

## General Terms and Conditions of Sale and Delivery INGUN Prüfmittelbau GmbH, Max-Stromeyer-Str. 162, D-78467 Konstanz

### **I. General**

1. All deliveries, services and offers of INGUN Prüfmittelbau GmbH, hereinafter referred to as "INGUN", apply exclusively on the basis of these General Terms and Conditions of Sale and Delivery. These are deemed an integral part of all contracts that the INGUN enters into with its customers, hereinafter referred to as the "Principal", regarding the goods and services offered by INGUN. They also apply to all future deliveries and services for the Principal, including if they are not been separately agreed upon again.

2. The terms and conditions of business of the Principal or third parties shall not apply, including if INGUN does not object to their validity separately in an individual case. Even if INGUN cites a letter containing the terms and conditions of business of the Principal or a third party, or refers to such a condition, this shall not constitute any kind of consent to the validity of such terms and conditions of business.

### **II. Offers and entering into contracts**

1. All offers are subject to change without notice and are non-binding provided they are not expressly stated as binding or are not subject to a certain acceptance period.

2. The Principal shall be bound by an order it has signed, which INGUN has not yet accepted, for 14 calendar days following receipt. INGUN is entitled to accept the offer within this period. All orders shall be confirmed in writing. The Principal is to review the order confirmation without delay. Discrepancies between the order and order confirmation are to be reported to INGUN without delay and clarified by way of mutual agreement. Otherwise the content of the order confirmation shall be deemed agreed upon as per agreement.

3. Delivery of the ordered goods or performing the commissioned service shall also apply as acceptance of an order.

4. Individual agreements entered into in an individual case (including supplementary information, amendments and subsidiary agreements) shall have preference over these terms and conditions of purchase. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative in respect of the content of such agreements.

5. Details of INGUN regarding the subject matter of delivery and service (weights, measurements, service values, loads, tolerances and other technical data) as well as drawings and illustrations enclosed with the offer are only approximately authoritative provided the use proposed in the contract does not specify that these are to correspond exactly. They do not constitute any warranted characteristics but rather are delivery or service

descriptions or identifications. Variations that are customary in the trade and variations that apply as a result of legal requirements or illustrate technical improvements, as well as the replacement of components with equivalent parts are permitted provided they do not have a detrimental effect on the use as proposed in the contract.

6. INGUN is entitled to ownership of and copyright for the drawings, illustrations, models, leaflets, tools and other aids and documents made available to the Principal. Without express approval by INGUN, the Principal may neither in full nor in excerpts make such items available to third parties, disclose them to third parties or use or duplicate them itself or via third parties. On request, these items are to be surrendered to INGUN if the Principal no longer requires them during the normal course of business. If negotiations do not lead to the entering into of a contract, all items surrendered as part of the contractual negotiations are to be returned to INGUN. This does not apply to the storage of data made available electronically for the purpose of customary data backup.

### **III. Provision/collaboration on the part of the Principal INGUN**

1. If the Principal is required to take action in respect of the rendering of services, provided nothing to the contrary is agreed upon the Principal shall be required to make available to INGUN, at the Principal's cost and risk, all items, data, documents, drawings, information and the like that are necessary to render the service.

2. If the Principal wholly or partially defaults in such provision or collaboration, and if this results in additional costs for INGUN, all necessary additional costs shall be borne by the Principal.

### **IV. Prices and payment**

1. The prices apply to the service and delivery scope stated in the order confirmation. Additional and special services shall be charged separately. Prices are to be understood as being in euros plus VAT in the respective statutory amount. Prices do not include packaging, freight or shipping costs or in the case of export deliveries, customs duties, charges or other public levies.

2. Where not expressly agreed to the contrary, invoice amounts are payable without deductions 30 days following delivery and invoicing.

