

International Conditions of Sale for Customers Not Resident in Germany

I. Application of the International Conditions of Sale

1. These International Conditions of Sale apply to all customers of Arntz Optibelt GmbH – hereinafter referred to as Optibelt – whose relevant place of business is **not in Germany**. For customers whose place of business is in Germany, the General Conditions of Sale of Optibelt apply, which will be forwarded on request. In each case, the relevant place of business is the one which concludes the contract in its own name.
2. These International Conditions of Sale apply to the present and all subsequent contracts whose preponderant object is the **supply of goods** to customers.
3. Conflicting or differing **terms of business of the customer** do not bind Optibelt, even if Optibelt does not explicitly object to them or even if Optibelt unconditionally renders performance or accepts the customer's performance irrespective of the customer's conflicting or differing terms of business. The provisions of this paragraph equally apply insofar as the terms of business of the customer deviate from legal provisions.

II. Formation of the Contract of Sale

1. The customer is under an obligation to give **written notice to Optibelt** prior to the formation of a contract if the goods ordered are to be fit not only for normal use or will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment, or which require a more demanding use.
2. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by Optibelt, the customer will emphasize the differences as such.
3. All orders, in particular also those received by employees of Optibelt, will **only take effect if followed by a written acknowledgement** of the order by Optibelt. Actual delivery of the goods ordered, any other conduct of Optibelt or silence on the part of Optibelt does not allow the customer to assume the formation of the contract of sale. Optibelt can dispatch such written acknowledgement of the order up to and including **14 calendar days after** the customer's order has been received by Optibelt. Until this time, the customer's order is irrevocable.
4. The written **acknowledgement of the order** has been **received in time**, if it is received by the customer within 14 calendar days after its date of printing. The customer will inform Optibelt without delay, if the written acknowledgement of the order is received with some delay.
5. The written acknowledgement of the order by Optibelt sets out all the **terms of the contract** and brings the contract into effect even if – except for the purchase price and the quantity to be delivered – the written acknowledgement deviates in any other way, especially with reference to the exclusive application of these International Conditions of Sale, from the declarations of the customer. Particular wishes of the customer, namely warranties or guarantees with reference to the goods or the performance of the contract therefore require express written confirmation in every case. Regardless of the nature and extent of the deviations, the contract will only fail to come into existence if the **customer objects to the deviations in writing** and the objection is received by Optibelt within a short time, at the latest seven calendar days after receipt of the written acknowledgement of the order by the customer.
6. Optibelt's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a written acknowledgement of the order or to make promises which differ from its content or guarantees. **Changes** to the concluded contract likewise require written confirmation by Optibelt.

III. Obligations of Optibelt

1. Subject to an exemption according to section VII. 1. b) Optibelt must **deliver the goods** specified in the written acknowledgement of the order. Optibelt is **not obliged to perform obligations** not stated in the written acknowledgement of the order or in these International Conditions of Sale, in particular Optibelt is under no obligation to deliver accessories not explicitly listed, to install additional safety devices, to carry out assemblies or to advise the customer.
2. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to bring any other contractual claim against Optibelt. The customer's responsibility to take delivery continues to exist even if he **assigns claims to third parties**.
3. Optibelt undertakes to deliver goods of average kind and quality taking account of the **tolerances customary in trade** concerning the kind, quantity, quality and packaging. Divergences in measure and size, structure and colour are reserved as far as they result from the nature of the materials used and are customary in trade. Optibelt is entitled to make **part deliveries** and to invoice them separately.
4. If further **specification** is required in relation to the goods to be delivered, Optibelt will carry this out having regard to its own interests and to the identifiable and legitimate interests of the customer. A request to the customer to specify the goods, or to participate in the specification, is not required. Optibelt does not undertake to inform the customer of the specification it has made or to give the customer the option of a differing specification.
5. Optibelt undertakes to place the goods **at disposal for collection by the customer** at the agreed time of delivery at the place of delivery indicated in the written acknowledgement of the order or by way of precaution at its premises in Hötter/Germany. Previous separation or marking of the goods or notification to the customer of the goods being placed at disposal is not required. However, Optibelt is entitled to initiate the shipment of the goods at the customer's risk and expense in order to obtain the document in proof of tax-free-delivery.
6. Agreed **delivery time periods** or **delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by Optibelt. Optibelt is entitled to deliver earlier than at the agreed delivery time.
7. Without prejudice to its continuing legal rights, Optibelt is entitled to fulfil its obligations **after the delivery time agreed upon**, if it informs the customer that it will exceed the delivery time limit and of the time period for late performance. The customer can object to late performance within reasonable time, if the late performance is unreasonable. An objection is only effective, if it is received by Optibelt before commencing late performance. Optibelt will reimburse necessary additional expenditure, proven and incurred by the customer as a result of exceeding the delivery time to the extent that Optibelt is liable for this under the provisions laid down in section VII.
8. **Risks as to price and performance** even in relation to goods which are not clearly identifiable to the contract and without it being necessary for Optibelt to give notice, pass to the customer at the latest as soon as the loading of the goods has begun or as soon as the customer does not take delivery in accordance with the contract or title to the goods has passed to the customer. The **loading of the goods** is part of the customer's obligations. The agreement of

