

General Terms of Sale and Delivery and the Data Protection Notice of IDG-Dichtungstechnik GmbH

A. General Terms of Sale and Delivery

1. Scope of application, general information, data protection

1.1 Our Terms of Sale and Delivery are part of all offers and contracts for our deliveries and services relating to purchase and works contracts; our Terms of Sale and Delivery shall apply exclusively. Terms and conditions of the Customer which contradict or deviate from our Terms of Sale and Delivery shall not apply, unless we expressly approve such terms in writing. Our Terms of Sale and Delivery apply even in the event that we carry out the service/delivery unconditionally despite being aware of terms of the Customer which contradict or deviate from our Terms of Sale and Delivery.

1.2 Our Terms of Sale and Delivery shall also apply for future transactions with the Customer to the extent that such transactions are similar in nature.

1.3 These Terms of Sale and Delivery shall apply only to entrepreneurs (*Unternehmer*) within the meaning of § 14 para. 1 of the German Civil Code (BGB), legal entities under public law (*juristische Personen des öffentlichen Rechts*) or special entities under public law (*öffentlich-rechtliche Sondervermögen*).

1.4 We will comply with all applicable provisions of data protection law in the performance of the contract; this includes in particular the General Data Protection Regulation (GDPR) and the German Federal Data Protection Law. For details on data processing and the rights of data subjects, please review our data protection notice which follows our Terms of Sale and Delivery and check our data privacy statement on our website under www.idg-gmbh.de/en/data-privacy-statement.

1.5 The contracting parties shall bind their employees and any subcontractors (if applicable) to these obligations under data protection law.

2. Offer, conclusion of the contract, offer documents, samples

2.1 All our offers are non-binding until final confirmation of the order.

2.2 All orders placed with us by the Customer shall be deemed binding offers. We shall be entitled to accept such an offer within two weeks by confirming the offer or by dispatching the goods ordered to the Customer within this period. The timely dispatch of the order confirmation or the confirmed goods shall be sufficient to meet the deadline.

2.3 References to technical standards and other information (e.g. weight, dimensions, load capacity, service value, tolerances) contained in our cost estimates, drawings or other offer documents as well as our descriptions (e.g. drawings, illustrations) shall be considered only approximations, unless the fitness for the contractually agreed purpose requires precise conformity. They only serve as specifications and do not constitute guarantees, in particular not with respect to the quality or durability. The same shall apply for any orders based on a sample produced by us.

Any recommendations made by us for the use of our goods are made to the best of our knowledge. Due to the multiplicity of potential uses, differing requirements and individual conditions of use, we accept no liability for the goods being fit for any particular use, unless we have expressly warranted such fitness in writing. The Customer shall, in any event, be obligated to verify the fitness of the goods for his intended use.

3. Prices

3.1 The applicable price is as indicated in the order confirmation; in the absence of an order confirmation, it shall be taken from our offer; otherwise, the price shall be determined by our price lists applicable at the time of the order.

3.2 In the event that there are increases in costs after the conclusion of the contract (in particular due to higher labour, transport, customs, storage or material costs), we reserve the right to increase our prices accordingly, beginning 6 weeks after the conclusion of the contract. The same applies in the event of cost reductions. Where cost increases or cost reductions occur, we shall document such costs to the Customer, at his request, as soon as and to the extent that they are incurred.

3.3 Unless otherwise provided for in the order confirmation, prices are ex works from Albershausen, but excluding packing, freight, transfer and customs costs. Agreed or prescribed testing costs shall be borne by the Customer.

In addition, all prices are exclusive of the applicable statutory VAT. For deliveries within the EU, the Customer must provide his VAT ID number. The Customer must provide timely notification if a delivery is not subject to VAT, and furnish the required proof.

