims for compensation for damages and material defects are limited to 12 months from the transfer of risk. The aforementioned regulation shall not apply as long as the law stipulates longer mandatory periods; for these claims the legal limitation rules apply. For claims relating to loss of life, physical injury or health damage; grossly negligent behavior of organs or management employees; malicious or fraudulent behavior; culpable violation of essential contractual obligations; guarantees and in case of claims in accordance with product liability law the legal limitation guidelines always apply.
- 19 PARTIAL INVALIDITY
- If individual provisions of the contract are or become invalid or void, either completely or partially, this does not affect the validity of the other provisions. The contractual partners commit to replacing the invalid or void provision with a valid provision which achieves the intended aim of the invalid or void provision as far as possible.
- 20 PLACE OF PERFORMANCE AND JURISDICTION
- 20.1 The place of performance is Singen, Germany.
- 20.2 In case of disputes resulting from the contractual relationship legal action must be brought exclusively at the court responsible for Orbitalum Tools. However, Orbitalum Tools also has the right to apply to any other competent court.
- 20.3 The contractual relationship is subject exclusively to German law without the possibility of application of the UN Convention on Contracts for the International Sale of Goods (CISG).

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