

1 General

1.1 These General Terms and Conditions of Sale and Delivery apply to all present and future deliveries and services in connection with purchase contracts and contracts for work and services of IBS to your respective contractual partner (hereinafter referred to as "Buyer" or "Purchaser"). Conditions allegedly imposed by the Buyer are hereby rejected in their entirety and have no application to IBS, even if not objected to upon receipt. The conditions of the buyer are ineffective if they have not been expressly accepted in writing by IBS.

1.2 Quotations are always subject to change and are not binding on IBS. Declarations of acceptance and all other agreements, including verbal agreements, promised by our representatives and salesmen are only legally binding insofar as they have been made or confirmed in writing by a duly authorized representative of the Company.

1.3 Drawings, sketches, weight data, dimensions and performance descriptions as well as other documents about the delivered goods are only to be kept approximately as far as they are not expressly designated as binding in the order confirmation of IBS. IBS retains the ownership and copyright of such documents; access to them may not be passed on to third parties without the consent of IBS.

1.4 The technical data and dimensions stated in the Company's quotations and documents are in accordance with the standards applicable at the time of such quotations and documents. The Company reserves the right to apply new relevant standards and to deviate from standards to the extent that this is customary in the trade or permitted by DIN.

1.5 The buyer bears full responsibility for the drawings, sketches, samples, models, etc. supplied by him. The Buyer warrants that detailed drawings supplied by him do not infringe any copyrights, letter patents or other intellectual or industrial property rights of third parties. IBS is not obliged to check its offers or their execution against the drawings provided by the Buyer or for any other reason for such infringement. Buyer shall indemnify IBS against all actions, proceedings, costs, claims and expenses arising out of any such infringement.

1.6 Unless otherwise agreed, the interpretation of the terms of delivery (e.g. FCA, DAP, DDP) shall be determined by the provisional latest edition of the INCOTERMS laid down by the International Chamber of Commerce.

2. Prices

2.1 The prices quoted by IBS are in principle non-binding unless they are expressly designated as fixed prices. Unless otherwise agreed, the prices are free ex works and/or bonded warehouse. Any additional costs, e.g. due to parcel, freight, import duties, insurance premiums and statutory value added tax, shall be borne by the purchaser.

2.2 Our prices are in Euro (EUR). If payment in another currency is agreed, IBS shall be entitled to reimbursement of any losses between conclusion of the contract and receipt of payment by the Buyer.

3. Payment conditions

3.1 Unless expressly agreed otherwise, payment shall be made within 30 days (from date of invoice) net, without deduction. In particular, no deduction shall be made for statutory turnover tax, which shall be added proportionally to each payment. Invoices for repairs, service calls and/or installations are payable upon receipt without any deduction. Transfer charges shall be borne by the purchaser.

3.2 The Company will only accept bills of exchange if they are discountable and taxable and if such acceptance has been expressly agreed. Cheques and drafts (and credit notes in respect of such cheques and drafts) shall not be deemed to be payment until the money is at the Company's disposal. Payment received shall be the amount remaining after deduction of the applicable discount rate, customs duties, bank charges and collection charges.

3.3 In the event of default in payment, the purchaser shall be obliged to pay interest from the due date in accordance with the interest rates applicable to short-term loans, but provisionally at a minimum interest rate of 4% above the Bundesbank interest rate. We reserve the right to assert further damages.

3.4 In the event of circumstances arising after the conclusion of the contract which lead or may lead to a noticeable reduction or deterioration in the assets of the Buyer, and insofar as such reduction or deterioration may, in the opinion of the Company, affect the receipt of payment under the contract from the Buyer, the Company shall be entitled to withhold its deliveries or services even if it is obliged to perform first, unless the Buyer has already fulfilled its obligations or security is provided to the Company. If the purchaser does not comply with our request for simultaneous performance or does not provide security, IBS may withdraw from the contract without liability towards the purchaser. The Company's right to enforce retention of title under Condition 6.6 is reserved.

