

# General Conditions of Sale and Delivery (GC)

## IRO GmbH, Jakob-Mutz-Strasse 7, 72280 Dornstetten, Germany

These General Conditions of Sale and Delivery shall apply to our sales contracts and to all other agreements, statements and processes referred to in the GC. They shall apply exclusively between us as entrepreneurs (Section 14 German Civil Code [BGB]). With the exception of Clause 6, they shall not apply to consumers (cf. Section 13 German Civil Code). The GC shall also apply to this extent to future agreements without any explicit reference to these being required. Any general terms of purchasing or ordering of the customer shall only apply insofar as they are in accordance with our GC or if they have been acknowledged by us in writing. Any lack of response shall in no case be interpreted as acknowledgement.

### 1. Quotations

Quotations shall be non-binding. Quotation prices shall be calculated on the cost basis of the quotation day and shall therefore be subject to a price adjustment in the event of a change in a cost factor before the order is placed.

In all cases the above shall be subject to the goods being unsold. In particular, the delivery times specified in the quotation require an immediate placement of the order.

### 2. Conclusion of a contract

All orders shall only become effective after we have confirmed them in writing. This shall also apply to amendments and additions to supply contracts already concluded. If it becomes apparent after the contract has been concluded that the fulfillment of the payment obligations is at risk due to the customer's inability to pay, we shall be entitled to withdraw from the contract unless the customer provides us a security or cash payment on delivery.

### 3. Call-off orders

Regarding call-off orders, unless otherwise agreed, we shall grant a period of 3 months starting from the day the order confirmation date. If the acceptance period has expired, we shall be entitled to either invoice the goods or cancel the order.

### 4. Prices

In the absence of any other agreement, our prices shall be ex works of IRO GMBH. In the Federal Republic of Germany value added tax shall also be added to the prices at the statutory applicable rate.

Prices shall be calculated using the cost basis of the order confirmation. For contracts where there is an agreed delivery period of more than 4 months, we reserve the right to increase the prices in line with any cost increases that may occur due to collective labor agreement or increases in the price of materials. If the increase is more than 5% of the agreed price, the Purchaser shall have the right of withdrawal.

### 5. Packaging

The packaging shall be invoiced at net cost price. Unless expressly agreed otherwise, packaging costs are not included in the price. The supplier shall take back the packaging within the scope of its obligations under the Packaging Ordinance. The Purchaser may return the packaging to the premises of the supplier during normal business hours and with timely prior notice, unless a different acceptance/return point has been notified to it. The Purchaser shall assume any transportation costs for used packaging. The returned packaging must be clean, free from impurities and sorted by packaging type. Otherwise, the supplier shall be entitled to request the additional disposal costs incurred from the Purchaser.

### 6. Payment

Unless otherwise expressly agreed, invoices must be paid net without deduction within 30 days of the invoice. Any deviations must be noted by us in the order confirmation. Repair costs, assembly costs and additional individual parts must be paid in full without any deduction within 7 days of receipt of the invoice. Default interest is calculated at 9% above the respective base interest rate in accordance with Section 288, para. 2 German Civil Code.

Invoices shall be issued in EURO. Payment shall also be made in EURO and without additional costs to us.

The Purchaser shall only be entitled to a payment retention right or to offset against outstanding payments in the event that its counter-claims have been established in law and are undisputed or recognised by us.

### 7. Retention of title

7.1 The delivered goods shall remain our property (reserved goods) until the complete payment of all our current and future receivables arising from the purchase agreement and the ongoing business relationship (secured claims) or until the redemption of any given checks and bills of exchange.

7.2 The goods subject to retention of title may not be pledged either to third parties nor assigned as security before the full payment of the secured receivables. The Purchaser must notify us immediately in writing if an application to open insolvency proceedings has been made or in the event of third-party access (e.g. seizure) to the goods to which we retain title. If there is a claim on our part we shall be entitled to request from the Purchaser at any time information on which goods delivered under retention of title are still in its possession and where these are located.

