

Intensiv-Filter Himenviro GmbH

General Terms and Conditions of Business



§ 1 General / Scope of Application

(1) The following terms and conditions of the company IF apply exclusively. IF's terms and conditions apply without any further particular indication. The terms and conditions are valid for all current and future contracts, deliveries and other services unless they are cooperatively excluded or modified in a written document.

(2) Other terms and conditions the customer may use, which are in contradiction or deviation of those IF uses, are invalid and not being recognised. IF's terms and conditions apply even if delivery is executed to the customer without any reservations and even if IF is aware of contradicting and deviating terms and conditions of the customer but does not explicitly disagree.

(3) Inclusion and interpretation of these General Terms and Conditions as well as conclusion and interpretation of contracts with the customer observes only the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the international Sale of Goods (CISG) is excluded.

(4) The legal inefficacy of any stipulation or part of these terms and conditions does not have any effect on the validity of the other terms and conditions. The contracting parties are obliged to replace the invalid stipulation by a new condition, which most closely represents the invalid condition.

This rule also applies in case of a necessity for further regulations or in case any stipulation in these terms and conditions is unclear or incomplete.

(5) Place of fulfilment for all obligations of the contractual relationships is the business domicile of IF in Velbert. This also applies to the payment liability.

(6) Place of jurisdiction is the location of the business domicile of IF, or, in case IF chooses so, a court of arbitration in Düsseldorf, which decides the case according to the arbitration regulations of the local chamber of commerce.

IF is obliged to select the court before a pending litigation.

IF is also entitled to bring legal action against the customer at any other competent court.

§ 2 Offers / Documents relating to Offer/ Installation

(1) Offers are non-binding and subject to alteration. The validity of declarations of acceptance and the validity of all orders requires a written confirmation of IF by fax or telex. This also applies to modifications, additions, or supplementary agreements.

(2) Drawings, illustrations, specifications, densities, measurements, performances and other information contained in catalogues, leaflets, newsletters, price lists or documents pertaining IF's offer do not guarantee the actual condition of the good or its durability. They are unaccommodating unless their compliance is explicitly otherwise agreed.

Modifications of features, both before and after conclusion of the contract, are reserved, unless these modifications are contradictory to the order confirmation or the specification of the customer. The customer will agree to any other modifications proposed by IF, as far as they are reasonable for him.

(3) In case after completion of the contract new regulations are introduced, which diverge from those valid when placing the order or when entering the contract, the resulting additional costs will be charged separately.

(4) Agreements or completions with representatives of the company or visiting engineers require explicit confirmation in writing.

(5) Special installation conditions are valid for any installation completed by IF. These conditions are also part of the contract.

§ 3 Prices

(1) Our prices apply "ex works", excluding packaging, shipping costs and other freight costs, which will be charged separately as a special item.

Our prices are exclusive of value added tax. The VAT is charged at the legally valid rate on the date of issuing the invoice, on which it is also included as a separate item.

(2) Prices are subject to change, if the delivery date agreed upon is changed for reasons, IF is not responsible for.

Price alterations take place on basis of increased costs of materials or of labour, or on basis of increased incidental costs. Changes in prices because of the reasons named above are as well permitted in case of fixed prices

(3) Unless otherwise agreed, the customer has to bear any supplementary fees, public charges or taxes

(4) Disposal of packing materials and costs thereby incurred are fully at the expense of the customer. Costs incurred by the return of packing material also are to be borne by the customer.

(5) Providing the customer requests a delay of the delivery, all emerging expenses and extra costs will be charged.

§ 4 Delivery period / Default

(1) Periods stipulated for delivery apply only approximately, unless a specific date for delivery is explicitly stipulated or confirmed in writing.

The delivery period begins with delivery of the confirmation of the order and as soon as all details of its implementation are clarified. The adherence to delivery dates requires the customer to fulfil the contractual obligations in time and properly. Especially the punctual delivery of the relevant technical and other documentation and obtained permissions, including those for construction drawings, and the adherence to terms of payment is requested.

The delivery period may be extended adequately if the customer fails to co-operate as it is required or agreed upon.

The defence of non-performance of the contract is reserved.

