

1. General Provisions

- 1.1 Only the following Terms and Conditions shall be valid/applicable for our deliveries in the version valid at the date of purchase.
Terms and conditions deviating from our Terms and Conditions shall not apply unless they have been expressly approved by us in writing before the delivery.
Separate service conditions shall apply to assembly and repair works.
- 1.2 If the customer fails to accept our quotation within four weeks of receipt thereof, we shall be entitled to cancelation.
- 1.3 Measurements, packaging dimensions, weights, illustrations and drawings are only binding for the construction of the products if this has been expressly confirmed in writing.

2. Prices

- 2.1 Invoices shall be calculated on the basis of the list prices in effect on the date of delivery plus VAT/Sales tax. VAT will not be charged only in those cases where the conditions have been met for export shipments to be exempted from such tax.
- 2.2 Prices are FCA dispatch place of the delivering plant (Incoterms® 2010) including packaging.
- 2.3 Spare parts and products which have been repaired shall be shipped against a reasonable flat rate charge for shipping and packaging plus the charge for the service rendered by us.

3. Delivery, Delivery Dates, Default

- 3.1 The precondition for the commencement of and compliance with delivery dates agreed upon is that the collaboration duties have been performed by the customer, in particular the timely delivery of the entire materials, documentation, approvals, examinations and clearances to be provided by the customer and the compliance with payment terms agreed upon, especially effecting agreed down-payments or, if required, the opening of a letter of credit by the buyer. If these preconditions are not duly met in good time, the delivery dates shall be reasonably extended; this shall not apply if the supplier is solely responsible for the delay.
- 3.2 If non-compliance with the delivery date is due to force majeure delivery dates agreed upon shall be extended by the period of time of the disturbance.
This also applies to industrial action affecting either us or our suppliers
- 3.3 In case of a delayed delivery, the customer may cancel the contract within the framework of applicable law only if we are responsible for the delay.
- 3.4 Clause 9 applies to claims to damages by the customer on account of delayed delivery.
- 3.5 Part shipments and corresponding invoices are permissible unless this is an unreasonable hardship for the customer.

4. Transfer of Risk

- 4.1 Delivery is FCA dispatch place of the delivering plant. (Incoterms® 2010) except where expressly otherwise agreed.

5. Complaints and Notification of Defects

- 5.1 The customer must notify us in writing immediately, no later than 7 days after receipt of the goods / engineering, of any recognizable defects. Adhesive labels on the boxes, packing lists, the control slips enclosed with the shipment shall be submitted to us together with the notification of the defect. For any other defects the customer must inform us in writing immediately after discovery thereof.
- 5.2 The relevant date to determine timeliness of a notification of a defect shall be the date we receive such notification.
- 5.3 If the notification of a defect is unjustified we shall be entitled to demand compensation from the customer for any expenses we have incurred unless the customer can prove that he is not at fault regarding the unjustified notification of a defect.

6. Acceptance of Deliveries

- 6.1 The customer may not refuse to accept delivery on account of minor defects.

