

General Terms and Conditions – GTCs – iMT spray systems GmbH

(Sales and Payment Conditions)

Order placement

All agreements and offers are subject to our conditions; they are deemed accepted upon placement of an order or acceptance of delivery. Any deviating conditions on the part of the purchaser, which we do not expressly agree to in writing, shall be non-binding for us, even if we do not expressly object to such conditions.

Delivery period

The delivery period is deemed to be agreed on an approximate basis only. The delivery period commences the day on which the order confirmation is dispatched, yet not before all technical and commercial questions relating to the delivery are clarified and is deemed to be met if the goods have left the factory/warehouse at the end of the delivery period, or at such time the possibility to dispatch the goods has been declared. In the event of early delivery, this date of early delivery shall be decisive and not the originally agreed date. Subject to correct and punctual supplier deliveries to us. The delivery period shall be appropriately extended – including during delivery default – should unforeseen problems occur which we were not able to avert despite reasonable effort according to the circumstances of the case, regardless of whether the problems occurred in our factory or at our suppliers, such as due to operational disruptions, official interference, industrial action or delays in the supply of important raw materials and construction materials. The same applies in the event of a strike or lockout. We undertake to promptly inform the purchaser of such delays. Any later amendments to the contract (such as unclear matters in the drawings provided by the purchaser or construction changes) which may influence the delivery date shall appropriately extend the delivery period, provided no separate agreement has been made in this connection.

Prices and payment conditions

Our price list or respectively the prices stated in the order confirmation or order form agreed at the time of entering the relevant contract shall apply. These prices do not include the statutory amount of value-added tax applicable on the delivery date or the costs for orderly shipment, transport costs from our factory or warehouse, haulage costs and, where agreed, the costs of transport insurance. Country-specific duties may also apply to international deliveries. We reserve the right to adjust our prices appropriately. If the order value is less than 20 Euro net, we reserve the right to charge a surcharge of 10 Euro. Our invoices are payable net without deduction of discount within 14 days. The ordering party shall be in default upon expiry of the payment due date stipulated on the invoice in accordance with Section 286 (II) (2) of the German Civil Code (BGB). Offsetting or retention rights shall only be granted to the ordering party if its counterclaims have been legally ascertained and accepted by us in writing. In addition, the right of retention shall only arise if the counterclaim asserted relates to the same contractual relationship as our claim. In the event the ordering party fails to settle its due payments, exceeds a payment deadline or if the financial circumstances of the same should deteriorate, we are authorised to make payable the entire outstanding debt of the ordering party and, in derogation from the original agreements, demand an advance payment or security payment or, upon delivery, immediate payment of all our receivables relating to the same legal relationship. If the buyer defaults on payment, we are entitled to charge default interest of 5 % above the base rate. If a higher default damage is detectable, we are entitled to assert it. After the second reminder after default a fine is due.

Transfer of risk, dispatch and shipping

In the event the goods are dispatched to the purchaser at its request, the risk of accidental loss or accidental deterioration of the goods shall be transferred to the purchaser upon the dispatch of the goods to the forwarding agent commissioned by us, yet no later than upon leaving the factory or warehouse, regardless of whether the shipment is performed from the place of fulfilment and who bears the shipping costs. If the goods are ready for dispatch and shipping or acceptance is delayed for reasons not attributable to us, the risk shall be transferred to the purchaser upon notice of readiness for dispatch.

Inspection and approval

In the event the goods should be inspected according to specific conditions, they shall be inspected in the supply factory. Unless otherwise agreed, the purchaser shall bear the inspection costs in this case. If the purchaser dispenses with an inspection in the factory, the goods shall be deemed to be accepted once they leave the factory.

Retention of ownership

The delivered goods remain our property until all receivables arising from the business transaction between us and the purchaser are settled in full. The preparation of individual receivables in a current invoice as well as account balancing and its acceptance do not affect this retention of ownership. Payment is only deemed to have been made upon receipt of the counter-value by us. The ordering party is permitted to resell the reserved goods in the normal course of business; however, the former is not permitted to a pledge or assignment of the goods as security. The purchaser is obligated to ensure the rights of the conditional buyer in the event of resale on credit.