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INCOTERMS in Group F or Group C or of clauses such as “delivery free ...” or similar ones merely involve a variation of the provisions as to transportation costs; moreover, the provisions laid down in these International Conditions of Sale including those referring to the passing of risk continue to apply.

9. Optibelt is not obliged to obtain any licences, authorizations, certificates, formalities or other **documents** necessary for the export, transit or import. However, Optibelt renders at the customer's request, risk and expense every assistance in obtaining the documents that the customer has required in writing.

10. Including where INCOTERMS in Group F are agreed, **Optibelt is in particular not obliged** to arrange for the shipment of the goods, to insure the goods, to procure certificates or documents not expressly agreed, to procure customs clearance, to bear levies, duties and charges accruing outside Höxter/Germany, to comply with weight and measuring systems, packaging, labelling or marking requirements applicable outside Höxter/Germany, to inform the customer of the delivery or to take back packaging material from the customer. Irrespective of any legal provision, the customer shall at its own cost take care of renewed utilization, material recycling or otherwise prescribed waste-disposal. The foregoing provision applies irrespective of whether the packaging material is invoiced separately or not to the customer.

11. Without prejudice to its continuing legal rights, Optibelt is entitled to **suspend the performance of its obligations** so long as, in the opinion of Optibelt, there are grounds for concern that the customer will wholly or partly fail to fulfil its obligations in accordance with the contract. In particular, the right to suspend arises if the customer insufficiently performs its obligations to enable payment to Optibelt or a third party or pays late or if the limit set by a credit insurer has been exceeded or will be exceeded with the forthcoming delivery. Instead of suspending performance Optibelt is entitled at its own discretion to make future deliveries, even if confirmed, conditional on payment in advance or on opening of a letter of credit confirmed by one of the big German commercial banks. Optibelt is not required to continue with performance of its obligations, if an assurance given by the customer to avoid the suspension does not provide adequate security or could be challenged pursuant to an applicable law.

12. Except as provided in section III. 7., Optibelt is only obliged to inform the customer of **delay or non-performance** as soon as these are certain.

IV. Price, Payment and Acceptance of the Goods

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer undertakes to pay the **agreed price** in the currency specified in the written acknowledgement of the order transferring it without deduction and free of expenses and costs to the financial institution designated by Optibelt. To the extent that a price has not been agreed, the contract has nevertheless been validly concluded; in such a case the price which is at the agreed time of delivery Optibelt's usual price will apply. Optibelt's employees, commercial agents or other sales intermediaries are not authorized to accept payments.

2. The payment to be made by the customer is in any event **due for payment** at the time specified in the written acknowledgement of the order. The due time for payment arises without any further precondition and, in particular, does not depend on whether the customer has already taken delivery of the goods and/or the documents and/or has had an opportunity to examine the goods. The **periods granted for payment** will cease to apply and outstanding accounts will be due for immediate payment, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Optibelt or

towards third parties or if the customer has provided inaccurate information regarding his creditworthiness.

