

Terms and Conditions of Purchase



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1 GENERAL

1. These Terms and Conditions of Purchase apply to all companies of the ODU Group in the United States of America (ODU-USA, Inc.; ODU North American Logistics Inc.; ODU Automotive Inc.) and Mexico (ODU Mexico Manufacturing S. de R.L. de C.V. and to all contracts concluded by a company of the ODU Group in the United States of America and Mexico as the Buyer or Purchaser.. Our purchases, purchase orders, and other legal acts within the scope of our business operations are exclusively subject to the following Terms and Conditions of Purchase in their applicable version.

This document is available at <https://odu-connectors.com/purchasing/suppliers/>. Any deviating agreements to the contract and to these Terms and Conditions of Purchase must be placed in writing. The same applies to any collateral agreements. Any special agreements shall only apply to those purchase orders for which they have been agreed in each case.

2. The Supplier's general terms and conditions shall not become part of the contract. Their validity is hereby rejected. They shall also not apply even if the goods are accepted or payment for deliveries is rendered without any further explicit rejection of the Supplier's terms and conditions.

3. Any rights to which ODU is entitled in accordance with the statutory provisions, which exceed the scope of these Terms and Conditions of Purchase, shall remain unaffected.

2 PURCHASE ORDERS, DELIVERY, TRANSFER OF RISK

1. Quotations submitted by the Supplier shall be binding for at least twelve (12) months with regard to the specified performance and the quoted prices.

2. In each case, our purchase order must be confirmed in writing by the Supplier, including confirmation of the prices and delivery times. If we do not receive a written order confirmation within eight (8) days of the order date, we shall no longer be bound to honor our purchase order. Any changes or additions made to our purchase order shall require our written consent to be legally effective. In particular, this applies to any changes to the agreed prices and delivery deadlines, as well as to any deviations from the binding documents specifying the goods' dimensions, materials, etc. We shall not be held liable in case of obvious errors and/or spelling and/or calculation errors.

If the order confirmation deviates from the purchase order, the Supplier shall clearly indicate this in the order confirmation and describe the respective deviations. We shall only be bound to honor a deviating purchase order if we have expressly agreed to do so in the individual case. Our unconditional acceptance of deliveries or services as well as payments shall not constitute our consent to the same.

3. The scope of the Supplier's performance obligation shall be based on the specifications and performance descriptions provided at the time of conclusion of the contract or, in the absence thereof, on the information provided via the Supplier's quotations, brochures, and websites.

In cases of doubt, all notes and confirmations issued by the Supplier shall be deemed guaranteed product descriptions and warranties with regard to the product's characteristics. The statements made in promotional materials, manuals, catalogs, and price lists shall also constitute agreements on specific product characteristics. The same applies to all drawings, figures, dimensions, weights and other performance data provided by the Supplier.

The Supplier is not authorized to make technical changes or changes to the product's function, form, color or weight without our prior written consent, unless such changes constitute an adaptation of the product to the technological state of the art. In the latter case, we shall be informed of the changes immediately and in detail.

3 DELIVERY QUANTITIES, DELIVERY DATES AND DEADLINES

1. At any time, we reserve the right to reject any over-deliveries, under-deliveries or partial deliveries, as well as partial performance by the Supplier, which have not been agreed in advance, and to return them at the Supplier's expense and risk.

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2. The delivery date specified by ODU in the purchase order or delivery call-offs is binding. The delivery date means the date on which the goods must arrive at the ODU location specified in the purchase order or delivery call-off. If, due to the agreed terms and conditions of delivery in accordance with Incoterms® 2020, ODU is required to arrange collection of the product, the Supplier shall give notice of the goods shipment in good time on behalf of ODU and in accordance with the instructions of the forwarding agent specified by ODU. Early deliveries are only permitted after prior consultation and shall require our written confirmation.

