

§ 1 Validity

1. All deliveries and services carried out by IWN for a company, and quotes given, shall be based exclusively on these terms and conditions.

A "company" (hereinafter referred to as the "Ordering Party") in the sense as understood by these terms and conditions is a natural or legal entity or a legally-constituted private limited company with which IWN have contact and which acts in a commercial or self-employed professional capacity.

2. Any terms of trade or purchasing conditions of the Ordering Party which deviate from, or which conflict with, these conditions, even if IWN are aware of these and/or fail to specifically object to them, shall not be part of any contract unless IWN have expressly agreed to their validity in writing.

§ 2 Making Offers and Finalising Contracts

1. All offers contained in brochures, advertisements etc. are –including with respect of prices –without obligation and non-binding. Any enquiries/orders of the Ordering Party are only concrete offers which must still be accepted by IWN expressly in writing. IWN have fixed a minimum order value for orders and Ordering Parties shall be notified of this on request. Any specific offers worked out for an Ordering Party shall be binding on IWN for 30 days from the date of order.
2. Contracts shall always be concluded under the proviso that IWN's own suppliers deliver correctly and on time. This shall not apply if the non-delivery is due to the lack of a matching (congruent) covering transaction with an IWN supplier. IWN shall inform the Ordering Party immediately of any non-availability of performance. Any payments made in respect of such will be refunded immediately.
3. Verbal agreements, amendments, supplements and/or any other deviations from the foregoing trade terms and conditions are not valid unless IWN have expressly agreed to them in writing.
4. Any details contained in offers and/or order confirmations of IWN which are based on an obvious error, namely a typing mistake or a mistake in a calculation, shall not be binding on IWN. Instead, the meaning which was obviously intended shall be valid.
5. Offer documentation, drawings, descriptions, samples and quotations of IWN shall remain the property of IWN. Without IWN's approval they cannot be made forwarded, published, copied, or otherwise made accessible to third parties. The documents must be returned on demand and no copies must be withheld.

§ 3 Prices, Price Changes/Adjustments

1. Prices include the statutory rate of VAT. This will be shown separately.
2. Prices do not include costs for packaging and freight.
3. If more than six months have elapsed between the date of finalising the contract and the agreed and/or actual date of delivery, then those IWN prices shall be valid which are in force at the time of delivery or when IWN signify that the goods are at the disposal of the Ordering Party. IWN will inform the Ordering Party of any corresponding price adjustments. If these amended prices exceed the ones initially agreed by more than 10%, then the Ordering Party shall be entitled to withdraw from the contract.

§ 4 Delivery Dates

1. Delivery dates or deadlines, which can be agreed either bindingly or non-bindingly, must be made in writing. They are binding however, only after an express statement by IWN to this effect.
2. IWN can only be held responsible for delays in their deliveries and performances and/or for their impossibility, only if they, their authorised representatives or vicarious agents, have caused the hindrance deliberately or by acting in a grossly negligent way.

This principle shall apply in particular to force majeure, strikes, lock-outs, local authority rulings etc., even if these hindrances arise at IWN's suppliers or their sub-suppliers.
3. The appropriate extension to the delivery date to be set according to statutory regulations by the Ordering Party in the case of a defaulted delivery is hereby fixed at two weeks and shall begin when IWN receive notification of the extended deadline.

§ 5 Shipment and Transfer of Risk

1. Risk shall transfer to the Ordering Party as soon as the consignment has been handed over to the person carrying out the transport or when the goods have been made available for shipment by IWN in their factory. If shipment is delayed or not carried out due to the fault of Ordering Party, then risk shall transfer to him as soon as IWN notify him that the goods are ready for shipment.
2. At the request of the Ordering Party, deliveries can be insured on his behalf and for his account.

§ 6 Warranty

1. For any defects relative to any performances or goods IWN shall effect the warranty for the goods initially by opting to either improve or replace, whereby – if necessary – the Ordering Party must allow IWN two attempts at fulfilling the performance. The delivery of a new item free of defects shall only be effected concurrently with the return/handover of the defective item. If the Ordering Party has already used the defective item, then IWN shall be entitled to sue for compensation for the loss of value caused by its use by the Ordering Party and to refuse to bring about any supplementary performance (cure) until the amount has been paid.
2. If the supplementary performance fails after a suitable deadline, then the Ordering Party can choose either compensation, a price reduction or withdrawal from the contract (rescission). If the violation of the contract is only minor, in particular in the case of slight defects, then the Ordering Party shall have no right of withdrawal, however.

3. The Ordering Party is obliged to inspect the goods immediately on their arrival and to inform IWN in writing of any obvious defects within five working days of receipt of the goods. In respect of defects which cannot be seen but which appear later the Ordering Party must inform IWN likewise in writing within 5 working days of their becoming known. In both aforementioned cases IWN must receive the notification within the deadline - otherwise the pressing of any warrantyclaims in respect of the defect concerned shall be excluded.

