

INTERNATIONALE METALL IMPRÄGNIER GMBH  
**GENERAL TERMS AND CONDITIONS OF SALE**

**1. GENERAL, SCOPE OF APPLICATION**

- 1.1 These General Terms and Conditions of Sale (General Terms) shall apply exclusively to all supplies, services and quotations of Internationale Metall IMPrägnier GmbH (IMP). Terms and conditions of the Customer, which complement, deviate from or are in contradiction to these General Terms are not accepted by IMP, unless IMP explicitly consents in writing. They shall not become part of the agreement with the Customer (Agreement) even if IMP provides supplies or works while aware of such terms or if IMP refers to a letter which contains or refers to such terms.
- 1.2 Agreements, amendments or addenda to agreements, as well as individual agreements, are read and construed as fixed in writing or as confirmed in writing by IMP.
- 1.3 Addenda or amendments to Agreements, declarations of intent by the Customer after conclusion of the Agreement or deviations from these General Terms must be expressly accepted in writing by a managing director or director of IMP. Writing in the meaning of this paragraph shall include, but not be limited, to transmission by way of telecommunication and declaration by way of e-mail.
- 1.4 These General Terms also apply to all future Agreements with the Customer.
- 1.5 These General Terms shall apply only towards entrepreneurs, public law entities and public law separate estates as defined by § 310 Abs. 1 of the German Civil Code ("*Bürgerliches Gesetzbuch*" - BGB).

**2. OFFERS, QUOTATIONS**

- 2.1 All quotations by IMP shall be without a legal obligation, unless they have expressly been labelled binding or set a specific deadline for acceptance.
- 2.2 IMP may accept orders and offers within 14 days following receipt of such order.
- 2.3 Statements by IMP regarding the products or services to be supplied, namely to measures, use or tolerances, as well as their representation, shall be approximate only, unless the use under the Agreement requires precise compliance with such statements. Deviations which are customary in the industry, or required under the law or for product safety are reserved, unless they affect use of the object for the purpose provided under the Agreement.
- 2.4 IMP reserves all and any intellectual property rights (including copyrights, trademarks and service marks, business names and trade names, know-how and

trade secrets and all other intellectual property rights whether registered or unregistered) (Intellectual Property Rights) in or associated with the supplies or services, including pictures, drawings, calculations, drafts and calculations, as well as in tools, dies and other equipment designed by IMP or by third parties upon instruction by IMP. Such objects and documents, as well as those marked as "confidential", may be disclosed to third parties only upon IMP's prior written consent. The Customer shall return objects and documents in the meaning of this paragraph to IMP upon request and shall destroy all copies when they are no longer needed in due course of business or when negotiations do not result in conclusion of an Agreement.

- 2.5 Nothing in this Agreement shall be construed as conferring any licence or granting any rights in favour of the Customer in relation to the Intellectual Property Rights and IMP asserts its full rights to control the use of its trademarks and reputation in any trade marks affixed or applied to the supplies or services shall accrue to the sole benefit of IMP.
- 2.6 The Customer shall sell the supplies in their original state, appearance and as labelled by IMP. It may not repackage, alter, process or decant the supplies in any way, nor may it change the labels.
- 2.7 The Parties shall treat strictly confidential the terms of this Agreement as well as all confidential information of the respective other Party, namely industrial and business secrets. Confidential information shall be any piece of information which is known to a limited number of people only, which the respective Party has a legitimate interest to keep confidential and which that Party wishes or, due to the nature of the information, presumably wishes to keep confidential. The Parties shall not use confidential information other than for fulfilling this Agreement. This shall apply after termination of this Agreement.

### 3. **PRICES, PAYMENT TERMS**

- 3.1 Unless otherwise agreed in writing, prices of IMP shall be EX WORKS (EXW, INCOTERMS 2010) Monheim and exclusive of packaging and applicable value-added tax.
- 3.2 The price for the supplies or services to be paid by the Customer is based on the prices set out in IMP's quotation. Prices are subject to variation by IMP prior to performance of the services or delivery of the supplies and the Customer shall pay such varied price.
- 3.3 Invoices shall be due upon receipt. Unless otherwise agreed in writing, the Customer shall make all payments due to IMP within 30 days of the date of invoice and, if it fails to do so, it shall be in delay of payment even without a reminder. For timeliness of payments to IMP, receipt of clear funds on the bank account of IMP shall be decisive.

