

Terms and Conditions of Sale and Delivery **Of INGENIA GmbH, Altlay**

1. Validity of our terms and conditions of sale and delivery

Our terms and conditions of sale and delivery apply exclusively. We do not recognize any conflicting or deviating terms and conditions of our contractual partners unless we have explicitly agreed to their validity in writing. Our terms and conditions of sale and delivery are also valid for all future deliveries, services and offers to our contractual partners even if they have not been separately agreed.

The general terms and conditions of our contractual partners shall not apply even when we have not specifically objected to their application separately. Even in the case that our contractual partner refers to correspondence in which any other terms and conditions are included or makes mention of such, this does not suggest any agreement to the validity of such terms and conditions.

2. Offers

Our offers are always subject to change without notice and may be revoked at any time by the purchaser until receipt of acceptance.

3. Order confirmation, changes and scope of delivery

We can accept orders within 14 days through written declaration or performance. Our order confirmation including these general terms and conditions of sale and delivery is relevant for the scope and conditions of the delivery. Deviations from previously arranged agreements written in the order confirmation shall be deemed to be approved in as far as the purchaser does not contest it without delay.

The written concluded contract of sale shall apply solely for the legal relations between us and our contractual partners. The aforementioned state all of the agreements between the contract parties regarding the subject matter of the contract. Verbal commitments or agreements prior to the conclusion of the contract are legally not binding.

Amendments and additions to the agreed contract including these general terms and conditions of sale and delivery shall require the written form in order to be effective. To meet the written form the transfer per telefax is sufficient. Transmission by electronic telecommunication is explicitly not sufficient.

Details on this page referring to the object of delivery and services (e.g. weights, measures, specifications on this page of the delivery item or service (e.g. weights, measurements, values in use, load-bearing capacity, tolerances and technical data) or depictions of the same (e.g. drawings and images) shall only be approximate unless the usability for a contractually agreed purpose requires exact conformity. They are no guaranteed characteristics of constitution but general descriptions or distinctive features of delivery or service.

We reserve the right of deviations from the agreed scope of services which may be due to the consideration of amendments of legal or technical standards.

Requests for amendments of the part of the contractual partner regarding the content of the services to be provided subsequent to the conclusion of the contract (e.g. refitting or extension work) can only be taken into consideration within the framework of our operational capacity and are subject to additional payment according to our separate offer or to our valid price list at the time of the acceptance of the request for amendments.

4. Industrial Property Rights

We reserve all ownership and copyrights with respect to all drawings, images or any other documents which the contractual partner received prior to conclusion of the contract. Such documents shall not be copied or disclosed to any third parties without our prior written approval. Unless otherwise explicitly agreed we are not obliged to verify the correctness of the information or materials supplied to us by our customers. We are not liable for infringements of industrial property rights of third parties when producing machines according to the specifications, drawings or sketches of our customer. Should third parties assert a claim against us in this regard, the contractual partner shall be obliged to indemnify us from these claims including all necessary costs incurred due to this infringement. Each contractual partner shall inform the other partner immediately in writing should such claims be made against him due to the violation of such property rights.

In the case of a violation of industrial property rights or copyrights of third parties the contractual partner shall duly modify or exchange the object of delivery according to our choice on his account so that it no longer infringes any third party rights but so that the object supplied continues to fulfil its contractually agreed functions, or procure the right or use for us by concluding a licence contract. Should this not be performed within a reasonable period of time we shall be entitled to rescind the contract.

5. Prices

Our prices are net in Euros without current valid VAT. If not otherwise agreed, our prices are quoted ex works and subject to confirmation and do not include packaging, transport, transportation insurance, possible customs and taxes and other public duties, installation and commissioning. We reserve the right to calculate the valid prices for the day of delivery in the case that delivery takes place later than four months after confirmation of order. This applies in particular when after conclusion of contract the material prices, labour costs or any other cost factor increase, or any other circumstances for which we are not responsible make production or distribution become more expensive.

