

IKA® Terms and Conditions of Sale

The following terms and conditions shall apply to all sales, unless specifically agreed otherwise:

1. General

All agreements must be made in writing. Any terms and conditions of the buyer in his/its enquiries or orders which deviate from the present Terms and Conditions of Sale shall only apply if the supplier has specifically declared its agreement herewith. Any agreements deviating from the present Terms and Conditions of Sale shall only apply to the business for which they were agreed unless they are specifically prolonged.

2. Quotations

The supplier shall be bound to all quoted prices for three months unless otherwise agreed. The right of prior sale shall be reserved. The documents pertaining to the offer, such as illustrations, drawings, weight and dimension details, etc. shall only be approximate unless they are specifically designated as binding. The supplier shall retain the ownership and copyright of cost estimates, drawings and any other documents; they may not be made available to any third parties. Plans received from the buyer and designated as confidential shall only be made available to third parties by the supplier with the consent of the buyer.

3. Conditions of delivery

The written order acknowledgement of the supplier shall be relevant for the scope of delivery. All ancillary agreements and modifications shall require written confirmation by the supplier.

4. Prices and payments

- a) Unless otherwise agreed, prices are ex-works, excluding packaging. INCOTERMS 2000 apply. Unless otherwise agreed, all prices shall apply ex works excluding packing. All prices shall be subject to the statutory rate of value-added tax. Confirmed prices shall be based on prevailing material prices and wages. The supplier shall reserve the right to charge the material prices and wages prevailing at the time of delivery.
- b) Unless otherwise agreed, all payments shall be made to the cash office of the supplier without deductions or charges, with 2% cash discount for payment within 14 days or net within 30 days. If payments are deferred or not made as agreed, default interest at eight percent above the basic discount rate of the EZB shall be charged. Special payment conditions shall apply to export deliveries.
- c) No withholding of payments, nor any offsetting of counter claims disputed by the supplier, shall be permitted.

5. Deliveries - Delivery period

- a) Unless otherwise agreed in writing, deliveries are ex-works. INCOTERMS 2000 apply.
- b) The delivery period shall commence with the dispatch of

- the order acknowledgement but not before receipt of the documents, licenses and approvals to be acquired by the buyer and not before receipt of the agreed down-payment.
- c) The delivery period shall be deemed to have been upheld if the object of delivery has left the works of the supplier before the end of the delivery period or if readiness to supply has been notified.
- d) The delivery period shall be reasonable prolonged in the event of labor disputes, particularly strikes or lock-outs, or in the event of unforeseen impediments can be shown to have had a material effect on the production or delivery of the object of supply. This shall also apply if the aforesaid circumstances occur at sub-contractors of the supplier.
- e) If dispatch is delayed at the request of the buyer, the buyer shall be charged with the storage costs incurred commencing one month after the notification of readiness to deliver but not less than 1/2% of the invoice amount for each month if the goods are stored in the works of the supplier.
- f) In case of delayed acceptance by the buyer, and after setting and fruitless course of a reasonable period of time, the supplier has the right of further disposal of the goods.

6. Call-up of goods

Goods ordered on call shall be called up within a reasonable period with special agreement, but no later than 12 months from the date of the order acknowledgement. If ordered goods are not called up on time, the supplier shall be entitled to store the goods which are ready for dispatch, such storage being at the risk of the buyer, and to invoice the goods with all the storage costs incurred as if they had been delivered or to dispatch the goods without having received a dispatch request from the buyer.

7. Transfer of risk and acceptance of goods

- a) Risk shall pass to the buyer no later than the dispatch of goods, also if part-shipments are made or if the supplier has assumed other performances, e.g. dispatch costs or transportation and installation
- b) If specific instructions for the dispatch of goods are not included in the order, goods shall be dispatched at the discretion of the supplier, without any obligation for the cheapest mode of transport.
- c) In the interests of the buyer, the supplier shall insure shipments against theft, breakage, transport, fire and water damage and against any other reasonable risks at the cost of the buyer. Only on the specific request of the buyer transport insurance of the aforesaid type shall not be concluded. Unless otherwise agreed, the supplier shall charge 0,5% of the invoice value for transport insurance and 2% of the invoice value for fragile accessories. Any transport damages shall be notified to the supplier within 8 days, together with the damage report of the transport establishment; such transport damages shall otherwise not be accepted. Any incomplete deliveries shall likewise be notified to the supplier within 8 days; notifications of missing deliveries shall otherwise not be accepted. Shipments destined for export shall only be insured on the specific

instructions of the buyer and at the cost of the buyer.

