

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

§ 1 General – Applicability

1. IMPAG Import GmbH operates exclusively according to these general terms and conditions of sale and delivery; these terms and conditions also apply to all future business with customers.
2. We do not recognise terms and conditions that conflict with or differ from these terms and conditions unless we have agreed to their applicability explicitly and in writing. Our terms and conditions of sale still apply even if we deliver without reservation to the customer in acknowledgement of any of the customer's conditions that conflict with or differ from our terms and conditions of sale.
3. All agreements made between us and the customer for the purpose of executing this contract shall be stipulated in this contract.
4. Our terms and conditions of sale apply only to companies as defined in § 310 par. 1 of the *Bürgerliches Gesetzbuch*, BGB (German Civil Code).

§ 2 Offer – Offer Documents

1. Our offer is non-binding unless it is explicitly marked as binding or contains a specific term of acceptance. IMPAG is entitled to accept purchase orders and contracts within 14 days upon receipt.
2. We retain the property rights and copyright to all illustrations, drawings, calculations and other documents. This also applies to documents in writing that have been identified as "confidential". The customer must obtain our explicit agreement in writing to forward such documentation to third parties.

§ 3 Pricing – Terms and Conditions of Payment

1. Unless otherwise stated in the order confirmation, our prices are quoted "ex works".
2. The deduction of discounts requires special written agreement.
3. Unless otherwise specified in the order confirmation, the sales price is payable immediately and in full (without deduction). If staggered deliveries are provisions of a contract, the sales price is payable upon each partial delivery. The legal regulations on consequences of delayed payment apply.
4. We are entitled to make partial deliveries wherever reasonable for the customer.
5. The customer has the right to set-off only if his counterclaims are found to be valid, are undisputed or are recognised by us. The customer is authorised to exercise a right of detention insofar as a counterclaim rests upon the same contractual relationship.

§ 4 Delivery Period

1. Observance of the delivery period we specify requires the clarification of all technical issues.
2. Observance of our obligation to deliver furthermore requires the timely and proper fulfilment of the customer's obligations. The plea of non-performance remains reserved.
3. Should the customer be in default of acceptance or deliberately violate any other contributory obligations, we are entitled to demand that the loss insofar incurred, including any additional expenses, be recompensed. We reserve the right to make further claims.
4. Should the conditions of paragraph 3 exist, the customer shall bear the risk of an accidental loss or an accidental deterioration of the object of sale at the time that he becomes in default of acceptance or payment.
5. We shall also be liable according to the legal regulations, providing the customer is entitled to assert the claim that an interest is no longer held in the continued fulfilment of the contract, as a consequence of default in delivery for which we are responsible.
6. Furthermore, we shall be liable in accordance with the legal regulations, providing the delivery delay is due to a wilful or grossly negligent breach of contract for which we are responsible; a fault of our representatives or agents shall be attributed to us. If the delivery delay is not due to a wilful breach of contract for which we are responsible, then our liability for compensation is limited to the foreseeable, naturally arising losses.
7. We shall also be liable in accordance with the legal regulations, providing the delivery delay for which we are responsible is due to a culpable breach of an integral contractual obligation; however, in this case, the liability for compensation is limited to the foreseeable, naturally arising losses.
8. All other statutory claims and rights of the customer remain unaffected.

§ 5 Transfer of Charges – Packaging Costs

1. Unless otherwise specified in the confirmation of order, delivery is agreed as "ex works".
2. Transport packaging and all other packaging as defined by the packaging ordinance will not be taken back; an exception is made for pallets. The customer is obliged to dispose of all packaging at his own cost.
3. If desired by the customer, we shall provide a transport insurance coverage for the delivery; all costs incurred to this extent have to be borne by the customer.

§ 6 Liability for Defects

1. Defect claims made by the customer require the customer to have properly fulfilled his obligation to investigate and give immediate notice of defects in accordance with § 377 of the *Handelsgesetzbuch*, HGB [German Commercial Code].
2. If an object of sale is defective, we are obliged to subsequent fulfilment under exclusion of the customer's rights to demand withdrawal or a reduction unless we are entitled by legal regulations to refuse the subsequent fulfilment. The customer is entitled to a choice of subsequent fulfilment in the form of either remedy of defects or delivery of a new, fault-free object, as long as we are not entitled by legal regulations to refuse the customer's chosen type of subsequent fulfilment. In the case of remedy of defects, we are obliged to bear the cost of all expenses involved in the remedy of defects, in particular freight, transport, working and material costs, providing they are not increased by the object of sale having been moved to a location other than the place of performance.
3. Should the subsequent fulfilment fail a second time, the customer shall be entitled to demand either a refund or a reduction at his discretion.

