



INGUN Prüfmittelbau GmbH General Terms and Conditions for Businesses

Item 1 Scope

(1) Solely these General Terms and Conditions shall apply to all business relationships between INGUN Prüfmittelbau GmbH and our customers and suppliers; contradictory terms will not be acknowledged unless we had expressly consented to their validity in writing. Our sales terms shall still apply if we carry out unconditional delivery to the customer while aware of customer terms that conflict with or deviate from our own sales terms.

(2) All agreements reached between us and the customer aimed at carrying out the terms of this contract are set down in writing in this contract. Our General Terms and Conditions shall apply only with respect to businesses as intended in §310 paragraph 1 of the German Civil Code (BGB).

Item 2 Applicable Law

(1) Insofar as nothing to the contrary is agreed upon in writing, solely German law, including those commercial customs and technical practices prevailing in Germany, shall apply to all present and future business transactions.

(2) The Uniform Law on the International Sale of Goods as well as the Convention on Contracts for the International Sale of Goods shall not be applicable.

Item 3 Scope of Services

(1) All quotes, prices, and any other commitments on our part shall be provisional unless something to the contrary is explicitly stipulated. Similarly, technical descriptions and other information in quotes and proposals, prospectuses, and other information shall initially be non-binding in nature.

(2) The customer shall be bound by its quote. Should an order qualify as a quote pursuant to §145 of the BGB, the customer shall also be bound by said quote. We shall accept quotes to the extent that we send a written job order confirmation.

(3) All agreements shall be binding on us only following written confirmation. Collateral agreements and amendments likewise require our written confirmation. The documents that are included with the quote such as illustrations, sketches, weight and dimension data, shall only provide rough criteria insofar as they are not designated as binding. We reserve all property rights and copyrights to illustrations, sketches, and other documents. This shall also apply to those written documents that are designated as "confidential". Before these may be passed on to third parties, the customer must obtain our express written consent.

(4) We shall be entitled to collect an appropriate minimum quantity surcharge, the amount and conditions of which shall derive from the respective price lists.

Item 4 Retention of Title

(1) Goods delivered remain our property until the client has satisfied our claims in their entirety. In the case of behavior on the part of the customer that violates the contract, in particular default on payment, we shall be entitled to repossess the goods sold. Should we repossess goods sold, this shall occasion a rescission of the contract. Following repossession of the goods sold, we shall be entitled to make use of them commercially; the proceeds shall be used to offset the customer's liabilities, less appropriate utilization costs. The customer shall be entitled to resell goods in the normal course of business. It shall at that point assign to us all receivables in the amount of the invoice – in Germany inclusive of the value-added tax – that it is entitled to from buyers or other third parties as a result of the resale. We hereby accept the assignment. Following the assignment, the customer shall remain authorized to collect the receivables. Our entitlement to collect the receivables shall not be affected thereby.

(2) When goods are sold on credit, the customer is to retain the title with respect to its buyers. The customer shall at that point assign to us the rights and entitlements from this retention of title. We hereby accept the assignment.

(3) Any pledging of the goods or assignment of them as collateral to the benefit of third parties is prohibited. In the event of pledging of the goods via third parties, the customer shall be obligated to notify us immediately. We shall be obligated to release the collateral to which we are entitled upon request by the customer to the extent that the value of our collateral rights exceeds the entitlements to be secured by more than 20%. The choice of collateral to release shall fall to us.

(4) In the event of payment default by the customer, we shall be entitled to revoke its authorization to sell goods subject to retention of title from all transactions concluded with us, and to demand the surrender of the goods without a notice period. After repossession of the goods, we shall be entitled to make direct use



of these commercially in the normal course of business. The proceeds shall be used to offset the customer's liabilities, less appropriate utilization costs. The same shall apply implicitly for stoppage of payment by the customer or if bankruptcy proceedings are initiated with regard to its assets.

(5) Should, as an exception, foreign law be applied to the contractual relations and this law does not recognize retention of title but similar or other rights, we shall be entitled to exercise all rights of this nature.

Item 5 Terms of Payment

(1) The invoice shall be issued no later than the day of shipment or provision of the goods. Payment of the net purchase price (excluding deduction) is due within 30 days of the invoice date. The statutory provisions regarding the consequences of payment default shall apply.

(2) We shall not be obligated to further delivery of goods from other ongoing business contracts before full payment of invoiced sums due including late payment interest.

(3) In the event of payment default by the customer, we shall be entitled to demand the immediate surrender of goods already delivered without rescinding the contract: Item 4 (4) shall apply accordingly.

(4) The customer shall be prohibited from withholding payments or offsetting claims made by us.

(5) At our discretion, payments shall be made by sending a check or by transfer from a bank account or postal checking account. The relevant date for payments made by check is the date the check is cashed, for transfers, the day our account is credited. Payments shall always be used to settle the oldest charges due in addition to the late payment interest accrued thereon.