3.5 The Purchaser shall not be entitled to withhold payments. Offsetting with counterclaims by the Purchaser is only permissible insofar as these have been recognised in writing by the Company as existing and due or have been duly established in law.

4. Delivery time, Weights

4.1 The buyer shall not be entitled to any objections or price reductions due to excess or empty weights customary in the trade or caused by technical reasons.

4.2 Delivery periods and dates are only approximate in the order confirmation unless the Company has expressly confirmed them in writing as binding. Delivery periods shall commence on the date of our confirmation, provided that all technical and commercial details have been clarified and all necessary licences have been granted. Changes to the deliveries requested by the buyer within a delivery period shall extend this period appropriately.

4.3 The Company is entitled to make partial deliveries.

4.4 Unforeseeable events entitle IBS to postpone the delivery for as long as the obstacle persists plus a reasonable grace period. Unforeseeable events are such circumstances which IBS could not have avoided with reasonable care under the circumstances of the individual case, such as war, currency and economic or other governmental measures, civil unrest, natural events, fire, strikes, lockouts, raw material supply bottlenecks for which IBS is not responsible, traffic obstructions, business interruptions and other events of force majeure by which the fulfilment of the contract is endangered, made considerably more difficult or made impossible. In this case, IBS is also entitled to withdraw from the contract without liability for damages. The buyer can demand a declaration from the company as to whether IBS will withdraw from the contract or deliver within a reasonable period of time. If IBS does not make such a statement, the purchaser may withdraw from the contract. The purchaser may not refuse partial deliveries and partial performance.

4.5 If the delivery is delayed for other reasons, the buyer has the option to grant IBS a reasonable extension of time in writing. If such an extension expires without the goods having been dispatched by the company, the buyer is entitled to cancel those deliveries which have not been dispatched or declared ready for dispatch by IBS before the expiry of this extension. Only if the deliveries already partially executed are of no practical use to the buyer, he is entitled to withdraw from the entire contract. If the buyer suffers damage due to a delay which is attributable to the fault of IBS, IBS will compensate the proven damage, but only up to an amount of 2 per cent per value of the delayed or undelivered goods or services for each full week of further delay of the delivery and in any case only up to a maximum amount of 10 per cent of this value. No such limitation shall apply to this liability for intent or gross negligence, which cannot be excluded. If the extension of time expires without dispatch or declaration or readiness for dispatch by IBS, the purchaser has the right to withdraw from the contract.

5. Shipment and transfer of risk, acceptance

5.1 Unless otherwise agreed in writing, the goods will be delivered unpacked and uncovered. If a package is agreed, it will be as is customary in the trade and at the buyer's expense.

5.2 The goods are transported at the expense and risk of the purchaser. The risk is transferred to the purchaser when the goods are handed over to a forwarding agent or carrier and in any case at the latest when the goods leave the warehouse or factory of IBS, even if delivery free destination has been agreed. If the dispatch is delayed due to the behaviour of the purchaser, the risk passes to the purchaser immediately with the notification of readiness for dispatch.

5.3 Goods for which notice of readiness for dispatch has been given shall be collected without delay. If this is not the case, the Company shall be entitled, at its option, to dispatch or store such goods at the Buyer's expense and risk and to invoice them without delay.

5.4 Transport insurance shall only be taken out at the express written request of the buyer and at the buyer's expense, even if free delivery to the place of destination has been agreed.

6. Retention of title

6.1 All delivered goods remain the property of IBS until full payment of all (also future) claims resulting from the business relationship between the buyer and IBS, including all ancillary claims, irrespective of the legal grounds, and until the redemption of bills of exchange and cheques, even if payments have been made for specifically designated claims. If there is a current account with the purchaser, any property to which IBS has retained title is security for the outstanding balance on account. Insofar as IBS assumes a contingent liability for the purchaser, e.g. in connection with a bill of exchange, the retention of title remains in force until the termination of this obligation. The processing or manufacture of the goods subject to retention of title may be carried out by the Company as manufacture under section 9950 of the Civil Code without obligation. The manufactured goods shall be deemed to be the goods in which the Company has retained title in accordance with Condition 6.1 above.

