

# General conditions of sale of ITG Induktionsanlagen GmbH, Hirschhorn as of 06/17

ITG Induktionsanlagen GmbH, hereinafter designated "Supplier"

## **I. General**

1. All deliveries and services of Supplier are based on the following conditions and any separate contractual agreements. Any deviating purchasing conditions of Client shall not become part of the contract even by acceptance of the order.

General terms and conditions of Client shall not apply.

2. Where these sales terms do not contain any provisions, the statutory provisions shall apply, rather than the general terms and conditions of Client.

3. Any different agreements or agreements deviating from these sales conditions shall only apply if they are expressly confirmed by Supplier in written form.

4. In the absence of any special agreement a contract shall be concluded upon the written order confirmation of Supplier.

5. Supplier reserves the title and copyright in templates, cost estimates, drawings and similar information of material and immaterial nature - including in electronic form; they must not be made accessible to any third parties.

Supplier commits to only making information and documents designated as confidential by Client accessible to third parties with his consent.

## **II. Offer/order confirmation**

1. If a binding period is not expressly named, Supplier's offers shall be subject to confirmation and the contract shall only be concluded when Supplier confirms the order in writing.

2. Orders without any previous offer shall only become binding upon Supplier when Supplier confirms the order in writing. This shall apply accordingly if Client modifies an offer from Supplier.

3. If Client orders the object of delivery electrically, Supplier shall confirm receipt of the order without delay. Confirmation of receipt shall not constitute binding acceptance of the order. The confirmation of receipt can be connected to the declaration of acceptance.

## **III. Price commitment, prices and payment**

1. All offers are made subject to confirmation and are valid for 3 months. After this time, Supplier reserves price or technical adjustment. Taxes or special fees that the authorities of the receiving country may impose are not considered in the offer (only applicable to deliveries abroad).

All prices named shall be indicated without the respective applicable statutory VAT. Additional expenses that are produced by Client, no matter the time, shall be invoiced separately.

2. All agreed payments shall be made net by money transfer (within 10 days of invoicing unless agreed on deviatingly) free point of payment of Supplier. The final payment shall be made after commissioning, but no later than 30 days after delivery.

3. Client shall only have a right to retain payments where his counter-claims are undisputed or have been finally determined.

The right of Client to set off against counter-claims from other legal relationships shall only apply where they are undisputed or have been finally determined.

4. If any essential deterioration of the asset situation of Client occurs or if Supplier gains knowledge of any circumstances by which the claim to the remaining payments is endangered after conclusion of the contract, Supplier shall have the right to refuse to meet any performance obligations from the contract until Client has met his contractual obligations. Use of this right to refuse performance shall not constitute rescission from the contract without the express declaration of Supplier.

5. The application for opening of insolvency proceedings by Client shall entitle Supplier to withdraw from the contract and to demand immediate release of the delivered object.

6. If payments are made late or with a long delay, the statutory rules shall apply.

## **IV. Delivery dates, delivery time, delivery delay, impossibility**

1. All goods shall be delivered ex works or manufacturing plant, loaded on trucks, excluding packaging and insurance (EXW according to INCOTERMS 2010).

2. The delivery time results from the agreements of the contracting parties and commences with receipt of the written order of Client and clarity of the order. Compliance with it by Supplier shall require timely receipt of all agreed performances by Client, such as drawings, authority permits, releases or certificates, workpieces and the contractually agreed receipt of the downpayment in a bank account of Supplier. If these performances are not rendered in time, the delivery deadlines shall extend appropriately.

3. Compliance with the delivery deadlines shall be subject to the reservation of proper and timely own supply. Supplier shall inform Client of any delays that become evident as soon as possible.

4. The delivery time shall be complied with if the object to be delivered has left the factory or manufacturing plant of Supplier, has been transferred to the first carrier or if readiness for shipment has been reported to Client by its end – assuming that Client has met the contractual obligations due to him. Partial deliveries shall be admissible at a reasonable scope. Where acceptance must take place, the acceptance date shall be relevant - except at justified refusal of acceptance -, alternatively reporting of readiness for acceptance.

5. Delivered objects shall be received by Client even if they have any defects. In case of inessential defects, the delivery time is deemed complied with.

6. If the shipping or acceptance of the delivered objects is delayed for reasons for which Client is at fault, or if the objects are not removed in time, Supplier shall have the right to store the object of delivery at Client's risk at his reasonable discretion and to charge it as delivered ex works, and to charge the costs of storage to Client.

