

# General Terms of Sale

## **I. Scope of Application**

1. IFG GmbH terms of sale below apply exclusively to business owners ("Unternehmer" as defined by per § 14 and § 310 subsection 1 BGB [*German Civil Code*]). Buyer's terms to the contrary or buyer's terms diverging from our conditions of sale shall be accepted only if we explicitly consent to their application in writing.
2. These terms of sale also apply to future business transactions and are an integral part of all contracts and agreements made with our company. The unconditional delivery of goods and services as well as the acceptance of payments on our part shall not constitute an acknowledgement of diverging provisions.

## **II. Offers, Documents and Formation of Contract**

1. Our offers are without obligation. If an order is classified as a request as defined by § 145 BGB, we can accept this order within two weeks. A contract is brought about only after our written order acknowledgement or after we have carried out the order.
2. Any amendment of, addition to, and/or the rescission of the contract must be in writing. The same shall apply to any waiver of this written-form requirement. Statements and notices brought forward by buyer after conclusion of contract shall only be effective if made in writing.

## **III. Use of Documents**

We explicitly reserve our ownership and copyright of any document entrusted to buyer in connection with an order, such as calculations, samples, drawings and other documents. Buyer shall not pass on such documents to a third party without our explicit prior approval in writing. These documents shall be returned to us immediately unless we accept buyer's order within the period as per item II.1.

## **IV. Prices, Terms of Payment**

1. Prices shall include free delivery to an address in Germany and packaging.
2. The legal value-added tax (VAT) to the amount currently applicable is not included in our prices and shall be paid in addition. VAT shall be accounted for separately, to the legal amount applicable, on the day of invoicing and shall be due for payment together with the purchase price.
3. Payments to us shall be made free of transaction or other charges to our point of acceptance/receiving office. A special written agreement is required for any discount deduction.
4. Unless otherwise provided by written agreement, the purchase price shall be due upon receipt of invoice and paid prior to delivery (payment in advance).

## **V. Setoff and Right of Retention**

Buyer shall be entitled to right of setoff only if his counterclaims are undisputed or based upon a final court decision. Buyer may exercise a right of retention only in so far as his counterclaim is based upon the same contractual relationship.

## **VI. Place of Performance, Passing of Risk, Transportation Insurance, Packaging**

1. Place of performance shall be the seat of our company. Unless otherwise provided in the order acknowledgement, it is agreed that delivery shall be free of charge to the address indicated by buyer. The risk of accidental loss, destruction or deterioration of the goods is transferred to the buyer at the moment the goods are passed, at our request, to the forwarding agent or carrier for delivery. This shall apply irrespective of where the goods are shipped from or who pays for freight charges.
2. Packaging for transportation and all other purposes in accordance with packaging regulations shall not be taken back; buyer is required to provide for disposal of packaging at his own expense.

## **VII. Delivery, Delivery Period, Duty to Cooperate**

1. The delivery period we indicated begins after buyer has fulfilled his obligations duly and in due time. Defense of non-performance of contract shall be reserved.

2. If buyer can be reasonably expected to accept partial delivery, goods shall be delivered and invoiced in installments.
3. If we are not supplied ourselves despite having placed matching orders with reliable suppliers, we shall be released from our obligation to perform and allowed to withdraw from the contract.
4. Should it become evident after conclusion of contract that buyer does not offer sufficient guaranty for his solvency and that our claim for payment is at risk, we are entitled to refuse delivery until buyer pays or has offered security for his payment. If payment or provision of security is not made within 12 working days after request for such payment, we are entitled to withdraw from the contract.
5. If buyer defaults in calling, accepting or picking up goods, or if he is responsible for hold-up in shipment or delivery or otherwise infringes his duty to cooperate, we are entitled to charge a lump sum for storage cost in accordance with local conditions, irrespective of whether goods are stored in our company or on the premises of a third party. Buyer must furnish proof that no damage or less damage was caused. We shall reserve the right to lodge more extensive claims.
6. If the delivery period agreed upon cannot be maintained by our company or by our suppliers due to circumstances beyond our control, it shall be extended appropriately. In such case we shall inform buyer immediately. Should the hindering circumstances continue to exist one month after expiration of delivery period, either party may withdraw from the contract. Any further claims for exceeding time-limit for delivery due to circumstances we are not responsible for shall be excluded.
7. In case of delay in delivery caused, neither deliberately nor by gross negligence, by our company, we shall be liable to pay, within the parameters of a lump-sum compensation for default, an amount of 0.5% of the value of the goods to be delivered for each full week following expiry of time-limit, up to a maximum, however, of 5% of this value, provided that buyer furnishes prima facie evidence of having suffered damage due to the delay. Buyer can further grant us in writing an adequate additional period of time which must be at least 15 (fifteen) working days. After this period has elapsed to no effect, he is entitled to withdraw from the contract or demand compensation in lieu of performance. Buyer's claims for damages due to delayed delivery as well as claims for compensation in lieu of performance exceeding the above lump sum payment shall be excluded in all cases of delayed delivery, even after expiry of a possible additional period granted us for delivery, unless a commercial transaction for delivery by a fixed date as defined by § 376 HGB [*German Commercial Code*] was contracted. For a transaction as defined by § 376 HGB, the explicit written confirmation of our Management is required.
3. Our liability pursuant to item X remains unaffected.

