

I. General

1. These general Terms of Sale, Delivery and Assembly are the legal basis for the business relationship between IFE Aufbereitungstechnik GmbH ("IFE") as a seller and its customers in Austria and abroad. They constitute an integral part of every single IFE offer and of every single contract. The general terms and conditions of a customer shall only apply if expressly recognised by IFE in writing.
2. The following terms for the delivery of goods shall correspondingly also apply to services (e.g. assembly works).
3. Orders of customers are legally binding only when performed in writing and upon written confirmation by IFE. Changes and amendments to contracts also require written confirmation.

II. Plans, Documents

1. Drawings, plans, outlines and other technical documents, including all details and references always remain the intellectual property of IFE. Any commercial use, imitation, duplication, distribution or delivery to third persons requires IFE's approval.
2. The customer guarantees the correctness of dimensions and calculations etc. of such drawings, samples and other devices and that they do not infringe any third party's rights. He will hold IFE completely harmless in this respect. IFE does not assume any liability for loss or damage of documents provided by the customer. It rests with the customer to insure such documents against fire, theft and the like for the duration of their remaining at the disposal of IFE.
3. Statements of IFE in advertising media, advertising folders, advertisements, price lists etc. or information attached to goods may only be regarded as warranties for characteristics if IFE expressly refers thereto in contracts.

III. Prices, Obligation to take delivery

1. Prices are – unless expressly stipulated otherwise – net prices (without any deduction) and do not compromise packing, transportation or insurance.
2. Packaging is conducted in line with commercial standards, to avoid damages of the goods during transport under normal transport conditions. Upon demand by the customer or for compliance with transport regulations, the goods will be particularly packaged.
3. The prices are based upon the production costs at the time of the conclusion of the contract. IFE reserves the right to adjust its prices until delivery if such delivery takes place more than four months after the conclusion of the contract and if the following cost increases occur that do not depend on the intention of IFE: increase or introduction of taxes, charges and fees including tariffs, price increases of raw materials, semi-finished products or transportation costs, salary and wage increases on the basis of collective bargaining agreements.
4. The customer is obliged to take delivery of the contractually agreed services. A cancellation by the customer is only effective upon the written consent of IFE. If IFE consents to the cancellation by the customer, the customer is obliged to pay all services rendered by IFE until such date. In addition, IFE shall be entitled to invoice a cancellation charge in the amount of 30 % of the balance between the value of the services rendered prior to the cancellation and the total contract price.

IV. Delivery, Transfer of Risk

1. If not explicitly agreed otherwise, the delivery shall always be “ex works” (EXW) Waidhofen/Ybbs according to the INCOTERMS applicable at the date of the conclusion of the contract (ready for collection).
2. If not explicitly agreed otherwise, the customer has to collect the goods “ex works” at the agreed date of delivery, or if no such date of delivery has been agreed within 10 days after having received the notification that the goods are ready for collection. In case of late collection of the goods by the customer default of acceptance shall occur; in this instance, the goods shall be stored at the customer’s expense and risk, IFE being entitled to charge a lump sum consideration of 1% of the net value per started week. In case of the customer’s default, IFE may demand satisfaction of or withdraw from the contract upon an adequate term.
3. In case IFE took over the duty to dispatch the goods upon demand of the customer, such dispatch will always be effected at customer’s costs. Additionally, the INCOTERMS as agreed and valid on the date of conclusion of the contract shall apply.

V. Term of Delivery

1. If instead of a fix delivery date the parties have agreed on a term after which delivery has to be completed the latest, such term shall commence at the conclusion of the purchase contract, the fulfilment of all technical, commercial and financial preconditions by the customer and, if agreed, the receipt of a deposit or a security in the agreed amount.

Later modification or amendment requests of the customer accepted by IFE shall extend the delivery term respectively.

2. Deliveries prior to the expiry of the delivery term and partial deliveries according to manufacturing circumstances are permissible.
3. IFE may postpone the date of delivery or withdraw entirely or partly from delivery if the execution of the contract is hindered or made impossible:
 - a) by cases of force majeure such as strikes, labour shortage, dispatch hindrance or other disruptions at the own or at the subcontractors’ plant, traffic disturbances, shortage of raw materials, damages through water, fire or power failure as well as weather damages.
 - b) by a conduct of the customer by which the agreed completion and the proper acceptance and the payment of the goods are not safeguarded.
4. If IFE is in default for other reasons than mentioned in paragraph 3, the customer may demand performance or may, upon granting an extension of at least 40 % of the contractual term of delivery, withdraw from the contract. In such case the customer is only entitled to the return of the performances so far furnished, in cases of wilful intention or gross negligence also to compensation for justified expenditures the customer had to effect until the termination of contract and which are of no further use.
5. Any other claims against IFE because of default of delivery other than mentioned above are excluded.

