



General Terms and Conditions of Sale

1. Applicable Conditions and Scope of Application

- 1.1 These general terms and conditions apply for commercial businessmen only.
- 1.2 Unless otherwise expressly agreed upon in writing, supplies and services by ISG Supply (below: „the Seller“) are exclusively subject to the following General Terms and Conditions of Sale.
- 1.3 Any conditions of the Customer shall apply only if and to the extent to which we have expressly consented thereto in writing.
- 1.4 The provisions contained herein in respect of the goods or other physical items supplied shall apply correspondingly to all services of whatever kind provided by the Seller.

2. Offers

- 2.1 Seller's initial offers are made free of charge and are not intended to be legally binding upon the Seller unless expressly so stated in writing therein.
- 2.2 The written confirmation and acceptance by the Seller of Customer's orders, which the Seller sends to the Customer, shall constitute the terms and conditions upon which the parties contract, together with the specification, these Terms and Conditions, and the documents referenced in the confirmation, unless the Customer objects in writing thereto immediately upon receipt of such confirmation and acceptance.
- 2.3 All documents, illustrations, drawings, details of weights and measurements stated and prices quoted contain only preliminary estimates and are not binding unless they are expressly described as such.
- 2.4 The INCOTERMS applicable at the time the respective contract is concluded shall apply for the interpretation of the contractual terms customary in the trade.

3. Information and Advice, Documentation

- 3.1 Any advice and information given on the Seller's products is based on the Seller's experience to date. The data, in particular concerning the possibilities of use of the Seller's products, are average data only and do not represent quality description of the products. The Seller is unable to assume any liability as to the exact correctness of the data and the possibilities of use. As far as the Customer is entitled to damages notwithstanding this provision, clause 9 and 10 shall apply.
- 3.2 Any document and object, such as drawings, samples or models, made available to the Customer in connection with the Seller's offers, remain property of the Seller. The Seller is holder of copyrights and related protective rights within the meaning of the German Copyright Act (Urheberrechtsgesetz) regarding these documents and objects. The Customer is not entitled to disclose to third parties the documents made available without the Seller's prior written consent. The provisions of this Clause shall continue to apply notwithstanding the final fulfilment or the termination of the contract.
- 3.3 The Seller reserves the right to make alterations to the technical specification to of the contract provided that such alterations are of no material nature and do not affect the quality of the goods or items supplied.

4. Conclusion and Content of Contract

- 4.1 Seller's offers are made free of charge and are not binding unless a certain period of validity is stated in writing therein. A contract for delivery shall be concluded only upon either the Seller's written confirmation of the Customer's order or, where no such confirmation is given, the delivery of the goods. The contents of the contract shall be determined by the Seller's offer respectively written confirmation, in case of delivery without prior offer respectively confirmation, the delivery note Seller's shall be deemed as being such written confirmation. Oral statements and explications are in any case not binding.
- 4.2 Any information given on products of the Seller, in particular, pictures or drawings or information concerning quality, quantity, weight, colour, measure and performance enclosed in the Seller's offers are approximate data only and no quality descriptions. As far as permissible deviations are not stipulated in the order confirmation and none are given in the Customer's specification expressly accepted, deviations customary in the industry are admissible in any case. The composition, Usability, qualification, function and purpose of the Seller's products are exclusively determined by specifications and technical qualifications of the Seller. Public statements, laudations or advertising by the Seller or third parties do not represent a quality description of the product.

- 4.3 Guarantees regarding qualities or shelf life of our products must be expressly declared as such in the order confirmation. If models and samples are delivered, their qualities are not warranted unless expressly stated otherwise in the order confirmation. This shall also apply to data concerning the result of analyses.