4. In accordance with the legal regulations, we shall be liable should the customer assert claims for compensation due to wilful intent or gross negligence on our part, including wilful intent or gross negligence of our representatives or agents. If we are not accused of wilful breach of contract, then liability for compensation is limited to the foreseeable, naturally arising losses.
5. In accordance with the legal regulations, we shall be liable should we be culpably in breach of an integral contractual obligation; in this case, however, liability for compensation is limited to the foreseeable, naturally arising losses. An important contractual obligation exists if the violation of duty refers to an obligation upon whose fulfilment the customer relied to and should be able to rely on.
6. Liability for culpable injury of life, body or health remains unaffected; this also applies for the compulsory liability according to the German Product Liability Act.
7. Unless the above includes a regulation to the contrary, liability is precluded.
8. The statutory period of limitation for claims of defects is 12 months from transfer of risks.

§ 7 Total liability

1. Liability for compensation for damages above and beyond that which is set out in § 6 is precluded—without regard for the legal nature of the claim asserted. This applies in particular to claims for compensation for damages due to debts on conclusion of the contract, due to other breaches of obligations or due to claims for compensation for material damages based on tort in accordance with § 823 BGB.
2. The limitation according to paragraph (1) also applies if, instead of compensation for the loss, the customer demands compensation for needless expenses and not subsequent performance.
3. Providing our liability for compensation for damages is precluded or limited, this also applies to the personal liability of our staff, employees, personnel, representatives and agents.

§ 8 Safeguarding Reservation of Proprietary Rights

1. We will retain ownership of the object of sale until all payments from the delivery contract have been received. Should the customer's conduct be in breach of contract, in particular in the event of default of payment, we are entitled to recall the object of sale. Upon recalling the object of sale, there is no withdrawal from the contract unless we explicitly declare so in writing. Seizure of the object of sale by us will always involve a withdrawal from the contract. After recalling the object of sale, we shall be authorised to make a valuation assessment of same; the difference in value shall be added to the customer's liabilities—minus the appropriate valuation costs.
2. The customer is obliged to handle the object of sale with care; in particular, the customer is obliged to sufficiently insure the object at his own expense, as new, against losses due to fire, water and theft.
3. Upon seizure or other interventions by third parties, the customer must immediately inform us in writing, so that we can raise a complaint in accordance with § 771 of the *Zivilprozessordnung*, ZPO [German Code of Civil Procedure]. If the third party is not able to reimburse us for the judicial and extrajudicial costs of a complaint in accordance with § 771 ZPO, then the customer shall be liable for our losses incurred as a result.
4. The customer is entitled to process and sell the goods subject to the retention of title within the ordinary course of business until the requirements of § 8 Ziff. 1 are fulfilled under which we are entitled to reclaim the object of sale. Pawning or ownership transfer by way of security of the object of sale is not permitted. The customer assigns to us at this point all debts incurred from passing the object on to account debtors or third parties to the value of the final invoice amount (including VAT), irrespective of whether the object of sale has been resold without or after processing. The customer is revocably authorised to settle the debt assigned to us in his own name for our accounts. This does not affect our authority to collect the debt ourselves. However, we agree that we will not collect the debt providing the customer meets the payment obligations from the profits taken, does not fall into default of payment and, especially, providing no application has been made to commence settlement or insolvency proceedings and no reason for insolvency exists. Should this be the case, however, we can demand that the customer inform us of the assigned claims and their debtors, provide all details required for settlement, hand over the associated documents and inform the debtors (third parties) of the assignment.
5. Processing or reconstruction of the object of sale by the customer is always undertaken for us. Upon processing, combination or mixing the reserved goods with other objects not belonging to us, we shall acquire joint ownership of the new object at the rate of the value of the object of sale (final invoice amount including VAT) relative to the other worked objects at the time of processing, combination or mixing. Should the customer acquire sole ownership of the new object after processing, combination or mixing, the customer transfers — without requiring separate agreement in any case — proportionally the joint ownership in the new object, which he shall store for us free of charge. For the rest, the same applies for the object resulting from processing as for the object of sale that we delivered under reservation.
6. We agree to release the securities to which we are entitled on the customer's request, providing the realisable value of our securities exceeds the debts to be secured by over 10 percent; it is at our discretion which securities to release.

§ 9 Place of Jurisdiction – Place of Performance

1. If the customer is a dealer, the exclusive place of jurisdiction shall be the location of our head office; however, we are also entitled to bring action against the customer in the court local to his place of residence.
2. The law of the Federal Republic of Germany applies. The validity of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is precluded.
3. Unless specified otherwise in the order confirmation, the location of our head office shall be the place of performance for the mutual obligation arising from the contractual relationship.

Please note:

IMPAG Import GmbH will store data obtained from the contractual relationship according to § 25 of the *Bundesdatenschutzgesetz*, BDSG [a Federal Data Protection Act] for the purpose of data processing and reserves the right to transmit the data to third parties, such as suppliers, insurances, protection sellers, as far as this is necessary for the contractual performance.