4. Terms of payment, set-off/right of retention, withdrawal

4.1 Unless indicated otherwise in the order confirmation, the purchase price shall be due immediately, without any deductions; this also applies to partial deliveries. If payment is not made within the time period indicated in the invoice, the Customer shall be in default of payment. The invoice shall be issued with the date the goods are dispatched.

4.2 Cash discounts require a separate written agreement. We shall only honour any agreed cash discounts if the agreed discount deadline for the payment is observed.

4.3 The annual default rate of interest on late payments shall be 9 percentage points above the current base rate, calculated in accordance with § 247 of the German Civil Code (BGB). The right to claim additional damages is reserved. If we subsequently extend the terms of payment, the obligation with respect to interest will be unaffected, unless otherwise agreed.

4.4 If we become aware of circumstances which put the creditworthiness of the Customer into question, or if our claim for payment is put at material risk due to the over-indebtedness of the Customer, or if the Customer is in arrears with payment of the price, we shall be entitled to demand payment in full, in advance, or security; should such payment or security not be provided within the set time limit, we shall be entitled to withdraw from the contract.

4.5 The Customer shall only be entitled to exercise a right of set-off if his counter claims are uncontested, ready for decision, legally enforceable or recognized by us in writing. The Customer shall only be entitled to exercise a right of retention to the extent that his counter claim arises from the same contractual relationship.

Should the goods be defective, the Customer shall only be entitled to exercise a right of retention if such defects are obvious and the Customer is obviously entitled to decline acceptance, and subject to the withheld amount being proportionate to the defects and the expected costs of the cure.

5. Delivery, partial delivery, delivery period, default in delivery, incoming supplies/force majeure

5.1 We shall be entitled to make deliveries in line with common practice of quantities which exceed or fall short of the ordered quantity by up to 10%.

5.2 Partial deliveries shall be permitted, if

- the Customer is able to make use of the partial delivery in accordance with the contractually agreed purpose,
- the delivery of the remaining goods ordered is assured, and
- the Customer does not incur significant additional expenditure or costs, unless we agree to bear such costs.

5.3 Delivery dates and periods indicated by us shall only be considered as approximations, unless we have expressly agreed or promised a fixed delivery date or period. The delivery period shall commence on the day the order confirmation is dispatched, but not before the timely and proper discharge of the obligations of the Customer prior to delivery; this applies, in particular, to any documents, approvals and releases to be furnished by the Customer as well as to any advance payments which have been agreed. Delivery periods and delivery dates are deemed to have been met if the goods have been dispatched from the distribution centre or factory, or if the Customer has been notified that the goods are ready for dispatch, by the end of the delivery period.

5.4 In the event of changes to the contract which could influence the delivery period, the delivery period shall be extended accordingly, unless separate agreements have been made in this regard.

5.5 Should we, despite proper and compliant provision (i.e. matching the delivery agreed with the Customer in terms of quantity and quality), fail to receive deliveries from our sub-contractors or sub-suppliers correctly and on time, for reasons for which we are not answerable, or should events of force majeure occur (i.e. not culpable obstacles to the delivery or service lasting for more than 14 calendar days), we shall inform the Customer thereof without undue delay. In such an event, to the extent that we have complied with our abovementioned duty to inform and insofar as we have not assumed the procurement or production risk and the obstacle to performance is not temporary in nature, we shall be entitled to postpone the deliveries and services for the period for which such impediment continues, plus some reasonable recovery time thereafter, or to withdraw from the as-yet unfulfilled part of the contract in whole or in part. Strikes, lock-outs, shortages of raw materials and energy, actions of public authorities, transport difficulties and impediments of operations (e.g. due to fire, water and equipment damage) for which we are objectively not culpable, as well as all other impediments for which we are objectively not culpable, shall be considered as equivalent to force majeure.

Should an agreed period or date for deliveries or services be exceeded by more than four weeks due to the aforementioned circumstances, or should, in instances of non-binding dates for deliveries or services, upholding the contract objectively be unacceptable for the Customer, the Customer shall be entitled to withdraw from the unfulfilled part of the contract. In such a case, the Customer shall have no further rights, in particular not to damages.