3. The customer warrants that all legal requirements for delivery free of **German value added tax** will be fulfilled. To the extent that Optibelt does not receive the document in proof of tax-free-export-delivery or Optibelt is called upon to pay value added tax as a result of the terms of delivery or of circumstances allocable to the customer, the customer will indemnify Optibelt in all and every respect without prejudice to any continuing claim by Optibelt. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation or prescription and also includes the reimbursement of the expenses incurred by Optibelt.

4. Regardless of currency and regardless of the jurisdiction of any court, Optibelt is entitled at its own discretion to **set off** incoming payments against claims existing against the customer by virtue of its own or assigned rights at the time of payment.

5. Any rights of the customer to **set-off** against claims of Optibelt are excluded, except where the corresponding claim of the customer is in the same currency, is founded in the customer's own right and has either been finally adjudicated or is due and undisputed or acknowledged by Optibelt in writing.

6. Any rights of the customer to **suspend payment** and to **raise defences** are excluded, except where despite written warning Optibelt has committed a fundamental breach of its obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.

7. The customer undertakes to take delivery of the goods at the delivery time without taking any additional period of time and at the place of delivery indicated in the written acknowledgement of the order or by way of precaution at the premises of Optibelt in Höxter/Germany. The customer is only entitled to refuse **to take delivery** if it exercises – in accordance with the rules in section VI. 1. – its rights to avoid the contract.

V. Delivery of Non-Conforming Goods or Goods with Defective Title

1. Without prejudice to any exclusion or reduction of liability of the seller provided by law, delivery does **not conform with the contract** if the customer proves that, taking into account the terms in section III., at the time the risk passes the packaging, quantity, quality or the description of the goods is significantly different to the specifications laid down in the written acknowledgement of the order, or in the absence of agreed specifications, the goods are not fit for the purpose which is usual in Höxter/Germany. Changes in design, construction or material which reflect technical improvements don't constitute a lack of conformity with the contract. Irrespective of the legal requirements applicable in Höxter/Germany, the delivery conforms with the contract, to the extent that the legal requirements applicable at the place of business of the customer do not impede the usual use of the goods.

2. To the extent that the written acknowledgement of the order does not contain an explicit statement to the contrary, Optibelt is in particular **not liable** for the goods being fit for any particular purpose to which the customer intends to put them or for possessing the qualities of a sample or a model or for their compliance with the legal requirements existing outside of Höxter/Germany, for instance in the customer's country. Optibelt shall also not be liable for any non-conformity with the contract occurring after the time the risk has passed. Any assurance or guarantee required by the customer must always be agreed to as such in the written acknowledgement of the order, also in subsequent dealings. To the extent that the customer, either himself or through third parties, initiates the removal of non-conformities without the prior consent of Optibelt, Optibelt will be released from its liability.

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3. The customer must **examine the goods** as required by law and in so doing check every single delivery in every respect for any discoverable or typical lack of conformity with the contract.

4. Without prejudice to any exclusion or reduction of liability of the seller provided by law, the goods delivered have a **deficiency in title** if the customer proves that the goods are not free from enforceable rights or claims of third parties at the time risk passes. Without prejudice to further legal requirements, third parties' rights or claims founded on industrial or other intellectual property constitute a deficiency in title only to the extent that the rights are registered and made public in Germany. Irrespective of the legal requirements applicable in Germany, title to the goods is not defective, to the extent that the legal requirements applicable at the place of business of the customer do not impede the usual use of the goods.

5. The customer shall give notice as required by law to Optibelt of any lack of conformity with the contract or of any deficiency in title, and in any event directly and in writing. Optibelt's employees, commercial agents or other sales intermediaries are not authorised to accept **notices** or to make any statements concerning lack of conformity with the contract or of title and its consequences.

