

**General Terms and Conditions of Sale**

Applicable in national and international business transactions with companies, legal persons under public law and special public funds.

**1. Application**

- 1.1 These General Terms and Conditions of Sale (hereinafter: "Sales Conditions") shall apply to all business transactions between Bernhard Ide GmbH & Co. KG (hereinafter: "IDE") and the customer, even if they are not referred to in subsequent contracts.
- 1.2 Terms and conditions of the customer that conflict with, supplement or deviate from these Sales Conditions shall not become part of the contract unless their application is expressly approved by IDE in writing. These Sales Conditions shall apply even if IDE makes a delivery to the customer without reservations whilst being aware of the customer's conflicting or deviating terms and conditions.
- 1.3 Agreements which supplement or deviate from these Sales Conditions and which are made between IDE and the customer for the performance of a contract must be set out in writing in the contract. This shall also apply to the cancellation of this requirement of the written form.
- 1.4 Any rights beyond these Sales Conditions to which IDE is entitled by law shall remain unaffected.

**2. Formation of contract**

- 2.1 All offers shall be subject to change and non-binding unless they are expressly designated as binding offers.
- 2.2 Pictures, drawings, information about weight and measurements and other descriptions of the goods that may be contained in the documentation which forms part of the offer shall be approximations only unless they are expressly stated to be binding. Such items shall not constitute an agreement on, or guarantee of, an according quality of the goods.
- 2.3 Orders shall not become binding until they have been confirmed by IDE by means of a written order confirmation. Order confirmations that are generated using automatic devices and, therefore, do not contain a name and signature shall be deemed written order confirmations. If IDE does not respond to offers, orders, requests or other declarations from the customer, this shall only be deemed approval if an express written agreement to this effect has been made between IDE and the customer. To the extent that an order confirmation contains obvious errors, misspellings or calculation mistakes, it shall not be binding upon IDE.

**3. Delivery; delivery periods; default**

- 3.1 Unless expressly otherwise agreed, delivery shall be "ex works" (EXW, as defined by Incoterms® 2010), 73760 Ostfildern, Germany. At the request and expense of the customer, the goods will be shipped to a different destination (hereinafter: "sale involving shipment"); in this case, IDE shall have the right to determine the manner of shipment.
- 3.2 The scope of the delivery shall be as set out in the written order confirmation from IDE. Any changes to the scope of the delivery must be approved by IDE in writing to be valid. IDE reserves the right to make changes to the design or form of the goods to the extent that such changes are insignificant and not unreasonable for the customer.
- 3.3 IDE shall have the right to make partial deliveries unless this is unreasonable for the customer.
- 3.4 Delivery periods must be agreed in writing.
- 3.5 The delivery period shall commence when IDE dispatches the order confirmation, but not before all documents, permits and approvals to be obtained by the customer have been provided in full and the agreed down-payment, if any, has been received. In order for

the delivery period to be adhered to, the customer must timely and properly perform its other obligations.

- 3.6 An agreed delivery period shall be deemed met if the goods have left the business premises by the time the delivery period expires or – if the customer has announced that it will refuse acceptance and the goods have not, therefore, left the business premises – IDE has given notice that the goods are ready for dispatch. The delivery shall be conditional upon IDE being timely and properly supplied by its own suppliers.
- 3.7 If the failure to comply with delivery periods is due to force majeure or other obstacles for which IDE is not responsible, such as war, terrorist attacks or import and export restrictions, including restrictions affecting IDE's suppliers, the agreed delivery periods shall be extended for the duration of the existence of such obstacles. This shall also apply if IDE and/or its suppliers are affected by industrial action.
- 3.8 If the customer and IDE have entered into a fixed-term framework agreement regarding future deliveries and the customer fails to order the goods in a timely manner, IDE may, after a reasonable additional period of time set for performance has expired, deliver the goods and issue an invoice, rescind the contract or – if the customer has acted wilfully or negligently – claim damages in lieu of performance.

**4. Transfer of risk**

- 4.1 The risk of accidental loss or destruction of, or of an accidental deterioration in, the goods shall pass to the customer as soon as IDE has made the goods available at the place of delivery mentioned in the first sentence of clause 3.1 above or – in the event of a sale involving shipment, as defined in the second sentence of clause 3.1 above – as soon as the goods have been handed over to the person in charge of carrying out the transport. This shall also apply if partial deliveries are made or IDE has assumed further obligations, such as the transport costs or the assembly of the goods at the customer's place. At the request and expense of the customer, IDE shall insure the goods against the risks specified by the customer by taking out a transport insurance policy.
- 4.2 If the customer defaults on its obligation to take delivery of the goods, IDE may claim damages for the losses suffered due to default. The liquidated damages shall be in an amount equal to 0.5% of the net price of the consignment per day of default; however, they shall be limited to a maximum of 5% of the net price of the consignment in total. The contracting parties may assert that further losses were suffered or that the loss actually suffered was smaller. The risk of accidental loss or destruction of, or of an accidental deterioration in, the goods shall pass to the customer at the time the customer starts to default on its obligation to take delivery of the goods.
- 4.3 Without prejudice to the customer's claims for defects, if any, the customer shall be obliged to take delivery of the goods supplied even if they contain minor defects.