Delivery periods and dates of delivery refer to the date of completion. The dates and periods are met with announcement of the readiness for dispatch.

(2) In case of new conditions or legal regulations, enacted during the construction period, which diverge from those valid by the time of conclusion of the contract, or in case IF agrees to additional modifications, the period of delivery will be extended as necessary.

(3) In case of acts of God and further unpredictable, extraordinary and unforeseen circumstances, such as the interruption of operations by fire, water and similar incidents, failure of manufacturing plants and machines, delays of delivery caused by suppliers and business interruption caused by a shortage of raw materials, of energy or of manpower, strike, lock-out, difficulties in ordering means of transportation, traffic disruptions or interference of authorities, IF has the right to defer delivery for a reasonable time. This applies in case IF is not responsible for the circumstances named above.

(4) If periods stipulated for delivery are exceeded because of circumstances, IF is responsible for, the customer may withdraw from the contract after expiration of an adequate time limit he had set. This rule only applies, if the delayed delivery is not accomplished within extension of the time limit because of reasons, IF is responsible for. IF is not in default before extension of the set time limit.

The withdrawal of the contract must be told in writing.

Instead of withdrawal the customer has the right to demand compensation due to non-performance of the contract, in case IF or its assistants or partners caused the default deliberately or through gross negligence. In case of negligence the customer has to prove the damage.

The amount of compensation for damage must be estimated by the customer before completion of the contract; he can demand a maximum amount of the estimated compensation for damage of 1% for each complete week of delay, or 3% of the invoice value of the delayed deliveries and services.

§ 5 Transfer of risk

(1) Under exclusion of any liability, IF has the right to name the carrier, the customer is obliged to engage.

(2) The delivery takes place at the customers' own expense, the risk of transport is transferred to him, unless IF and the customer have cooperatively stipulated another agreement in a written document.

In any circumstance, after delivery of the item to the customer or his representative, the risk of accidental perishing and deterioration is to be borne by the customer. At the latest the risk passes to the customer with the item leaving the factory of IF. In case IF delivers free of carriage charges or IF concludes transportation insurance, the customer must also carry the risk.

If the customer wishes or causes the delivery item to leave the factory at a later date, he bears the risk from the date on the item is ready for shipping. In this case IF has the right to store the item at the customers' risk and expense. The incurring costs will be charged each month of storage for the full amount of at least 1 % of the invoice value.

(3) The customer must observe the conditions of the carrier and insurance companies engaged for the shipping.

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(4) In case of transport damages an assessment of damage has to be taken by the appropriate authority. IF is to be informed immediately.

(5) Should items have material defects or be faulty, the customer is to accept the delivery without limiting any further rights.

§ 6 Warranty / Liability for Defects

(1) In case of a commercial transaction between the customer and IF, the customer has to report apparent defects, wrong delivery and quantity deviations to IF without undue delay, at the latest within two weeks after receiving the item. IF must be notified about the deficiency in writing. Hidden defects IF is also to be notified about in writing and within one month after delivery.

In case the customer fails to notify IF about the defects, any warranty claim is invalid. In this case claims of hidden defects are delayed and therefore excluded, if the defect could have been visible with low effort. The customer loses his warranty unless IF concealed the defect in a fraudulent manner.

(2) The customer is only entitled to supplementary- performance, he has the choice of either rectification or replacement by delivery of a new item free of defects.

Rectification has priority, unless it is not reasonable due to the scope of work and the value of the item. In case the supplementary performance failed thrice, the customer- at his own choice- is entitled to demand either cancellation of the contract or abatement of the purchase price.

(3) IF is not liable for deliveries and services of suppliers, in case these are engaged by the customer to complete orders. In this case the customer has to assert warranty claims directly against these suppliers. Therefore IF will assign all claims against the suppliers to the customer.

§7 Reservation of Title

(1) IF reserves the right to retain its title to the object of purchase until all payments relating to the delivery contract have been received. This also applies until all- future or conditional- demands of the business connection are fulfilled, irrespective of legal basis. This also applies in case the customer makes a payment on a specific demand.

(2) The customer is not entitled to pledge the conditional goods or to assign them as a security. He may only dispose of the goods by usual commercial means.