5.6 In the event that periods or dates for the delivery/service are exceeded, we shall only be considered in arrears with the delivery after the fruitless expiration of a period of grace set by the Customer in text form according to § 126 b BGB (e.g. email, letter, fax), such grace period to last for at least eight working days; this does not apply if the order confirmation expressly specifies a fixed period or date for the delivery/service.

5.7 Should we be answerable for being in arrears with a delivery, the Customer shall be entitled, if he demonstrates that he has suffered damage or loss due to such delay, to demand liquidated damages in the amount of 0.5% of the value of the goods to be delivered, for each full week of such delay, up to a total of 5% of the value of the goods. Further claims for damages due to delays shall be excluded. Both we and the Customer retain the right to prove the actual damage incurred was higher or lower. The Customer shall not be entitled to claim damages in lieu of performance or reimbursement of expenses due to delays in delivery. The preceding restriction of liability shall not apply to mandated liability under clause 10.2 below.

6. Default of acceptance

6.1 If the Customer fails to accept performance or breaches any other duties of cooperation such as request for delivery or shipping instruction, we shall be entitled to claim compensation for any resulting damage or loss, including any additional expenditure. We reserve the right to assert additional claims or to exercise other rights.

6.2 Subject to the requirements of clause 6.1, the risk of accidental loss, destruction or deterioration of the goods to be delivered shall pass to the Customer once he is in default of acceptance or payment.

7. Transfer of risk, shipping

7.1 Unless the order confirmation indicates otherwise, the agreed mode of delivery shall be delivery ex works Albershausen. The risk shall pass to the Customer when the goods are handed over to the forwarder or carrier, but in any event no later than upon the departure of the goods from our factories or the distribution warehouse. This shall also apply if freight prepaid delivery has been agreed. Goods are always shipped on behalf of the Customer.

In the event that dispatch of the goods is delayed for reasons for which the Customer is answerable, the risk shall be transferred to the Customer on the day the goods are ready for shipment.

7.2 If the goods are returned, the Customer shall bear the risks relating to such return, unless we are answerable for such return. We have not taken out any insurance cover for goods returns.

8. Retention of title

8.1 The delivered goods shall remain our property until all claims arising from our business relationship with the Customer are paid (hereinafter: reserved goods), even if payments are made with regard to specific claims. Where individual claims are added to a current account or netted or accepted, this shall not affect the retention of title. Payment shall be effected only when we receive such amount or such amount is credited.

8.2 In the event of contractual breaches by the Customer, in particular in cases of payment defaults, we shall be entitled, if the further conditions of § 323 BGB are met, to repossess the reserved goods if we withdraw from the contract. We shall be entitled to realise the reserved goods after their repossession; the proceeds (less reasonable selling expenses) shall be deducted from the Customer's debts.

8.3 The Customer shall be obligated to treat the reserved goods with care, and to insure them sufficiently at replacement value against fire, water and theft, at his own cost; the Customer hereby already assigns to us any claims (in the amount of the value of the reserved goods) against the insurer which arise due to any insured events relating to the reserved goods; we hereby accept the assignment. Should maintenance or inspection work be necessary, the Customer shall carry out such work in a timely fashion, at his own cost.

8.4 The Customer shall be obligated to inform us without undue delay of any attachment or seizure of the reserved goods or claims, which have been assigned in advance or of any other infringement upon such goods or claims by third parties; the Customer shall also provide us with the documents necessary for an intervention. The Customer shall bear all costs of our intervention unless such costs are otherwise covered.

8.5 If the reserved goods are processed by the Customer into a new movable thing, such processing shall always be carried out for our benefit, without giving rise to any obligations on our part; the new thing shall become our property. If the reserved goods are processed with other goods which do not belong to us, we shall acquire co-ownership in the new thing, the size of our share being determined by the ratio of the value of the reserved goods (invoice total including VAT) to the other processed goods at the time of the processing.