3. We are entitled to terminate the respective individual contracts with the Supplier if, due to circumstances arising after the conclusion of the business transaction, the delivery or service to be provided by the Supplier is no longer of value to us. In such cases, the Supplier shall be reimbursed by us for the reasonable, previously incurred expenses associated with its expectation of performing the individual contract.

4. Should it become apparent to the Supplier that the agreed delivery date can no longer be adhered to, the Supplier shall notify ODU immediately in writing, stating both the reasons for and the expected duration of the delay. The Supplier shall explain the reasons for the delay in a reasonable manner by submitting verifiable documents.

5. In the case of delays or hindrances due to force majeure, the Supplier shall only be freed from its delivery obligations if it informs us of such circumstances without delay. Furthermore, the Supplier shall only be freed from said obligations if neither the Supplier nor its subcontractors are responsible for the circumstances in question.

4 DEFAULT, COMPENSATION FOR DEFAULT

1. If the date that serves as the delivery deadline can be determined on the basis of the contract, the Supplier shall automatically be in default after that date without the need for a reminder from ODU. If the Supplier is responsible for non-compliance with the agreed deadlines and dates or is in default, we shall be entitled to compensation for the delay in the amount of 0.5% of the delivery value per calendar week or part thereof, but not more than 5% of the total value of the delivery.

2. ODU reserves the right to assert further legal rights (in particular, withdrawal from the contract and compensation claims for damages). The Supplier is entitled to prove that either no damages or a lesser amount of damages were incurred as a result of the delay.

5 QUALITY AND DOCUMENTATION

1. All deliveries and services provided by the Supplier shall comply with the product-specific and/or service-specific specifications, standards, and quality requirements as well as the scientific and technological state of the art as communicated by the Purchaser or its customers. Furthermore, said deliveries and services shall be suitable for their intended use. The Supplier's deliveries and services shall also meet all relevant statutory and regulatory requirements.

2. All changes to the delivery items and all product-relevant changes in the process chain shall be recorded in a set of product lifecycle management (PLM) documentation. Any changes to drawings, approvals for deviations, process-related changes, changes to test methods and test frequencies, as well as any changes to suppliers, vendor parts, and operating materials, among other things, shall also be documented in this PLM documentation. The PLM documentation shall be disclosed to us upon request.

3. The Supplier shall operate and maintain a quality management system (e.g., in accordance with DIN EN ISO 9001).

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4. The consistent implementation of a “zero-defect strategy” by the Supplier is deemed agreed by the Parties. Should we identify any defects in the deliveries, we will inform the Supplier accordingly without delay. Within 24 hours of receiving such notification, the Supplier shall send us its initial or completed analysis reports with regard to the defects. The Supplier shall send us a completed 8D report or a comparable document no later than 10 business days after receipt of a defect notification.
5. Suppliers of products intended for the automotive sector shall enter the relevant material data into the “IMDS” (International Material Data System). In addition, the Supplier must be certified and operate in accordance with the IATF 16949 standard.
6. Suppliers of products intended for the automotive and medical sectors shall obtain and maintain all necessary certifications that are mandatory or commonly required in these sectors.
7. Supplier shall commit to ensuring product and service conformity, product safety, and the importance of ethical behavior. Supplier agrees to educate and inform its employees and subcontractors of Supplier’s commitments under this Section. Upon request from ODU, Supplier agrees to provide documentation or other evidence of its compliance with the requirements of this Section.