7. Defects/Defects of Title/Warranty

- 7.1 All warranty claims shall become time-barred after a period of 12 months.
- 7.2 The time bar period for warranty claims commences with the date of the delivery of the product (date of transfer of risk).
- 7.3 If a defect arises during the time bar period the cause of which already existed on the date of transfer of risk, we may effect subsequent performance at our discretion either by remedying the defect or delivering a defect-free product. The defective product has to be sent for repair either to us or to the nearest customer service unit for the respective product determined by us.
- 7.4 The time bar period shall be interrupted for the period of time necessary for remedying the defective product or to deliver a new product. The time bar period does not start anew as a result of the completion of the remedy of the defect.
- 7.5 If the remedy of the defect fails, the customer may — without prejudice to any claims to damages — rescind the contract or reduce the amount of payment in accordance with statutory provisions.
- 7.6 Claims by the customer on account of expenditure required for the purpose of subsequent performance, in particular costs of transport, transportation, labour and materials, shall be governed by statutory provisions. They shall, however, be excluded insofar as such expenditure is increased due to the fact that the product delivered was subsequently taken to a place other than the original place of contractual performance unless such removal is in accordance with the designated use of the product.
- 7.7 Claims for subsequent performance do not exist in case of merely inconsiderable deviation from the quality agreed upon or in case of only minor impairment to the use of the product. Further rights shall remain unaffected hereby.
- 7.8 The following are not deemed to be defects:
- ordinary wear and tear;
- characteristics of the product and damage caused after the date of transfer of risk due to improper handling, storage or erection, non-compliance with installation or handling regulations or to excessive strain or use, improper operational means, commissioning or maintenance;
- characteristics of the product or damage caused by force majeure, special external circumstances not foreseen under the terms of the contract or due to the use of the product beyond normal use or the use provided for under the terms of the contract;
- non-reproducible software errors.
Claims on account of defects do not exist if the product is modified by third parties or due to the installation of parts manufactured by third parties.
- 7.9 The customer shall give us or any third party engaged by us to perform our warranty obligation sufficient time and the possibility to carry out the warranty work. The customer himself may only carry out such work if we have given our prior consent. We shall bear the costs necessary for this work to an extent which must be in a reasonable proportion to the value of the product in a defect free condition, the significance of the defect and/or the possibility of obtaining a defect-free product by an alternative method.
- 7.10 Clauses 7.3, 7.6, 7.7 shall not apply insofar as our product was proved to be sold by the customer or client of the customer to a consumer without being processed or installed into another product.
- 7.11 Our obligation to pay damages and to compensate for abortive expenditure on account of defects shall be governed by clause 9 in all other respects. Any further-reaching claims or claims by the customer on account of defects other than those covered by this clause 7 are excluded.

8. Industrial Property Rights and Copyright

- 8.1 We shall not be liable for claims arising from an infringement of third party intellectual or industrial property rights or copy-right (hereinafter: industrial property right) if the industrial property right is or was owned by the customer or by an enterprise in which the customer holds, directly or indirectly, a majority of the shares or voting rights.
- 8.2 We shall not be liable for claims arising from an infringement of third party industrial property rights unless at least one industrial property right from the property right family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, Great Britain, Austria or the USA.
- 8.3 The customer must notify us immediately of (alleged) infringements of industrial property rights and of risks of infringement in this respect which become known and, at our request — insofar as possible — allow us to conduct the litigation (including non-judicial proceedings).
- 8.4 We are entitled, at our discretion, to obtain a right of use for a product infringing an industrial property right, to modify it so that it no longer infringes the industrial property right or to re-place it by an equivalent substitute product which no longer in-fringes the industrial property right. If this is not possible subject to reasonable conditions or within a reasonable period of time, the customer shall — insofar as the customer allowed us to carry out a modification — be entitled to the statutory rights of rescission. Subject to the aforementioned preconditions we too shall have a right of rescission. The ruling set forth in clause 7.9 shall apply accordingly. We reserve the right to carry out the action at our disposal under the terms of sentence one of this clause 8.4 even if the infringement of the industrial property right has not been ruled on by a court of law with res judicata effect or recognized by us.
- 8.5 Claims by the customer are excluded insofar as the customer is responsible for the infringement of the industrial property right or if the customer has not supported us to a reasonable extent in the defense against claims by third parties.
- 8.6 Claims by the customer are also excluded if the products were manufactured in accordance with the specifications or instructions of the customer or if the (alleged) infringement of the industrial property right ensues from the use in conjunction with another product not stemming from us or if the products are used in a manner which we were unable to foresee.
- 8.7 Our obligation to pay damages in case of infringements of industrial property rights is governed by clause 9 in all other respects.
- 8.8 Clauses 7.1 and 7.2 apply mutatis mutandis to the time bar for claims based on infringements of industrial property rights.
- 8.9 Further-reaching claims or claims other than those claims of the customer governed by this clause 8 on account of an infringement of third party industrial property rights are excluded.

9. Claims for Damages

- 9.1 We are liable to pay damages and compensation of abortive expenditure on account of a violation of contractual and non-contractual obligations only in case of
- intent or gross negligence,
 - in case of negligent or deliberate fatal injury, physical injury or injury to health,
 - on account of assuming a quality or durability guarantee,
 - in case of a negligent or deliberate breach of material contractual duties,
 - on account of compulsory statutory liability pursuant to the Product Liability Act or
 - on account of any other compulsory liability.