The purchaser hereby assigns to us the receivables on the part of the former arising from the resale of the reserved goods. We hereby accept this assignment. Regardless of the assignment and our right of collection, the purchaser is entitled to collect the claim if the same fulfils its obligations to us and does not face financial collapse. At our request, the purchaser shall supply the information on the ceded claims necessary for seizure and inform the debtor of the assignment.

Any processing and treatment of the reserved goods is performed by the purchaser for us only, without us incurring any obligations for this. In the event the reserved goods are processed, combined, mixed or amalgamated with other goods that do not belong to us, we shall be entitled to the co-ownership share of the new products in the ratio of the value of the reserved goods to the value of the other processing good(s) at the time of processing, combination, mixing or amalgamation. If the purchaser acquires sole ownership of the new goods, the contractual parties agree that the purchaser shall grant co-ownership of the new goods in the ratio of the value of the processed, combined, mixed or amalgamated reserved goods and store these goods for us without charge. Should the reserved goods be resold together with other goods, regardless of whether these are processed, combined, mixed, amalgamated or not, the above advance assignment shall only apply in the amount of the value of the reserved goods which are resold together with the other goods. The purchaser shall notify us without delay of compulsory enforcement measures of third parties against the reserved goods or the claims assigned in advance and provide the necessary documentation for intervention. As the supplier, we undertake to release the securities with which we are assigned according to the above provisions at our discretion and upon the request of the purchaser, insofar as the value of the receivable to be secured exceeds 20%. The purchaser is obligated to insure the reserved goods against all forms of damage at its own cost.

Warranty, liability and notice of defects

Material defect warranty claims

In the event the delivery item is defective or lacks warranted qualities or if it is damaged during the warranty period by manufacturing or material faults, we shall at our discretion provide a replacement or rectify the defect, to the exclusion of other warranty claims of the purchaser. Such defects must be notified to us in writing without delay: for discernible defects no later than within 10 days of acceptance, for indiscernible defects immediately upon discovery. The warranty period shall cover 6 months. This period commences upon delivery of the goods to the purchaser. However, the warranty period shall end no later than 6 months after the goods have left our factory. Consumable material and wearing parts are not subject to warranty.

Other claims for compensation for damages

Claims for damages from impossibility of performance, from default, from positive breach of an obligation, from us being at fault upon conclusion of the contract and damages arising from unauthorised handling are excluded, unless they concern wilful intent or gross negligence on our part or by our managerial staff.

Third-party property rights

If deliveries are made based on drawings or other information on the part of the ordering party and if, as a result, third-party property rights are infringed, the ordering party shall indemnify us of all claims.

Force majeure, strike and lockout

In the event that we are prevented from fulfilling our obligations due to the occurrence of unforeseeable, extraordinary circumstances, which we were unable to avert in spite of reasonable effort according to the nature of the circumstance – regardless of whether the impediments occurred in our factory or at our suppliers – such as operational disruptions, official interference, delay in the supply of important raw materials and building materials, the delivery period shall be extended by an appropriate amount if the delivery or performance does not become impossible. Should the circumstances make delivery or performance impossible, we shall be released of our delivery obligation. The delivery period shall also be extended by an appropriate amount in the event of strike or lockout, provided the delivery or performance does not become impossible. If delivery or performance becomes impossible, we shall be released of our delivery obligation. In the event the delivery period is extended in the above cases or if we are released of our delivery obligation, any subsequent claims for damages and withdrawal rights on the part of the purchaser shall become inapplicable.

Severability clause

If one or more provisions of these general terms of business should be or become legally ineffective, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced as quickly as possible by another provision which most closely approximates the economic purpose of the legally ineffective provision.

Place of fulfilment, jurisdiction and applicable law

The place of fulfilment for all obligations arising from this contractual relationship is Rosendahl, Germany. The place of jurisdiction for all disputes arising from this contractual relationship as well as regarding its formation and validity is Coesfeld, Germany. The contractual relationship is subject to the law of the Federal Republic of Germany.

iMT spray systems GmbH
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