6 PRICES, PACKAGING

1. The prices stated in the purchase order are binding and include all packaging, customs, and transport costs; they are analogous to Incoterms® 2020 DDP including packaging to the order address specified by ODU, unless otherwise agreed in writing. Insofar as the return of the used packaging has been agreed with the Supplier, all delivery papers shall be clearly marked accordingly. In the absence of such labeling, we will dispose of or return the packaging at the Supplier’s expense. In this case, the Supplier’s shall no longer be entitled to demand the return of the packaging. In the case of reusable and recyclable packaging, the return transport as well as its ongoing cleaning, maintenance, and replacement in the event of wear and tear or loss shall be at the Supplier’s expense.
2. The agreed prices are binding maximum prices. Subsequent cost increases due to changes to collective agreements, material surcharges, changes to customs duties, freight charges, fees or other levies or changes in the currency parity shall not entitle the Supplier to adjust the agreed prices. Subsequent price reductions shall be taken into account to the extent that the purchase order has not yet been executed.
3. A valid shipping notice or packing slip shall be sent with each shipment. This shall be sent to us separately by email or fax on the day the goods are dispatched, irrespective of the dispatch method and the invoicing process. The invoice shall not constitute a shipping notice. Furthermore, each delivery shall be accompanied by delivery notes (as a single copy) stating our part number, the order date, the customs tariff number, the country of origin as well as our material, device or type designation.
4. Any additional costs incurred due to the need to shorten transport times in order to meet delivery deadlines shall be borne by the Supplier. The Supplier shall be responsible for any damage resulting from the use of inadequate packaging.

7 TERMS OF PAYMENT

1. Invoices shall be sent to us separately in text form (as a single copy) after dispatch of the goods. They shall contain the information required for invoice verification, i.e., our material, device or type designation, the delivery note numbers, marks, numbers and the type of packaging, the number of items invoiced (each type shall be listed separately), the gross and net weight, the order date as well as our order number. If the invoice does not contain the required information – in particular, the part number and the order date – the payment period shall not begin until we have received a valid invoice.

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2. Payment will be made following receipt of the goods in full and of a valid invoice. Unless otherwise agreed in writing, payment shall be made within 14 days less 3% discount, or net within 90 days. Payment shall be dependent on proper delivery and correctly calculated prices. In the event of any default in payment, our monetary debt to the Supplier shall bear interest at the Federal Reserve Board's base interest rate.

3. The Purchaser is entitled to set off claims that are due or not yet due, as well as future claims to which it or a company affiliated with it is entitled, irrespective of the legal basis and legal relationship, against claims that are due or not yet due as well as future claims of the Supplier and/or its affiliated companies. The Purchaser is entitled to withhold due payments as long as the Purchaser still has outstanding claims against the Supplier due to incomplete or defective deliveries or services.

4. The assignment of any claims against us to third parties shall require our prior written consent.

8 RETENTION OF TITLE, OWNERSHIP OF TOOLS, MOLDS, AND DESIGN DOCUMENTS

1. Reservation of title by the Supplier shall only become part of the contract if said reservation of title shall expire upon payment of the agreed price for the reserved goods and if we are authorized to resell them and to subject them to further processing. There shall be no reservation of title exceeding this scope.

2. Machines, tools, molds, design documents and the like that have been manufactured in whole or in part at our expense shall become our unencumbered, exclusive property from the time of their manufacture. They shall be carefully stored, maintained, and repaired by the Supplier to the extent that they can be used at any time. We shall be entitled to demand the return of the above-mentioned molds, tools and the like at any time.

9 WARRANTY

1. Our obligation to inspect the delivered goods and to give notice of defects within 10 days shall commence upon receipt of the goods at our plant and upon presentation of a valid shipping notice or packing slip. We shall satisfy our obligation to inspect the goods and give notice of defects by performing an incoming goods inspection to check for identifiable external defects. This inspection shall also encompass the delivery documents. Via said inspection we shall verify the number (quantity) and type (identity) of the delivered goods and check them for signs of external transport damage.

2. In the event that the goods are defective or lack any of the warranted features, we shall be entitled to assert all statutory claims. We may, within reason and at our discretion, demand supplementary performance, withdraw from the contract, and/or assert compensation claims for damages. In urgent cases or in the event of a delay in the subsequent performance, we shall have the right to remedy any identified defects at the Supplier's expense – either at the Supplier's premises or via third parties (substitute performance). A faultless replacement delivery or rectification of the defect shall be provided within five working days at the latest.