6. Terms of Payment

If not otherwise agreed payment shall be made in cash without any deductions as follows:

- a. For amounts < 5,000.00 € :
 Within 8 days with 2 % discount on goods
 Within 21 days without deductions
- b. For amounts > 5,000,00 € :
 40 % of delivery value on order
 60 % of delivery value on our notification of readiness for dispatch

7. Offsetting and Retention Rights

The contractual partner is only entitled to offsetting and retention rights if his Counterclaims have been stated legally binding, undisputed or recognized by our company.

Cash payments shall only apply for cash payments and credit transfers. Should the purchaser be in default of payment we shall be entitled to demand default interest to the amount of 10 per cent over and above the base rate. We are entitled to prove higher damages due to the arrears and to enforce them. The proof that minor damage has been incurred remains reserved to the contractual partner. Should the contractual partner be in default of payment all other payments including deferred payments shall become payable immediately.

We are entitled to carry out or perform outstanding deliveries or services only against advance payment or a security deposit if after conclusion of the contract circumstances become known to him which considerably reduce the contractual partner's creditworthiness or on account of which the payment of our outstanding demands are put at risk.

8. Delivery Time, Part-Delivery

Delivery time begins with the dispatch of the order confirmation; it shall be deemed met if the object of delivery has been shipped from works or the readiness for shipment has been advised by its expiry. Amendments in the content of performance agreed with the contractual partner lead to the abolition of agreed deadlines and times unless otherwise agreed in writing.

The fulfilment of our delivery obligation shall be conditional upon the timely and proper fulfilment of the partner's obligations, (e.g. timely receipt of agreed deposits, timely provision of documents, approvals, samples, raw materials, technical specifications of work pieces or work piece samples to be provided by the contractual partner). Our delivery deadline shall be extended appropriately on late or improper fulfilment of the partner's obligations or of our suppliers (e.g. industrial disruption, strike, delay in the delivery of raw materials etc.). We shall not be responsible for the above-mentioned circumstances even if they occur within an existing delay.

We are entitled to provide part-deliveries if completed units or independent single components are to be delivered and if the part-delivery is usable within the framework of the contractual stipulation of purpose.

9. Delivery with Installation

If it has been contractually agreed that we should install the object of delivery at a place named by the contractual partner, the following applies:

All construction work (including energy supply) must be completed prior to the commencement of the installation in such a way that the installation can be started immediately after delivery and be completed without interruption. The purchaser must provide a dry, well-lit and lockable room for the storage of machine parts, material,

tools etc. The contractual partner shall provide assistance staff for the installation and any other necessary devices needed for the installation and commissioning on his own account. Furthermore, he shall remunerate our deployed staff at the current valid daily rate at the time. For delays in installation point 8 paragraph 2 is relevant.

10. Delays in Delivery, Liability for Damages in case of Default

Our liability for damages, regardless of the legal grounds, but in particular for impossibility, default, defective or false delivery, breach of contract, violation of obligations during contract negotiations and wrongful actions is limited accordingly in as far as they are subject to fault:

We are not liable for ordinary negligence by our government bodies, legal representatives, employees or other auxiliary persons; or as long as these violations do not breach an essential contractual obligation. Essential contractual obligations include the obligation to deliver and install in a timely fashion objects of delivery that are free of essential defects and advisory, protective, custodial and duty of care obligations that enable the contractual partner to use the item delivered in the contractually prescribed manner or whose purpose is to protect the lives and health of the partner's staff or to protect their property from considerable damage.

In so far as we are liable for damages this liability is limited to damages which the contractual partners on conclusion of the contract have foreseen as possible consequences of a breach of contract or by applying due care and attention should have been foreseen. Indirect loss and consequential damage due to defaults in the delivered object are only liable for compensation if such damage can be typically expected when used for its intended purpose.

In the case of our liability for simple negligence the liability to pay compensation for property damages and any further loss of assets resulting thereof shall be limited to an amount of 25% of the net delivery value even if this is a case of infringement of obligations essential to the contract.

If our performance is delayed after the due date the contractual partner may set us a reasonable deadline for delivery and after expiry of this additional deadline is entitled to withdraw from the contract. As long as the contractual partner has not declared his withdrawal we shall be entitled to fulfilment even after expiry of the deadline.