7. Furthermore, Supplier shall have the right to otherwise dispose of the delivered object after setting and expiration of an appropriate period and to supply Client with an appropriately extended period.

8. If non-compliance with the delivery time is due to force majeure, the delivery time shall extend appropriately. Force majeure shall also include strikes, lock-outs, sabotage, raw material or energy deficits, operating failures without fault, important workpieces becoming rejects without fault, authority approvals refused or not granted in time and any other unforeseeable events that are outside of the sphere of influence of Supplier. Supplier shall inform Client of the start and end of such circumstances as soon as possible.

9. Client may withdraw from the contract without setting a grace period if Supplier finally becomes unable to render the entire performance before passing of risk. Client shall also have the right to withdraw from the contract if part of the delivery becomes impossible during execution of the order and he has a justified interest in refusal of the partial delivery. If this is not the case, Client shall pay the contractual price due for the partial delivery. This shall apply accordingly in case of inability of Supplier. If the impossibility or inability occurs during default of acceptance or if Client is responsible for such circumstances alone or predominantly, he shall remain obligated to pay compensation.

## **V. Passing of risk**

1. Risk shall pass to Client according to the agreed clause (INCOTERMS 2010) if the object of delivery has left the factory or

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manufacturing plant, even if partial deliveries are made or Supplier has taken over other services as well, such as shipping costs or delivery and setup. In the absence of any agreement, risk shall pass at transfer of the object of delivery to the first carrier. This shall also apply in case of partial deliveries or if Supplier has taken over any other services, such as costs for shipping, delivery or setup.

2. If dispatch or acceptance are delayed or do not take place for reasons not due to the fault of Supplier, risk shall pass to Client on the day on which readiness for dispatch or acceptance was reported. The risk shall also pass to Client if he is in default of acceptance.

### VI. Assembly and commissioning and/or repair

Where assembly, assembly monitoring, commissioning, repair or conversion is required, the corresponding conditions of Supplier that shall be provided upon request shall apply supplementarily.

### VII. Reservation of title

1. Title in the object of delivery shall remain with Supplier until complete payment of all claims present at the time of invoicing and resulting from the business relationships of any kind, including secondary claims. If Client enters default of payment or otherwise does not meet his contractual obligations, Supplier shall have the right to take back the object of delivery as collateral and Client shall be obligated to return the object of delivery without reminder.
2. Assertion of the reservation of title and seizing of the object of delivery by Supplier shall not be deemed rescission of the contract.
3. Where validity of the reservation of title is bound to any specific requirements of form or other prerequisites in Client's country, Client shall ensure that these are met.
4. Client shall have the right to dispose of the object of delivery in the scope of its proper course of business. Claims that arise for Client during the term of the reservation of title from any such or unauthorised disposal are hereby assigned to Supplier. Client shall have the right to collect the claims, subject to revocation at any time.
5. Supplier commits to releasing collateral due to him as far as its value exceeds the unpaid claims to be secured by more than 20%.
6. Client shall perform finishing and processing of the object of delivery for Supplier without Supplier incurring any obligations from this. If the object of delivery is processed, combined, mixed or blended with any objects that do not belong to Supplier, Supplier shall be due shared title in the new object at the ratio of the value of the object of delivery to the other processed goods at the time before processing, combination, mixing or blending. If Client acquires sole title based on the law, he hereby grants Supplier a corresponding share in the title and shall keep the object for Supplier in this respect. The share in the title shall be subject to the provisions of section VII.
7. Client shall inform Supplier without delay in case of seizure or other third-party access.
8. Client shall be obligated to sufficiently insure the object of delivery during the time of reservation of title against theft, breakage, fire and water damage at his own expense and to take out liability insurance under inclusion of processing damage and removal of the exclusion of rent/lease/lending contracts and to document this upon Supplier's demand. If the required proof is not submitted within an appropriate period, Supplier shall have the right to insure the object of delivery at Client's expense.
9. Client must not sell, pledge or transfer the object of delivery for collateral. He shall inform Supplier without delay in case of seizure, attachment or other third-party disposal.

10. The application for opening of insolvency proceedings shall entitle Supplier to withdraw from the contract and to demand immediate release of the delivered object.

### VIII. Warranty, claims from defects

For any defects of material or title of the delivery, Supplier shall be liable as follows, under exclusion of any further claims - subject to section IX:

#### 1. Defects of material:

a) Those parts that turn out to be defective due to any circumstance that occurred before the assignment of risk shall be improved or replaced without defects at the choice of Supplier. The determination of such defects shall be reported to Supplier without delay.