3. Even minor deviations between the delivered goods' actual properties and the agreed target properties with regard to the external design or function shall trigger our statutory warranty rights.

4. If, in the event of subsequent performance, measures are required on site or at the plant to which the goods were delivered as agreed, the Supplier shall carry out the subsequent performance at said location or have it carried out at its own expense. In order to safeguard the manufacturing operation, said subsequent performance shall occur without delay.

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5. Unless a longer period is agreed in individual contracts or mandatory law provides for a longer warranty period, a warranty period of three (3) years shall apply. Notwithstanding the aforementioned warranty period, a warranty period of five (5) years shall apply to deliveries intended for the automotive sector.

The warranty period shall begin once we have received the goods as well as a valid shipping notice or packing slip. In the event that our products are sold directly by ODU to consumers, the warranty period shall begin upon delivery of the product to the consumer. In the case of capital goods, the warranty period shall commence upon acceptance of the capital goods at their final destination.

In each case, the warranty period shall be extended by the time taken to complete any subsequent rework.

6. Each delivery shall be free from defects of title and shall include the unlimited right to utilize the goods and any documentation provided. The Supplier's performance shall be unencumbered by third-party rights (patents, utility models, trademarks, copyrights, etc.). The Supplier shall enable us to carry out, directly or via third parties, repairs or modifications to the delivered goods without infringing any license rights, and to use the Supplier's manufacturing documents without infringing any license rights.

7. The Supplier shall include instructions for use or product descriptions with its products. These documents shall be written in the language used during the contract negotiations.

8. The Supplier represents and warrants that all payments due to its contractors and suppliers have been made in a timely manner. Any default in making those payments shall entitle us to withhold payments due to the Supplier until its contractors and suppliers have been paid.

10 PRODUCT LIABILITY, INDEMNIFICATION, LIABILITY INSURANCE COVER

1. If the delivered products undergo further processing by us and if the Supplier is responsible for damages arising due to product liability, it shall indemnify us against any claims for damages asserted by third parties to the extent that the cause of the damages arising due to product liability lies within the Supplier's sphere of control and organization. In cases of tortious liability, however, this shall only apply if the Supplier is at fault.

2. The Supplier shall maintain product liability insurance coverage and insurance coverage for recalls, which shall also cover the relationship between the Supplier and us, whereby the maximum insured sum shall be doubled to at least 2,000,000 USD per claim for personal injury and for property damage. Upon request, the Supplier shall immediately submit to the Purchaser corresponding proof of the aforementioned insurance coverage.

11 CUSTOMS AND EXPORT CONTROLS

1. Unless otherwise agreed, the Supplier shall be responsible for export and import procedures and shall procure the documents and information necessary for transport and customs clearance and shall be responsible for arranging customs clearance.

2. Upon delivery, Supplier shall provide Customer for each good and service delivered the following trade data as applicable: (i) "Export Control Classification Number" according to the U.S. Commerce Control List (ECCN) or the Munitions List Category Designation according to the US International Traffic in Arms Regulations, and all other export control list numbers; (ii) the statistical commodity code according to the current commodity classification for foreign trade statistics and the HS (Harmonized System) coding; (iii) the country of origin (non-preferential origin); and (iv) Supplier's declaration for preferential origin (in case of European suppliers) or preferential certificates (upon request of Customer), Supplier's declaration for non-preferential origin (in case of European suppliers), or preferential certificates (for non-European suppliers).

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12 FORCE MAJEURE

1. In cases of force majeure, we shall be released from our obligation to accept delivery of the goods. This includes, but is not limited to, operational disruptions, work stoppages as well as operational restrictions and similar cases which result in reduced consumption.