5. Delivery and Passing of Risk

- 5.1 The Seller will inform the Customer about the delivery date.
- 5.2 Where delivery dates or times are not expressly declared as fixed in written order confirmation of the Seller but are to be regarded as estimates, the Customer may set a reasonable time limit for delivery two weeks after expiry of the delivery dates or times. The Seller is only in default after expiration of such final time limit.
- 5.3 The Seller shall only be obliged to meet a delivery time or delivery date if the Customer fulfils his contractual obligations towards the Seller timely, whether in respect of payment, delivery of construction documents or plans to the Seller, or in respect of any other obligation he may have. The delivery time shall be extended or the delivery date shall be postponed by the period of time for which the Customer is in default. The Seller's other rights arising from Customer's default shall remain unaffected.
- 5.4 If, at the time of the confirmation and acceptance of Customer's order, details of the order are not fully clarified and/or any necessary consent, permit, certificate and/or authorisation from domestic or foreign authorities are not obtained, the start of the agreed delivery time and/or any delivery date shall be automatically postponed by the period of time necessary to finally clarify such details and/or to obtain such consent, permit, certificate, and/or authentication.
- 5.5 In case of default or impossibility of performance the Seller is liable for claims for damages exclusively pursuant to the provisions in clause 9 and 10 below. The Seller's liability for damages caused by default is limited to 0.5 % per completed week of the value of the delivery or partial delivery that is in default. The Seller's maximum liability for damages caused by default is limited to 5 % of the value of the (partial) delivery in default. This limitation shall not apply if the Seller's delay is caused by gross negligence or intent. The Customer's right to withdraw from the contract when the statutory conditions are fulfilled, shall remain unaffected by his claiming payment of the liquidated damages.
- 5.6 In cases of force majeure, for example operational disturbances, delay in transportation, measures taken in the course of industrial action, in particular strike and lockout, and in cases of non-delivery, incorrect or delayed delivery by the Seller's sellers, irrespective of its cause (reservation of self-supply), and in any other case of insufficient performances for which the Seller is not responsible, the Seller shall be entitled to extend the delivery period for the duration of the obstruction and to a reasonable period thereafter to reinstate works. If it is foreseeable that the inability to perform will be of permanent nature, the Seller is entitled to refuse the delivery completely or in part. In that case the Customer is not entitled to any damage claims. He is no longer obliged to fulfil his contractually agreed counter-performance and any advance payments will be returned.
- 5.7 In case the Seller is in default with the performance of the contract, the Customer is entitled by exclusion of any further claims for damages - t 0 payment of liquidated damages in the amount of 0,5 percent (nought point five per cent) of the contract price per full week of delay, limited, however, to 10 percent of the contract price in the aggregate. This limitation shall not apply if the Seller's delay is caused by gross negligence or intent. The Customer's right to withdraw from the contract when the statutory conditions are fulfilled, shall remain unaffected by his claiming/payment of the liquidated damages.
- 5.8 If delivery upon request is agreed upon, the respective requests must be placed within three months after availability of the products, unless otherwise agreed upon in writing. In case the Customer does not request delivery within the specified time, clause 5.11 shall apply accordingly.
- 5.9 Place of performance is always the Seller, unless otherwise agreed upon in writing. The Seller is entitled to make partial deliveries. Shipment and transport shall be made at the Customer's sole risk. The risk shall pass to the Customer, also in case of partial deliveries, when the goods are handed over to the Customer or the Customer's carrier or to an independent carrier transporting the goods to the Customer or its nominee, unless clause 5.11 below applies.
- 5.10 If the Customer refuses acceptance of the goods or if shipment is delayed for reasons which the Customer is responsible, the risk shall pass when his default in acceptance commences. Any storage costs incurred after the risk has passed shall be payable by the Customer.

The Seller is entitled to charge either a lump sum of 0.5% of the invoice amount per month as storage costs or the damage actually suffered, unless the Customer proves lesser damage. In addition, The Seller is entitled to set the Customer a final period of 14 days and to rescind the contract or claim damages for non-fulfilment if this period lapses without acceptance of the goods by the Customer.

