

GENERAL TERMS AND CONDITIONS OF DELIVERY AND SALE

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1. General Provisions

- 1.1 The terms and conditions set forth herein apply to deliveries and sales to entrepreneurs, public legal persons and public special funds according to § 310 section 1 BGB (German Civil Code) ("Purchaser") exclusively.
- 1.2 These terms and conditions apply to all our agreements and quotations, even to prospective agreements and quotations, and apply exclusively.
- 1.3 Purchaser's conditions which are contradictory to or diverging from our terms and conditions do not apply unless their validity is expressly agreed in written form.
- 1.4 These terms and conditions also apply in case we supply even though contradiction or divergence of Purchaser's conditions from our terms and conditions is known to us.
- 1.5 All agreements between us and Purchaser for the purpose of performance of the contract at hand require written form. This also applies to the waiver of the written form itself.

2. Offers and Prices

- 2.1 Our offers are not binding until our written order confirmation is submitted. Oral offers are not valid unless a written confirmation is submitted.
- 2.2 Our prices are effective "ex factory" plus value added tax and costs of delivery and packaging.
- 2.3 Unless a fixed price agreement is reached, we reserve the right to adequately adjust the price due to changed costs for wages, material and distribution of deliveries, which are carried out three months after conclusion of the contract or later on.

3. Extent of Delivery and Performance

- 3.1 The order confirmation discloses the whole extent of the delivery and performance owed.
- 3.2 Purchaser bears the costs and risks of delivery.
- 3.3 In case we owe a separable performance, partial delivery is permitted for relevant reasons to a reasonable extent. We are entitled to invoice partial delivery separately.
- 3.4 Specifications as to time of delivery are not binding unless a binding time of delivery is expressly agreed. If we do not meet a binding time of delivery, Purchaser will be entitled to withdraw from the contract, if we do not deliver within an adequate additional respite granted by Purchaser. Upon our request Purchaser is obliged to declare within an adequate respite, whether he withdraws from the contract because of the delay of the delivery or demands delivery.
- 3.5 If the Parties agree that our performance will not be initiated until down payment or advance payment has been made, delivery time will not begin unless the according amount has been credited to our business account subject to a separate agreement.
- 3.6 If we exceed time of delivery, Purchaser – in case Purchaser credibly shows, that resulting from this he suffered damage – will be entitled to demand indemnification amounting to 0.5 % of the delivery value for each completed week of delay, but not exceeding a total of 5 % of the delivery value.
- 3.7 Damages claims of Purchaser resulting from delay of delivery as well as damages claims in place of delivery exceeding the limits set by foregoing no. 6 are excluded in all cases of delayed delivery, even after expiry of an additional respite of delivery. This shall not affect the cases where IMM's liability is mandatory by law in cases of intent, gross negligence or damage to life, body or health. The foregoing regulation does not stipulate a reversal of the burden of proof for Purchaser.

- 3.8 Meeting respites of delivery requires timely receipt of all documents as well as required permissions and clearances and particularly of plans to be delivered by Purchaser, as well as compliance with agreed conditions of payment and other obligations by Purchaser. If these requirements are not timely fulfilled, respite of delivery will be adequately prolonged, unless we are responsible for the delay.
- 3.9 Delivery time will be extended adequately in case of force majeure, strike, lockout, breakdown, delay of external suppliers and other unexpected circumstances. In such cases we reserve the right to withdraw from the contract taking into account Purchaser's interests.
- 3.10 If Purchaser defaults in payment in the context of other present contractual relationships between Purchaser and us, we are entitled to detain delivery under this contract for the duration of default of payment, prior notice to Purchaser provided. This shall not apply in case of minor outstanding payment.
- 3.11 In case of application to open insolvency proceedings as well as of affidavit of means according to § 807 ZPO (German Code of Civil Procedure) we are entitled to detain delivery until consideration has been executed or until Purchaser furnishes appropriate security. Furthermore, we are entitled to claim full payment and – after futile expiration of a reasonable additional respite – to withdraw from the contract unless Purchaser furnishes adequate security on our demand.

4. Payment Terms

- 4.1 Invoices are payable net within 30 days as of invoice date.
- 4.2 Unless otherwise agreed, ordering amounts of more than 10.000,-- EURO will be invoiced in two rates of 50% of the order value each. If so and unless otherwise agreed, delivery will not be performed until receipt of the first rate. The second rate is due after delivery.
- 4.3 Bills of exchange and cheques are only accepted on explicit agreement and only on account of performance and they shall not be deemed to constitute payment until honoured. In the event of such agreed submission of bills of exchange or cheques, payment shall only be deemed to have been made upon encashment, due payment provided.
- 4.4 On default of payment Purchaser has to pay interest at 8 percentage points above the current base rate according to § 247 BGB (German Civil Code). We reserve the right to claim a higher damage as a result of default.
- 4.5 Purchaser will be entitled to set off with counterclaims only, if said claims are undisputed or legally confirmed. Purchaser is entitled to lay a lien on his payment only as far as the counterclaim is based on the same contractual relationship. In case of reasonable partial delivery Purchaser is not entitled to lay a lien on his payment for reasons of outstanding parts of delivery.