2. In the case of delays or hindrances due to force majeure, the Supplier shall only be freed from its delivery obligations if it informs us of such circumstances without delay. Furthermore, the Supplier shall only be freed from said obligations if neither the Supplier nor its subcontractors are responsible for the circumstances in question.

13 SECRECY

1. The Parties shall treat all commercial and technical information, knowledge, data and documents, know-how, calculations, procedures, and processes which are not publicly accessible and which become known to them through their business relationship as business secrets of the other party. In addition, they shall commit their employees to uphold the same level of confidentiality in writing and shall implement ongoing, appropriate measures to safeguard confidentiality. The same applies to subcontractors and external service providers.

2. Upon our request Supplier shall enter into a confidentiality agreement with us at reasonable terms and conditions taking into account our and our customers interests.

14 INTELLECTUAL PROPERTY, INDUSTRIAL PROPERTY RIGHTS

We reserve ownership of – and the copyright to – all design-related and other documents such as drawings, standards sheets, print templates, models, samples, etc., which we have provided to the Supplier for the purpose of the contractual performance. These documents may not be made accessible to third parties without our express written consent. Any use of these documents for purposes other than those specified in the contract is prohibited. Any unauthorized copies of our documents shall be returned to us immediately. The documents shall be returned to us with the remaining delivery at the latest.

Likewise, the goods manufactured in accordance with these documents may not be made available to third parties for inspection or used for advertising purposes without our written consent. In the event that the Supplier violates the above conditions it shall pay us damages; furthermore, we shall be entitled to withdraw from the contract in whole or in part and without owing the Supplier compensation.

15 INFORMATION SECURITY

The Supplier shall take appropriate organizational and technical measures to ensure the confidentiality, authenticity, integrity, and availability of the Supplier's operations as well as its deliveries and services. Said measures shall correspond to the industry standard and include an appropriate information security management system in accordance with the established standards, such as ISO/IEC 27001 or IEC 62443 (as applicable).

The Supplier shall inform us without undue delay of any safety-relevant incidents which have occurred or are suspected to have occurred and which affect the Supplier's operations or its deliveries or services, if and to the extent that we are actually or probably materially affected thereby

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16 DATA STORAGE

In accordance with the regulations set forth in the CCPA (California Consumer Privacy Act) and other applicable data privacy laws, we hereby inform you that we have stored your data in our EDP system for the purpose of business processing.

We take the protection of personal data very seriously. Therefore, we process personal data in accordance with the applicable legislation governing personal data protection and data security.

In the context of our collaboration with suppliers, we process the personal data of our contacts at our suppliers, as well as that of interested parties, our sales partners, and other partners in accordance with the applicable statutory regulations.

17 DUE DILIGENCE IN THE SUPPLY CHAIN

The Supplier shall comply with all statutory requirements regarding due diligence in the supply chain and C-TPAT compliance, where applicable. Furthermore, it shall support our efforts to maintain supply chain security to the best of its ability and shall instruct and obligate its subcontractors accordingly.

18 SUPPLIER CODE OF CONDUCT

The Supplier shall comply with the obligations set forth in ODU's "Supplier Code of Conduct". This document is available at <https://odu-connectors.com/purchasing/suppliers/>.

Furthermore, the Supplier shall oblige its subcontractors accordingly.

19 SEVERABILITY CLAUSE

Should any parts of the purchase contract or these Terms and Conditions of Purchase be or become invalid, the remaining provisions shall remain unaffected. In the event that the Supplier's terms and conditions of sale deviate from these Terms and Conditions of Purchase, the latter shall take precedence.

20 PLACE OF JURISDICTION, APPLICABLE LAW

The place of performance for deliveries and payments is Camarillo and San Diego, CA., which is also the place of jurisdiction. We are also entitled to sue the Supplier at its place of business. The laws of the State of California and US law shall apply. If the delivery address is not in the U.S., then the laws of that country shall apply. The UN Convention on Contracts for the International Sale of Goods shall not apply.