- 5.11 In case the Seller has undertaken assembly or installation of the goods, the risk of damage to or loss of the goods shall pass to the Customer upon him taking over the goods or, if a trial operation has been agreed upon, after upon such trial has shown that the goods conform to the contract. However, if the Customer has not taken over the goods being at the Customer's premises or has not carried out the trial operation as agreed upon within a period of 14 days, the risk of damage to or loss of the goods shall pass upon elapse of such period of time, always provided the Parties have not agreed otherwise.
- 6. Acceptance**
- 6.1 An acceptance and acceptance test shall only be carried out if the Customer and the Seller have expressly agreed on this in the contract.
- 6.2 If an acceptance test is carried out, the goods shall be deemed to be accepted if the Customer does not notify the Seller of any defects of the goods immediately after the test is concluded.
- 6.3 The Customer shall bear the costs of the acceptance and acceptance tests. The Seller is entitled to charge its costs for materials and man-hours for the acceptance and acceptance procedure in accordance with the Seller's usual rates and tariffs valid at that time.
- 6.4 If an acceptance test is delayed for reasons for which the Seller is not responsible, any additional costs resulting from such delay shall be borne by the Customer.
- 7. Prices/Payments**
- 7.1 The contract price is valid for delivery „ex-works“, excluding VAT, packaging, carriage and insurance cover.
- 7.2 Any shipping expenses shall be borne by the Customer at the freight rates, customs tariffs and any further duties applicable at the time of delivery.
- 7.3 In case the costs (such as but not limited to wages, salaries, taxes, cost for energy and raw materials) will increase after conclusion of the contract and before its final fulfilment by the Seller, the Seller shall be entitled to adjust the contract price reasonably but not in excess of the prices valid at the time of the adjustment, always provided that there is a period of more than four months between conclusion of the contract and its final performance/fulfilment.
- 7.4. In case the Seller is prevented partly or wholly from fulfilment of its obligations for reasons for which the Seller is not responsible, the Customer shall pay the portion of the contract price for the deliveries and services the Seller has carried out until such time.
- 7.5 Payment of the Seller's invoices is due within 30 days from the invoice date, unless otherwise agreed upon in writing. The Customer is in default, if this period lapses without payment.
- 7.6 If the Customer is in default with any payments due, we are entitled to claim interest at 8 % p.a. above the base-lending rate of the Deutsche Bundesbank, unless a higher or lower damage is proven.
- 7.7 All amounts payable to the Seller become due immediately if the Customer does not comply with his contractual obligations regardless of the terms of any bill of exchange we may have accepted as conditional payment. In the event of default, bill of exchange protest or suspension of payments the Seller is entitled to demand immediate payment of all claims, including claims of circulating bills of exchange, regardless of any due dates agreed upon. This shall also apply in the event that circumstances become known to the Seller which in the Seller's opinion make the creditworthiness or the financial standing of the Customer doubtful, even if these circumstances have existed at the time the order was placed, unless the Seller has known or should have known about these circumstances at that time. Notwithstanding further rights, the Seller shall be entitled in all above mentioned cases to make outstanding deliveries against advance payment or security only, and, if no advance payment is made or security granted within a two week period, to rescind the contract without fixing any further time period for compliance.
- 7.8 The Customer is not entitled to assign any claims following from this contract to third parties without prior written consent of the Seller.
- 7.9 The Customer is not entitled to make any deductions from amounts due to the Seller due to any counterclaims or to exercise a right of retention, unless the counterclaims or the right of retention have been acknowledged by the Seller in writing or declared valid with final effect in a judicial proceeding.

- 7.10 The Seller is entitled to set off all claims which the Seller or its group companies have against the Customer, against all claims which the Customer has against the Seller or its group companies. This shall also apply if the parties have agreed on different means of payment (e.g. cash, bills of exchange, or others) in performance of their payment obligations.