The contractual partner is obliged to take all immediate measures to reduce damages. Should he fall into default due to this obligation, we do not have to remedy any consequences of our default.

11. Storage Costs, Bearing Costs

Should the contractual partner fall into default of acceptance or should the production time be delayed because the contractual partner does not fulfil his contractual obligations, or should the dispatch be delayed on request of the contractual partner, any storage costs incurred will be charged to him at a half per cent of the invoice amount for each week or part thereof. The contractual partner has the possibility to prove lower costs. In such a case, the risk of accidental loss or deterioration of the

object of delivery will pass to the contractual partner at the moment in which his delay in acceptance commences.

12. Place of Fulfilment, Shipping, Packaging, Risk Transfer, Acceptance

Place of fulfilment for all obligations under the terms of this contractual agreement is Atlay unless otherwise determined.

Shipping shall always take place ex-works at the cost and risk of the contractual partner also when delivery is performed with contracted vehicles. The form of packaging and delivery is subject to our discretion. Packaging is charged at cost price. On request of the contractual partner the shipment will be insured by us against breakage, transport, and fire and water damage.

The risk shall pass at the latest with the transfer of the object of delivery (whereby the commencement of the loading process is decisive) to the forwarder, carrier or any other third party performing the shipping or to our contractual partner. This will also apply when part-deliveries take place or if we have accepted any other services (e.g. shipping or installation). If the shipping or transfer is delayed as a result of circumstances the cause of which lies with the contractual partner, the risk shall be transferred to the contractual partner from the day on which the object of delivery is ready to ship and we have notified the contractual party to this effect.

In as far as acceptance should take place, the item is considered to be accepted when

- Delivery, and in as far as we are obliged to fulfil installation, and installation have been completed,
- We have called upon the contractual partner to accept,
- Twelve working days have passed since the delivery or installation or the contractual partner has begun using the item,
- The contractual partner has refused to acceptance of delivery for another reason than a defect reported to us which makes use of the item impossible or significantly affect use thereof.

13. Reservation of Ownership

We retain title of ownership to the delivered goods until the purchase price has been paid in full and until any and all future existing claims from the business relationship with our contractual partner have been paid. Should the value of the existing securities covered by the title of ownership exceed our secured claim by more than 20 %, we will release objects of delivery (on request of our contractual partner) at our own discretion.

Delivered items may neither be pledged nor given in security without our agreement until full payment has been made. Should a resale take place then only subject to property rights. Processing or reshaping will always be performed for us as manufacturer, but without any obligation. Should our ownership cease by combination it is herewith agreed that our contractual partner herewith assigns us a share according to the value of the partial ownership of the resulting uniform item.

It is understood that the contractual partner assigns to us all claims due to his acquirers arising from any resale and in particular payment of the buying price. The contractual partner must inform us immediately if any third party claims the retained goods and in particular if seizure takes place. Costs arising for us from the measures to be taken to eliminate intervention, especially any intervention proceedings shall be borne by the contractual partner in as far as these could not be recovered from the counterparty. The contractual partner is obliged to send us, on our request, a list of the remaining retained goods, their whereabouts and a list of claims of the garnishees and copies of all invoices. The assertion of the right of retention as well as the seizure of the delivered item by us shall not count as withdrawal from the contract.

14. Warranty, Liability for Material and Title Defects

The warranty period for newly produced items shall be one year starting from the transfer of risks.

Used items shall be sold as seen. The respective status shall be deemed in conformity with the contract. Any warranty is explicitly excluded except in the case of deliberate and gross negligence.

Exceptions apply, in the event of title defects existing in an in rem right of a third party, on the basis of which the third party can demand return of the item. The legal warranty period applies in the case of deliberate and gross negligence in the case that we have maliciously concealed defects or that we have accepted an explicit durability and quality warranty in writing.