If reserved goods are combined, intermixed or mingled pursuant to §§ 947, 948 BGB with goods not owned by us, we shall acquire co-ownership in accordance with the law. Should the Customer acquire sole ownership due to combination, intermixture or mingling, he hereby already grants us co-ownership in accordance with the relationship of the value the reserved goods (invoice total incl. VAT) to the other goods at the time of the combination, intermixture or mingling. The Customer shall in these cases store, free of charge, such goods which are our property or co-owned by us and which are deemed reserved goods within the meaning of the above provisions.

8.6 If the Customer sells the reserved goods alone or together with other goods not owned by us, the Customer hereby already assigns to us all claims (including all ancillary rights) arising from the reselling, in the amount of the value of the reserved goods; our rights shall have priority to the rights of others; we hereby accept such assignment. The value of the reserved goods is the invoice total of our claim (including VAT) plus a safety margin of 10 per cent, which however shall only apply to the extent that it does not collide with the rights of third parties. If we are co-owners of the resold reserved goods, the assignment of the claims shall also cover the amount corresponding to the value of our co-owner interest.

8.7 The Customer is entitled and authorised to sell or use the reserved goods only in the ordinary course of business and only subject to the proviso that the claims within the meaning of clause 8.6 are, in fact, transferred to us. The Customer shall not be entitled to any other dispositions with regard to the reserved goods and he shall in particular not pledge or assign the reserved goods as security.

8.8 The Customer shall remain authorised to collect the claims assigned in accordance with the preceding clause 8.6 until we withdraw such authorisation; this shall not affect our right to collect such assigned claims ourselves. We shall not make use of our right to collect such debts or to rescind such authorisation as long as the Customer renders the payments due from the obtained proceeds and is not in arrears with its payment obligations. At our request, the Customer shall inform us of the debtors owing the assigned claims and shall provide us with all information necessary for their enforcement and release to us all related documents and notify the debtors of the assignment; we shall be authorised to notify the debtors of the assignment.

8.9 We hereby undertake to release our security interests at the request of the Customer to the extent that the realisable value of our security interests exceeds the secured debts by more than 10 per cent; we shall be free to select the security interests to be released.

9. Defects in title and material defects

9.1 Claims by the Customer with respect to defects are dependent upon his examining all goods for defects immediately upon receipt, and notifying us in text form of any defects within two weeks of delivery or, in the case of hidden defects, within two weeks of discovery. This shall not affect the statutory duty of inspection and notification of defects applying to businessmen under § 377 German Commercial Code (HGB).

9.2 To the extent that the defect in the goods is due to a cause already existing at the time of the transfer of risk, the Customer shall be entitled, at our option, to demand cure by repair of the defect or delivery of a new defect-free item.

Should items other than the defective goods be damaged as a result of the cure, the Customer may only demand compensation for such damage in accordance with clause 10 below.

9.3 Where the actual condition of the goods deviates from the agreed/expected condition (*Sollbeschaffenheit*) of the goods because of improper or incorrect storage or use, incorrect installation by the Customer or third parties, normal wear and tear, improper or careless handling, insufficient or improper maintenance, unsuitable operating conditions and chemical, electrochemical or electrical effects, this shall not be deemed a defect. The Customer shall be entitled to prove that the deviation in the actual condition of the goods from the agreed/expected condition of the goods was already present at the time of the transfer of risk.

9.4 In the event that we refuse to cure, or if two cure attempts fail, or if the cure is not reasonably acceptable to the Customer, or if the specification of a grace period can be dispensed with pursuant to §§ 281 para. 2 BGB or 323 para. 2 BGB, the Customer shall be entitled, at his option, to withdraw from the contract or demand an appropriate reduction of the purchase price (*Minderung*). The Customer shall in all cases be entitled to damages or reimbursement of expenses only in accordance with the following clause 10. The statutory right of supplier recourse pursuant to §§ 445a, 445b BGB shall remain unaffected.

