

General Terms and Conditions / Conditions of Supply IBG HydroTech GmbH (Status as of June 2021)

1. General

1.1 These general terms and conditions apply to all contracts, deliveries and other services, including consultancy services, information etc. (even to future business). Any counter-confirmations of the customer referring to their own Terms of Business and/or Conditions of Purchase are hereby expressly excluded.

1.2 Data is stored within the framework of our mutual business relationships in accordance with the Federal law on data protection (BDSG).

1.3 The customer shall, at his own expense, properly dispose of the goods delivered when they are no longer used - based on statutory regulations. This obligation shall also be agreed contractually in the case of a transfer of title to commercial third parties. In the event of failure to do so, the customer shall bear the costs of disposal.

1.4 From a design and structural point of view, our equipment, plant, systems plus the designs brought onto the market by us meet the basic EU health and safety requirements relevant to you (the time of introduction to the market is important). Such equipment shall only be operated by trained specialist personnel and in accordance with our operating instructions. We reserve the right to modify our products in line with the latest technical developments.

2. Offers and Conclusion of contract

2.1. Our offers are always for information. All associated documentation (e.g. drawings, depictions, measurements and weights etc.) are non-binding unless clearly marked as binding. Likewise, any information given is not guaranteed quality.

2.2 The contract shall only become binding on receipt of our written confirmation of order. Any ancillary agreements, amendments, supplements or provisos in the contract shall only be valid if set down in writing. If we do not issue a confirmation of order to a customer in response to his order, the dispatch of the consignment with the invoice and/or delivery note shall be regarded as acceptance of order.

2.3 We retain full and unrestricted title and copyright to all estimates, drawings, illustrations, photographs and other documentation; these shall not be disclosed to third parties without our consent and must be returned to us without delay on demand.

2.4 We reserve the right to modify the construction or form of the item of delivery, provided that such modification does not substantially alter the item of delivery, and the buyer can reasonably be expected to find the alterations acceptable.

2.5 For contracts and transactions between us and foreign customers, it is agreed that the law of the Federal Republic of Germany shall apply to all business relations (respective of their legal basis). The contractual language for business relationships with foreign customers shall be German or English.

3. Prices

3.1 Prices are in Euro (€), ex seller's warehouse, excluding installation and commissioning, unpacked ex works and excluding packaging and postage and the statutory turnover tax valid at the time, unless other modalities have been explicitly set out in the confirmation of order.

3.2 Any additional costs of approvals, expert opinions or certificates from public authorities or testing bodies demanded by the customer shall be charged separately.

3.3 If the customer subsequently wishes to alter, delete or return goods from orders, this will only be accepted and effected against payment of the costs incurred.

4. Payment conditions

4.1 Unless otherwise agreed, all payments shall be made after delivery or availability and on receipt of invoice without any deduction.

4.2 We are entitled to invoice the customer part payments of 90 % of the value of the particular service provided, unless 50 % down payment has been agreed.

4.3 We reserve the right to make deliveries on a cash-on-delivery basis or against advance payment.

4.4 Bank and discount charges shall be paid by the customer. We shall only accept bills of exchange after prior written agreement, if they can be discounted.

4.5 The customer is entitled to set off and enforce retaining liens only inasmuch as the counter claims have been recognised by us in writing, are not disputed by us or have been finally and conclusively established by a court of law.

4.6 If the customer defaults in his payment obligations, we shall be entitled to claim interest on arrears in compliance with §288 of the Civil Code at a rate of 8 % above the base rate in accordance with §247 of the Civil Code.

5. Retention of title

5.1 We retain the extended and expanded title to all delivered items until receipt of all payments arising from the business relationship with the customer (goods subject to retention of title).

5.2 The customer shall only sell, pledge or give the delivered item in security to third parties with our prior written consent.

5.3 If the customer resells or hires out the delivered item in the normal course of business, he shall assign to us from the beginning all claims arising from the resale against the buyers or third parties in the value of the final invoice amount (including VAT), regardless of whether the delivered item is resold before or after processing. We are entitled to collect these claims notwithstanding the assignment. Our right to collect the claims ourselves is not affected by this. However, we undertake not to collect the claims as long as the latter meets his liabilities from the collected proceeds, is not in default re payment and also in particular, as long as he has not filed a petition for insolvency and as long as payments have not been suspended.