Item 6 Delivery

(1) The deadline for deliveries is determined from the written statements from both parties. Observance of the agreed delivery deadline is based upon the prompt receipt of all documents, required permits, and releases to be delivered by the customer as well as compliance with agreed upon payment terms and other obligations.

(2) Insofar as nothing to the contrary is agreed, performance and uninsured shipment of the goods shall take place from the factory at the customer's expense. The delivery date shall be considered met when the goods have left our facility or shipment readiness has been announced by that date. Whether a delivery is on time shall be determined solely by the day of transferal of the goods by us to the shipping company or other parties authorized with their transport. For a delivery with setup, the delivery date shall be considered met when the setup takes place within the agreed upon time period.

(3) In the event of force majeure or other unforeseeable, extraordinary circumstances and those beyond our control – for example difficulties in materials procurement, disruptions of operations, strike, lock-out, lack of transport means, governmental intervention, energy supply difficulties, etc. – even if these occur at our upstream suppliers, the delivery period shall be extended by an appropriate amount if we are prevented from fulfilling our obligation on time. The customer shall be informed of such circumstances immediately.

(4) Should delivery or performance be impossible or unreasonable under the specified circumstances, we shall be released from our delivery obligation. To the extent that the no-fault delay in delivery is longer than one month, the customer can withdraw from the contract after setting a subsequent deadline of at least two weeks.

(5) We shall accept liability in accordance with statutory provisions to the extent that the underlying sales contract represents a fixed-date transaction within the intention of §286 paragraph 2 no. 4 of the BGB or §376 of the German Commercial Code (HGB). We shall also accept liability in accordance with statutory provisions to the extent that the customer is entitled to make a claim that due to delay in delivery for circumstances beyond our control, its interests in the further fulfillment of the contract have ceased.

(6) Furthermore, we shall accept liability in accordance with statutory provisions to the extent that delay in delivery is caused by an intentional or negligent breach of contract on our part; any fault on the part of our representatives or vicarious agents shall be ascribed to us. Insofar as delay in delivery is not caused by an intentional breach of contract on our part, our liability for damages shall be limited to foreseeable, typically occurring damage.

(7) Damages claims shall be limited to the value of the delayed delivery: We shall pay compensation for delay in the amount of 5% for each full week of delivery delay, up to a maximum amount of damages in the amount of 20% of the delivery value.

(8) Other damages claims shall only be considered when we can be accused of intent or gross negligence or any other material breach of duty. Should the delivery deadline be extended or should we be released



from the delivery obligation, the customer cannot derive damages claims from this fact. However, we shall only cite the circumstances specified if the customer was notified immediately.

Item 7 Transport and Transfer of Risk

(1) To the extent that nothing to the contrary is agreed, we shall determine the means of transport and route, but shall not be responsible for ensuring that the quickest and least expensive option is selected. Under all circumstances, the risk shall be transferred to the business when the goods have left the factory. This shall also apply for partial deliveries. Upon request by the customer, the delivery shall be insured at its expense against breakage, transport and fire damage.

(2) Should the shipment or the start or the setup be delayed as the result of circumstances over which the customer has control, the risk shall transfer to the customer for the period of the delay. In the event of damage to or loss of the goods during transport, the customer shall arrange immediately with the carrier for a report of the matter.

Item 8 Acceptance

(1) Should the customer refuse acceptance following the expiration of a reasonable subsequent deadline set for it or should it previously declare its explicit intent not to accept, we can demand the immediate payment of the purchase price while canceling the original payment deadline, or withdraw from the contract and demand damages due to non-performance.

(2) Should we be responsible for missing a delivery date, the customer can withdraw from the contract or demand damages in place of performance after it has set a reasonable subsequent deadline that is at least 15 business days and expires without avail. Damages claims shall be limited to the value of the delayed delivery: We shall pay compensation for delay in the amount of 5% for each full week of delivery delay, up to a maximum amount of compensation of 20% of the delivery value.

(3) Other damages claims shall only be considered when we can be accused of intent or gross negligence or any other material breach of duty.

Item 9 Defects

(1) Complaints regarding goods are to be communicated to us immediately. In the case of defective goods, we shall be obligated to repair the goods that are the object of the complaint or to deliver non-defective goods in replacement. The customer shall have the choice as to whether subsequent performance is rendered through repairs or replacement delivery. However, we shall be entitled to refuse the type of subsequent performance chosen if it is unreasonable for us within the meaning of §439 paragraph 3 sentence 1 of the BGB or is only possible with disproportionately high costs for us. In this case, the customer shall be entitled to withdraw from the contract or to reduce the purchase price by an appropriate amount, at its discretion. Replaced goods shall become our property.

(2) Obvious defects in the goods and services delivered by us must be reported in writing within two weeks after receipt of the goods. The assertion of guarantee claims is otherwise prohibited.

(3) The customer shall be obligated to produce proof of the defects, the date when the defects were determined, and the date of the complaint of defects.

(4) The statute of limitations for buyer's guarantee claims shall lapse after the expiration of one year following shipment of the goods. This shall not apply to our liability in the event of injury to or loss of life, health, or well-being, or in the case of gross negligence or fraudulent conduct for claims for recourse pursuant to §478 paragraph 2 of the BGB.