3. INGUN is entitled to settle its services electronically.

4. In the case of extraordinary advance performance and in the case of orders of a total value in excess of € 10,000, INGUN may request advance payment in the sum of 1/3 of the order amount. The advance payment falls due for

payment 14 days following the issue or confirmation of order.

5. In addition, INGUN is entitled to provide outstanding deliveries or render outstanding services only subject to advance payment or the provision of security if, after entering into the contract, knowledge of circumstances is gained that is capable of significantly reducing the credit standing of the Principal and which jeopardises payment of the outstanding claims of the Seller by the Principal resulting from the respective contractual relationship (including from other individual orders that are subject to the same skeleton agreement).

6. The Principal shall be deemed to be in default upon expiry of the above payment periods. During the default, INGUN shall be entitled to charge interest to the sum of 9 percentage points above the base lending rate p.a. This does not affect asserting a claim for further-reaching damage in the event of default.

7. The Principal shall only be entitled to set off by way of using counterclaims or retain payments regarding such claims provided the counterclaims are undisputed or have become res judicata or emanate from the same contract under which the respective delivery or service applies.

#### **V. Delivery and delivery time**

1. Within the European Union (including Germany) deliveries are made CPT (freight paid to) destination address with freight clearance. Deliveries outside the EU apply FCA (free carrier) Konstanz. These terms of delivery apply unless otherwise agreed.

2. The periods and dates for deliveries and services for which the INGUN holds out prospects apply, at all times, on an approximate basis unless a fixed period or a fixed date has been assured or agreed upon on a fixed basis. Insofar as shipping has been agreed upon, the delivery periods and delivery dates refer to the time of the hand over of the goods to the forwarding agent, carrier or other third parties entrusted with the transport.

3. INGUN shall not be liable for the impossibility of the delivery or delivery delays insofar as these have been caused by force majeure (e.g. natural disasters, war and unrest) or other events that were unforeseeable at the time of entering into the contract (any kind of operational disruptions; difficulties in respect of material or energy procurement; transport delays; strikes; lawful lockouts; workforce, energy or raw material shortages; difficulties in procuring official licenses; other administrative measures or the lacking, incorrect or untimely delivery by suppliers), which are not INGUN's responsibility.

4. Insofar as such events significantly hamper or render impossible the delivery or service by INGUN, and the hindrance is not merely of a temporary nature, INGUN shall be entitled to withdraw from the contract. In the case of hindrances of a temporary duration, the delivery and performance deadlines shall be postponed by the period of

the hindrance plus a reasonable start-up period. Insofar as acceptance of the delivery or service is no longer unacceptable to the Principal as a result of the delay, the Principal may withdraw from the contract by way of a written declaration. Withdrawal is to be stated without delay.

5. If INGUN defaults on performance or service, or if INGUN is unable to provide a delivery or render a service for whichever reasons, INGUN's liability shall be limited in accordance with Section IX.

#### **VI. Place of performance, passing of risk, sales shipment and acceptance**

1. In the absence of provisions to the contrary, the INGUN's principal place of business shall be deemed the place of performance for all obligations resulting from the contractual relationship. If INGUN is also required to install or assemble the supplied goods, the place of performance shall be deemed the location at which the installation or assembly is to apply.

2. The risk of accidental loss or accidental deterioration shall pass to the forwarding agent, carrier or other third parties entrusted with shipping shall pass to the Principal at the latest upon hand over of the delivery item (the end of the loading procedure is authoritative). This also applies if partial deliveries are made or INGUN has assumed other services (shipping or installation). If the shipping or the hand over are delayed as a result of a circumstance the cause of which is the Principal's responsibility, risk shall pass to the Principal from the day on which the delivery item is ready for dispatch and INGUN has notified the Principal in that respect.

3. Storage costs following the passing of risk shall be borne by the Principal. In case of storage on the part of INGUN, the storage costs shall be 0.25 % of the invoice amount of the delivery items to be stored for each expired week. INGUN reserves the right to assert a claim and furnish proof of higher or lower storage costs.