**5. Prices**

- 5.1 The agreed price shall be the price in euros that is stated in the order confirmation, plus value-added tax. The statutory value-added tax is not included in the price and shall be stated separately in the invoice at the statutory rate which applies on the date of issue of the invoice.
- 5.2 Unless specifically otherwise agreed, all prices are "ex works" (EXW, as defined by Incoterms® 2010), plus packaging. In the event of a sale involving shipment, as defined in the second sentence of clause 3.1 above, the customer shall bear the transport costs.

**6. Terms of payment**

- 6.1 The deadlines for payment are set out in the order confirmation.

- 6.2 A payment shall be deemed made when IDE is able to dispose of the amount at its place of business. If IDE accepts means of payment other than cash, payment shall again be deemed made when the relevant sum has been credited unconditionally to the bank account of IDE and/or when IDE is able to dispose of the amount owed.
- 6.3 If the time allowed for payment is exceeded, IDE may charge default interest at the rate of 9 percentage points above the base rate (Sec. 247 German Civil Code (BGB)). This shall not affect IDE's right to assert further claims for damages.
- 6.4 The customer shall have no right to set its claims off against claims of IDE or to exercise a right to retain with regard to its claims unless the customer's claims are undisputed or have been established in a judgment that cannot be appealed against. Furthermore, the customer may only exercise a right to retain if the customer's claims and the claims of IDE are based on the same contract.
- 6.5 IDE shall have the right to make the performance of outstanding deliveries or services contingent upon the customer paying in advance or providing security if circumstances become known after the conclusion of the contract which could significantly reduce the customer's creditworthiness and jeopardize the payment of IDE's outstanding claims under the relevant contract by the customer. This shall apply accordingly if the customer refuses to pay, or fails to pay, any outstanding claims of IDE and undisputed objections against IDE's claims or objections that have been established in a judgment which cannot be appealed against do not exist.
- 7. Claims for defects and liability**
- 7.1 The customer's rights arising from defects shall be governed by the statutory provisions, except to the extent otherwise provided below.
- 7.2 The customer's rights arising from defects shall be contingent upon the customer performing its statutory obligations to inspect and give notice of defects, in particular, on the customer inspecting all goods supplied upon receipt and giving IDE written notice of any obvious defects and of defects that could be identified during such inspection without undue delay after the goods were received. The customer must provide IDE with written notice of any hidden defects without undue delay after such defects have been discovered. In order for such notice to be deemed given without undue delay, it must be given within 8 working days after the delivery if the defects are obvious or could be identified during a proper inspection, and within 8 working days after the discovery if the defects were hidden; this deadline is met if IDE receives the notice or complaint before the expiry of the aforesaid period. If the customer fails to carry out a proper inspection and/or give notice of defects, IDE shall not be liable for the defect. When giving IDE notice of defects, the customer must provide a written description of the defects.
- 7.3 If a complaint about defects is unjustified, IDE may demand to be reimbursed by the customer for the expenses incurred by IDE unless the customer proves that it is not guilty of intent or negligence in respect of the unjustified complaint about defects.
- 7.4 Claims for a repair or replacement delivery shall be excluded in the event of minor deviations in quality, colour, width, weight, equipment or design which cannot be avoided technically.
- 7.5 If the goods contain defects, IDE may, at its option, remedy the defects or deliver goods which are free from defects.
- 7.6 If the item supplied is not at the place of delivery, the customer shall bear all additional costs and expenses which IDE incurs as a result of this fact when remedying defects unless such relocation is in line with the agreed use.