In the event of this happening, however, we can demand that he disclose to us the assigned claims and their debtors, provide all information necessary for collection, surrender the relevant documents and advise the debtors (third parties) of the assignment.

5.4 To the extent that the realisable value of all security interests owed exceeds the amount of all secured claims by more than 20 %, we shall release at the customer's request the part of the security interests due to us. It shall be at our discretion alone which of the various security interests we choose to release 5.5 We shall be notified immediately, in the event of attachments and seizures or other third party interventions.

5.6 If he infringes the terms of the contract, (in particular in the case of payment default), the customer shall surrender the delivered items on demand. The customer shall bear all the costs of repossession and use of the delivered items. The recovery costs shall be 10% of the sales price (incl. VAT.) if no documentary evidence is provided. We can provide evidence of higher costs and the customer evidence of lower costs.

5.7 The customer is obliged to adequately insure the delivered items.

5.8 The enforcement of retention of title and the pledging of delivered items by us shall not be regarded as cancellation of contract.

5.9 If the customer processes or alters the item of purchase, this is always done in our stead. If the delivered item is processed with other items which do not belong to us, we shall acquire co-ownership of the new item. The item resulting from the processing shall also be deemed goods subject to retention of title.

5.10 If the item purchased is inextricably mixed or combined with other goods not belonging to us, we shall acquire co-ownership rights. The percentage of co-ownership of the new item proportionate to the value of the item purchased to the other mixed items at the time of mixing. The co- or sole ownership shall be kept for us by the customer.

5.11 If the customer files a petition to open insolvency proceedings, we are entitled to cancel the contract and demand the immediate return of the delivered items.

6. Performance and delivery dates

6.1 Any delivery periods and dates shall be approximate unless we have designated them expressly and in writing to the customer as binding. The delivery period begins from the date of dispatch of our confirmation of order but not before clarification of all technical and commercial details (including presentation of any permits which might be required). If a down payment, a bank guarantee or a letter of credit is agreed, the delivery period runs from receipt of payment and/or the corresponding documents. If any alterations to the subject of the contract are requested by the customer within the delivery period, the delivery period shall be extended accordingly.

6.2 Observance of delivery periods and dates is subject to correct and punctual deliveries from our suppliers.

6.3 Delivery periods and dates shall be deemed to have been observed if the delivery item has left our factory or availability for shipment has been advised before such periods expire.

6.4 Part services and part deliveries are permitted.

6.5 If shipment of the item is delayed for reasons for which the customer is responsible, he shall bear any costs incurred, beginning one month after advice of availability for shipment.

6.6 If the delivery period cannot be adhered to due to force majeure, industrial strife or other events beyond our control, the delivery period shall be extended accordingly. We shall advise the customer as soon as possible of such events and resulting delays.

6.7 The customer can cancel the contract without notice if we ultimately cannot deliver full performance before the transfer of risk. This also comes into force if it becomes impossible for us to execute part of an order and if he has a justified interest in refusing the partial delivery. If this is not the case, the customer shall pay that part of the contract price owed on the partial delivery. The same shall apply in the case of inability on our side. Otherwise Article 10 shall apply. If the impossibility or inability occurs during the delay in acceptance, or if the customer is solely or largely responsible for the prevailing circumstances, he shall remain liable for payment.

7. Passing of risk and Transport

7.1 The commercial terms agreed upon are to be interpreted in accordance with the INCOTERMS in force at the time of the conclusion of the contract. Otherwise shipment of the delivery item is effected at the expense and risk of the customer, with the risk being transferred to the customer at the latest however when the delivery items leave our premises, irrespective of who bears the freight costs and whether dispatch is effected from the place of fulfillment. If the goods are ready for shipment and acceptance is delayed for reasons for which we are not responsible, risk shall pass to the customer on receipt of advice of availability for shipment.