7.3 The Purchaser shall bear the risk for the goods delivered by us and shall commit to store them carefully and provide adequate insurance cover for loss (theft, fire etc.). The Purchaser hereby assigns to us the first-class part of his claim against the insurance company in the case of insured event. The assigned part of the claim is amounting to the purchase price of the reserved goods delivered by us. This shall also apply when the insurance does not cover the full amount of the entire loss. In this case the partial amount of claim which was assigned to us shall not be reduced on a pro-rata basis.

7.4 In the event of non-contractual conduct of the Purchaser, in particular in relation to the non-payment of the purchase price due, we shall be entitled, according to statutory provisions, to withdraw from the contract and/or to demand surrender of the goods to which we hold title. The surrender demand does not at the same time include the withdrawal declaration; rather we shall only be entitled to demand surrender of the goods and reserve the right to withdraw. If the Purchaser does not pay the purchase price due, we may only assert these rights if we have previously, and without success, set the Purchaser a reasonable grace period to make the payment or if setting such a grace period is unnecessary in accordance with statutory provisions.

7.5 The Purchaser shall be authorised until revocation in accordance with (c) below, to resell and/or process the goods subject to the retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.

a) The retention of title shall extend to products created from the processing, mixing or combining of our goods at their full value, whereby we shall be considered as their manufacturer. If co-ownership has arisen through the processing, combination or mixing with the goods belonging to third parties, then we shall acquire co-ownership in relation to the invoice value of the processed, mixed or combined goods. As for the rest, the same shall apply for the created product as for the goods delivered under retention of title.

b) The Purchaser hereby assigns to us as a security in advance all claims against third parties arising from any resale of reserved goods or products amounting to the value of the reserved goods and/or at the amount of our possible co-ownership share in accordance with the paragraph above. We shall hereby accept the assignment. The obligations of the Purchaser stated in Clause 7.2 shall also apply in regard to the assigned receivables.

c) In addition to us, the Purchaser shall remain authorised to collect these claims. We shall commit not to collect the receivables, provided that the Purchaser complies with its payment obligations to us, there is no deficiency in its performance capacity and we do not assert the retention of title by exercising a right in accordance with Clause 7.4. If this should be the case we can then demand that the Purchaser notifies us of the assigned claims and their debtors, provides all the necessary information for the collection, hands over the associated documentation and notifies the debtors (third parties) of the assignment. We shall also be entitled in this case to revoke the authorisation of the Purchaser for any further sale and processing of the goods under retention of title.

7.6 If the realisable value of the securities exceeds our receivables by more than 10%, at the request of the Purchaser we will release the securities of our choice.

### 8. Delivery times

The delivery time is either ex works of IRO GMBH. Unless expressly agreed to the contrary, the stated delivery times shall be deemed approximate and without guarantee. A written declaration from the supplier shall be required as proof that a binding delivery or hand-over deadline was agreed.

a) In the case of an agreed binding delivery time, the delivery time shall commence with the sending of the order confirmation, however, not before the provision of all documents, licences and

clearances to be obtained by the Purchaser or before receipt of any agreed down payment or letter of credit.

b) If we are unable to meet binding delivery deadlines for reasons which are not our responsibility (non-availability of the service), we will inform the Purchaser of this immediately and at the same time communicate the anticipated new delivery deadline. If the service performance is also not possible within the new delivery period, we shall be entitled, in full or in part, to withdraw from the contract and we will immediately reimburse any consideration made by the Purchaser. Deemed as a case of non-availability of the service performance in this sense is in particular the late delivery to us by our supplier, if we have concluded a congruent hedging transaction, there is no fault on our side nor on the part of the supplier or we are not committed to the procurement in the individual case.

c) A binding agreed delivery deadline has been met if the delivery item has left the factory before it expires or the readiness for dispatch has been communicated to the customer. The delivery time shall be extended by a reasonable time in the case of measures taken within the context of industrial disputes, in particular strikes and lockouts and if unanticipated impediments occur which are outside the control of the supplier, if such impediments are proven to have a significant impact on the completion or delivery of the delivery item. This shall also apply if such circumstances occur with subcontractors.

d) Should the Purchaser suffer damages due to a delay resulting from the fault of the supplier, it shall be entitled to claim default payment under the exclusion of further claims. The default payment shall be fixed at 0.5% for every full week of delay but with the total amount not exceeding a maximum of 5% of the value of the entire delivery. This limitation of liability shall not apply to cases in which the supplier has demonstrated intent or gross negligence. The supplier shall reserve the right to provide proof that the Purchaser incurred no, or only a substantially smaller loss than the above flat-rate.