(5) With regard to the properties of the goods, only our product description shall be deemed agreed. Public statements or advertising shall not constitute information on the properties for the purposes of the contract.

(6) Should the customer or a third party improperly undertake modifications or repairs on the delivered item without our prior approval, we shall not be liable for any consequences arising therefrom. Liability for defects shall not apply to normal wear and tear, incorrect installation, and furthermore shall not apply to damage that occurs after the transfer of risk due to improper or negligent handling or use, excessive stresses placed on the goods, or inappropriate equipment not set out in the contract. There is no guarantee offered with respect to damage due to defective construction, replacement materials, inappropriate construction site, chemical, electro-chemical, or electrical influences insofar as these cannot be attributed to us.

(7) Should the customer choose to withdraw from the contract due to a failure of subsequent performance for defect, it shall not be entitled – Item 10 below notwithstanding – to additional damages claims due to the defect. Should the buyer choose damages following a failure of subsequent performance, it shall retain



the defective goods insofar as it is not unreasonable for it to do so. In this case, the entitlement to damages shall be limited – again, Item 10 below notwithstanding – to the difference between the purchase price and the value of the defective goods, unless the breach of contract was caused by us through fraud.

Item 10 Other Damages Claims

(1) More in-depth liability for damages other than that provided in Item 9 is excluded, regardless of the legal nature of the asserted claim. This shall apply in particular to damages claims arising from negligence during conclusion of the contract, due to other breaches of duty, or claims in tort for compensation for material damage in accordance with §823 of the BGB. The limitation shall also apply insofar as the customer demands compensation for futile expenditures as performance instead of a claim of compensation for damages.

(2) Claims by the customer arising from product liability, or claims due to bodily injury or damage to health as well as the loss of life of the customer, or due to the breach of material contractual duties are excluded from this liability limitation. The claim shall be limited to typically foreseeable damage. We therefore shall not accept liability for damage that does not occur directly to the item delivered, in particular not for lost profits or other financial losses suffered by the customer.

(3) Expenditures by the customer for the purpose of subsequent fulfillment shall be excluded from this.

(4) The limitations specified above shall also apply to direct claims against our legal representatives, employees, or vicarious agents.

(5) We shall not accept liability for errors that result from the documents (sketches, models, and the like) submitted by the ordering party.

Item 11 Setup and Installation

(1) The following provisions shall apply for any type of setup and installation to the extent that nothing to the contrary is agreed upon in writing: The customer is to prepare the space for setup according to our guidelines at its own expense and shall ensure that the required electrical connections and technical facilities are on hand. Before the start of setup work, the customer is to provide the required information regarding the site, concealed electrical, gas, and water lines, or similar information as well as the required statistical information without being requested to do so.

(2) Should setup, installation, or startup be delayed by circumstances, in particular through no fault of ours (creditor default), the customer shall bear the costs, to a reasonable degree, for the waiting period and further travel our staff is required to undertake.

Item 12 Rescission

(1) The contract shall be adjusted as appropriate in the event of unforeseeable occurrences as intended by Item 6 (3) of these General Terms and Conditions, to the extent that they change the economic significance or the content of service by a considerable degree or have a significant effect on our business, and in the event of subsequently arising impossibility of performance. Insofar as this is not economically justifiable, we shall be entitled to withdraw in whole or in part from the contract.

(2) In the event of delivery that is not on time – even through no fault of ours – we shall be entitled after setting a deadline to withdraw from the sales contract. We may keep partial deliveries and withdraw in all other respects from the contract.

Item 13 Place of Performance

The place of performance for delivery and payment is Konstanz. The place of performance for deliveries to us is the location to which the seller is to deliver the goods. When this is in doubt, it shall be Konstanz.

Item 14 Legal Jurisdiction

(1) The exclusive legal jurisdiction for both parties shall be Konstanz, whereby we shall be entitled to file suit at the headquarters of the business partner.

(2) For disputes with foreign business partners, we shall have the option of appealing to the court of arbitration of the International Chamber of Commerce of the business partner's country instead of to the municipal courts.

(3) Should the customer lose to us in the court or arbitral proceedings, either in whole or in part, it shall be obligated to bear the legal costs incurred by us, either in full or proportionately, when the law of its country does not provide for this obligation for compensation.



Item 15 Data Storage

The business partner is in agreement that its data relevant for contract fulfillment shall be stored, transmitted, and used by us insofar as nothing in the German Federal Data Protection Act conflicts with this.

Item 16 Final Provisions

Should individual provisions of the contract or these General Terms and Conditions be or become invalid, in whole or in part, the validity of the remaining stipulations shall not be affected thereby. The provision that is invalid in whole or in part shall be replaced with a stipulation that most closely approximates the economic outcome of the invalid stipulation.

Item 17 Effective Date

These terms shall apply as of February 1, 2006. All previous terms shall no longer be valid.

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