

# GENERAL CONDITIONS OF SALE IPCO GERMANY GMBH (VERSION 2019)

## 1.0 Application, Offers

- 1.1 These General Conditions of Sale (Conditions) shall apply to all present and future contracts with commercial Customers, with public legal entities as well as public trusts in regard to deliveries and other services. The Customer's general terms and conditions shall not be binding even if we do not expressly object to them again after their receipt.
- 1.2 Our offers are not binding to us. Oral agreements, promises, assurances and guarantees made or given by our sales staff shall not be binding unless confirmed by us in writing.
- 1.3 Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.
- 1.4 Grades and sizes shall be determined in accordance with the DIN-/EN, ISO or mills' standards, in absence of such standards with the trade usage. Any reference to such standards, mill's standards or test certificates as well as any indication with regard to grade, size, weight or usage of the goods shall not be regarded as a representation or guarantee. The same shall pertain to any declaration of conformity, mills' confirmation and to any related marks such as CE and GS.

## 2.0 Delivery

- 2.1 Our commitment to deliver is always subject to our own supplier's correct and timely delivery.
- 2.2 Any confirmation as to delivery times shall only be approximate. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order.
- 2.3 Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be despatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.
- 2.4 Delivery times shall be extended in case of Customer's late performance of his contractual obligations. Within events of force majeure or unforeseeable events we shall be entitled to postpone deliveries for a reasonable time. This condition shall apply in case the Customer further clarifies details of the order or we have to inquire about these details.
- 2.5 We may exceed or reduce the agreed quantities up to 10 %.

## 3.0 Prices and Payment

- 3.1 The prices referred to indicate the price ex warehouse (in case of direct sales: ex mill) plus VAT. Costs for packaging are not included.
- 3.2 Unless otherwise agreed to, prices and terms referred to are those effective at the time when the goods are delivered.
- 3.3 Should taxes or other extraneous expenses included in the agreed upon price change or be added, we shall be authorised to modify the price relative to the respective change. The same shall apply if price-components or surcharges not attributable to our part (e.g. alloy-surcharges) change or be added.
- 3.4 Payment shall be made within the term of payment agreed upon, but not later than 30 days after the date of the invoice without cash discounts and regardless of our duty to hand over certificates (e.g. test certificates) so that we can dispose of the sum on the due date. The Customer may retain or set off any counterclaims only in so far as his claims are undisputed or have become legally binding.
- 3.5 Should the Customer default in payment, he will be liable to pay interest at 8 % points above the basic interest rate, unless higher rates have been agreed upon. We reserve the right to claim additional damages resulting from late payment.
- 3.6 Should it become evident after the conclusion of the contract, that payment is jeopardised by the Customer's lack in financial means, or should the Customer be in default with a considerable portion of the amount due or should other circumstances arise which show a material deterioration in the Customer's financial position after the conclusion of the contract, we shall be authorised to make use of our statutory rights to withhold the performance of our contractual obligations and to make due any and all of our non statute-barred accounts receivable resulting from the same legal relationship.

## 4.0 Dispatch and Passing of Risk

- 4.1 Unless otherwise agreed we shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier. The Customer shall bear the costs for the dispatch and unload the goods at his cost. We will buy insurance only if expressly requested to by the Customer.
- 4.2 In all transactions, including fob, cif, freight prepaid and freight-free deliveries, the risk of loss or damage to the goods and the risk of seizure of the goods shall pass to the Customer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse.
- 4.3 Should the Customer delay the dispatch for more than one month after his notification of the goods' readiness for dispatch, we are entitled to damages for our additional warehouse costs, at least to 0,7 % of the invoiced sum unless the Customer proves that our actual damages fall short of this amount. Our claims for damages resulting from Customer's default in taking delivery ("Annahmeverzug") shall remain unaffected by the aforesaid.
- 4.4 In case of damage to goods in transit the customer shall immediately notify the carrier in writing. The notification shall be signed by the carrier and attached to the bill of lading, the shipping order or the bill of delivery. Alternatively, the Customer may draw up a record of the damage.
- 4.5 In case of Customer's default to request delivery of those goods which have been notified to him as ready for dispatch, we are entitled, upon expiry of an additional period, to invoice the goods to him as if they have been delivered. . . .
- 4.6 The goods which have been notified to the Customer as ready for dispatch will be stored at the risk of the Customer.