8. Retention of Title

- 8.1 All goods delivered shall remain sole property of the Seller until all claims of the Seller and its group companies as stated in clause 8.10 („Vorbehaltsware“ - separate goods) until the Customer has fully satisfied all existing claims and those arising after conclusion of contract.
- 8.2 Processing and transformation of the separate goods is made for the Seller as manufacturer („Hersteller“) in the sense of sec. 950 German Civil Code (BGB), without obligation to the Seller. Processed and transformed goods are deemed to be separate goods within the meaning of clause 8.1 above. In case of processing and transformation, combining and intermixture of the separate goods by the Customer with goods of other origin to a new product or to an intermixed stock, respectively, the Seller becomes co-owner of it, namely in the ratio of the invoiced amount of the separate goods at the time of delivery to the value of the other processed or the intermixed goods, respectively. The co-ownership share is held as separate goods within the meaning of clause 8.1 above.
- 8.3 If separate goods are connected with other goods and if goods belonging to the Customer are to be regarded as the principal good within the meaning of sec.947 German Civil Code, it is hereby agreed that the co-ownership share is transferred to the Seller in the ratio of the invoiced amount of the separate goods to the value of the principal good and that the Customer holds the goods in safe custody for the Seller free of charge. The co-ownership share is held as separate good within the meaning of clause 8.1 above.
- 8.4 The Customer shall hold the separate goods in safe custody. At any time and upon request of the Seller the opportunity of stocktaking and stock marking at the warehouse must be given. The Customer shall notify the Seller immediately of any seizure or other interference of third parties in respect to the Seller's property rights and will provide the Seller with all documents and information necessary to oppose such interference with all legal means.
- 8.5 The Customer is entitled to resell the separate goods exclusively within the ordinary course of business according to his usual conditions provided that he also ensures retention of title as stipulated above and if it is ensured that his claims arising from the resale pursuant to clauses 8.6 through 8.8 below are transferred to the Seller.
- 8.6 The Customer hereby assigns to the Seller all claims he acquires against his buyers through the resale of separate goods, also within the scope of contracts for work and contracts for delivery of work, with all subsidiary rights. The assigned claims shall function as security for the Seller's claims to the same extent as the separate goods. The Customer is only authorised to assign claims to third parties with prior written consent of the Seller.
- 8.7 If the Customer sells the separate goods together with other goods not supplied by the Seller, the claim following from such sale shall only be assigned to the Seller up to the amount invoiced by the Seller for the respective separate goods at the time of delivery. For the resale of goods, for which the Seller becomes coowner pursuant to clause 8.2 or clause 8.3, respectively, the assignment of claims is valid up to the amount of the co-ownership share.
- 8.8 If the assigned claim is taken into a current account, the Customer hereby assigns to the Seller a corresponding part of the balance of such account, including a deficit balance.
- 8.9 The Customer is authorised to collect the claims assigned to the Seller pursuant to clauses 8.5 through 8.7 above on our behalf until revocation of this right by the Seller.