- 3.4 If the Customer is in delay of payment, the consequences of delay under statutory law shall apply. The lump-sum under § 288 Abs. 5 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall not be credited to damages for legal costs incurred.
- 3.5 The Customer may only set off with counterclaims which are undisputed, have been established by a judgment which can no longer be appealed or which are ready for decision in a lawsuit. The same shall apply for asserting withholding rights.
- 3.6 The Customer has withholding rights only for counterclaims arising under the same Agreement. In an ongoing business relationship, every order shall give rise to a new Agreement.

#### 4. **TIME OF SUPPLY AND PERFORMANCE, DELAY**

- 4.1 Delivery times stated by IMP shall not be binding unless IMP has explicitly agreed a fix time period for delivery or a fixed date.
- 4.2 To the extent that it is acceptable for the Customer, namely if the Customer can make use of partial deliveries and is not caused substantial additional expenses, IMP is entitled to deliver supplies or services in instalments and before agreed delivery dates. Deliveries under this paragraph shall be invoiced immediately.
- 4.3 IMP shall only be obliged to supplies and services as far as the Customer has fulfilled its own obligations timely and duly, namely confirmed specifications or made advance payments, if agreed with IMP.
- 4.4 All supplies by IMP are subject to IMP's being supplied itself in a correct and timely manner.
- 4.5 In the event and for the duration of force majeure, IMP is not obliged to provide supplies or services, even if IMP has been in delay of performance when the force majeure event began. Force majeure shall comprise all circumstances for which IMP is not responsible and which make impossible or unacceptably onerous the supplies or services during the duration of force majeure, including but not limited to lawful industrial action, acts of government or general lack of energy or raw material supply. If force majeure persists for at least two months, IMP may rescind the Agreement without further obligations in relation to the Customer.
- 4.6 The Customer may remind IMP and set a grace period only when the time for delivery as agreed has expired. The grace period shall be no shorter than four weeks. Claims for damages for delay of the Customer shall be subject to § 8 below.

## 5. **TRANSFER OF RISK, DISPATCH**

- 5.1 Unless otherwise agreed in writing, supplies by IMP shall be made EXW Monheim (INCOTERMS 2010).
- 5.2 Risk of loss and damage shall transfer to the Customer EXW even if IMP organizes dispatch and/or bears the costs of shipping. In such cases, IMP may choose the way of shipping and select the carrier. IMP shall take out insurance for damage in transport or other risks only upon express instruction in writing and at the expense of the Customer.
- 5.3 If the Customer fails to collect supplies within eight calendar days of an agreed date or within a reasonable time period after notice by IMP, IMP may have dispatched the supplies by a carrier of its own choice at the expense of the Customer. Other and further rights of IMP because of Customer's default or delay of performance shall not be affected.
- 5.4 If acceptance ("*Abnahme*") of a work or supplies is required under the law or under the Agreement, the supplies or works shall be deemed accepted when they are ready for acceptance and IMP has summoned the Customer to declare acceptance within a period of 14 calendar days, or if the Customer starts using the supplies or the object of the work. This shall also apply if the Customer refuses to accept the work or the supplies but for a defect which affects use of the work or the supplies seriously.

## 6. **RETENTION OF TITLE**

- 6.1 IMP retains title to supplies and all movable items supplied under the Agreement (items under retention of title) until it has received in full all sums due from the Customer on any account in the business relation.
- 6.2 The Customer shall store items under retention of title for IMP without charge, handle them with care and keep them separate from its own property or property of third parties. It shall mark them property of IMP upon request. The Customer shall furthermore take out at own cost insurance coverage for such items at least for the amount of IMP's invoice against damages arising from fire, water, theft and natural hazard.
- 6.3 If a third party seizes items under retention of title or interferes with IMP's property in any other way, the Customer shall inform IMP in writing without undue delay and support IMP in proceedings to protect its property, namely under § 771 of the German Code of Civil Procedure ("*Zivilprozessordnung*", ZPO) or equivalent other remedies. As far as the third party does not reimburse the court fees and out-of-court costs for such remedies to IMP, the Customer shall be liable to IMP for such unpaid costs.

- 6.4 The Customer shall be entitled to resell items under retention of title in the course of ordinary business, unless it is in default. Default shall be breach of the Agreement, namely delay in payment, so IMP therefore rescinds the Agreement or would be entitled to do so. The Customer assigns all claims against its own customers from the resale of items under retention of title as a collateral now already. IMP accepts this assignment. The Customer may still collect its claims, unless it is in default.
- 6.5 Any processing or alteration of items under retention of title by the Customer is conducted on behalf of IMP. If the items are processed in combination with other items to which IMP does not have title, IMP will acquire joint property of the finished product or any other product in a proportion equaling the value of IMP's item in relation to the value of the finished or other product. The product resulting from such processing or IMP's share in such a product shall in turn be treated like items under retention of title.
- 6.6 In a case of default, IMP shall be entitled to recover the items under retention of title. Such recovery shall not as such be deemed rescission of the Agreement.
- 6.7 IMP shall release items under retention, rights in products of the Customer or claims assigned by the Customer of its choice if the aggregate value of such items, rights and claims exceeds 110% of the secured receivables.