6.2 If the goods subject to retention of title are processed by the purchaser or combined by him with other goods not owned by the company, IBS is entitled to a share in the ownership of the new item in the proportion that the invoice value of the goods subject to retention of title has to the total invoice value of all other goods used. Such shares of ownership are deemed to be goods in the sense of the above condition 6.1.

6.3 The purchaser is permitted to process or sell the reserved goods, but only in the ordinary course of business and on his usual terms, unless he is in default of payment and it is provided that his claims from the resale are assigned to IBS in accordance with the following conditions 7.1 and 7.2. This permission, which is revocable at any time, ends in case of cessation of payments, petition in bankruptcy, petition for settlement by court proceedings, appointment of a receiver / administrator or liquidator.

6.4 The buyer is not entitled to dispose of the reserved goods in any other way, in particular not by pledging or assigning them as security to third parties.

6.5 The buyer shall insure the goods referred to in conditions 6.1, 6.2 and 6.3 against fire, theft and damage by water and keep them identifiable and separate from other goods. It is hereby agreed that the resulting claims of the Buyer against insurance companies or other persons liable for damages are assigned to IBS to the extent of their claims.

6.6 If the Buyer defaults in payment due, IBS may revoke the permission to process, manufacture and sell its goods and require the return of the goods or indirect possession at the Buyer's expense and revoke the Buyer's right to collect the money granted in Condition 6.2 above. In such cases the Company shall also be entitled, after notice, to enter the Buyer's works/warehouse and repossess its goods and apply the proceeds of any free sale of the goods (less the costs of such sale) to reduce the Company's claims against the Buyer. Such steps shall only be deemed to be a withdrawal from the contract if IBS expressly declares this in writing.

6.7 The Purchaser shall inform the Company immediately if third parties attempt to enforce rights to the reserved goods, in particular in cases of seizure.

6.8 The company can release securities at the request of the buyer if the value of the securities given exceeds the amount of 20 percent of the claims against IBS.

6.9 The Buyer shall give the Company every assistance in taking such steps as may be necessary to protect the Company's retention of title in accordance with the laws in which the goods are situated, in particular where registration in a special register, confirmation by a notary public, express written confirmation by the Buyer, etc. are required. If the retention of title or the assignment is null and void under the law of the state in which the goods are located, the equivalent security associated with the retention of title or the assignment in that state shall be deemed to have been agreed. The buyer shall take all necessary steps to establish or maintain such rights.

7. Assignment of resale claims

7.1 It is already agreed now that the claims of the buyer including the ancillary rights from the resale of the reserved goods are assigned to the company. The assigned claims secure the claims of IBS in the same way as the reserved goods. If the goods of the company are resold together with other goods which are not the property of the company, the assignment is only effective to the extent of the proportionate resale price of the resold goods. In the event of a resale of goods in which ownership is co-assessed in accordance with Condition 6.2 above, the assignment shall only apply to the extent of the Company's share in the ownership of such goods, i.e. in the proportion that the invoice value of the goods subject to retention of title bears to the invoice value of the goods resold.

7.2 Until such authorisation is revoked by the Company, the Buyer shall be entitled to collect the receivables from the resale which have been assigned to the Company in this way. The Purchaser is not entitled to assign claims from the resale including factoring to third parties without the written consent of the Company. At the request of IBS, the purchaser must inform the debtors of such claims of assignment and provide the Company with an indication of all claims assigned to it, the names and addresses of the debtors, the amount of each claim and invoice data, etc. The purchaser is also obliged to inform IBS of all claims assigned to the Company. The buyer is also obliged to provide IBS with all other information necessary for the collection of the claims.