Replaced parts shall become the property of Supplier.

b) Client shall grant Supplier the time and opportunity needed to perform any improvements and replacement deliveries that appear necessary to Supplier; otherwise, Supplier shall be released from any liability for defects. Only in urgent cases of danger to the operational safety and for defence against unreasonable damage, in which case Supplier must be informed at once, or if Supplier has entered default of removal of the defect, shall Client have the right to remove the defect directly or to have it removed by third parties, and to demand reimbursement for the necessary costs from Supplier.

c) Regarding the direct costs arising from subsequent performance, Supplier shall - provided that the complaint turns out to be justified and the report has been filed properly and in time - bear the costs of the replacement part including the costs for shipping and the appropriate costs for removal and installation of the defective part, as well as - if this can be demanded based on the individual case - the costs for any required provision of its installers and helpers. Apart from this, Client shall bear the costs.

d) Client shall have a right to withdraw from the contract in the scope of the statutory provisions if Supplier - under consideration of the statutory exceptions - lets any appropriate deadline for subsequent improvement or replacement delivery expire without results due to any defect of material. If the defect is inessential, Client shall only have a right to reduce the contractual price. The right to reduction of the contractual price shall remain excluded otherwise.

e) No liability shall be assumed in particular in the following cases:

Unsuitable or improper use, defective assembly or commissioning by Client or third parties, natural wear, defective or negligent treatment, improper maintenance, unsuitable operating equipment, defective construction work, unsuitable building soil, chemical, electrochemical or electrical influences - unless due to Supplier's fault.

f) If Client or a third party performs improper improvements, Supplier shall not assume any liability for the resulting consequences. This shall apply accordingly to any changes to the object of delivery made without the advance consent of Supplier.

g) The warranty shall commence at final acceptance, but no later than 6 weeks after readiness for shipment has been reported.

The expiration period for claims from defects shall be 12 months from the time of delivery, and 12 months from the time of acceptance in case of work in single-shift operation - provided that there is no case of malicious concealing - but in any case at the latest from the time at which risk has passed to Client. No warranty is assumed for any wear parts and workpiece-specific parts (e.g. holders, inductors, showers, etc.) and for improper use or defective operation of the object of delivery.

h) Supplier assumes no expanded warranty for any electrical components and purchased parts - the warranty of the respective

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supplier shall apply. If any technical help by Supplier's staff is indispensable during the warranty period (or thereafter), the assembly technician of Supplier shall be on site within an appropriate period after agreement on the deployment, provided that the fault cannot be removed by staff of the plant operator - with phone support by Supplier.

i) Warranty claims regarding spare parts and improvement work shall expire within 3 months, but not before the end of the prescription for the object of delivery.

### 2. Defects of title

j) If Supplier does not specify separately, the object of delivery is free of any third-party property rights according to his knowledge and the state of the art in Germany. If the object of delivery or a part of it nevertheless comprises a property right already created and published in Germany at the time of conclusion of the contract or if the object of delivery expressly comprises a specific process right, violates a corresponding process right and any court proceedings are initiated against Client because of this, Supplier shall, at his expense and at his choice, either procure the right to further use for Client or modify the object of delivery or the respective part or procedure so that it no longer violates any third-party rights within an appropriate period of time.

If this is not possible under economically reasonable conditions or within a reasonable period of time, Client shall have the right to withdraw from the contract. Under the conditions named, Supplier shall also have a right to withdraw from the contract.

Further liability, in particular for proceedings, application, products etc., shall not be assumed by Supplier.

k) If any drawings submitted or information provided by Client lead to violation of third-party property rights, Client shall be responsible for this violation of rights and shall indemnify Supplier if any claims are raised.

l) The obligations named in section VIII.2.j) of Supplier in case of violations of property rights or copyrights shall be comprehensive.

They shall only apply if

- Client informs Supplier without delay of any property right or copyright violations asserted,
- Client supports Supplier at an appropriate scope in defence against the asserted claims or gives Supplier the opportunity to perform the notification measures pursuant to section VIII. 2.
- Supplier retains all defence measures, including out-of-court agreements,
- the defect of title is not due to any instruction issued by Client and
- the violation of rights has not been caused by Client changing the object of delivery without authorisation or using it in any manner that was not contractual.

m) In case of violation of the contract by Client, Supplier shall have the right to take back the object of delivery after issuing a warning, and Client shall be obligated to release it.

n) Reports of defects shall be submitted to Supplier in written form.

o) If a defect is reported unfoundedly, Supplier shall have the right to invoice the resulting costs to Client.

p) Remaining payments retained by Client must be at an appropriate relationship to the defect.

