

1. Applicability of terms and conditions

- (1) *ib prozessleittechnik GmbH & Co. KG* carries out deliveries, services and offers based exclusively on these terms and conditions. The terms and conditions also apply for all future business relationships, even if they are not expressly agreed upon again. These terms and conditions shall be deemed accepted upon the order of goods or services.
- (2) All agreements made between us and the Orderer for the purpose of executing this contract are set out in writing in this contract. Deviating terms and conditions of the Orderer are hereby contradicted, in so far as their application has not already been expressly agreed to in writing.

2. Offer and conclusion of contract

- (1) Our offers are subject to change and are non-binding. Declarations of acceptance and orders shall only be legally valid if confirmed in writing.
- (2) Drawings, illustrations, dimensions, weights, warranted qualities and other performance data shall only be binding if this is additionally expressly agreed in writing.

3. Prices

- (1) Prices are in euros ex works, excluding packaging, freight, insurance, installation, etc.
- (2) The agreed prices are the prices stated in the order confirmation provided by *ib prozessleittechnik GmbH & Co. KG* plus the respective statutory VAT. Additional deliveries and services shall be charged separately.
- (3) In the event of changes to the costs of wages, materials, power etc. for which we are not responsible, we reserve the right to correct the stated prices as permitted by statutory regulations.
- (4) In accepting our order confirmation, the Orderer agrees to recognise our later price determination, insofar as no immediate objection is made in writing.

4. Period of delivery and service / self-supply reservation

- (1) Binding and non-binding delivery dates or delivery periods must be in writing. They begin at the earliest on the day on which all technical and other details in this contract are clarified, in particular the provision of required documents. Delayed provision of documents and materials on the part of the Orderer can postpone the delivery dates.
- (2) Our delivery obligations shall be subject to reservation of self-supply. This only applies in the case that we are not responsible for the non-delivery. The Orderer will be informed immediately of the non-availability of services. However, we agree to assign to the Orderer possible claims for compensation against the up-stream supplier.
- (3) We reserve the right to make part deliveries on a scale that is agreeable to both parties.
- (4) In the case of contracts for delivery in instalments, the Orderer agrees to accept the total quantity ordered within one year of the order date, unless the parties have agreed otherwise.
- (5) We shall not be responsible for delivery and performance delays due to allocation, force majeure and events that make the delivery difficult or impossible for us, for example strike, lockout, official instructions, environmental disasters, machine breakdowns, disruptions to transport, bankruptcy of the upstream supplier etc., including when they occur in the case of our suppliers or their subcontractors, even for bindingly agreed deadlines and dates. You authorise us to postpone the delivery or service for the time of the hindrance plus a reasonable start-up time or to withdraw from the contract wholly or in part in respect of the part of the contract not yet performed.
- (6) Should the hindrance last longer than 3 months, we are entitled after a reasonable extension period to withdraw from the contract with regard to the part of the contract not yet fulfilled. Should the delivery period be extended or should we be released from our obligations, this shall not give the Orderer any claims for damages. With regard to the hindrance, we can assert the previously listed rights only if we notify the Orderer immediately upon learning of this hindrance.
- (7) Should we be responsible for the non-fulfilment of bindingly agreed deadlines and dates or if we are in default, the Orderer has the right to claim compensation for delay in the amount of 0.5% of the invoice value for every full week of delay, but not more than 5% of the invoice amount for the deliveries and services prior to the delay. Further claims are excluded, unless the delay is the result of at least gross negligence on the part of *ib prozessleittechnik GmbH & Co. KG*.
- (8) Our compliance with our delivery and service obligations presupposes that the obligations of the Orderer have been fulfilled properly and in good time.
- (9) Should the Orderer default in request, acceptance or collection of the goods, or if the Orderer is responsible for delays, we shall be entitled to withdraw from the contract in the amount equivalent to the quantity concerned or to demand compensation for the damage incurred.
- (10) Upon the occurrence of default of acceptance, the risk of accidental deterioration or accidental loss shall pass to the Orderer.

5. Transfer of risk

The risk is transferred to the Orderer as soon as the consignment has been handed over to the person in charge of the transportation or has left our warehouse for the purpose of shipping. If shipping becomes impossible through no fault of ours, the risk is transferred to the Orderer on notification of readiness for shipment.

6. Prices / terms of payment

- (1) Our prices are net prices and apply to deliveries ex works excluding packaging.
- (2) Unless otherwise agreed, invoices must be paid in full within 30 days of the invoice being issued. We are entitled to first offset payments against older debts, despite contrary provisions of the Orderer.
We will inform the Orderer of the type of offsetting undertaken. If costs and interest are incurred, we are entitled to offset payment first against costs, then against interest and finally against the main service.
- (3) After expiry of the deadline stated on the invoice, the Orderer is automatically in default of payment without the need for a separate reminder. If the Orderer, for whatever reason, is in default with regard to any payment obligations, all existing debts shall become due immediately. Legal regulations apply regarding the consequences of default of payment. The default interest is 8 percentage points above the base rate, insofar as no consumer is involved in the legal transaction. We are permitted to provide evidence of higher damages.
- (4) If after the conclusion of the contract we become aware that the financial circumstances of the Orderer have deteriorated – if applicable even before the conclusion of the contract – for example if the Orderer ceases payments or if a cheque issued by the Orderer is not honoured – we are entitled to render the

services incumbent on us only as and when the Orderer's consideration has been fulfilled. In this case we are also entitled to demand advance payments or security.

