

'GCBs' – General Conditions of Business - Sales, Status: January 2021

General Sales' Conditions of IMA Materialforschung und Anwendungstechnik GmbH (Inc.) (hereinafter referred to as IMA Dresden)

Art. 1 Generalities and scope

1. These present general sales' conditions are validly to apply exclusively for all contracts, which IMA Dresden concludes as a seller or supplier. These conditions are not applicable for contracts concerning software, verifications, examinations and freely agreed services to be rendered.
2. Any contradictory purchasing conditions of the buyer / orderer, or conditions divergent from these General Sales' Conditions will not be recognised and accepted by IMA Dresden, unless it approves such expressly in writing. These General Sales' Conditions are also to remain validly applicable even when IMA Dresden proceeds to sell or supply to a buyer / orderer unconditionally, although already in the knowledge of the existence of any purchasing conditions contradictory to or divergent from these present sales' conditions.
3. The sales' conditions of IMA Dresden are only applicable via-à-vis enterprises within the meaning of Art. 14 of the (German Civil Law Code).
4. All rights, to which IMA Dresden is entitled under any German Federal statutory requirements, going beyond these General Sales' Conditions, remain unaffected by the foregoing stipulations.
5. Oral declarations or agreements made in individual cases have priority over these General Sales' Conditions and require written confirmation by IMA Dresden to be effective.

Art. 2 Offerings, and offering documents

1. Any offerings from IMA Dresden are – unless otherwise expressly announced as legally binding – always 'subject to change' and therefore not legally binding on IMA Dresden. All contracts become concluded when orders are received and confirmed in writing on the part of IMA Dresden, or by means of any unaltered acceptance of a legally binding offering from IMA Dresden on the part of the buyer / orderer.
2. The basis for all contracts, which are to be definitive for the extent of the supply, is the written confirmation of order as well as the legally binding offerings from IMA Dresden.
3. All orders placed by the buyer / orderer will always be deemed legally binding on the purchaser or buyer by IMA Dresden.
4. Any documentation of the buyer / orderer attached to an enquiry such as illustrations, technical drawings and calculations remain in the ownership of the buyer / orderer. These represent legally binding bases for the drawing-up or elaboration of any offering from IMA Dresden. The buyer / orderer should draw attention to any required subsequent alterations divergent from the original enquiry or from the offering from IMA Dresden, when placing an ultimate written order.
5. IMA Dresden retains ownership and copyright of any illustrations, technical drawings and calculations and any other sundry documentation and records, attached to its offerings and tenders and received by the buyer / orderer. Prior expressed written permission is to be obtained from IMA Dresden before the buyer / orderer may pass such documentation on to third parties.
6. Any obvious general errors, printing errors, written errors and any obvious calculatory errors are not to be legally binding on IMA Dresden and give the buyer / orderer no entitlement to assert indemnities for loss or damage.

Art. 3 Prices and terms and conditions of payment

1. Unless otherwise stated in a confirmation of order by IMA Dresden, all prices are to be deemed 'ex works' and not to include packaging and transportation charges. These will be shown in invoices separately.
2. The statutory currently valid rate of value-added tax is not included in the prices, but will always be shown separately in invoices.
3. The deduction of a discount from invoices is to require the express written agreement of IMA Dresden.
4. Unless otherwise stated in a confirmation of order or in a legally binding offering from IMA Dresden, the sales' / purchase price becomes payable within 14 days of invoice date without any deductions.
5. In the event of default in payment, IMA Dresden is to be entitled to invoke all statutory remedies. The buyer / orderer is in default no later than 30 days after the due date and receipt of the consideration.
6. If the buyer / orderer defaults on payment, IMA Dresden is entitled to assert statutory default interest.

We reserve the right to assert further damage and the flat-rate damage fee in accordance with Art. 288 Para. 5 of the BGB (German Civil Law Code).

7. In the event of justified doubts about the solvency or creditworthiness of the buyer / orderer, in particular in the event of payment arrears, IMA Dresden is entitled to revoke any payment terms granted and to request advance payment or securities for further deliveries.
8. The buyer / orderer is only entitled to set-off rights if his counterclaims have been legally established, are undisputed, synallagmatic with the main claim or are recognized by IMA Dresden.
9. The buyer / orderer is only authorized to exercise a right of retention if his counterclaim arises from the same contractual relationship.
10. If the price has increased at the time the service is provided due to a change in the market price or an increase in the fees charged by third parties involved in the service provision, a higher price will be agreed with the customer.