The Ordering Party bears the full burden of proof in respect of all the pre-conditions relating to his claim, in particular for the circumstances surrounding the defect itself, for the point in time when he noticed it, and for making his complaint in good time. So that IWN can inspect them, all defective items must be held ready in the state in which they were when the defect was seen.

4. In the case of a contract for work or services, a claim for an obvious defect known to the Ordering Party in respect of the work and service can only be pressed if, on acceptance of the item, a corresponding caveat or proviso has been declared.
5. The Ordering Party cannot refuse to receive and accept deliveries or performances on account of a slight defect.
6. If the Ordering Party fails to comply with any IWN operating or maintenance instructions or makes changes to the items supplied or changes any parts or uses consumables (expendables), then it shall be disputably presumed that any defect occurring is due to this, thereby removing any liability from IWN. If the Ordering Party receives faulty assembly instructions, then IWN is only obliged to supply error-free assembly instructions and this only if the error in the instructions prevents the correct assembly.
7. The product description of IWN as agreed shall form the only basis for the finished workmanship of the product. Slight, acceptable deviations in the dimensions and the design – particularly with follow-up orders - shall not entitle the Ordering Party to make claims in respect of defects unless it has been expressly agreed in writing that these characteristics must be kept absolutely. Technical improvements and/or necessary technical adjustments shall be considered as in conformity with the contract unless they constitute a not merely insignificant deterioration in the ability to use the object. Any liability for normal wear and tear shall be excluded. The Ordering Party shall not receive any guarantees as understood by the law from IWN unless the guarantees are expressly described as such.
6. Any claims in respect of defects shall become statute-barred within one year from the delivery of the goods unless the law pursuant to §§ 438 Section 1 No. 2, 479 Section 1, 634 BGB (German Civil Code) prescribes longer periods or if IWN is liable on account of a deliberate act, the malicious concealment of a defect or injury to life and limb or the health of the Ordering Party. This does not apply to the sale of used items which are supplied to the exclusion of any liability for defects.
7. The right of recourse of the Ordering Party against IWN pursuant to § 478 BGB (Recourse of the Ordering Party) shall be permissible only as provided by law. If the Ordering Party has agreed claims for defects with his client which go beyond the legal limits, then these shall not apply to IWN unless IWN have expressly agreed to them.
8. If IWN gives the Ordering Party information over and above IWN's legal obligations regarding the use of their products, then IWN shall only be liable if a special fee has been agreed in respect of this.

§ 7 Limitations on Liability

1. IWN shall be liable for slight cases of negligence only if a major contractual obligation has been infringed thereby (e.g. the obligation to deliver goods without any defects). The extent of the liability shall be limited thereby to the average foreseeable immediate damage relative to the type of goods typical to the contract. This also applies in the case of slightly negligent infringements of obligation by our vicarious agents.
2. If the Ordering Party claims for damages following the failure of a supplementary performance, then this shall be limited to the difference between the purchase price and the value of the defective item.
3. The above limitations on liability shall not apply to any damage caused to life and limb or health, providing they do not reside in the culpable violation of obligations on the part of IWN or their vicarious agents and for any liability in respect of the deliberate or grossly negligent violation of their obligations. The above limitations on liability also do not apply to claims of the Ordering Party arising from the Product Liability Act and for liability claims regarding defects if IWN have maliciously concealed the defect in question or inasmuch as IWN have undertaken a guarantee in respect of them.

§ 8 Retention of Ownership

1. Until all demands which IWN have against the Ordering Party have been settled, whatever their legal basis, IWN shall retain ownership of the supplied items (retained items).
2. The Ordering Party is obliged to notify IWN in writing immediately if he pawns or takes out any attachment on the retained items and must inform his pawnee of IWN's retention of ownership. Except in the cases given below the Ordering Party shall not be entitled to sell the supplied items which are under retention of ownership, nor to give them as a gift, nor to pawn them nor to transfer ownership of them by way of a security.
3. If the delivery is effected for a plant or company managed by the Ordering Party, then the items may be sold on the basis of correct business practice. In this case the claims of the Ordering Party against his client from the sale are, as of now, assigned to IWN. IWN hereby accepts this assignment. If the items are sold to a customer on credit, then the Ordering Party must retain ownership on his part against his client. The Ordering Party hereby assigns to IWN the rights and claims from his retention of ownership in respect of the client. IWN hereby accepts this assignment.
4. The Ordering Party shall perform any processing or finishing-off work of the retained items on behalf of IWN free of charge. If the retained goods are processed, connected to, combined or blended with, other goods not belonging to IWN, IWN shall be entitled to part-ownership of the new item resulting therefrom in relation to the value of the items which IWN has delivered and which are in those retained goods to the remaining processed goods at the time of the processing, connecting, combining or blending.