10. Damages and claims for reimbursement of expenses

10.1 Unless the preceding provisions stipulate otherwise, and subject to clause 10.2 below, the Customer shall have no claim whatever for damages or expenses, regardless of the legal basis of such claims. This shall apply, in particular, to claims for breach of obligations arising from contract negotiations, initiation of a contract and similar business contacts, other breaches of duties and tortious claims due to property damage pursuant to § 823 BGB and claims of the Customer for reimbursement of expenses in lieu of performance.

10.2 The liability restriction pursuant to clause 10.1 above shall not apply

- to the extent that damage or loss is caused by gross negligence or intent on our part or on the part of our representatives or agents employed by us in the performance of our obligations, subject to the proviso that in the event of gross negligence, damages shall be limited to the foreseeable damage typical for such contracts;
- in the event of culpable breaches of cardinal contractual duties, with the proviso that in such cases damages shall be limited to the damage typical for such contracts and foreseeable at the time of the conclusion of the contract. Cardinal contractual duties are obligations protecting legal positions of the Customer which are essential to the contract and of which it was the specific purpose of the contract to provide to the Customer. Cardinal obligations also include obligations the fulfilment of which enables proper implementation of the contract in the first place and the observance of which the Customer may rely on;
- in cases of statutory liability under the German Product Liability Act (*Produkthaftungsgesetz*);

- in cases of damage or loss resulting from injury to life, limb or health;
- in cases of delays, if a fixed time was specified for the delivery or service;
- if a defect is fraudulently omitted, in the event of the assumption of a procurement or production risk within the meaning of § 276 BGB or if (by way of exception) we give a written guarantee with respect to characteristics or durability within the meaning of § 443 BGB;
- in other instances where mandatory statutory liability applies.

The above provisions shall not be construed to contain a reversal of the burden of proof.

10.3 Claims for reimbursement of the Customer's expenses shall be limited to the value of the interest the Customer has in the fulfilment of the contract.

10.4 To the extent that our liability is excluded or limited, the same shall apply to the individual personal liability of our employees, representatives and agents employed in the performance of our obligations under the contract.

11 Limitation of actions

11.1 Claims for defects shall lapse 12 months after the transfer of risk; the limitation period for claims relating to delivery recourse pursuant to §§ 445a, 445b BGB shall remain unaffected.

Should we attempt a cure as a gesture of good will, the limitation period for claims for defects shall not recommence. Where the Customer has a right to demand cure, our implementation of such cure through subsequent improvement or replacement shall constitute acknowledgement of such claim pursuant to § 212 para. 1 no. 1 BGB only with regard to such defects as were the subject of the Customer's request for cure, or caused by a deficient attempt at cure; otherwise, the limitation period with respect to the original goods shall continue without interruption.

11.2 Other claims for compensation by the Customer arising from or in connection with our delivery or service shall lapse twelve months after the Customer learns of the damage or loss and the identity of the damaging party, or fails to do so as a result of gross negligence; in any event, such claims shall lapse 5 years after they arise, regardless of knowledge thereof or due to gross negligence.

11.3 In cases covered by clause 10.2, the statutory periods of limitation shall apply to any claims for damages or reimbursement of expenses.

12. Industrial and intellectual property rights; ownership rights

12.1 For goods produced in accordance with drawings, designs, or other instructions of the Customer, the Customer shall be liable for any infringement of third-party patent or other industrial property rights and indemnifies us against any such claims.

12.2 We shall retain ownership and copyright in all tools, moulds, drawings, models, designs, files, and other items. The aforementioned items shall only be made available to third parties for purposes of inspection, and only with our prior written approval. Sentences 1 and 2 shall also apply if the Customer has assumed the cost of manufacturing the item.