7.2 The delivery or loading takes place according to FCA with transfer to the carrier from Seeweg 6 & 10.

7.3 We can insure the goods to be shipped against transport risks of all kinds on request and at the customer's expense.

7.4 The customer shall dispose of disposable packaging at his own cost. Only reusable transport resources will be taken back.

8. Warranty / Acceptance

The customer shall not refuse to accept supplies and services on the basis of negligible defects.

8.1. Material defects

8.1.2 All services and/or parts showing defects within the period of limitation after 12 months and considering an operating period of a maximum of 2000 operating hours (depending on which event occurs first) shall be repaired free of charge, replaced or supplied new at our discretion, provided that the cause of the defect already existed at the time of transfer of risk.

This shall not apply in the case of malice aforethought or gross negligence on the part of IBG or fraudulent concealment of a defect. This does not affect statutory provisions on suspension and resumption of the statute of limitations. IBG reserves the right to determine the type and extent of the removal of the material defects.

8.2.2 The customer shall notify us immediately in writing of any material defects: a) obvious defects in our supplies and services at the latest within 7 working days after acceptance or commissioning, b) concealed defects within 7 days from discovery; otherwise the notice of defect shall be regarded as delayed under § 377 of the German Commercial Code.

8.2.3 In the event of notifications made and confirmed by IBG, payments can be withheld by the customer to an amount in due proportion to the defects of quality notified. If payment is withheld unjustly, the customer shall refund to IBG all expenses incurred.

8.2.4 There can be no warranty claims for a) damage occurring after transfer of risk as a result of faulty or negligent handling, the use of unsuitable working materials, excessive strain, atomic radiation; on account of particular outside influences which are not provided for in the contract b) non reproducible software errors, c) only minor deviations from the quality and serviceability agreed upon, d) natural wear and tear. Proper handling includes among other things compliance with the fitting, operating and maintenance instructions prescribed by IBG, proof of which must be furnished by the customer. If modifications, maintenance or repairs are carried out improperly by the customer and/or third parties, there can be no claim for warranty for material defects arising from same. No warranty is given on illuminations.

8.2.5 After notification of defects, IBG or third parties authorised by IBG must be given several opportunities to fulfil the contract subsequently within a reasonable period of time. If subsequent fulfilment fails, the customer can claim compensation under Art. 10. This may be cancellation of the contract or a reduction in the remuneration by a reasonable amount.

8.2.6 Claims from the customer for expenses incurred in conjunction with subsequent fulfilment, in particular transport costs and travel costs are hereby precluded.

8.2.7 IBG reserves the right to decide to remove the defect and/or make a replacement delivery.

8.2.8 Consequential costs arising from defects of quality (in particular lost profits) other than those regulated in this Article 8 against IBG and its vicarious agents are hereby precluded. Moreover Art. 10 applies to claims for compensation.

8.2.9 For equipment of other manufacturers supplied, the periods of limitation for defects of quality of the manufacturers concerned shall apply.

9. Industrial Property Rights, Copyright, Defects in Title

9.1. We are obliged to effect delivery free of any industrial property rights, copyright and patents of third parties (hereinafter called property rights) solely in the country of the place of delivery. If a third party lodges claims in the country of the place of delivery against the customer on the grounds of the proven infringement of property rights by IBG, we shall be liable for compensation payments within the factory defined in Art. 8.1.2, as follows: obligations apply as described in Art. 10, we shall at our choice and at our expense either obtain a licence for the use of the delivery/service in question, modify these such that the property right is not infringed or replace the delivery/service. If it is not possible to do so, the customer shall be entitled to avail of the lawful right of cancellation or reduction in price.

This obligation on IBG only exists where the customer informs us without delay in writing of the claims asserted by the third party, inasmuch as the latter does not recognise any infringement and that IBG reserves all the measures for defence and negotiations for settlement.

9.2. If the customer discontinues use of the delivered items (on the grounds of mitigation of damage or for other reasons), he must inform the third party that this is not an automatic acknowledgement of an infringement of a property right.

9.3 Claims by the customer against IBG are precluded, if infringements of the property right are at his expense, in particular through an application which could not be foreseen by us, special delivery or service requirements, or through the delivered item being modified by the customer or used along with other products not supplied by us.