### 9. Warranty

9.1 Unless otherwise agreed below, the legal provisions shall apply to the rights of the Purchaser in the event of material defects and defects of title (including incorrect and under-deliveries, incorrect assembly or defective assembly instructions). The provisions of Clause 11 shall apply to claims for defects asserted on the part of the Purchaser for compensation or reimbursement of futile expenditures. Remaining unaffected in all cases shall be the legal special provisions regarding the final delivery of the unprocessed goods to a consumer, even if this consumer has further processed them (supplier recourse in accordance with §§ 478 BGB). Supplier recourse claims shall be excluded if the defective goods have been further processed by the Purchaser or another entrepreneur, e.g. through incorporation into another product.

9.2 The basis of our defect liability shall primarily be the agreement made regarding the condition and quality of the goods. All product descriptions which are the subject of the individual contract or which have been publicly disclosed by us (in particular in catalogues or on our website) shall be deemed to be the agreement regarding the condition and quality of the goods.

9.3 Insofar as the condition and quality of goods was not agreed, then it must be assessed in accordance with the statutory regulation whether a defect exists or not (§ 434 para. 1 page 2 and 3 BGB). However, we shall assume no liability for public statements by third parties (e.g. advertising statements). Third-parties in this sense shall also be the respective manufacturer of the goods, if we did not manufacture the goods ourselves. Wear and tear damage or damage which is based on previous wear does not constitute a material defect. Also not constituting material defects are damages which are causally related, where

- the goods were incorrectly put in operation by the Purchaser or third party or were incorrectly assembled (in particular not in accordance with the operating instructions), or
- the goods were used incorrectly, inappropriately or excessively; or
- the goods were insufficiently maintained and serviced; or
- the goods were previously changed by the customer or by a third-party without our consent or were improperly repaired; or
- incorrect spare parts (in particular incompatible parts or parts not designated by the manufacturer) have been incorporated or add-on parts have been added; or
- unsuitable operating materials were used or the goods were exposed to damaging (e.g. physical, chemical, electrical) influences.

9.4 The defect claims of the Purchaser presuppose that it has complied with its statutory examination and notification obligations (§§ 377, 381 HGB [German Commercial Code]). If a defect becomes apparent at the time of delivery, examination or at any other future point in time, then we must be immediately notified of this in writing. In all cases obvious defects are to be notified in writing within 2 working days of delivery and non-obvious defects during the examination within the same period as from first discovery. If the Purchaser misses the due and proper examination and/or defect notification, then in accordance with statutory regulations our liability shall be excluded for the defect that was either not duly notified, or not notified, within the requisite time period.

9.5 If the delivered item is defective then we can initially choose whether we provide a supplementary performance by removing the fault (rework) or by delivering a defect-free item (replacement delivery). This shall not affect our right to refuse a supplementary performance under the statutory conditions.

9.6 We shall be entitled to make the owed supplementary performance contingent on the customer paying the purchase price due. However, the Purchaser shall be entitled to withhold part of the purchase price that is appropriate in relation to the defect.

9.7 The Purchaser must give us the requisite time and opportunity for the owed supplementary performance, in particular to hand over the goods subject to the complaint for testing purposes. In the case of a replacement delivery, the Purchaser shall return the defective item to us in accordance with the statutory provisions. The supplementary performance shall include neither the removal of the defective item nor a further installation if we were not originally committed to such an installation.