Art. 4 Delivery time period and contractual completion

1. The orders accepted by IMA Dresden are carried out according to the rules of technology recognized at the time of order acceptance.
2. The prerequisite for the commencement of a delivery time period indicated by IMA Dresden, is the clarification of all technical matters to do with an order. The delivery time periods or due-date deadlines for the supply of goods and the rendering of services indicated by IMA Dresden, are always only to be deemed approximate, unless a fixed delivery time period or due-date deadline is expressly indicated or agreed. When consignment dates are expressly agreed, then the delivery time period or due-date deadline is to be the point in time of the relinquishment of the supplies to a forwarding agent, haulage contractor or any other third party retained for delivery purposes.
3. Compliance with any contractual duties to deliver on the part of IMA Dresden, is the prerequisite of the regular contractual completion on the part of the purchaser or buyer of their contractual duties. IMA Dresden in any event hereby reserves the plea of non-contractual completion.
4. Should the buyer / orderer be in delay of acceptance or culpably infringe any other of his contractual duties of collaboration, then IMA Dresden is to be entitled hereunder to assert indemnity for any loss or damage occurring to date, to include any extra expenditure. Any other indemnities remain unaffected by the foregoing.
5. IMA Dresden is not to be liable hereunder for the impossibility of supply and delays in deliveries, when caused by force majeure or any other occurrences unforeseen at the point of time of the conclusion of a contract (e.g. operational disruptions of whatsoever nature, difficulties in the acquisition- of materials and of power supplies, transportation delays, pandemic, epidemic, strikes, lawful lockouts, shortage of workforce, power or raw materials, difficulties in the obtaining of official permits, official countermeasures, or overdue, incorrect or late delays in deliveries by subcontracted suppliers, for which IMA Dresden is not culpably responsible. Should such occurrences at IMA Dresden essentially hinder it in supplying goods or rendering services or make any such impossible, and any such hindrance is not only of temporary duration, then IMA Dresden is to be entitled hereunder to withdraw from any contract. In cases of hindrances of only temporary duration, the delivery times periods or due-date deadlines are to be extended by the time period of any hindrance, plus any reasonable start-up time period. Should it however prove unreasonable for the purchaser or buyer to accept supplies of goods or rendering of services because of any such foregoing delays, then they can withdraw from any contract by giving immediate written notification and explanation to IMA Dresden.
6. Should IMA Dresden be in arrears of the consignment of goods or the rendering of services, no matter on whatsoever grounds, or should such become impossible, then any legal liability of IMA Dresden to indemnify for loss or damage is to be limited to the stipulations of Art. 7 of these General Sales Conditions.

Art. 5 The passing of the perils upon consignment

1. Unless otherwise stated in the confirmation of order or a legally binding offering or tender on the part of IMA Dresden, consignment is hereby declared and agreed to be 'ex works'.
2. Should the buyer / orderer require transport insurance, then IMA Dresden will have consignments covered by marine insurance or

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goods-in-transit insurance, and the resultant charges are to be borne by the buyer / orderer.

3. Should goods be consigned to the business address of the buyer / orderer at their request, then the perils of incidental destruction or the incidental deterioration of the goods pass to the purchaser or buyer at the latest upon consignment from the works' location. This is also to apply independently of whether or not the consignment of the goods is from the place of contractual completion, or what party bears the transportation charges.

Art. 6 Warranty and material defects

1. The warranty claim rights of the purchaser or buyer are prerequisite to their regular compliance with the statutory requirements of inspection and complaint presentation pursuant to Art. 377 of the German 'HGB – Handelsgesetzbuch' (Commercial Law Code).
2. The warranty time period hereby is one year from delivery, or when acceptance is prescribed, from the date of acceptance.
3. The goods supplied are to be immediately inspected carefully after delivery to the buyer / orderer, or to a third party designated by them. The goods supplied are to be deemed as approved by the buyer / orderer as regards obvious defects or other defects recognisable by an immediate careful inspection, unless IMA Dresden is notified within 7 days of delivery by written complaint of the defects. As regards any further defects, the goods supplied are to be deemed as approved by the purchaser or buyer, unless a complaint is made to IMA Dresden within 7 days of the date of their discovery. Should any defect have been recognisable by the purchaser or buyer at an earlier date in cases of normal use, then such date is to be definitive for the commencement of the time period for complaint. If required by IMA Dresden, any complaint queried goods supplied are to be returned to them, transportation charges paid. Should a complaint be justified, IMA Dresden will reimburse for the charges of the most economic method of consignment. Such shall however not apply when the transportation charges increase because the goods supplied are at a location other than that of normal use.
4. In cases of material defects in the goods supplied, IMA GmbH Dresden is hereby initially entitled and obligated, within a period of time reasonable for making a selection, to make improvement or replacement. In case of an abort, i.e. impossibility, unreasonableness, refusal or unreasonable delay for completing the improvement or replacement, then the purchaser or buyer can withdraw from the contract or the selling-/ purchase price can be appropriately reduced.
5. Should any queried defect be culpably attributable to IMA Dresden, then the purchaser or buyer can, under certain circumstances assert indemnity for loss or damage under Art. 7 of these General Sales' Conditions.
6. In cases of queried defects in the components of other manufacturers or suppliers, which IMA Dresden is unable to rectify for reasons of licensing regulations or on actual grounds, then IMA Dresden can select to assert its warranty claim rights against such manufacturer or supplier for the account of the purchaser or buyer, or make assignment of its warranty claim to the buyer / orderer. Warranty claims for such queried defects are only then assertable against IMA Dresden under other sundry prerequisites, but in accordance with these General Sales' Conditions, when litigation for the assertion of the forementioned queried claims against a manufacturer or supplier is unsuccessful, or hopeless for example on grounds of insolvency. Within the duration of any legal dispute, the statute barring of the relative warranty claims of the purchaser or buyer towards IMA Dresden, becomes suspended.
7. The warranty hereunder becomes null and void when the buyer / orderer alter the goods supplied without the permission of IMA Dresden or has this altered by a third party and the rectification of the queried defect thus becomes impossible or unreasonable difficult for IMA Dresden. In any event, the buyer / orderer is to bear the extra cost of the alteration work on the queried defect.
8. In any individual case of the agreed supply of used goods by IMA Dresden to the buyer / order, such supply will not be subject to warranty for material defects of used goods.
9. A complaint does not entitle the buyer / orderer to withhold payments due or to refuse to accept further deliveries.