6. Following **due notice** according to section V. 5., the customer can rely on the remedies provided by these International Conditions of Sale. The customer has no other rights or claims whatsoever. The customer's remedies for deficiency in title are subject to the same statute of limitations as are the remedies for lack of conformity. In the event of **notice not having been properly given**, the customer may only rely on remedies if Optibelt has fraudulently concealed the lack of conformity with the contract or the deficiency in title. Statements by Optibelt as to the lack of conformity with the contract or as to the deficiency in title are for the purpose of explaining the factual position only, but do not entail any waiver by Optibelt of the requirement of proper notice.

7. In accordance with the terms of the UN Sales Convention, **the customer is entitled to demand delivery of substitute goods or repair or a reduction in the purchase price or to avert the customer's remedies by giving him a credit of an appropriate amount.** Further claims for performance are not available to the customer. Irrespective of the customer's remedies, Optibelt is always entitled in accordance with the provision in section III. 7. to repair goods which do not conform with the contract or to supply substitute goods.

VI. Avoidance of the Contract

1. Without prejudice to the compliance with the respective applicable legal requirements, the **customer** is only entitled to declare the contract avoided after he has **threatened Optibelt with avoidance of the contract in writing** and an additional period of time of reasonable length for performance fixed in writing has expired to no avail. If the customer claims delivery of substitute goods, repair or other performance, he is bound for a reasonable period of time to the chosen remedy, without being able to exercise the right of declaring the contract avoided. In any event, the customer must give notice of avoidance of the contract within reasonable time in writing and to Optibelt directly.

2. Without prejudice to its continuing legal rights, **Optibelt** is entitled to avoid the contract in whole or in part without compensation if the customer objects to the application of these International Conditions of Sale, if the written acknowledgement of the order is received by the customer more than 14 calendar days after its date of printing, if insolvency proceedings relating to the assets of the customer are applied for or commenced, if the customer without providing a justifiable reason does not meet fundamental obligations due towards Optibelt or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness, if Optibelt

through no fault of its own does not receive supplies properly or on time, or if for other reasons Optibelt cannot be expected to fulfil its obligations by means which taking into consideration its own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter-performance.

VII. Damages

1. **Optibelt** is only obliged to pay damages **pursuant to this contract or extra contractually** if the following provisions in a) to f) are fulfilled:

- a) The customer is required in the first instance to **rely on other remedies** and can only claim damages in the event of a continuing deficiency. The customer cannot claim damages as an alternative to other remedies.
- b) **Optibelt is not liable** for the conduct of suppliers or sub-contractors or for damages to which the customer has contributed. Neither is Optibelt liable for impediments which occur, as a consequence of natural or political events, acts of state, industrial disputes, sabotage, accidents, terrorism, biological, physical or chemical processes or similar circumstances and which cannot be controlled by Optibelt with reasonable means. Moreover, Optibelt is only liable to the extent that its executive bodies or members of staff deliberately or in circumstances amounting to gross negligence breach contractual obligations owed to the customer.
- c) In the event of liability Optibelt will compensate within the limits of lit. d) the proven **loss** to the customer to the extent that it was unavoidable for the customer and **foreseeable** to Optibelt, at the time of the formation of the contract in respect of the occurrence of the loss and its amount. The customer must **advise** Optibelt in writing before formation of the contract of particular risks, atypical possibilities for damages and unusual amounts of loss. Moreover, the customer is required to **mitigate his loss** as soon as a breach of contract is or ought to be known.
- d) Optibelt is **not liable** for loss of profit or damage to reputation. Moreover, the **amount of damages** for late delivery is limited to 0,5% for each full week of delay, up to a maximum of 5%, and for other breaches of obligations is limited to up to 200% of the respective delivery value. However, this subparagraph does not apply to gross negligence by the executive bodies or the management of Optibelt.
- e) The aforementioned provisions b) to d) do not apply insofar as statutory provisions apply, which obligatorily give rise to a **more extensive liability** regardless of the choice of law in section IX. 3.
- f) The **limitation period** for contractual claims also applies to extra contractual claims of the customer against Optibelt, which are concurrent with contractual claims. To the extent that claims are not time-barred earlier, a **six-month preclusive limitation of time** for bringing an action for damages applies, starting with the rejection of the claim for damages.
- g) The foregoing provisions relating to Optibelt's liability also apply to the **personal liability** of Optibelt's employees, servants, members of staff, representatives and those employed by Optibelt in the performance of its obligations.