If the Ordering Party acquires sole ownership of a new item, then the contractual parties hereby agree that the Ordering Party shall grant IWN joint ownership of the new goods in relation to the items supplied by IWN in the processed, connected, combined, or blended retained products and shall keep these for the supplier free of charge. If the retained items are re-sold together with other goods, irrespective of whether they are processed, connected, combined, blended or not, then the prior assignment agreed above in Clause 3 shall be valid only to the extent of the value of the goods contained in the retained items supplied by IWN which have been re-sold together with the other goods.

5. If the retained items are built as an essential componen by the Ordering party or on his behalf into the basic model of a third party, then the Ordering Party assigns as of now against the third party, or against the party concerned, any resulting demands for payment with all ancillary rights, including the granting of a cautionary or security mortgage, to IWN. IWN accepts this assignment.
6. If the retained items are fitted as essential components into the basic model of the Ordering Party, then the Ordering Party as of now assigns the demands arising from the sale of the basic model or of the rights attaching to the basic model together with all ancillary rights to IWN. IWN accepts this assignment.
7. If the value of the securities due to IWN according to the above conditions exceeds the value of IWN's demands – not only temporarily – by more than a total of 20%, then, at the request of the Ordering Party, IWN shall be obliged to release the securities at their discretion.
8. If the Ordering Party does not fulfil his obligations towards IWN or does not do so punctually and/or acts on the items supplied under the retention of ownership in an inadmissible way, IWN is entitled to withdraw from the contract and to request the return of the items, provided that a suitable deadline given to the Ordering Party to fulfil his obligations has expired without success.

§ 9 Payment

1. Unless otherwise agreed, IWN invoices are due and payable net immediately on issue.
In the case of deliveries with a total value of less than EURO 1000.00, IWN shall deliver cash on delivery plus freight and packaging.
2. IWN is expressly entitled to refuse to accept any cheques or drafts. Any acceptance shall always be subject to their being honoured and as conditional payment. Any expenses in connection with any discounts or drafts shall be for the account of the Ordering Party and are due and payable immediately.
3. If IWN learns of circumstances which call into question the creditworthiness of the Ordering Party, in particular if his cheque cannot be cashed or if he stops his payments, IWN shall be entitled to accelerate payment and invoice for the complete remaining debt, even if IWN have accepted some cheques. In this case IWN shall also be entitled to demand pre-payments or security performances in respect of the outstanding supplies/services.
4. If the Ordering Party stops his payments and/or if insolvency proceedings are applied for against his assets, IWN shall also be entitled to withdraw from that part of the contract which has not yet been fulfilled.
5. IWN shall be entitled, despite any conditions of the Ordering Party which state otherwise, to credit payments first against the Ordering Party's old debts. IWN shall inform the Ordering Party about the crediting which he has done. If any costs and interest have arisen, then IWN shall be entitled to credit first payments against the costs, then against the interest, and finally against the main performance.
6. If the Ordering Party defaults in payment, then IWN shall be entitled, from the corresponding point in time, to charge interest on arrears to the amount of 9 percentage points above the bank base rate. IWN reserves the right to press claims for any damage caused by the default over and above this.
7. The Ordering Party can only set off IWN demands with undisputed claims or claims which have been granted by a court or with claims to which he is entitled because IWN have infringed one of their obligations regarding the main performance. The Ordering Party can only exercise right of retention if his counterclaim resides in the same contractual relationship.

§ 10 The Costs of examining an Item

1. The Ordering Party shall be able to send items for checking to IWN. Following examination of the item, IWN shall send the Ordering Party a quote for its repair.
2. If the Ordering Party accepts the quote and IWN carries out the repair, then the Ordering Party shall not be charged for the examination. If he rejects the offer of repair, the Ordering Party is obliged to pay to IWN a lump sum for the examination and any follow-up costs (for scrapping the item, sending it back etc.). On request, IWN shall inform the Ordering Party at any time of the relevant lump sum.

§ 11 Applicable Law, Place of Jurisdiction, Place of Fulfilment, Separability

1. These terms and conditions of trade and all legal relationships between IWN and the Ordering Party shall be governed by German law to the exclusion of the UN Convention on the International Sale of Goods.
2. The mutual place of fulfilment and the exclusive place of jurisdiction for all disputes, direct or indirect, arising from the contractual relationship shall be the company seat of IWN.
3. If any of the provisions in these terms of trade shall prove ineffective or become so, then the effectiveness of all the remaining provisions and agreements between IWN and the Ordering Party shall remain intact. The ineffective ruling shall be replaced by a ruling the economic success of which comes closest to that of the ineffective clause.