## 5.0 Retention of Title

- 5.1 All goods delivered to the Customer shall remain our property (Reserved Property) until all of the Customer's accounts resulting from the business relationship with him, in particular any account balances have been settled. This condition shall apply to any future as well as any conditional claims including accepted notes and such cases where the Customer will affect payments on specifically designated claims.
- 5.2 With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of § 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause 5.1 of these Conditions. If the Customer manufactures, combines or mixes the Reserved Property with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the Customer herewith transfers to us any rights which the Customer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause 5.1 of these Conditions.
- 5.3 The Customer may resell the Reserved Property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clause 5.4 through 5.6 of these Conditions. The Customer shall not be entitled to dispose of the Reserved Property in any other way.
- 5.4 The Customer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Customer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Customer. In the case of resale of goods in which we have co-ownership rights according to clause 5.2 of these Conditions, the assignment shall be limited to the part which corresponds to our co-ownership rights.
- 5.5 The Customer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. We are entitled to withdraw this right if the Customer defaults in payment with a significant amount; fails to honour a bill of exchange; or files for bankruptcy. In this case, we shall be entitled to prohibit the Customer from reselling, manufacturing or removing the purchased goods and to take back the Reserved Property. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract. The statutory regulations of the Insolvenzordnung (= German Insolvency Act) shall remain unaffected.
- 5.6 The Customer shall - upon our request - immediately inform his Customers of such assignment and to forward to us any information and documents necessary for collection. The Customer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party.
- 5.7 Should the total invoiced value of our collateral exceed the amount of the secured receivables by more than 50 %, we shall - upon the Customer's request - release pro tanto collateral at our discretion.

## 6.0 Testing and Inspection

- 6.1 Testing and inspection of the goods shall be carried out in accordance with DIN/EN 50049/10204 and the relevant standards. The costs of inspection are subject to the mill's price list. Further testing costs will be invoiced to the customer according to the incurred expenses.
- 6.2 In case of extraordinary testing and inspection the goods must be inspected within 12 days after Customer's notice of readiness. Upon expiry of this period, we are entitled to store the goods at the Customer's cost and risk or to ship them at our discretion and to invoice them to the Customer.
- 6.3 The weight of the goods shall be determined on our or our suppliers' scales. Where provided by law, the weight may be determined without weighing in accordance with DIN or the standards. The same shall apply for the determination of alloy-surcharges.

## 7.0 Notification and Warranty Provision

- 7.1 The conformity of the goods with the contract and the absence of defects is subject only to the express agreements of the parties. The goods are in conformity with the contract if, at passing of the risk, their order and condition diverges not or not substantially from the specifications agreed upon. We are not liable for the suitability of the goods' for a particular purpose unless this has been expressly agreed upon. After passing of the risk we are not liable for damages resulting from deterioration, loss or improper utilisation of the goods
- 7.2 The Customer shall immediately notify us in writing of any defects of the goods, at the latest five days after their delivery. As defects of the goods will also be regarded missing or incorrect certificates (e.g. work certificates, acceptance certificates). Defects which, even upon careful inspection, cannot be discovered within this period must be notified to us in writing immediately upon their discovery, at the latest before the elapse of any agreed or statutory warranty period. In such cases the Customer must suspend any processing or manufacturing of the goods.
- 7.3 If and in so far the Customer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect or deliver non-defective goods ("substitution"). Should we fail or decline the substitution, the Customer may, upon the elapse of an adequate additional period of time set by him, withdraw from the contract or reduce the purchase price. In cases where the defect is minor, where the goods have already been resold, processed or transformed, he may only reduce the purchase price.
- 7.4 We will reimburse the Customer for his expenditures in connection with the substitution only in so far as such expenditures are reasonable and proportional to the purchase price of the goods. We will not reimburse the Customer for any expenditures in connection with the redelivery of the goods to any other place than the place of performance, unless such redelivery corresponds to the contractual use of the goods.
- 7.5 If and in so far the goods are subject to contractually agreed testing and inspection by the Customer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection.
- 7.6 If the Customer fails to immediately give to us the opportunity to inspect the defect, especially if he fails - upon our request - to immediately make the goods or samples hereof available to us, he will lose all of his warranty rights.
- 7.7 Our further liability is subject to Section 8.0.

## 8.0 Restriction of Liability and Limitation Periods

Neither the customer nor we shall be liable to each other for any indirect or consequential damages or losses whether by law, in equity or contract, resulting from a breach of any contract or any provision of a purchase document, such as, without limitation, loss of production, loss of profit (whether direct or indirect), loss of reputation or damages or losses paid to third parties. This applies even if the breaching party was advised in advance of the possibility of the occurrence of any such damage or loss.

Furthermore, and notwithstanding anything to the contrary herein or in any purchase document, our liability to the customer under each purchase document shall be limited to (30 %) of the total agreed purchase price payable by the customer to the seller under such purchase document and any claim in excess thereof shall be null and void. The foregoing limitations do not apply to claims based on breach of confidentiality, intentional breach of this agreement, or willful misconduct

## 9.0 Place of Performance / Jurisdiction / Applicable Law

- 9.1 The place of performance for both parties shall be at Fellbach. The place of jurisdiction - also for summary claims on a bill or a cheque - shall be at Fellbach (Local Court of Waiblingen / Regional Court of Stuttgart) or - at our discretion - at the Customer's seat.
- 9.2 All legal relationships between us and the Customer shall be governed by the non-standardised laws of the Federal Republic of Germany, including the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UNCITRAL), provided that our liability is subject exclusively to Section 8.0 of these conditions.