- 8.10 If the Customer does not fulfil his obligations under this or any other contract entered into with the Seller or if circumstances making the creditworthiness of the Customer doubtful become known to the Seller,
- the Seller is entitled to prohibit the resale, the processing and transformation of the separate goods as well as the combination and intermixture with other goods;
 - the Seller is entitled to rescind of the contract; in this event, the Customer's right of possession of the separate goods terminates and the Seller is entitled to demand surrender of the separate goods; the claim for surrender is deemed as rescission only if the rescission is expressly declared by the Seller; the Seller is then entitled to enter the Customer's business premises and take possession of the separate goods at the expense of the Customer and to sell it by private sale or public auction at the highest price possible, notwithstanding the Customer's financial obligations and other duties; after deduction of the costs of such sale the proceeds thereof shall be used to reduce the Customer's debt; any remaining surplus shall be made available to the Customer;
 - upon our request the Customer shall provide the Seller with the names of the debtors of all claims assigned to the Seller to enable the Seller to disclose the assignments and collect these claims; the Customer shall forward to us any payments he receives on claims assigned to the Seller immediately upon receipt if and as soon as our claims against the Customer become due;
 - the Seller is entitled to revoke the Customer's right to collect the claims assigned to the Seller on its behalf.
- 8.11 If the value of the security provided to the Seller exceeds the aggregate of the Seller's secured claims by more than 20 %, the Seller is under an obligation to release security of its choice to this extent at the request of the Customer.
- 9. Warranty**
- 9.1 The Customer shall diligently examine the goods immediately upon receipt at the place of destination, also if models or samples were delivered in advance. The goods are to be particularly examined with respect to their external quality. If boxes, cartons or other containers are delivered, samples have to be taken at random. The goods shall be deemed to have been accepted without any defects, unless the Customer notifies the Seller of any defect within ten (10) days after receipt of the goods at the place of destination or, in case of hidden defects, within ten (10) days after the defect was discovered. The notification must be made in writing or by telefax and has to specify the defect. All such notifications of defects of goods must be addressed to the Seller directly.
- 9.2 Any damages to goods in transit and incomplete delivery have to be notified immediately to the forwarding agent; the notification obligations pursuant to the German General Conditions for Forwarders (Allgemeine Deutschen Speditionssbedingungen) shall apply.
- 9.3 If a notification of defects is justified and has been made in due time we shall subsequently perform through remedying the defect or replacing the delivered goods according to the choice of the Seller.
- 9.4 If subsequent performance or replacement of the goods does not remedy the defect on the third attempt, the Customer may demand a reduction in the purchase price or rescission of contract. In the case of minor defects, the Customer is not entitled to rescission of contract. If the Customer chooses rescission of contract after such unsuccessful Subsequent performance, he is not entitled to any additional damage compensation.
- 9.5 The Seller shall only be obliged to correct any defects, if the Customer has paid the portion of the contract price relating to the goods delivered by the Seller which are not defective.
- 9.6 Replaced parts shall become the Seller's property.
- 9.7 The Customer shall bear all additional costs incurred by the Seller, if the remedial work is carried out at other places than the Seller's premises or the original place of delivery of the goods.
- 9.8 The Seller shall be under no obligation to remedy defects, if the defective parts are modified, worked on, processed, handled improperly or repaired inappropriately by the Customer, or third parties not authorized by the Seller to carry out such work.
- 9.9 The Seller's warranty shall not apply to consumables and parts which are subject to wear and tear.
- 9.10 The warranty period shall be agreed individually between the Seller and the Customer. If this is not the case, the warranty period shall be one year after the time the risk of damage to and loss of the goods has passed to the Customer. Any further liability of the Seller shall be excluded except as stated otherwise in clause 10 below.

10. Liability

- 10.1 For any claims based on misconduct, irrespective of their legal basis, e.g. default, delivery of defective goods, violation of contractual duties, violation of duties during contractual negotiations, torts, product liability (with the exception of the liability under the German Product Liability Act, "Produkthaftungsgesetz"), the Seller can be held liable for damages in case of a wilful act or gross negligence only. We are not liable for negligent conduct of a minor degree, unless the contractual purpose is thereby substantially endangered. In any event, the Seller's liability shall be limited to foreseeable and typical damages. This restriction does not apply to injuries suffered by the Customer to his life, body or health. Personal liability on the part of our statutory representatives, persons engaged in performance of the Seller's contractual obligations or employees for damage caused by them by negligent conduct of a minor degree is excluded.
- 10.2 Warranty claims of a Customer shall become time-barred one year after delivery of the goods. This shall not apply where the Seller can be accused of fraudulent intent.

11. Applicable Law/Jurisdiction

- 11.1 The relations between the Seller and the Customer are governed by the laws of the Federal Republic of Germany. Neither the UN-treaty (CISG) nor any other existing or future bilateral or international treaties, even if implemented into German law, shall be applicable.
- 11.2 Place of jurisdiction for all disputes arising from or in connection with the contract shall be at the Seller's choice either Hamburg or the company seat of the Customer; for lawsuits filed by the Customer, exclusively Hamburg. Any statutory provisions regarding exclusive jurisdiction remain unaffected.

12. Concluding Provisions

- 12.1 Any alterations and amendments to the contract, including this clause, must be made in writing and signed in order to be valid. This shall also apply to any supplementary and additional agreements.
- 12.2 If a provision herein is or becomes partly or completely invalid, the invalidity of this provision shall not affect the validity of the remaining provisions of this contract. The invalid provision shall be replaced by a valid provision reflecting in an economic respect as closely as legally possible the objectives of the invalid provision. This applies also to issues the parties intended but failed to address.