9.8 If a defect does indeed exist we shall assume and/or reimburse any requisite expenditure incurred for the purpose of the inspection and supplementary performance, in particular any transportation, travel, labour and material costs in accordance with the statutory regulation. Otherwise we can request reimbursement from the Purchaser for the costs incurred due to the unjustified defect removal claim (in particular testing and transport costs) unless the missing defectiveness was not recognisable for the Purchaser. Notwithstanding § 349 para. 3 BGB we shall not reimburse any installation or removal costs if the goods delivered by us are not intended in accordance with its customary use to be inserted or installed in a structure (building material), in way.

9.9 In urgent cases, for instance in the event of a risk to operational safety or to stave off excessive damages, the Purchaser shall have the right to eliminate the defect itself and to request reimbursement from us for the objectively requisite expenses. We must be informed immediately, if possible in advance, if the Purchaser is to undertake such work itself as a self-remedy. This right to self-remedy shall not apply if we would have been entitled to refuse a corresponding supplementary performance in accordance with statutory provisions.

9.10 If the supplementary performance fails or if a reasonable extension period set by the buyer for the supplementary performance has expired unsuccessfully or is unnecessary in accordance with statutory provisions, the Purchaser shall have the right to withdraw from the purchase agreement or reduce the purchase price. However, there is no right of withdrawal in the event of a slight defect.

9.11 Claims of the Purchaser for compensation and/or reimbursement of futile expenditures shall only apply in the event of defects in accordance with Clause 10 and shall otherwise be excluded.

### 10. Liability limitations

10.1 Unless specified otherwise in these General Conditions of Sale and Delivery, including the following provisions, we shall be liable in the event of an infringement of contractual and non-contractual obligations in accordance with statutory provisions.

10.2 We shall be liable for compensation – irrespective of the legal reason – within the framework of fault-based liability in the event of intent or gross negligence. In cases of slight negligence, we shall

be liable, subject to a milder liability criterion (e.g. the diligence we exercise for our own matters), in accordance with statutory provisions,

a) for damages arising from injury to life, body, or health,  
b) for damages arising from a non-insignificant infringement of an essential contractual obligation (obligation, of which only its due and proper fulfillment enables implementation of the contract and on its compliance the contractual partner regularly trusts and must trust; in this case however our liability is restricted to compensation for foreseeable damages that typically occur.

10.3 The liability limitations arising from Clause 10.2 shall also apply to infringements of obligations by or for the benefit of persons whose fault we have to assume responsibility for in accordance with statutory provisions. They shall not apply if we fraudulently concealed a defect or assumed a guarantee for the condition and quality of the goods and for the claims of the Purchaser in accordance with the Product Liability Act.

10.4 Due to an obligation infringement that does not consist of a defect, the Purchaser can only withdraw or terminate if we are responsible for the obligation infringement.

#### **11. Limitation Period**

11.1 Notwithstanding § 438 para. 1 No. 3 BGB, the general limitation period for claims for defects of material and title is one year from delivery. If an acceptance is agreed, the limitation period starts with the acceptance.

11.2 However, if the goods are defined as a structure or an item which corresponding to their customary use have been used for a structure and have caused the latter's defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory regulation (§ 438 para. 1 No. 2 BGB). Also remaining unaffected shall be other statutory special regulations on the limitation period (in particular § 438 para. 1 No. 1, para. 3, §§ 444, 445b BGB).

11.3 The above limitation periods based on purchasing law shall also apply to any contractual and non-contractual claims for damages asserted by the Purchaser which are based on a defect in the goods unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would result in a shorter limitation period in the specific instance. However, damage compensation claims of the Purchaser in accordance with Clause 10.2 para. 2, sentence 1 and sentence 2a and in accordance with the Product Liability Act shall only expire after the legal liability periods.

#### **12 Delivery, transfer of risk, acceptance, acceptance delay**

12.1 Delivery shall be ex works which is also the place of performance for the delivery and any supplementary performance. On the request and costs of the Purchaser, the goods shall be sent to another location (consignment purchase). Unless agreed otherwise we shall be entitled to determine the type of shipping ourselves (in particular transportation company, shipping route, packaging).