- 7.7 Rights arising from defects shall not exist
- in the event of natural wear and tear;
  - if the relevant quality of the goods or the damage is due to improper handling, storage or maintenance or excessive strain or use;
  - if the relevant quality of the goods or the damage is due to force majeure, to extraordinary external impacts that are not intended according to the contract or to the goods being used in a manner which does not correspond to their contractually intended or customary use.
- IDE shall not be liable for any quality of the goods which is due to the manner of processing or the material chosen if the customer requested a design or material that is not included in IDE's range of possible designs or materials.
- 7.8 IDE's contractual liability for damages within the scope of the warranty presupposes culpable conduct in any case, even if the law (in particular according to CISG in the context of international business transactions) provides for a strict liability for damages. The mandatory legal product liability remains unaffected by this.
- 7.9 IDE shall be liable without limitation for damage resulting from breach of guarantee or from death, bodily injury or damage to health. The same shall apply to wilful misconduct and gross negligence, mandatory statutory liability for product defects (especially under the German Product Liability Act), and liability if defects were concealed with fraudulent intent. In cases of slight negligence, IDE shall only be liable if material obligations are violated which result from the nature of the contract and are of particular importance for achieving the purpose of the contract. If such obligations are violated, and also in the event of default or if performance is impossible, IDE's liability shall be limited to the damage that can typically be expected with this contract.
- 7.10 The limitation period for the customer's claims for defects shall be 12 months and shall commence when the goods are delivered. Except where agreed out of goodwill, the limitation period shall not start anew as a result of a repair or replacement delivery. The above limitation period shall also apply to tort claims which are based on a defect of the goods. IDE's unlimited liability for damage resulting from breach of guarantee or from death, bodily injury or damage to health, for wilful misconduct and gross negligence and for product defects shall remain unaffected.
- 8. Retention of title**
- 8.1 The goods supplied shall remain the property of IDE until all claims of IDE against the customer which arise from the business relationship have been paid in full.
- 8.2 The customer shall be obliged to handle the goods which are subject to this retention-of-title clause (hereinafter: "Conditional Goods") with due care for as long as title is retained. In particular, the customer shall be obliged to sufficiently insure the goods at the customer's own expense at their replacement value against damage by fire, water and theft. The customer hereby assigns to IDE all claims for compensation arising from such insurance. IDE hereby accepts this assignment. If assigning such claims is not allowed, the customer hereby instructs the insurer to make payments, if any, only to IDE. This shall not affect any further claims of IDE. Upon request, the customer shall provide IDE with evidence of the conclusion of the insurance contract.
- 8.3 The customer shall be authorized, subject to revocation, to process, combine and mix the Conditional Goods in the ordinary course of business. The processing, combining and mixing (combining and mixing hereinafter also referred to as "transformation") of the Conditional Goods by the customer shall always be carried out for IDE. The customer's right to acquire the Conditional Goods shall continue to exist with

- regards to the processed or transformed object, to the extent and so far as a new object is created. If the Conditional Goods are processed or transformed with objects that do not belong to IDE, IDE shall acquire co-ownership of the new object in relation to the value of the Conditional Goods (in an amount equal to the invoiced amount including the VAT) and to the other processed or transformed objects at the time of the processing or transformation. The same provisions shall apply to the object created through the processing or transformation that apply to the other goods which are subject to retention-of-title.
- 8.4 The customer shall be authorized, subject to revocation, to sell the Conditional Goods in the ordinary course of business. The customer shall not be authorized to pledge the goods which are subject to this retention-of-title clause, to transfer them by way of security or to make any other dispositions which jeopardize the ownership of IDE. In the event of attachments or other encroachments by third parties, the customer must notify IDE without undue delay in writing and provide all the information needed, advise the third party of IDE's property rights and assist with any measures taken by IDE to protect the goods which are subject to this retention-of-title clause.
- 8.5 The customer hereby assigns to IDE its claims arising from the resale of the goods that are subject to this retention-of-title clause, along with all ancillary rights, in an amount equal to the amount invoiced, including value-added tax and irrespective of whether the Conditional Goods are sold without being processed or transformed. IDE hereby accepts this assignment. If the goods which are subject to this retention-of-title clause are sold with other goods not supplied by IDE, the claim arising from resale shall be assigned proportionately, according to the ratio of the value of the goods which are subject to this retention-of-title clause (final amount invoiced, including value-added tax) and the other goods sold. In the event of a sale of the goods where IDE has a co-ownership share as set out in Clause 8.3 above, the customer shall assign to IDE a share equivalent to IDE's ownership interest. If assigning such claims is not allowed, the customer hereby irrevocably instructs the third-party debtor to make payments, if any, only to IDE.
- 8.6 The customer shall be authorized, subject to revocation, to collect the claims which have been assigned to IDE in its own name. All amounts collected must immediately be remitted to IDE.
- 8.7 IDE may revoke the customer's right to resell and transformation of the goods and the authority to collect the claims if the customer fails to properly perform its payment obligations to IDE, defaults on one or more payments or stops payment or if a petition is filed to institute insolvency proceedings against the assets of the customer.
- 8.8 At the request of the customer, IDE shall be obliged to release the security interests to which IDE is entitled to the extent that the realizable value of such security interests exceeds IDE's claims arising from the business relationship with the customer by more than 10%, upon deduction of the mark-downs customary in the banking business. IDE may choose which security interests it wishes to release.
- 8.9 In the event that goods are supplied to destinations with other legal systems where the retention-of-title provisions set out in clauses 8.1 to 8.8 above do not provide the same degree of protection as they offer in the Federal Republic of Germany, the customer hereby grants IDE an equivalent security interest. If the creation of such a security interest requires further measures, the customer shall do whatever is necessary to grant IDE such security interest without undue delay. The customer shall assist with all measures that are required for, and conducive to, the validity and enforceability of such security interests.