- 9.2 The damages for a breach of material contractual duties are, however, limited to foreseeable damage, typical for the type of contract, except in the event of intent or gross negligence or on account of fatal injury, physical injury or injury to health or on account of assuming a quality guarantee.
- 9.3 Liability for damages exceeding that provided for in clause 9 is excluded irrespective of the legal nature of the claim raised. This applies in particular to claims for damages arising from *culpa in contrahendo* (fault arising in conclusion of a contract), on account of other breaches of duty and to tort claims for compensation of property damage
- 9.4 Insofar as liability for damages is excluded with respect to us, this also applies to the personal liability for damages of our employees, representatives and of persons engaged by us in performance of our obligations.

10. Retention of Title

- 10.1 We retain title and ownership of all goods / engineering supplied until the full purchase price due under the contract has been paid.

11. Cancellation

- 11.1 In the event of the customer acting in breach of contract, in particular in case of default of payment, we have the right, notwithstanding our other contractual and statutory rights, to withdraw from the contract after expiry of a reasonable ex-tended deadline.
- 11.2 After declaration of such withdrawal, the customer shall immediately return to us or our agents the products that are under retention of title.
- 11.3 Statutory rights and claims shall not be restricted by the provisions contained in this clause 11.

12. Export Control Clause

- 12.1 Deliveries and services (contractual performance) shall be subject to the proviso that there are no obstacles to performance due to national or international export control regulations, in particular embargos or other sanctions. The customer undertakes to provide all information and documentation, which is required for export and shipment. Delays due to export examinations or approval procedures render deadlines and delivery dates inapplicable. If necessary approvals are not granted or if the delivery and service are not capable of approval, the contract shall be considered not valid with respect to the parts affected.
- 12.2 We have the right to terminate the contract without notice if such termination is necessary for us in order to comply with national or international legal provisions.
- 12.3 In the event of termination pursuant to clause 12.2, the customer is not entitled to claim compensation or other rights on account of the termination.
- 12.4 When passing on products delivered by us (hardware and/or software and/or technology and the respective documents, irrespective of the manner in which they are made available) and/or work and services performed by us (including technical support of all kinds) to third parties in Bulgaria and abroad, the customer must comply with the respective applicable provisions of national and international (re-) export control law.
- 12.5 Goods and Technologies of ib.fs Ingenieurbuero may not be exported, sold, supplied, provided, brokered or made available in any way, directly or indirectly, as a whole or in parts or in connection with other goods or as components/parts of other goods, to countries or to recipients or users in countries that are subject to German, European or US American legal regulations (laws, directives, guidelines, decisions and other applicable rules and regulations) regarding export restrictions, embargos or similar or comparable rules and regulations.

13. Confidentiality

- 13.1 All of the business and technical information stemming from us (including characteristics which can be deduced from goods or software delivered and other knowledge or experience) shall be kept secret with respect to third parties if and as long as such information is not proven to be public knowledge or determined by us to be resold by the customer and it may only be made available to those persons within the customer's own operation who necessarily have to be included in the use thereof and who are also committed to secrecy; the information shall remain our exclusive property. Without our prior written consent such information may not be duplicated or commercially used. At our request all information stemming from us (including, if applicable, any copies or duplicates prepared) and goods made available on loan must be re-turned to us immediately in full or destroyed.
- 13.2 We reserve all rights to the information mentioned in clause 13.1 above (including copyright and the right to file applications for industrial property rights such as patents, utility models, semiconductor protection etc.).

14. Payment Terms

- 14.1 Except otherwise agreed in writing, payments shall be made within 30 days of the invoice date without deductions.
- 14.2 We are entitled to offset payments made against the oldest claim due.
- 14.3 The customer shall only have the right to offset counterclaims insofar as the customer's counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.
- 14.4 The customer shall only be entitled to withhold payments to the extent that its counterclaims are undisputed, ruled with res judicata effect by a court of law or are ready for a decision after pending suit.

15. Miscellaneous

- 15.1 If one of the provisions of these Terms and Conditions and the further contracts reached should be or become ineffective, this shall not affect the validity of the remainder of the Terms and Conditions
- 15.2 The legal venue for any disputes shall be Essen (Germany) or, at our discretion, the place of business of our branch executing the business, if the customer is,
- a registered merchant, public law legal entity, public law special fund or
 - has no general domestic place of jurisdiction or
 - has moved its domicile or normal place of abode abroad after entering into the contract or if its domicile or normal place of abode is unknown.
- 15.3 All legal relationships between the customer and us shall be exclusively governed by and construed under the laws of Germany excluding the rules on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

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