12.3 We undertake to keep moulds and other equipment for possible subsequent orders. We shall no longer be required to keep such moulds and other equipment if the Customer fails to place additional orders for a period of two years after the last delivery; such obligation shall cease immediately if the Customer fails to pay for the goods supplied to him on time.

13. Place of performance, place of jurisdiction, governing law, translations

13.1 Our distribution warehouse shall be the place of delivery and the place of cure. Our principal place of business shall be the place of performance for payment of the purchase price and any other performance by the Customer.

13.2 If the Customer is a businessman (*Kaufmann*) under German Commercial Law, a legal person under public law (*juristische Person des öffentlichen Rechts*) or a special entity under public law (*öffentlich-rechtliches Sondervermögen*), the place of jurisdiction shall be determined by our principal place of business; however, we shall be entitled to sue the Customer in any other lawful venue.

13.3 The law of the Federal Republic of Germany shall apply. If the Customer's place of business (Art. 10 CISG) is not in Germany, the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply in addition to the contractual arrangements and our general Terms of Sale and Delivery and shall take precedence over the statutory provisions of German law.

13.4 These Terms of Sale and Delivery were originally drafted in German. Translations into other languages are merely for the convenience of the Customer; however, only the German version is legally binding. This applies in particular in the event of translation errors or other discrepancies in content.

B. Data Protection Notice

1. We collect, store, process and use personal data of the Customer if, to the extent that, and as long as this is necessary for establishing, carrying out or ending this contract. Any further collection, storage, processing and use of the Customer's personal data will only be undertaken to the extent that this is required or permitted by law, or with the consent of the Customer.
2. The Customer understands that in order to carry out measures in advance of a contract, and to perform this contract, the collection, processing and use of his data (including in particular his name or contact person and address) are required according to Article 6 para. 1 lit. b) GDPR.
3. To the extent allowed by the law, we are entitled, for the purpose of deciding on the establishment, performance or termination of the contract between the contracting parties, to analyse the risk of a payment default on the part of the Customer. The collection, processing and use of data for this purpose is undertaken on the basis of Article 6 para. 1 lit. b) GDPR.
4. We are also entitled to transfer the Customer's data to third parties, if and to the extent this is required to carry out measures in advance of a contract and in performance of this contract (e.g. for shipping, billing or customer support) pursuant to Article 6 para. 1 lit. b) GDPR or to comply with a legal obligation within the meaning of Article 6 para. 1 lit. c) GDPR. Under certain circumstances, we may transfer this data – to the extent permitted under the law – to third parties for purposes of payment collection in accordance with Article 6 para. 1 lit. b) and/or f) GDPR (e.g. payment companies).

5. At the request of the Customer, we will provide him with access to his stored personal data free of charge, subject to the statutory requirements. Subject to the statutory requirements, the Customer has the right to demand the rectification, erasure, restriction of processing or transfer of his data to a third party. The Customer is also entitled to lodge a complaint with a supervisory authority.
6. According to Article 21 para. 1 GDPR, the Customer has a right to object to the use of his personal data (i) for the performance of a task carried out in the public interest or in the exercise of official authority which has been vested in us, or (ii) which is necessary for the purposes of the legitimate interests of either us or a third party, such as (if applicable) under clause 4 above. Such objection may be notified to us at any time and is not subject to any formal requirements. Should we be unable to demonstrate compelling legitimate grounds for such use, we shall cease to use the relevant data for such purposes upon receipt of this objection.
7. The Customer may also object to any use of his personal data for purposes of direct marketing pursuant to Article 21 para. 2 GDPR at any time and free of charge, by notifying us accordingly; this notification is not subject to any formal requirements. We shall cease to use the relevant data for such purposes upon receipt of this objection.
8. We are considered the responsible "controller" for all purposes relating to data protection as well as for the exercise of the rights described above. For details, please also refer to our data privacy statement on our website under www.idg-gmbh.de/en/data-privacy-statement.