## **9. Services/work**

- 9.1 To the extent and so far as IDE provides services/work (e.g.) assembly services, the statutory provisions set out in Secs. 611 et seq German Civil Code (BGB) shall apply to services and Secs. 631 et seq German Civil Code (BGB) shall apply to work.
- 9.2 If assembly services are carried out together with the delivery, this shall not result in the contract as a whole taking on the character of a contract for services/work. All provisions relating to the sale and delivery of the goods, in particular those relating to the transfer of risk pursuant to Clause 4 and the claims for defects and liability pursuant to Clause 7, shall continue to apply in full.
- 9.3 The remuneration of the provision of services/work is not due upon acceptance, but due according to the agreed payment deadlines.

## **10. Rescission**

- 10.1 If the customer breaches the contract, in particular, if the customer defaults on its payment obligations, IDE shall – without prejudice to its other contractual and statutory rights – have the right to rescind the contract after a reasonable additional period of time set for performance has expired.
- 10.2 IDE shall have the right to rescind the contract without setting an additional period of time for performance if the customer stops payment, files for insolvency or applies for the institution of similar proceedings against its assets for debt settlement purposes.
- 10.3 After notice of rescission has been given, the customer must grant IDE or IDE's agents without undue delay access to the goods which are subject to the retention-of-title clause and surrender such goods. For the purposes of the settlement of IDE's due claims against the customer IDE may sell the goods which are subject to the retention-of-title clause otherwise after a timely announcement to this effect. Upon deduction of reasonable selling costs, the proceeds from sale shall be credited against the customer's liabilities.
- 10.4 The provisions of this clause 10 shall not operate to limit any statutory rights or claims.

## **11. Confidentiality**

- 11.1 The customer shall be obliged to treat all information about IDE that becomes available to the customer and is designated as confidential or can be identified as a trade or business secret due to other circumstances as confidential for an unlimited period of time, and the customer may not record, disclose or exploit any such information.
- 11.2 The customer shall enter into adequate contractual agreements with the employees and agents working for it to ensure that they, too, refrain for an unlimited period of time from any exploitation, disclosure or unauthorized recording of such trade and business secrets for their own purposes.

## **12. Governing law**

- 12.1. The legal relations between the customer and IDE shall be governed by the laws of the Federal Republic of Germany.
- 12.2 Insofar as the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies to international business transactions, i.e. to customers outside of the Federal Republic of Germany, any questions concerning matters which are not regulated in this Convention or which cannot be decided according to its basic features shall be decided according to the laws of the Federal Republic of Germany. This shall not apply to the provisions concerning supplier recourse in accordance with Secs. 445a, 445b, 478 German Civil Code (BGB), which do not apply to international business transactions.

## **13. Place of jurisdiction**

- 13.1 The exclusive place of jurisdiction for all claims against businesspersons and legal persons under public law which arise from the business relationship shall be STUTTGART, Germany. However, IDE shall additionally have the right to sue the customer at the customer's place of business or at any other permissible place of jurisdiction.
  - 13.2 In international business transactions, whenever a legal dispute arises out of or in connection with this agreement and its implementation, the contracting parties may choose whether to turn to the ordinary courts of law or whether to bring the matter before an arbitral tribunal.
  - 13.3 If the parties turn to the ordinary courts of law Clause 13.1 shall apply.
  - 13.4 If the parties turn to an arbitral tribunal, all disputes arising out of or in connection with the present agreement shall be finally decided in accordance with the Arbitration Rules of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)*). The DIS Arbitration Rules are available in German, English, French, Russian and Turkish, amongst other languages, at <http://www.dis-arb.de/de/16/regeln/uebersicht-ido>.
  - 13.5 The arbitral tribunal shall be comprised of three arbitrators. Unless otherwise agreed between the parties, at least one of the individual arbitrators must have studied law and completed such studies successfully. The arbitrators must be in command of the language of the arbitral proceedings.
  - 13.6 The language of the arbitral proceedings shall be German unless the parties agree on another language for the arbitral proceedings.
  - 13.7 The place of arbitration shall be STUTTGART, Germany.
- 14. Miscellaneous**
- 14.1 Any transfer or assignment of rights and obligations of the customer to third parties shall require the written consent of IDE.
  - 14.2 The language of the contract shall be German.
  - 14.3 The place of performance for all obligations that are to be performed by the customer and by IDE shall be IDE's place of business.
  - 14.4 Data protection compulsory information in accordance with Article 12 ff. DSGVO please refer to our privacy policy at: <https://www.ide-extrusion.de/de/dsgvo>