Art. 7 Legal liability to indemnify on grounds of culpability

1. The legal liability of IMA Dresden to indemnify for loss or damage, on whatsoever grounds and in particular on grounds of impossibility, arrears, improper or incorrect consignment, infringement of contract, infringement of contractual duties during contractual negotiations and non-permissible actions, is to be limited to the

stipulations of this present Art. 7, when IMA Dresden can be held culpable.

2. IMA Dresden is not liable hereunder for cases of the simple negligence of its corporate organs, legal representatives, employees or other sundry associated vicarious agents, provided that such is not an infringement of essential contractual duties. The infringement of essential contractual duties are the following: the failure to consign the goods ordered within the delivery time period, the failure to install the goods supplied, the existence of defects in the goods supplied, which encroach considerably upon their functionality and usability, as well as failure to provide advisories, protection duties and duties to take due care, which enable the purchaser or buyer to employ the goods supplied according to contract, or failure to ensure protection of life and limb of the personnel of the purchaser or buyer, or failure to ensure the protection of their property from considerable loss or damage.
3. Should however IMA Dresden be liable under Art. 7, Para. 2 hereof to indemnify for loss or damage on the forementioned grounds, then legal liability is limited to indemnify for loss or damage, which IMA Dresden could have well foreseen as a consequence of an infringement at the moment in time of the conclusion of a contract, or which it should have foreseen when exercising the commercially usual duty to take due care. Indirect loss or damage and consequential loss or damage resulting from defects in the goods supplied, are moreover only indemnifiable when such loss or damage are typically to be anticipated under conditions of the proper use of the goods supplied.
4. Insofar as liability for damage that is not based on injury to life, body or health of the buyer / orderer is not excluded for slight negligence, such claims shall become statute-barred within one year starting with the occurrence of the claim or at Claims for damages due to a defect from delivery of the item.
5. In case of any legal liability for simple negligence, the duty of IMA Dresden to indemnify is limited to material loss or damage and any consequent loss or damage to assets up to an amount of 5% of the sales-/ purchase price for each and every loss, even when an infringement of essential contractual duties occurs.
6. The foregoing limitations of legal liability and restrictions are also to apply to the same extend to the corporate organs of IMA Dresden, its legal representatives, employees and its associated vicarious agents.
7. When IMA Dresden provides technical information and such information is not part of the goods and services usually provided by it on a planned contractual basis, then such activity is free of charge and not included in any legal liability.
8. The limitations and restrictions of this present Art. 7 do not apply to any legal liability of IMA Dresden for premeditated actions, guaranteed characteristics, danger to life and limb, danger to health and the statutory requirements under the product liability legislation.