9.4 If infringements of property rights are caused by IBG and confirmed, the claims regulated in Item 9.1. shall apply in conjunction with Item 8.2.3, 8.2.5. and 8.2.8.

9.5. Any other defects in title shall be subject to the application of Art.8. Other claims regarding property rights by the customer against IBG and its vicarious agents on the grounds of defective title other than those regulated under this Item 9 are precluded.

10. Liability and other claims for damages

10.1 Any claims for damages (covering all claims for compensation or reimbursement of costs) by the customer, for whatever legal reasons, (in particular due to breach of obligations under the contractual obligation and unauthorised action) are precluded

10.2 The terms of 10.1 become invalid in the case of: a) compulsory liability, b) gross negligence, c) premeditated action or d) injury to life, health and body.

10.3 Claims for damages in the case of a serious violation of the contractual obligation are limited to foreseeable damage typical of the contract. This applies as long as there is no a) gross negligence, b) premeditation or c) injury to life, health and body. 10.4 Items 10.1 to 10.3 do not include any change to the burden of proof to the detriment of the customer.

10.5 If the customer is entitled to claims for damages under Item 10, the following applies: a) for material defects: these shall be subject to the period of limitation under Art. 8.1.2, b) for claims under the product liability law, the statutory provisions for limitation shall apply.

Liability is excluded for a defect in the delivered items caused by minor negligence, and also in relation to personal liability of the legal representatives, vicarious agents and/or personnel of IBG. 10.6. Unless otherwise agreed in writing, our liability is limited to the extent of our manufacturer's public liability insurance, to an amount of 0.5 million Euro for personal injury and damage to property. If our products are exported by the customer after further processing our use of components, IBG cannot be held liable for the exportability of the products delivered or the national licensing and import requirements in the particular country.

10.7 If orders are cancelled by the customer, IBG is entitled to assert claims for damages for the actual costs incurred.

11. Adaptation of contract in the event of impossibility

11.1 If delivery is not possible, the customer shall be entitled to claim damages as long as IBG is not responsible for the impossibility of performance. The customer's claim for damages is limited to 10% of the value and only applies to products, which cannot be put to their intended use because of the impossibility of performance. Excluded are a) premeditation, b) gross negligence or c) injury to life, body or health; the change in the burden of proof to the detriment of the customer is not affected by this. The right of the customer to cancel the contract is not affected.

11.2 IBG reserves the right to appropriately adapt the contract in accordance with the principles of good faith, if unforeseen events as per Art. 6.6 occur and considerably change the content of the delivery/service or the economic significance. Included here are the circumstances having a considerable impact on IBG's business. If the adaptation of the contract is not economically justifiable, IBG may withdraw from the contract. If we avail of this right of cancellation, we must advise the customer of this without delay after becoming aware of the significance of the events, even if an extension of the delivery time was initially agreed with the customer.

12. Jurisdiction and Arbitration

12.1 Place of performance and legal domicile for all contracts concluded and disputes between the contracting parties arising out of same for commercial people entered in the commercial register, a body corporate or a public corporation, shall be the District Court in Büdinger (irrespective of the value of the matter of litigation). All parties shall be subject to the law of the Federal Republic of Germany to the exclusion of the UN Sales Convention. We reserve the right to take legal action at the domicile of the customer.

12.2 If the contracting parties agree to refer a dispute to arbitration, each party shall appoint an arbiter within 4 weeks at the request of the opposite party. The President of the Higher Regional Court of the jurisdiction mentioned in Art. 12.1 shall appoint the arbiter of the arbitration court. He shall also be responsible for the appointment of the arbiter of that contracting party which is in default appointing an arbiter. The Court of Arbitration shall rule on the basis of the agreed delivery conditions and agreements.

13. Binding force of the contract

Should any individual provisions of this contract become legally invalid, this shall not affect the validity of the remaining parts of the contract, provided this does not constitute unreasonable hardship for either of the parties concerned.

14. Dispute resolution

IBG Hydrotech GmbH does not participate in a dispute settlement procedure on a consumer arbitration board.

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