- (5) The Orderer is entitled to offsetting, retention or reduction, even if notices of defect or counterclaims are enforced, only if the counterclaims have been stipulated as legally valid or are indisputable.
- (6) We are entitled to assign claims arising from our business relationships.

7. Warranty

- (1) The warranty period is 12 months for material defects and begins on the date of delivery.
- (2) The Orderer must check for missing items and damage to packaging upon acceptance or receipt of every delivery. Complaints and defects must be sent to us immediately in writing. We must be notified in writing of any defects that have not been discovered within a week despite careful checking, immediately after their discovery. In the case of transport damage, a statement of the facts shall be obtained from the carrier.
- (3) If our operating and maintenance instructions are not followed, changes are made to the products, parts are replaced or consumables that do not comply with the original specifications are used, moreover, if damage is incurred as a result of faulty or negligent handling, excessive stress, operation under unsuitable operational conditions that are of a mechanical, thermal, chemical or electrical nature or effect, the guarantee shall not be applicable if the Orderer does not refute any substantiated claim that one of those conditions resulted in the defect.
- (4) We are entitled to rectify defects or replace defective parts if these have been indicated in a timely manner and are demonstrably caused by defective workmanship or defective materials. Only if the rectification or replacement has failed can the Orderer demand a reduction in price or cancellation of the contract.
- (5) Warranty claims against us are not assignable.

8. Retention of title

- (1) The goods we deliver remain our property until payment is made in full by the Orderer.
- (2) With regard to merchants, this retention of title extends to the full payment of all claims due to us from the Orderer for whatever legal reason now or in future, including all claims relating to the current account balance. Processing or alteration of the delivered goods shall always be on behalf of the vendor, but without any obligation for the vendor.
- (3) Should (joint) ownership expire as a result of combination, it shall be agreed now that the Orderer's (joint) ownership of goods with regard to the individual object shall pass to us in proportion to the value (invoice value). The Orderer shall keep (joint) ownership for us without charge. Goods in which we have (joint) ownership shall be referred to as reserved goods. If an item delivered by us is combined to become an essential component of another item, and this is the main item, (joint) ownership of the main item shall be transferred to us in proportion to the invoice value of the delivered item.
- (4) The Orderer shall now assign to us all claims arising from the resale or other legal basis (insurance, unlawful act) regarding the reserved goods in their full extent for the sake of precaution. We will, at the request of the Orderer, release securities at our discretion, insofar as their value exceeds the claim by more than 20%.

9. Insurance claims

In the event of a claim, the Orderer shall assign claims for damages on account of performance to *ib prozessleittechnik GmbH & Co. KG* or a third party pursuant to our specification, if the goods have not yet been paid in full.

10. Design changes

We reserve the right to make design changes; however, we are not under obligation to also make changes of this kind to products that have already been delivered.

11. Obligation to confidentiality

The Orderer shall only receive drawings and documents on the condition that they are not made accessible to third parties, in particular companies with which we are in competition.

12. Disclaimer

- (1) *ib prozessleittechnik GmbH & Co. KG* is not liable for damage that results from the negligent conduct of its employees, vicarious agents and its legal representatives. Damages caused intentionally or as a result of gross negligence are excluded from the liability disclaimer.
- (2) In the case of a negligent breach of contractual obligations, the liability of *ib prozessleittechnik GmbH & Co. KG* is limited to foreseeable damage typical of the contract.
- (3) There is explicitly no limitation of liability in the case of injury to life, body or health and in the case of a breach of essential contractual obligations (cardinal obligations).
- (4) Any liability in accordance with the German Product Liability Act remains unaffected.
- (5) Liability for the loss of recorded data is restricted to the damage that would have occurred if the data had been backed up properly on a regular basis.

13. Place of jurisdiction, applicable law, partial invalidity

- (1) The law of the Federal Republic of Germany shall apply to these terms and conditions and all legal relationships between us and the Orderer to the exclusion of the UN Sales Convention.
- (2) The sole place of jurisdiction for all disputes arising from the contract shall be Bamberg, insofar as the Orderer is a merchant, legal entity under public law or special fund under public law and insofar as the Orderer does not have a place of general jurisdiction within Germany.
- (3) Should a provision of these terms and conditions or a provision within the framework of other agreements be or become ineffective, the validity of the remaining provisions or agreements shall remain unaffected.