- d) If dispatch is delayed for reasons attributable to the buyer, risk shall pass to the buyer on the date of readiness to supply; the supplier shall; however, be obliged to insure the goods at the request of the buyer and at the cost of the buyer.
- e) Part-shipments shall be admissible.

8. Reservation of title

- a) The supplier shall reserve title to the goods delivered until all claims of the supplier against the buyer arising from the business relationship have been settled in full, including all future claims arising from simultaneous or subsequent contracts. This shall also apply if individual or all claims of the supplier are placed on a current account and if a balance is drawn and recognized. In the event of any non-contractual conduct by the buyer, in particular payment delay on the part of the buyer, the supplier shall be entitled to demand the return of the reserved goods with prior notification and the buyer shall be obliged to return such goods. The return of goods or the pledging of goods by the supplier shall only constitute withdrawal from the contract if such withdrawal is specifically notified by the supplier in writing unless the German Hire Purchase Law applies. The buyer shall be obliged to notify the supplier immediately in writing if reserved goods are pledged or seized in any other way by a third party.
- b) The buyer shall be entitled to sell the delivered goods in the ordinary course of business. The buyer shall, however, hereby assign to the supplier all his/its claims against his/its customers or third parties arising from such resale, irrespective of whether the reserved goods are resold without having been processed or not. The buyer shall also be entitled to collect the aforesaid claims after the aforesaid assignment to the supplier. This shall not prejudice the right of the supplier to collect such claims as long as the buyer discharges his/its payment commitments in an orderly and proper manner. The supplier shall be entitled to demand that the buyer notifies the assigned claims and the names of the liable parties to the supplier, that all the details required for collection are provided, that the relevant documents are submitted to the supplier and that the liable parties are informed of the assignment. If the reserved goods are sold together with other goods to which the supplier has no title, the claim of the buyer against his/its customer shall be deemed as assigned to the supplier in the amount of the delivery price agreed by the supplier and the buyer.
- c) Any processing or transformation of reserved goods by the buyer shall always on behalf of the supplier. If reserved goods are processed with other goods to which the supplier has no title, the supplier shall acquire co-ownership in the new chattel in the ratio of the value of the reserved goods to the value of the new processed chattel at the time of processing. The processed chattel shall also be governed by the provisions relating to the reserved goods. The supplier shall be obliged to release any securities to which he is entitled only if such security exceeds the secured claims by more than 25% provided such claims of the supplier have not already been settled by the buyer.
- d) The supplier shall, at the cost of the buyer, be entitled to insure the reserved goods against theft, breakage, fire, water and any

other damages unless the buyer is able to prove that he/it has taken out such insurances.

- a) Any intervention costs incurred by the supplier shall be borne by the buyer.

9. Liability for defects

Notwithstanding Section 11, the supplier shall be liable for defective supplies as follows, to the exclusion of all further claims:

- a) All those parts which prove unusable or the usability of which is severely impaired within 12 months of putting into service due to circumstances prevailing prior to the transfer of risk shall be rectified or replaced by the supplier without charge and at the reasonable discretion and option of the supplier. The identification of any such defects shall be notified to the supplier in writing immediately. Any replaced parts shall become the property of the supplier. If dispatch, installation or putting into service are delayed for reasons not attributable to the supplier, the aforesaid liability shall lapse no later than 15 months from the transfer of risk.
- b) The right of the buyer to enforce claims for defects shall in all cases become statute-barred 6 months from the date of the due complaint by the buyer but no later than the end of the warranty period.
- c) No liability shall be assumed for damages arising for the following reasons: improper or incorrect use, defective installation or putting into service by the buyer or third parties, natural wear and tear, incorrect or negligent handling and the use of unsuitable materials, replacement materials, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences unless they are attributable to negligence or intent on the part of the supplier.
- d) The buyer shall, after consultation with the supplier, grant the supplier the necessary time and opportunity to carry out all the rectifications and replacements which the supplier considers necessary at its reasonable discretion, otherwise the supplier shall be exempt from its liability for the aforesaid defects. Only in cases of emergency endangering operational safety and to avert disproportionately high damages - were by the supplier is to be informed immediately - or if the supplier is in delay with the rectification of the defect the buyer shall be entitled to rectify the defect himself/itself, or the have the defect rectified by a third party and to demand reimbursement of the necessary costs from the supplier.
- e) Of the direct costs directly incurred as a result of the rectification or replacements - provided the complaints of the buyer prove to be justified - the supplier shall bear the costs of the replacement parts, including dispatch costs, and reasonable dismantling and installation costs and the costs of providing any technicians and auxiliary staff of the buyer if the reimbursement of such costs can be equitably demanded in the specific circumstances. Other costs shall be borne by the buyer.
- f) The liability of the supplier shall lapse for the consequences of any improper modification or maintenance work undertaken by the buyer or a third party without the prior consent of the supplier.
- g) Additional claims of the buyer, particularly compensation claims and claims for damages not sustained by the delivered goods themselves, shall be excluded if permitted by law.

10. Liability for ancillary obligations

If, for reasons attributable to the supplier, the delivered goods cannot be used by the buyer as specified in the contract due to an omitted or defective execution of recommendations and advice given prior to or after the conclusion of the contract - in particular usage a maintenance instructions for the delivered goods - the provisions of Sections 9 and 11 shall apply correspondingly, to the exclusion of any additional claims by the buyer.

11. Right of withdraw by the buyer

- a) The buyer shall be entitled to withdraw from the contract if the supplier is finally and conclusively unable to perform prior to the transfer of risk.
- b) The buyer shall be entitled to withdraw from the contract if delivery is delayed within the meaning of Section 5 and if the buyer grants the supplier a reasonable period of grace with a specific declaration that he/it will reject acceptance of the goods after such period of grace and if the period of grace is not upheld by the supplier.
- c) If delivery of the goods is not possible during a period of acceptance delay or for reasons attributable to the buyer, the buyer shall be obliged to meet his/its contractual obligations.
- d) The buyer shall also have a right of withdrawal from the contract if, through negligence or intent, the supplier fails to respond to a period of grace granted for the rectification or replacement of a defect attributable to the supplier within the meaning of the present Terms and Conditions of Sale. Such right of withdrawal by the buyer shall also apply in the event of impossibility to supply or the inability of the supplier to rectify or replace the aforesaid defect.
- e) All other further claims of the buyer shall be excluded, if permitted by law.

12. Rights of withdrawal by the supplier

The contract shall be reasonably modified in case of unforeseen events within the meaning of Section 5 of the present Terms and Conditions of Sale, if such events materially change the financial and substantive implications of the performance of the supplier or if they materially affect the operations of the supplier and if it later transpires that the supplier is unable to perform its contractual obligations. If this is not economically possible, the supplier shall be entitled to withdraw from the whole or part of the contract. Any compensation claims by the buyer due to the exercise of such right of withdraw shall be excluded, if permitted by law. If the supplier makes use of its right to withdraw from the contract, it shall be obliged to notify the buyer immediately after having become aware of the implications of the aforesaid event.

13. Competent court and legal venue

- a) For all disputes arising from the contractual relationship, legal action shall be taken at the competent court for the registered office of the supplier or the branch of the supplier

effecting delivery if the buyer is a registered trader, a legal entity under public law or a public-law fund. The supplier shall also be entitled to bring action at the principal place of business of the buyer.

- b) For legal relations in connection with this contract German material law is applicable, whereas the agreement of the United Nations regarding contracts ruling the international purchase of goods (CISG) is excluded.

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**Designed
to work perfectly**

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