Herewith the customer assigns all resulting claims against his business associate to IF.

These claims serve as security for all claims against the customer to the same extent as the conditional goods.

In case the conditional goods are sold together with other goods, IF did not deliver, the assignment is only valid to the amount of the final invoice amount of the sold conditional good. IF herewith accepts the assignment of the claims.

(3) The customer has the right to collect claims against his business associates until IF revokes this right. IF will only revoke this right, if the customer does not attend his obligation to pay. On demand of IF, the customer is obliged to inform his business associates about the assignment of his claims against them to IF. He is obligated to give all information and documents required for the collection of debts.

(4) At the customers´ request, IF will release securities in case the realisable value of the existing securities exceeds the secured claims by more than 25%. The customer has the right to select the securities which are to be released.

(5) In case the reservation of title or the assignment is not legally effective according to the law of the country where the goods are sent to, the corresponding dept security of this country applies. The customer is obliged to participate in providing most extensive securities. He is required to make all arrangements necessary for constituting these rights.

(6) If the object of purchase is being processed by the customer, the reservation of title extends on the new item. In case, the object is processed together with other items not sold by or belonging to IF, IF acquires joint ownership of the new item.

The share of the joint ownership is based on the proportion of the value of the object of purchase to the value of the object processed with.

§ 8 Terms of Payment

(1) Unless otherwise agreed, invoices are due for payment immediately and without any deductions.

(2) In case invoices are not paid immediately, the customer is in default. If the payment period is culpably exceeded, interest to the amount of 8 % above the ECB base rate plus VAT will be added. IF reserves the right to enforce further claims in case of delay of payment.

(3) IF reserves the right, regardless of any contradicting conditions the customer may have, to set payments against the customers´ outstanding debts. In this case the customer will be informed about the method of settlement. In case of accrued costs and interests, IF reserves the right first to set the payment against the costs, then against the interest and at last against the main demand.

(4) Payment is not being accepted before IF has access to the amount. In case of payment by cheque it will only be considered valid after the cheque has been cashed.

(5) In case of outstanding invoices, exceeded terms of payment or critical pecuniary circumstances or in case IF becomes aware of circumstances, which cast doubt on the financial standing of the customer, IF has the right to demand the full remaining debt at once. In this case- regardless of diverging agreements- IF has the right to request advance payment or securities, or in case the item has already been delivered, payment of all outstanding debts of the same legal relationship.

This condition applies especially, if the customer suspends payment, cheques are not being cashed, a bill at maturity is not being honoured, insolvency or bankruptcy proceedings against the asset of the customer are submitted or instituted or a respective application has been rejected due to lack of funds.

§ 9 Construction Drawings / Manufacturing Documents / Information / Data

(1) The customer assumes liability for not violating third parties´ rights by the use of provided drawings.

(2) Any data, devices, supply or material provided by the customer for manufacturing or processing have to be sent in at the expense of the customer. They are stored on the customers´ risk. IF is not obliged to insure these items.

§ 10 Patents / Copyrights

(1) Without explicit and written consent, rights and claims against IF, especially because of defects on goods produced and delivered by IF or because of delinquencies committed by IF, may not be assigned or pledged to third parties- neither all nor part.

(2) In case IF has to conduct experiments using drawings or devices the customer provided, the customer is responsible for not violating industrial property rights of third parties.

(3) IF has copyright and industrial property rights to the facilities, instruments, equipments, plans and drawings it has constructed.

(4) The customer guarantees, that any survey, drawing, installation and calculation, especially measurement- and cost- calculations produced for executing the order are being produced for the own use only.

§ 11 Limitation of Liability / Limitation of Claim

(1) IF is liable for damages or avoidable expenses- regardless of the legal nature of the claim- only if the damage or the avoidable expense results from grossly negligent or deliberate delinquency of IF or one of his assistants. IF is not liable especially for loss of profit and unforeseeable secondary damage, unless the liability is based on warranties, which are to protect the customer against this sort of damages.

(2) The limitation period for claims relating to defects in goods or services contrary to duty –including claims for damages and claims for compensation of avoidable expenses- amounts to six months, calculated as from the time of transfer of risk or other service.