5. Retention of Title

- 5.1 We reserve the right of property in the delivery items until Purchaser completely satisfies our claims arising from the contract at hand.
- 5.2 As long as property is not transferred to Purchaser, Purchaser is obliged to treat the delivery item with care. Particularly Purchaser is obliged to insure the delivery item sufficiently according to its replacement value and at Purchaser's own expenses against damage caused by theft, fire and water. Claims arising from said insurances as well as everything possibly acquired as a substitute according to § 285 BGB (German Civil Code) are herewith assigned from Purchaser to us; we hereby accept assignment. Notwithstanding the assignment, Purchaser is authorised to assert and collect claims in his own name, by legal proceeding if necessary. Our entitlement to collection of debts remains unaffected by Purchaser's authorisation. Necessary maintenance or inspections are to be performed by Purchaser at Purchaser's own expenses in due time.

- 5.3 In case of breach of contract, particularly of default of payment or breach of these terms and conditions, we reserve the right to withdraw from the contract at hand and to reclaim property.
- 5.4 In case of garnishment, requisition or other disposals or interventions of third parties, Purchaser is obliged to notify us forthwith. Purchaser shall be liable for our detriment, if and to the extent to which third parties are not able to refund costs arising in or out of court for actions taken in accordance with § 771 ZPO (German Code of Civil Procedure).
- 5.5 Purchaser is entitled to resale delivery items under reserved property in regular course of business. Purchaser herewith assigns to us all claims against Purchaser's customers arising from said resale at the final amount of the invoice (incl. value added taxes). This assignment is valid irrespective of whether the delivery items under reserved property were resold without or after product processing. Even after cession Purchaser remains authorised to collect outstanding claims. This shall not influence our right to collect the debt. However, we will not collect the debt as long as Purchaser fulfils his obligation of payment, Purchaser is not in default of payment, no application for opening insolvency proceedings is filed and payment has not been stopped.
- 5.6 If the delivery items under reserved property are worked, processed or modified by Purchaser, such working, processing and modification shall always be deemed to be performed on our behalf. In this case the remainder of Purchaser in the delivery item is continued in the worked, processed or modified item. Shall the delivery item under reserved property be processed or modified together with other objects not belonging to us, we acquire co-ownership in the resulting merchandise at an interest depending on the ratio of delivery items' objective value to the other objects' value which do not belong to us. Relevant value will be that at the time of working, processing or modification. The same shall apply in case of commingling, mixture or combination. Should the resulting merchandise consist of Purchaser's objects forming the main part, Purchaser herewith undertakes to assign proportionate co-ownership to us according to our contribution and keeps the ownership or co-ownership by us in safe custody. For securing our claims against the Purchaser Purchaser herewith assigns to us all claims, which accrue to him from connection of the delivery items under reserved property with immovable property; we hereby accept assignment.
- 5.7 We hereby covenant to gradually release at Purchaser's demand the securities obtained by retention of title in so far as the property's value exceeds the debts to be secured by more than 20 %.
- 6. Transfer of Risk**
- 6.1 If the delivery items are sent to Purchaser at Purchaser's demand, Purchaser bears the risk of accidental destruction or deterioration of the delivery items from the time of dispatch and at the latest from the time the delivery items leave the works/storage. This applies irrespective of whether dispatch is initiated from place of performance and irrespective of who bears the costs of delivery.
- 6.2 If dispatch, service, execution of setting up or assembly, taking over for operation, or trial operation are delayed for reasons attributable to Purchaser or Purchaser is in default of acceptance for other reasons, risk will be transferred to Purchaser.
- 7. Liability for Faulty Goods**
- 7.1 Period of warranty shall expire twelve (12) months after time of delivery.
- 7.2 Claims because of fault are excluded in case of negligible deviation, deviation being customary in trade and technically unavoidable deviation from the agreed condition, in case of negligible impairment of serviceability, in case of fair wear and tear and damages, which accrue after transfer of risk because of careless or faulty treatment, immoderate stress, use of unapt equipment or because of special exterior influences, which are not subject to the contract at hand. Claims because of fault are excluded in case of corrosion damage unless Purchaser pointed out the intended use of the delivery items in connection with special chemicals. If Purchaser or third parties carry out inappropriate maintenance or changes, no claims because of fault emerging from such inappropriate maintenance or changes will accrue.
- 7.3 We do not accept liability for our product being apt for a special intention. All information, irrespective of being oral or written, relating to possible fields of application of our products, is served to the best of our knowledge. It is based on our experience and therefore is not guaranteed. Purchaser is responsible to inspect the suitability of our products for the intended fields of application.
- 7.4 We do not warrant freedom from third parties' rights in the delivery items.
- 7.5 Purchaser will examine the consignment immediately after receipt for damages. If any defect becomes apparent during such inspection or is later detected, Purchaser has to give written notice thereof including description of the fault to us immediately, but not later than five (5) working days after delivery and discovery respectively.
- 7.6 If despite all applied diligence delivery items show a fault, which already existed at the time of transfer of risk, we will be entitled, subject to notice of defect in due time by Purchaser, to subsequent performance which may be carried out as elimination of defect or delivery of items free of defects, as our choice may be. Within an adequate respite we are entitled to subsequent performances done twice. Claims for recourse remain unaffected by foregoing regulations without restrictions.
- 7.7 In case subsequent delivery fails, Purchaser is entitled – claims for damages remain unaffected – to withdraw from the contract or demand price reduction.
- 7.8 Should complaints turn out to be unjustified and should we not have given reasons therefore, Purchaser has to reimburse any and all of our costs in connection with the putative subsequent performance which we could reasonably deem appropriate.
- 7.9 Claims of Purchaser because of expenditures for the purpose of subsequent performance, particularly expenses for delivery, infrastructure, wages and material, will be excluded, if additional expenses are caused by subsequent transfer of the delivery items to a place other than Recipient's site unless transfer corresponds to the delivery item's conventional use.
- 7.10 Claims for recourse of Purchaser against us only accrue insofar as Purchaser has not agreed with his customer on terms regarding claims for faulty delivery, which exceed the warranty, which is mandatory by law. Concerning the extent of the claims for recourse of Purchaser against us no. 9 shall apply mutatis mutandis.
- 7.11 Damages claims of Purchaser because of material defects or defects as to the quality are excluded. This does not apply in case of fraudulent concealment of the defect, noncompliance of guarantee of condition, in case of harm of life, body, health or liberty nor in case of intended or grossly negligent violation of duty. The foregoing regulation does not stipulate a reversal of the burden of proof for Purchaser. Claims of Purchaser because of material defects or defects as to the quality exceeding or differing from this clause VII. are excluded.
- 8. Other Damages Claims**
- 8.1 All other damages claims of Purchaser are excluded no matter what legal ground they are based on, particularly in case of violation of duty of the contractual relationship and of tort.
- 8.2 This shall not affect the cases where our liability is mandatory by law, like e.g. according to Produkthaftungsgesetz (German Code of Liability for Faulty Products), in case of intent, gross negligence, damage to life, body or health, and in case of breach of cardinal contractual obligations. The liability of IMM in case of breach of cardinal contractual obligations shall be limited to the foreseeable, typically occurring damages. This shall not apply in case of intent, gross negligence, and damage to life, body or health. The