VI. Terms of Payment

1. Unless specific terms of payments are agreed,
 - a) 30% of the price is to be paid at the conclusion of the purchase contract,
 - b) 30% of the price before collection / delivery, however, at the latest 3 days after having received the notification that the goods are ready for collection / delivery and

- c) the remaining 40% of the price 30 days after collection / delivery, however, at the latest 30 days after having received the notification that the goods are ready for collection / delivery.
2. If not otherwise agreed upon in writing, the bill is to be paid immediately upon receipt without cash discount or any other deduction.
3. In case of default of payment or whenever circumstances occur or become known which justify the assumption that of a higher risk for the collection of IFE's claims against the customer, IFE is entitled
- a) to demand the immediate payment of all open claims and at the same time stop all further deliveries, including any bills of exchange showing a later date of maturity.
 - b) to stop working on not yet fulfilled parts of the contract and/or to withdraw from the contracts; whereas advance payments received up to that time may be kept to cover performances furnished so far and possible claims for compensation.
 - c) to demand the restitution of all goods delivered upon retention of title. If IFE becomes aware of such circumstances after the placement of an order but prior to delivery, IFE is entitled to stop working until effecting or safeguarding the consideration and/or entitled to withdraw from the contract.
4. The customer may offset against claims of IFE only counterclaims ascertained by a declaratory judgement or explicitly acknowledged by IFE in writing. The right to retention of payment is permissive in these cases only.
5. In case of arrears IFE is entitled to charge interest in the amount of 8 percentage points above the base rate of the European Central Bank as well as all costs in connection with the collection of claims.
6. The acceptance of bills of exchange and cheques occurs on account of performance only. IFE is entitled to immediately present the accepted bills of exchange for discounting. The discount interest due at the actual date of maturity as well as all other costs in connection with the acceptance of the bills and cheques are chargeable to the customer.
7. IFE has a right of retention regarding all goods handed over to IFE or stored at its place until complete payment of the purchase price including all additional expenses and all storage fees.
8. Payments are first credited on expenses, then on interest and finally on capital.

VII. Retention of Title

1. The ownership of delivered goods shall remain with IFE until their complete payment. As far as legally possible under the laws of the customer's registered seat the ownership of delivered goods shall remain with IFE until full payment of all open claims resulting from the contractual relation between IFE and the customer.
2. If the law at the customer's registered seat requires the entry of the retention of title into a register or the fulfilment of other regulations, the customer is obliged to ensure the fulfilment of such rules on his own costs, to make all required statements and to inform IFE about their execution without delay.
3. As long as the retention of title is in effect, any disposal, mortgage, transfer by way of security, renting or any other surrender of the purchase object is not permitted without the written approval of IFE. In case goods delivered under retention of title are attached by third parties or if other claims are raised with respect to these objects, the customer has to stress IFE's ownership and to immediately notify IFE via letter, fax or e-mail including all the details (such as name and address of the third party, possible administrative number of the court etc). If such third party is not able to compensate IFE for the costs triggered or in case of a belated notification, the customer is liable for such loss.

4. In case the customer sells the delivered goods to a third party prior to full payment of the purchase price, the customer automatically assigns his claim for the purchase price to IFE. For such case IFE declares its acceptance of such assignment in advance. A sale for cash payment is not permitted. The customer is obliged to record such cession in his books at the instant of the sale at the very latest.

As far as the law at the customer's registered seat requires the fulfilment of other regulations for the effectiveness of such cession, the customer is obliged to ensure the fulfilment of such rules at his own costs, to make all required statements and to inform IFE of their execution without delay.

5. During the retention of title the purchase object has to be treated with due care, to be maintained and to be insured by the customer on his own costs against all insurable risks, under the provision that IFE is entitled to all rights resulting from the insurance. As far as the customer does not prove an insurance cover at the delivery of the purchase object at the very latest, IFE is entitled to arrange for insurance at the expenses of the customer, who cedes the rights arising thereof to it.

VIII. Assembly

1. The customer secures that the construction work is progressed so far to allow for the immediate start of the assembly works at the agreed date. The customer bears all costs of IFE caused by the delay of assembly (e.g. travelling and waiting time, travel expenses).

2. Electricity, lightning, lifting equipment and any other equipment or tools necessary for the assembly, launch or control and a lockable room for tools, instruments etc. of the assembly personnel will be provided by the customer free of charge.

3. Moreover, the customer provides assistants and an expert free of charge. This expert supervises, in the name of the customer, the *lege artis* execution of the works. He may demand a justification report within the work report from the installation personnel of IFE and sign it. IFE does neither assume any employer's duties nor liability for damages of any kind whatsoever for such assistants.

4. The assembly is carried out pursuant to the relevant employment contract of the respective employee of IFE and the Austrian labour and social law. However, any absolutely mandatory provisions (*ordre public* rules) at the foreign place of work have to be complied with.

5. Potential complaints about the assembly personnel and the assembly works are to be notified to IFE without delay. They do not discharge the customer of any of his other obligations, in particular payment obligations.