8. Warranty and notice of defects

8.1 The purchaser must inspect the goods immediately after receipt with due and reasonable care; complaints with regard to obvious defects must be reported to IBS in writing immediately and in any case no later than 2 weeks after receipt, complaints due to non-obvious defects must be reported to IBS within 2 weeks after identification.

8.2 In the event of manufacture or delivery according to designs and/or drawings supplied by the purchaser, the company shall not be liable for any inappropriateness to the intended use and our statutory warranty obligation shall be limited to work carried out according to the aforementioned designs/drawings. IBS is also not liable for defects attributable to materials or tools supplied by the purchaser.

8.3 If a claim is justified and is made within the period specified in Condition 8.1 above, IBS shall honour its statutory warranty by taking back the defective Goods and replacing them with non-defective Goods; IBS shall also be entitled, in lieu of replacement and at its option (but without limiting the Buyer's rights), to repair the Goods supplied or to refund to the Buyer any amount by which the value of the Goods has been reduced.

8.4 If IBS does not fulfil its obligation to replace or rectify or does not fulfil this obligation in accordance with the contract, the purchaser can demand a reduction of the price or withdraw from the contract at its own discretion.

8.5 The warranty obligations expire if the purchaser does not give IBS the opportunity to examine a complaint.

General Terms and Conditions of Sale and Delivery of IBS Performance Center Germany GmbH (IBS)

- 8.6 All further warranty claims are excluded. The same applies to claims for damages, including damage caused to other objects. In the absence of specifically warranted characteristics, claims for damages can only be asserted if it was intended that the warranty granted to the buyer should cover precisely the type of damage that occurred.
- 8.7 Warranty claims shall become statute-barred 6 months after delivery at the latest.
- 9. General limitation of liability**
- 9.1 Unless otherwise agreed in the above General Terms and Conditions of Sale and Delivery, IBS is liable for claims for damages arising from the breach of contractual or non-contractual obligations only in case of intent or gross negligence. However, the Company is only liable by way of vicarious liability for acts of its vicarious agents acting intentionally or grossly negligently in a non-conductive capacity and only to the extent that they have breached a material obligation contained in these contractual provisions.
- 9.2 The above provision does not apply to claims for personal property damage or damage to privately used objects under the Product Liability Act.
- 9.3 All claims against IBS become statute-barred after the expiry of one year, unless a shorter period is prescribed by law or agreed in these General Terms and Conditions of Sale and Delivery.
- 10. Exclusion of liability:**
- 10.1 Liability for consequential damage to the machine, or to equipment from other suppliers, or to third-party equipment, or any financial loss (e.g. loss of production) is completely excluded by IBS Performance Center Germany GmbH.
- 11. Property rights**
- 11.1 The buyer will inform IBS within 8 days if he becomes aware of alleged infringements of property rights by IBS.
- 11.2 Designs, samples, models of IBS and the like are considered intellectual property and may not be imitated by the buyer or used in any other way for reproduction. Any infringement thereof shall render the buyer liable to pay damages for pecuniary loss, immaterial damage and loss of profit.
- 12. Place of performance and jurisdiction, applicable law**
- 12.1 The place of performance for the deliveries of IBS is its works if delivery ex works has been agreed, in all other cases the place of performance is the warehouse of the company.
- 12.2 The place of jurisdiction is Moers and this also applies to actions on bills of exchange or cheques. However, the Company shall also be entitled to sue the Buyer at its local place of jurisdiction.
- 12.3 It is hereby agreed that the law applicable to legal relations between residents of the Federal Republic of Germany shall apply to all legal relations between the Buyer and the Company.
- 13. Data of the buyer**
- 13.1 IBS registers personal data of the buyer through electronic data processing.
- 14. Salvatory clause**
- 14.1 If any provision of this Agreement is or becomes invalid, unenforceable, or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected thereby. In such case, the invalid, unenforceable or unenforceable provision shall be deemed to be replaced by a provision which, to the extent permitted by applicable law, most closely approximates the intent of the invalid, unenforceable or unenforceable provision. The same shall apply to any omissions in this Agreement.