4. If the delivery item is shipped at the Principal's request, it will only be insured against theft, fire, water, transport and breakage damage or other risks by INGUN at the express request of the Principal and at the Principal's expense.

5. Insofar acceptance is to be conducted, the delivery item shall be deemed accepted if

- The delivery and, insofar as INGUN is also required to provide the installation or assembly, the installation or assembly have been completed;
- INGUN has notified the Principal of this by way of drawing attention to the acceptance fiction in accordance with this Section VI No. 5, and has requested that the Principal accept.
- Twelve workdays have lapsed since the delivery or installation or the Principal has started to use the delivery

item and in this case 6 workdays have lapsed since the delivery or installation, and

- The Principal has failed to accept the delivery or installation within this period for a reason other than a defect for which INGUN has been notified that renders using the delivery item impossible or considerably hampers such use.

#### **VII. Returns**

If standard articles are returned in individual cases following approval by INGUN, the return costs shall be borne by the Principal. INGUN shall charge the Principal 20% of the goods value, at least however € 50.00, for processing the returned goods. INGUN reserves the right to furnish proof of greater expenses. The Principal is expressly permitted to furnish proof that INGUN incurred no expenses at all due to the return consignment or that such expenses are significantly lower than the flat rate.

#### **VIII. Reservation of title**

1. The delivered goods shall remain INGUN's property up until payment in full. The goods subject to reservation of title are hereinafter referred to as "reserved goods".
2. The Principal is entitled to resell the reserved goods during the ordinary course of business. The entitlement shall expire upon the occurrence of the realisation event within the meaning of Section VIII No. 7. Seizure and transfer by way of security are not permitted.
3. The principal assigns to INGUN at this point in time its claims resulting from the resale or other claims that apply in the place of the reserved goods or otherwise arise in respect of the reserved goods. INGUN accepts the assignment. The Principal shall be entitled to collect the claim resulting from the resale as long as it honours its obligations to INGUN.
4. In the case of default in payment the Principal undertakes, at INGUN's request, to furnish INGUN with the details required to collect the claim and disclose the assignment to its debtors.
5. If the reserved goods are processed by the Principal, it is agreed that the processing shall apply in the name and on account of INGUN in the capacity of manufacturer, and INGUN shall directly acquire ownership or joint ownership (ownership in fractional (undivided) shares - if the processing applies on the basis of substances of several owners or the value of the processed item is higher than the value of the reserved goods - of the newly created item in the proportion of the value of the reserved goods (net invoice value) to the value of the newly created item. In the event that INGUN should not acquire such ownership, the Principal assigns to INGUN at this point in time as security its future ownership or, in the aforementioned proportion, joint ownership of the newly created item. If the reserved goods are inked or inseparably mixed with a uniform item, and if the other item is to be regarded as the principal item, INGUN shall assign to the Principal, provided INGUN owns

the principal item, proportionate ownership of the uniform item in the proportion stated in sentence 1.

6. If third parties intervene in the reserved goods, in particular by way of seizure, the Principal shall inform INGUN of this and draw the third party's attention without delay to INGUN's ownership.
7. If INGUN withdraws from the contract in the case of conduct in breach of contract on the part of the Principal, in particular default in payment (utilisation case), INGUN shall be entitled to demand that the reserved goods are returned.

#### **IX. Intellectual property**

In the absence of express agreements to the contrary, all intellectual property rights, in particular to products; work results; technical documentation; documents, know-how and inventions protected by copyright that arise as part of the contract or already existed before the contract was brought about, are and shall remain INGUN's property. This also applies provided the work results arose as a result of the Principal's requirements. Subject to proof to the contrary, a written contract or our written confirmation shall be authoritative in respect of the content of agreements to the contrary.