foregoing regulation does not stipulate a reversal of the burden of proof for Purchaser.

9. Title and Copyright

- 9.1 We reserve all copyright and rights of ownership concerning all samples, illustrations, drawings, calculations or other documents and information given to Purchaser.
- 9.2 Purchaser is obliged to keep secret all samples, illustrations, drawings, calculations or other documents and information received. They shall not be made accessible to third parties without our explicit consent.
- 9.3 The above duty of secrecy shall survive performance of the contract at hand but shall lapse if and in so far as the information included in the entrusted samples, illustrations, drawings, calculations or other documents and information has become common knowledge.
- 9.4 Purchaser is not allowed to disassemble the delivery items, samples etc., and/or to analyse or to examine or to have analysed delivery items', samples' etc. composition, functioning, working or similar, or to manipulate delivered items, samples etc. in any other way.

10. Intellectual Property Rights

- 10.1 Purchaser warrants that production of items according to Purchaser's instructions does not infringe third parties' rights.
- 10.2 Should infringement of said rights be substantiated to us by a third party, we are entitled to stop any further activity being in opposition to said rights. If so, Purchaser will indemnify us from third parties' claims on first demand.
- 10.3 Purchaser's obligation of release from liability comprises any expenditure we necessarily incur in the context of third parties' claims.
- 10.4 Our claims for damages remain unaffected.
- 10.5 Statute of limitation concerning said claims expires ten (10) years as of conclusion of the respective contract.

11. Applicable Law

- 11.1 The Laws of the Federal Republic of Germany shall apply exclusively to this contract.

12. Place of Performance – Place of Jurisdiction

- 12.1 Place of performance for all contractual duties shall be our place of business.
- 12.2 Any action concerning disputes arising from this contractual relationship shall be taken at the court, which is competent for our place of business.

13. Severability Clause

Should one or several provisions of the contract be or become completely or partly void, regardless of the reasons thereof, or contain a loophole, validity of the other provisions shall not be affected thereby.

Mainz, April 2009,
Institut für Mikrotechnik Mainz GmbH