12.2 The risk of accidental destruction or accidental deterioration of the goods shall be transferred to the Purchaser at the latest with the hand-over. However, with a consignment purchase the risk of accidental destruction or accidental deterioration of the goods as well as the risk of delay is transferred with the delivery of the goods to the freight forwarder, freight driver or to any person or institute designated for the performance of the shipment. If an acceptance has been agreed, this shall be the determining factor with regard to the transfer of risk. Furthermore, the statutory provisions related to work contract shall also apply accordingly to the agreed acceptance. The hand-over or acceptance shall be deemed fulfilled if the Purchaser has delayed acceptance.

12.3 If the Purchaser delays acceptance, fails to cooperate or if our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for the resulting damage including additional expenses (e.g. storage costs). For this purpose we shall be entitled to claim a flat-rate compensation of 1/2 percent for every full week of delay, but not more than 5 percent of the value of the entire delivery.

The proof of a higher level of damage and our statutory claims (in particular reimbursement of extra costs, reasonable compensation, termination) shall remain unaffected; however, the flat-rate is to be charged against further monetary claims. The Purchaser shall reserve the right to provide proof that we incurred no, or only a substantially smaller loss than the above flat-rate.

12.4 We shall be entitled to demand payment of a contractual penalty if the Purchaser rescinds from the contractual relationship without a justified reason. The contractual penalty in this case shall be 10 percent of the order value. A justified reason for rescinding the contract shall only be in the event the Purchaser has a statutory right to influence a legal relationship by unilateral declaration.

The proof of a higher level of damage and our statutory claims (in particular compensation, instead of performance) shall remain unaffected; however, the contractual penalty is to be charged against further monetary claims. The Purchaser shall reserve the right to provide proof that we incurred no, or only a substantially smaller loss than the above flat-rate.

#### **13. Purchaser's right to withdraw and further liability of the supplier**

a) The Purchaser can withdraw from the contract if it becomes ultimately impossible for the supplier perform the service in full before the transfer of risk. The same applies in the case of the incapacity of the supplier. The Purchaser may also withdraw from the contract when, in the case of identical items being ordered, the completion of part of the delivery becomes impossible in terms of numbers and it has a legitimate interest in rejecting a partial delivery. If this is not the case, the Purchaser can decrease the consideration accordingly.

b) If there is a delay in performance as set out in Clause 8 of the General Conditions of Sale and Delivery, and if the Purchaser grants an appropriate time extension to the supplier in default with the express declaration that, after expiration of that period it will not accept the service and the time extension is then not adhered to, the Purchaser shall be entitled to withdraw from the contract.

c) If the impossibility of performance occurs during the acceptance delay or through the fault of the Purchaser, then the Purchaser shall remain under the obligation to pay the consideration.

d) The Purchaser shall also have a right of withdrawal if the supplier, after having been granted a time extension to make a substitute delivery due to a defect for which it is responsible in accordance with the General Conditions of Delivery, is at fault for letting that period pass fruitlessly. The Purchaser shall also have a right of withdrawal in the event of the impossibility or inability of the supplier to make a substitute delivery.

#### **14. Place of performance, place of jurisdiction, applicability of German law**

The place of performance and place of jurisdiction, if the Purchaser is merchant as defined in the German Commercial Code (HGB) or has no general place of jurisdiction within Germany, shall be Freudenstadt for all disputes arising out of the contractual relationship. The contract shall be subject to the procedural and substantive law of the Federal Republic of Germany under exclusion of the conflict-of-laws rules and other regulation set out in the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **15. Contract language, Safeguard Clause**

15.1 The contract language is German. In the event of deviation and/or interpretation of this text, only the German version shall prevail.

15.2 Should individual provisions of the contract or of the General Conditions of Sale and Delivery be or become wholly or partially ineffective or unenforceable, this shall not affect the validity of the remaining provisions. The parties shall commit, in the place of the ineffective or unenforceable provision, to come to an agreement which is as close as possible in a legally permissible manner to the desired commercial and legal success of the provision. The same shall apply if a legal loophole that needs to be closed becomes apparent.