The delivered objects shall be carefully examined immediately after delivery to the client or to the third party named by him. They count as being accepted if we do not receive a written defect complaint concerning obvious defects or any other defects which were recognizable on immediate, careful examination, within seven working days after delivery of the object, or otherwise within seven working days after discovery of the defect or any earlier point in time at which the defect became obvious to the contractual partner during normal use of the object without further inspection. The faulty item must be returned to us freight prepaid on our request. In the event of a justified complaint we will reimburse the costs of the cheapest shipping method. This does not apply when the costs increase because the delivered object is situated at another place other than at the place of approved use. There is no warranty on defects which have not been timely reported.

We are entitled to choose whether to rectify faults or to deliver flawless goods within a reasonable period of time. We are entitled to perform such modifications on the goods which have become necessary due to the defects as long as the contractual performance is not significantly changed.

Machines or machine parts which we exchange, repair or replace within the framework of warranty are not subject to any special warranty. The warranty for the rendered replacement shall end with the expiry of the warranty period for the originally delivered goods.

The parties are in agreement that possibly more than two modification attempts for the elimination of defects may be necessary owing to the complexity of the goods. If the rectification of defects fails finally, the contractual partner can demand a reduction in price according to legal stipulations or may withdraw from the order in question. Withdrawal from the order is excluded if only negligible impairment of the value or the usage of the goods exists, as well as in the case that the contractual partner is in default of acceptance or is predominantly responsible for the defects himself.

As long as the contractual partner has not declared his withdrawal to us we are entitled to fulfilment even after expiry of any possible deadlines.

Possible claims for damages and for reimbursement of expenses on the part of the contractual partner are limited to the compensation of such damages or expenses which are typically foreseeable – except in the case of deliberate or gross negligence.

Should it be proven that no warranty claim exists the contractual partner shall remunerate our performed services according to the respective general valid prices at the time of the performance.

The liability for defects does not cover natural wear and tear (wear parts excluded) nor does it cover damages which result from incorrect handling or excessive usage on the part of the contractual partner. Modifications or repairs which are made by the contractual partner or third parties without our prior written approval forfeit any claims to warranty.

The contractual partner is obliged to undertake repairs according to our instructions to a reasonable extent.

If the contractual partner is in default of payment we will be released from any obligation to warranty service for the length of the default.

15. Reservation of Right of Withdrawal

In the case of unforeseen events as well as in the case of an impossibility of contractual execution subsequently ascertained we shall be granted the right to withdraw from the contract either in part or entirely. Should it become known to us that after conclusion of the contract the contractual partner is in difficult financial circumstances, we may demand securities for performing services or withdraw from the contract taking into account any expenses incurred.

16. Liability

In as far as deviations from the terms and conditions for sale and delivery have not been stipulated, our liability for any breach of duty is limited as follows:

We shall be liable without restriction for deliberate and gross negligence also for our government bodies, legal representatives and agents as well as for damages resulting from injury of life, limb and health which are based on breach of duty.

We shall be liable for any negligent violation of basic contractual obligations on the grounds of deliberate and gross negligence. Liability is limited to 1 mi € (one million Euros).

17. Written Form Requirement

Verbal agreements have not been made. Any amendments to the contractual agreements shall only be valid when they have been confirmed in writing.

18. Place of Jurisdiction

The place of jurisdiction for all disputes arising from this contract is Cochem. We are, however, entitled to take action against the contractual partner at his place of jurisdiction. Any mandatory provisions of applicable law providing for exclusive jurisdiction shall remain unaffected by this clause.

19. Applicable Law

This contract shall be governed exclusively by the laws of the Federal Republic of Germany. The application of the UN Sales Convention (CISG) is excluded.

20. Severability Clause

In so far as the contract or these general terms and conditions for sale and delivery contain any loopholes, those legally effective provisions which the contractual partners would have agreed according to the commercial aims of the contract and the purpose of these general terms and conditions for sale and delivery if they had been aware of the loopholes, are considered to be agreed for filling these loopholes.

Correspondingly, the same is valid, even if individual provisions thereof become ineffective.

Notice:

The contractual party acknowledges that we save all data from the contractual relationship according to § 28 BDSG for the purpose of data processing and that we reserve the right to transfer these to third parties (e.g. insurance companies) in as far it is necessary for the fulfilment of contract.

INGENIA GmbH, Altlay