### **VIII. Reservation of Title**

1. We shall retain our title to the delivered goods until full payment of all claims arising from the delivery contract has been made. This shall also apply to any future delivery, even if we do not always explicitly mention it.
2. In case of non-compliance with contract on buyer's part, particularly in case of default in payment, we are entitled to withdraw from the contract and to take back the goods. For the purpose of retrieving the delivered goods, buyer hereby gives us irrevocable permission to enter his premises unhindered and to take back the goods.
3. As long as ownership has not passed to buyer, he is obligated to handle goods with care; specifically, he is required to insure goods, at his own expense, sufficiently at replacement value against damage caused by fire, water and theft.
4. As long as title has not passed, buyer shall inform us immediately in writing in the event that the delivered object has been seized or become subject to other interventions of a third party. If the third party is not able to reimburse us for the judicial and extrajudicial costs of an action pursuant to § 771 ZPO [*German Code of civil procedure*], buyer shall be liable for the loss we incur. Buyer is prohibited from making agreements with his purchasers that could infringe our rights.
5. Buyer is entitled to sell or process the goods subject to retention of title in the course of ordinary business. Buyer shall hereby assign all purchaser's claims arising from resale and/or processing of the reserved goods to us in the amount of invoice total (including VAT), irrespective of whether goods are resold without or after processing. Buyer shall also assign to us, to the extent of sentence 1, any claims accruing from the union of the goods with real estate against a third party. After assignment he remains authorized to collect these claims.

6. Our authorization to collect the claims ourselves shall remain unaffected thereof; we will not, however, avail ourselves of this right as long as buyer duly fulfills his payment and other obligations, does not delay payment, and in particular as long as no petition for institution of judicial settlement or insolvency proceedings has been filed or a suspension of payments made.
7. Buyer shall inform us upon request of the assigned claims and their debtors, give us all details required for collecting, deliver the pertaining documents and inform debtors (third parties) of the assignment.
8. Any processing, treatment or transformation of the object of sale by buyer shall be carried out in the name and by order of our company. In this case buyer's expectant right to the object of sale is extended to the transformed object. When goods subject to reservation of title are processed, combined or blended with other goods which are not our property, we acquire co-ownership of the new object in proportion of the value (= gross invoice value including ancillary costs and taxes) of the reserved goods to the value of the new object.
9. Buyer may not give in pledge or assign goods, or products made from these, by way of security without our consent if and as long as they are subject to retention of title.
10. Upon buyer's request and at our option, we shall commit ourselves to release securities we are entitled to in so far as the realizable value of the securities exceeds the claims to be secured by more than 20 % or exceeds their nominal and/or estimated value by more than 50 %.

**IX. Warranty and Notice of Defect, Recourse against Manufacturer/Manufacturers' Redress**

1. Warranty claims shall be made only after buyer has duly complied with his obligations of inspection and notification pursuant to § 377 HGB.
2. Claims for defects shall be barred by limitation after expiry of 12 months from the date on which the goods were delivered to buyer. Prior to any return of goods our consent must be obtained.
3. Should the delivered goods, despite all diligence employed, bear any defect that already existed at the time of passing of risk, we shall at our option rectify the defects or deliver replacement, provided due notice of defect was given. We shall always be given opportunity for supplementary performance within an adequate period of time. Right of recourse shall unreservedly remain unaffected by above provision.
4. If supplementary performance fails, buyer shall be at his option entitled to demand rescission or price reduction.
5. Claims for defect are excluded in case of merely irrelevant departure from agreed quality, merely irrelevant defect in usability, natural wear and tear or consumption as well as in case of damages resulting, after passing of risk, from faulty or careless treatment, excessive use, unsuitable equipment/means of operation, or to specific outside influences which could not be foreseen in the contract. Likewise, if buyer or a third party executes improper repair work or modifications, no defect claims for these and consequences thereof shall arise.
6. Buyer's claims as to expenditure required for supplementary performance, notably costs for transportation, toll, labor and material, shall be excluded if expenditure is increased because goods delivered by us were subsequently shipped to a destination other than buyer's place of business, unless shipping was in accordance with requirements for use of goods.
7. For any claims for compensation on buyer's part, item X. shall apply.

**X. Extent of Our Liability for Damages**

1. We shall be fully liable for damages resulting from death or injury to body or health which are exclusively due to a breach of duty committed, either deliberately or by negligence, by our company, our legal representatives or our vicarious agents. We are further fully liable for other damages resulting from a deliberate breach of duty by our company, our legal representatives, or our vicarious agents, as well as for damages due to defects of the delivered goods covered by our expressly given warranty or fraudulently concealed by our company. For any warranty given, the express written confirmation of our Management is required.
2. We shall be liable for damages resulting from a breach of duty owing to gross negligence or from a violation of an essential contractual obligation committed by our company, our legal representatives, or our vicarious agents. In such cases, however, our liability is limited to the predictable, typically occurring damage.

3. Buyer shall not be entitled to any other claims for liability and damages, no matter on what legal ground. Notably, buyer's compensation claims for indirect damages (consequential damages, lost profit, including compensation for damages caused not to the delivered goods themselves, but by their use, their non-usability, or otherwise caused to other equipment or items) shall be excluded.
4. Buyer's claims pursuant to § 14 ProdHaftG. [*German Product Liability Act*] shall remain unaffected.
5. The above provisions do not involve shifting the burden of proof to the detriment of buyer.
6. Insofar as our liability is excluded or limited, this shall apply by analogy to the personal liability of our employees, collaborators, representatives, and vicarious agents.

#### **XI. Miscellaneous**

1. This contract and all legal relationships between the parties hereunder are governed by the Law of the Federal Republic of Germany to the exclusion of the UN Sales Convention (CISG)
2. Place of performance and exclusive place of jurisdiction for all controversy arising from this contract is the seat of our company.
3. All agreements made between the parties for the purpose of executing this contract are written in the contract.

#### **XII. Partial Invalidity**

Should any provision of these General Terms of Sale be fully or partially invalid, the validity of all other provisions shall not be affected. The parties shall commit themselves to replace the invalid provision by a provision permitted by law that reflects as close as possible the economic intention of the invalid provision or closes this gap.

as per June, 2015