### IX. Liability of Supplier, disclaimer

1. Liability for any damage not arising at the object of delivery directly and any subsequent expenses due to improvement or exchange shall be excluded as far as permitted by law.
2. Supplier shall be liable for property damage and injury incurred by Client or third parties in the scope of the applicable operating

liability insurance. Any claims not expressly granted, in particular any damages claims due to impossibility, default, violation of contractual secondary obligations - but not where they refer to represented properties - shall be excluded unless the managing employees or servants are at fault for wilful intent or gross negligence. The exclusion of liability also shall not apply if Supplier, his managing employees or servants, violate any essential contractual obligations. In the latter case, the liability shall be limited to the single order value in case of slight negligence.

3. In case of negligent violation of a main obligation, liability of Supplier for property or asset damage shall be limited to twice the invoiced value of the affected object of delivery for every single claim.

4. Supplier shall only offer any guarantees in the legal sense for the properties of the object of delivery to Client in case of express written agreement.

### X. Final acceptance

1. In case of deliveries without commissioning of the system by Supplier's staff, the system shall be deemed finally accepted at the time of delivery. If commissioning of the system by Supplier's staff has been contractually agreed, Client shall perform final acceptance directly after completion, provided that there are no gross defects. Defects that do not impair the quality and quantity of the product produced on the system shall not entitle Client to refuse final acceptance.

Final acceptance shall take place automatically if the object of delivery has been taken into operation by Client.

2. Client must not refuse acceptance even if there is a defect.

### XI. Secrecy

Supplier reserves unrestricted copyright in the drawings and documentations provided to Client in the scope of project processing. The documents must only be passed on to any third parties with the express consent of Supplier. The documentation contains the drawings of all main assemblies, incl. the drawings of wear parts; component drawings shall generally only be passed on to Client upon advance coordination. If any patentable procedure develops during processing of the project, Client and Supplier shall have the right to register it together.

### XII. Expiration

Any claims of Client no matter the legal reasons - shall expire after 12 months. This shall also apply to defects of a building or objects of delivery that have been used for a building according to their common use, and that have caused the building to be defective.

### XIII. Software use

Where the scope of delivery contains any software, Client is granted a non-exclusive right to use the delivered software, including its documentation. It shall be provided for use on the intended object of delivery. Use of the software on more than one system shall be forbidden.

Client must only reproduce, revise, translate the software or convert it from object code to source code in the legally permitted scope (§§ 69 a et seqq. UrhG). Client commits not to remove manufacturer information - in particular copyright notes - and not to change it without the express advance consent of Supplier.

Any other rights in the software and the documentation, including the copies, shall remain with Supplier or the software supplier. The awarding of sublicenses is not permitted.

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**XIV. Miscellaneous**

If the end customer does not provide any sample parts in time, the schedule (delivery date) may be changed. Supplier shall report this accordingly. Any costs connected to the dispatch of sample parts and provisions shall be at the end customer's expense. The delivery shall be made free domicile of Supplier.

Any facilities and components from third-party companies used shall correspond to the common commercial information of the manufacturers in their technical executions and surface designs, unless described differently. Before any information is passed on to any third parties reported to the end customer in writing or orally by Supplier, the consent of Supplier must be collected unless this information is generally known. When awarding the order, the end customer agrees that he will provide all information required for implementation of the project in time. Unloading of the object of delivery and transport to the site of setup shall take place by the customer unless agreed on differently. The necessary lifting gear incl. operators are provided by Supplier free of charge. A washing and changing facility must be provided for Supplier's service staff for the time of assembly and commissioning.

The foundation and any other work of different types shall not be part of the scope of delivery of Supplier.

**XV. Applicable law, place of jurisdiction**

1. Any legal relationships between Supplier and Client shall be subject to the relevant law of the Federal Republic of Germany relevant for legal provisions between domestic parties exclusively.
2. The place of jurisdiction shall be the court competent for Supplier's seat. However, Supplier shall have the right to raise a claim at the registered seat of Client.

**XVI. Final provision**

If parts of these conditions of sale are rendered invalid by any special agreement, the remaining provisions shall remain in effect.