## 7. **WARRANTY FOR DEFECTS**

- 7.1 IMP does not give any warranty but that supplies and works comply with the specifications as provided under the Agreement upon delivery. In particular, IMP does not warrant fitness of supplies for a particular purpose or merchantability of its products. Statements in advertising, brochures or given orally shall give rise to warranty rights only if expressly made part of the Agreement.
- 7.2 The Customer shall give notice of defects which can be detected by way of an examination required under § 377 of the German Commercial Code („*Handelsgesetzbuch*“, HGB) in writing without undue delay, however, no later than seven calendar days after delivery. It shall give notice of other defects in the same way, at the latest seven calendar days after detection.
- 7.3 Defective supplies shall be rectified by supply of replacement. The cost shall be borne by IMP, unless these costs are increased because the item supplied has been moved to a place different from the place where the item has to be used as contemplated under the Agreement. The Customer shall support IMP in searching the defects and rectifying them. IMP may refuse rectification to the extent it is only possible at disproportional cost. §§ 478, 479 BGB shall not be affected.

- 7.4 If rectification fails or is delayed inappropriately, the Customer shall be entitled to rescind the Agreement or to claim reduction of the price as provided by statutory law. A failure to rectify may only be assumed after two attempts have failed.
- 7.5 Warranty for defects shall be excluded as far as defects have been caused by statements, calculations or requirements imposed by the Customer. It shall also be excluded to the extent the Customer or a third party inappropriately alter, use or store products and thereby impede rectification. For the avoidance of doubt, no warranty rights shall arise for fair wear and tear, abnormal or unsuitable conditions of storage, or acts or omissions of the Customer or a third party relating to transportation, use or maintenance of the supplies.
- 7.6 Claims of the Customer arising out of this Clause other than under §§ 438 par. 1 No. 2, 634a par. 1 No. 2 BGB shall be time-barred one year beginning by the transfer of risk, unless defects have been fraudulently concealed. The right for the Customer to claim damages for defects is subject to Clause 8.

## **8. GENERAL LIMITATION OF LIABILITY OF CLAIMS AND INDEMNIFICATION**

- 8.1 IMP shall be liable for intentional and grossly negligent acts as provided under statutory law.
- 8.2 In cases of simple negligence, IMP shall be liable, under any legal theory, only as far as IMP has violated an obligation which to honour is essential for the purpose of the Agreement and which the Customer may typically rely upon that it is fulfilled. In such cases, IMP shall only be liable for typical damages which were foreseeable when IMP concluded the Agreement. Such damages shall be time-barred one year after limitations have started according to statutory law. Limitations of liability according to this paragraph shall not apply to damages to life, body or health, to damages according to the German Product Liability Act or breach of a guarantee.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 If IMP produces or supplies items or services according to statements, drawings, models, samples or other requirements set by the Customer, the Customer warrants that such requirements do not infringe intellectual property rights of third parties, unless such infringement is known to IMP upon conclusion of the Agreement. The Customer shall indemnify and hold harmless IMP on first demand against any claims of third parties, including but not limited to reasonable expenses for legal defense, and shall be liable to IMP for harm caused by the infringement.
- 9.2 The Customer shall indemnify and hold harmless IMP on first demand against any claims of third parties caused by any other breaches of the Agreement committed

by intent or negligence, including but not limited to reasonable expenses for legal defense, and pay damages.

10. **MISCELLANEOUS**

- 10.1 Place of performance for all obligations arising out of the business relation shall be the place of business of IMP.
- 10.2 The Customer is not entitled to assign its claims arising under the business relation with IMP. This shall not apply to claims for money; IMP may, however, still pay funds to the Customer and thereby fulfil its obligation irrespective of assignment.
- 10.3 If any clause in these General Terms is unenforceable, the validity of the other clauses shall not be affected.
- 10.4 If the Customer is a merchant in the meaning of the HGB, an entity under public law or special assets under public law, or if it does not have a general venue in Germany, exclusive court of venue for all controversies arising under or in the context of the business relation shall be the place of office of IMP. IMP may sue the Customer at its general venue, too.
- 10.5 German law shall apply exclusively. The application of the UN Convention of the International Sales of Goods shall be excluded.

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