2. Irrespective of Optibelt's continuing legal or contractual claims the **customer** is obliged to pay **damages** to Optibelt as follows:

- a) In the event of **delay in payment** the customer will pay the costs of judicial and extra-judicial means and proceedings, usual and accruing within the country and abroad, as well as interest at the

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rate applicable in Höxter/Germany for unsecured short-term loans in the agreed currency.

- b) In the case of a failure to accept delivery by the customer or of seriously **late acceptance** of delivery by the customer, Optibelt is entitled to claim damages without evidence being necessary up to 15 % of the value of the goods to be delivered.

VIII. Other Provisions

1. **Title of the goods** that have been delivered **remains with Optibelt** until settlement by Optibelt of all claims existing against the customer. The allocation of risk as to price and performance in section III. 8. is not affected by the reservation of title.

2. Without prejudice to Optibelt's continuing claims, the customer will indemnify Optibelt without limit against all claims of third parties which are brought against Optibelt on the grounds of **product liability** or similar provisions, to the extent that the liability is based on circumstances which – such as, for example, the presentation of the product – were caused by the customer or other third parties without express written consent of Optibelt. In particular, the indemnification also includes compensation for expenses incurred by Optibelt and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations, and waiving any defence of limitation.

3. In relation to pictures, drawings, calculations and other **documents** as well as computer-software, which have been made available by Optibelt in a material or electronic form, the latter reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights.

4. All communications, declarations, notices etc. are to be drawn up exclusively in **German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

IX. General Basis of Contracts

1. The **place of performance** and payment for all obligations arising from the legal relationship between Optibelt and the customer is Höxter/Germany. In particular, this provision also applies if Optibelt assumes the costs of money remittance, renders performance for the customer somewhere else or payment is to be made in exchange of documents or goods or in the case of restitution of performances already rendered. The agreement of **INCOTERMS** in Group F or Group C or agreements as to how costs are to be borne do not entail any change of the above rule as to the place of performance. Optibelt is also entitled to require payment at the place of business of the customer.

2. The United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (**UN Sales Convention/CISG**) in the English version as well as the usage in force in Höxter/Germany govern the legal relationship with the customer. The UN Sales Convention applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these International Conditions of Sale are to be applied according to the provisions of section I. Where standard terms of business are used, the **INCOTERMS 2000** of the International Chamber of Commerce apply taking into account the provisions stipulated in these International Conditions of Sale.

3. The **formation of contract**, including agreements as to jurisdiction and the inclusion of these International Conditions of Sale, and the **rights and obligations of the parties**, also including pre-contractual and collateral obligations, as well as the interpretation are exclusively governed by the UN Sales Convention together with these International Conditions of Sale. Outside the application of the UN Sales Convention, the legal relationship between the parties is governed by the non-uniform Swiss law, namely by the Swiss Bond Law.

4. All contractual and extra-contractual disputes arising out of or in connection with contracts to which these International Conditions of Sale apply, shall be finally resolved by **arbitration** according to the Rules of the London Court of International Arbitration (LCIA) without recourse to the ordinary courts of law. The tribunal shall consist of three arbitrators or if the amount in dispute is inferior to € 5.000, there shall be one arbitrator. The place of the arbitration shall be Zurich/Switzerland, the languages used in the arbitral proceedings shall be German or English. In individual cases, however, Optibelt is also entitled to bring an action before the national Courts of the customer's place of business, or other national courts having jurisdiction according to domestic or foreign law.

5. If provisions of these International Conditions of Sale should be or become partly or wholly void, the remaining arrangements will continue to apply. The parties are bound to replace the void arrangement by a legally valid arrangement, which ought to be as close as possible to the commercial meaning and purpose of the void arrangement.

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