Art. 8 Reservation of ownership rights

1. IMA Dresden hereby reserves its ownership rights in any goods supplied up to the complete payment of all financial claims under the relative contract of purchase and sale. This reservation of ownership rights also applies for all future supplies even when IMA Dresden does not always expressly refer thereto. IMA Dresden is entitled hereunder to take back the goods supplied when the buyer / orderer behaves in infringement of contractual stipulations.
2. The buyer / orderer is under a contractual duty hereby to treat the goods supplied with all due care so long as the ownership rights have not legally passed to them. In particular, the buyer / orderer are under a contractual duty hereby to insure the goods supplied sufficiently against theft, fire and water damage at reinstatement values, at their own expense. Should serving-, maintenance- and inspection –routines be necessary, then the purchaser or buyer are to conduct these at their own expense. As long as the ownership rights have not legally passed, the purchaser or buyer are to inform IMA Dresden in writing with immediate effect should the goods supplied become attached under any distraintment, or made subject to any other interventions of third parties. Should the third party not be in a position to reimburse IMA Dresden for litigation costs and fees under Art. 771 of the German 'ZPO – Zivilprozessordnung' (Civil Proceedings Order), then the buyer / orderer are to be liable to IMA Dresden for the expenditure incurred.
3. The buyer / orderer is to be permitted hereunder to onward-sell the goods supplied under reservation of the ownership rights of IMA Dresden in the normal course of business. The financial claim from the onward sale of the goods supplied under the reservation of the foregoing ownership rights is hereby and now ceded to IMA Dresden in the total amount of the invoice agreed between IMA Dresden and the buyer / orderer (to include any amount of value-added tax charged). This cession of financial claim is to apply in-

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dependent of whether the goods supplied have been onward sold in an onward processed state, or not. The buyer / orderer is still to remain authorised hereunder to collect the financial claim from their customer even after the cession thereof. The entitlement of IMA Dresden to collect the financial claim itself, is not however affected by this stipulation. IMA Dresden will however desist from collecting the financial claim as long as the purchaser or buyer continues to service their payment obligations from the collected proceeds, or does not become in arrears of payment, and in particular does not make application to the court for the opening of insolvency proceedings, or enacts stoppage of payments.

4. The processing, adaptation or conversion of the goods supplied by the purchaser or buyer is always to be undertaken for, on behalf of and upon the order of IMA Dresden. In such a case, the inchoate vested rights of the buyer / orderer in the unprocessed goods supplied are to continue. Should the goods supplied be processed to be combined with other subject matter not belonging to IMA Dresden, then IMA Dresden is to acquire co-ownership rights in the new subject matter, in that ratio which the objective value of the goods supplied by IMA Dresden bear to the other processed subject matter at the moment of time of the combination. The same is to apply in case of any mixing of the goods supplied with the other subject matter. When the mixing is undertaken in such a manner, that the new subject matter of the purchaser or buyer is to be deemed the principal subject matter, then it is hereby declared and agreed, that the buyer / orderer is to cede proportionate co-ownership to IMA Dresden and, that the thus created sole ownership or co-ownership is thus legally upheld for IMA Dresden. As surety for the financial claim of IMA Dresden on the purchaser or buyer, the purchaser or buyer is also to cede the financial claims to IMA Dresden, which become due to them against a third party from the combination of the goods supplied under reservation of ownership rights with a real estate property. IMA Dresden hereby and now accepts such a cession.
5. IMA Dresden legally binds itself hereunder, to release the surety ceded to it upon the demand of the buyer / orderer, when the value of the surety exceeds the secured financial claim by more than 20%. If the retention of title is not effective under the law of the country in which the delivered goods are located, the buyer / orderer must provide an equivalent security at the request of IMA Dresden. If he does not comply with this request, IMA Dresden can demand immediate payment of all open invoices regardless of the agreed payment terms.
6. IMA Dresden is entitled hereunder, to cede its financial claim against the purchaser or buyer to any third party.

Art. 9 Data Protection

1. IMA Dresden uses personal data from buyer / orderer to process and accept orders, to deliver goods and to process payments.
2. A transfer of personal data to third parties only takes place with the expressly declared consent of the buyer / orderer or if the transfer is necessary to safeguard the legitimate interests of IMA Dresden, provided that the interests worthy of protection or fundamental rights of the customers do not prevail. In addition, IMA Dresden is only entitled to transfer customer data if it is legally obliged to release the data. The collection, transmission or other processing of personal data for purposes other than those mentioned here is not permitted and does not take place on the part of IMA Dresden.
3. For further information, please refer to the data protection information for customers, suppliers, clients and other contractual partners on the IMA Dresden website.

Art. 20 General stipulations, place of jurisdiction and place of contractual completion

1. If one of the contractual partners stops making payments, or if insolvency proceedings are applied for over their assets or an out-of-court settlement procedure is applied for, the other is entitled to withdraw from the non-fulfilled part of the contract.
2. IMA Dresden is authorized to change these General Sales' Conditions. Any changes will take effect on the announced date of entry into force.
3. The law of the Federal Republic of Germany applies exclusively to the exclusion of the UN Sales Convention (CISG) and the referral provisions of German international private law.
4. In so far as nothing else is stipulated herein, the place of contractual completion for all contractual and statutory claims is the place of the corporate domicile (registered office) of IMA Dresden.
5. When the buyer / orderer are properly registered traders, then the court of law competent for the corporate domicile (registered of-

fice) of IMA Dresden is the place of jurisdiction. IMA Dresden is however to be entitled hereunder to litigate against the buyer / orderer at the court of law competent for their corporate domiciles (registered offices) or places of residence.