6. IFE can withdraw its personnel from the customer at any time.

IX. Occupational safety & health of IFE workers employed at the customers place of business, instruction

1. The customer ascertains that prior to conduct of any operation at the customer's place of business all workers and supervisors of IFE will, if required under international standards, receive

a) an instruction on occupational health and safety issues (e.g. concerning dangers from hazardous substances or components, on-site precautionary measures and right behaviour in case of emergency),

b) protective equipment for personal use in case and to the extent the standard equipment provided by IFE does not suffice.

The customer bears on this own the costs for these measures. IFE is entitled to invoice the customer for the working time of own employees accrued in this context.

2. In case of an event (especially emergency) at the customer's place of business directly endangering the occupational health and safety of IFE workers, IFE has the right to immediately cease all on-site activities until the customer restores a safe working environment according to international standards. The customer has no claims whatsoever against IFE (especially no claims for performance of contract or damages) arising out of or in connection with an interim cessation of activities by IFE (except in case where this right is overtly abusively invoked).
3. In case and to the extent that IFE is bound to provide separate instructions and trainings with respect to the delivered good, IFE is entitled to invoice the customer for all costs including the working time of own employees accrued in this context.

X. Warranty

1. IFE warrants vis-à-vis the customer only (not to third parties, therefore) upon fulfillment of payment obligations the correctness of the products with respect to material and workmanship according to the respective state of the art.
2. This obligation applies only to defects which appear within 12 months
 - a) from the time of the actual transfer or, in case of delivery and assembly, after the time of completion of assembly works, or
 - b) in case of customer's default of acceptance, from the time of such default of acceptance.
3. The customer may claim these warranties upon immediate written notification about any defects only. In addition, the customer has to examine the delivered goods at the time of acceptance or transfer of risk respectively. It is the duty of the customer to prove the existence of the defect at the time of acceptance.
4. IFE may choose to fulfill its warranty obligations in the form of amelioration or exchange within due time. The amelioration has to occur at the spot, however IFE may choose upon the consignment of the deficient good or deficient part. In this case and if not agreed otherwise, the customer bears the costs and risk of transport. In case the amelioration or exchange is not reasonable for IFE, the purchase price is to be adapted adequately.
5. This warranty applies only to defects which appear under compliance with the instructions and ordinary use. It does not apply, in particular, to defects which are caused by: bad care or lack of regular control, repairs by third parties, installations or other modifications without consent of IFE, regular wear.
6. When delivering used, changed or altered goods as well as when carrying out repair works, IFE cannot warrant a specific state of these goods or pieces of equipment. IFE only warrants the quality and suitability of the material used as well as the proper work performance.
7. The repairing of defects within the warranty period does not cause a prolongation of this period.
8. Parts that are removed or replaced within the scope of warranty pass over to the property of IFE by their removal and without any compensation.

XI. Damage Compensation and Product Liability

1. IFE is liable, with the exception of damages to persons, only in case of wilful intention or gross negligence. IFE is not liable for indirect or consequential damages (especially for losses of production or decreases of production), loss of profit or for damages resulting from the claims of third parties. IFE is not liable for damages caused by actions of third parties not assignable to IFE, force majeure or actions of the customer or of a third party assignable to him.

2. Claims for compensation have to be asserted in court within 6 months from the occurrence of damage. The proof of damage and fault of IFE lies with the customer. The overall warranty of IFE is in any case limited with the amount of the purchase price. Claims for compensation elapse, in any case, after 3 years from the day of acceptance or transfer of risk respectively.

3. The purchase object offers only that security that may be expected on the basis of authorisation regulations, user manuals, regulations of IFE concerning the handling of the delivered object (operating instructions) – especially regarding the prescribed inspections – and on the basis of any other given indications.

XII. Final Provisions

1. The fulfilment of the contract on the part of IFE is subjected to the reservation, that there are no barriers due to national or international laws, especially export control laws. In the same way the customer while he uses these services is responsible for compliance with Austrian or other applicable export provisions, especially those of Germany and the USA.

2. Written notifications to the customer are always sent to the last address announced by the customer. The customer is obliged to notify IFE in writing of any change of address without delay.

3. Should one or several provisions of these terms of sale, delivery and assembly be or become invalid or ineffective, this shall not affect the validity and effectiveness of the other provisions hereof. In this case the invalid or ineffective provision shall be replaced by a provision that best reflects the contents and meaning of the valid provisions hereof and the intention of the parties. Gaps in the contract have to be filled by amending interpretation of the contract.

4. Court of jurisdiction for all disputes arising out of interpretation and execution of this contract between the customer and IFE – including those about the existence or non-existence of the contractual relation – shall be the competent court of St. Pölten (Austria) exclusively. IFE, however, may as well call upon the common forum of the customer.

5. This contract is governed by Austrian law under exclusion of the conflict of law rules and of the United Nations Convention on the Sale of Goods.

6. For deliveries and payments the place of performance shall be the registered seat of IFE, even in the event the delivery takes place, in compliance with the relevant agreement, at another place.