#### **X. Warranty**

1. The warranty period is 1 year from delivery or, provided acceptance is required, from acceptance. The period does not apply to the Principal's claims for damages resulting from the loss of life, physical injury or detrimental effects on health or from intentional or gross negligent violations of obligations by INGUN or its vicarious agents, which in each case shall fall under the statute of limitations in accordance with the statutory requirements.
2. In the case of material defects or defects in title, INGUN shall provide a warranty in accordance with the statutory requirements provided nothing to the contrary is specified below.
3. In the case of material defects regarding the supplied items, INGUN undertakes, and is entitled, to initially provide subsequent improvement or replacement at its discretion within a reasonable period. In the event of failure, i.e. the impossibility, unacceptability, refusal or inappropriate delay of the subsequent improvement or replacement, the Principal may withdraw from the contract or appropriately reduce the purchase price.
4. The warranty shall be inapplicable if the Principal alters the delivery item or makes arrangements for third parties to alter it without approval by INGUN and rectifying the defect is impossible or is hampered to an unacceptable extent as a result of such alteration. In any case, the Principal shall carry the additional cost of rectifying the defect caused by such an alteration.
5. If a mutual commercial transaction (Section 343 HGB - German Commercial Code) applies, the obligations to

inspect and provide notification in accordance with Section 377 HGB shall apply.

6. If a defect is based on culpability on the part of INGUN, the Principal may claim damages subject to the preconditions set out in Section X.

7. Delivery of used items agreed upon with a principal in an individual case shall apply by way of exclusion of any warranty for material defects.

#### **XI. Liability**

1. INGUN's liability for claims for damages, irrespective of whichever legal grounds these are based, in particular due to impossibility, default, inadequate or wrong delivery, breach of contract, violation of obligations in the case of contractual negotiations and unlawful acts, is in that respect restricted in accordance with this Section XI provided culpability is relevant in that respect.

2. INGUN shall not be liable in the event of minor negligence on the part of its executive bodies, legal representatives, employees or other vicarious agents provided the matter does not involve the violation of key contractual obligations. Obligations that are key to the contract include the obligation to provide delivery and installation of the delivery item as per agreement, free of defects in title and material defects, which have more than just an insignificant detrimental effect on its functionality and suitability for the intended use, as well as consulting, protection and care obligations that should enable the Principal to use the delivery item as per agreement or are aimed at protecting the life of and preventing danger to the Principal's personnel or its property against considerable damage.

3. With regard to damage that is caused as a result of the breach of key contractual obligations, the liability is limited to damages which INGUN foresaw as a possible consequence of a breach of contract at the time of the entering into the contract or which it should have foreseen by way of exercising due care. Indirect damage and consequential damage arising from the breach of key contractual obligations shall only be compensated insofar as such damage is typically to be expected.

4. The above liability limitations, exclusions and restrictions apply to the same extent in favour of the executive bodies, legal representatives, white-collar workers and other vicarious agents of INGUN.

5. The aforementioned liability limitations and exclusions do not apply to INGUN's liability regarding intentional acts, warranted characteristics, loss of life, physical injury or detrimental effects on health or liability in accordance with the German Product Liability Act.

6. Where INGUN provides technical information or acts in a consulting capacity, without giving a contractual undertaking in that respect, this shall apply gratuitously and by way of exclusion of any liability.

#### **XII. References**

1. The Principal shall only be entitled to refer to the business relationship with INGUN on his products, drawings, illustrations, models, brochures, business papers, advertising brochures and the like as well as at trade fairs following consent by INGUN.

2. The Principal is only entitled to state the name INGUN and the business association with INGUN as a reference on its homepage or in other publications following approval by INGUN.

#### **XIII. Place of jurisdiction, choice of law**

1. If the Principal is a merchant, legal person under public law or special public funds, or if the Principal does not have a general place of jurisdiction in the Federal Republic of Germany, the court with jurisdiction for INGUN's principal place of business shall be deemed the exclusive place of jurisdiction for all disputes resulting from the business relationship.

2. The legal relations between INGUN and the Principal are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG) does not apply.