

# General Terms and Conditions of Institut Dr. Foerster GmbH Co. KG

## A. General provisions

### 1. **Scope, conclusion of contract, form**

- (1) These General Terms and Conditions (GTC) apply to all contracts of sale and for work and services (*Contract*) concluded between Institut Dr. Foerster GmbH Co. KG (*Foerster/we*) and our commercial customers within the meaning of Article 310 (1) of the German Civil Code BGB (*Customer/Buyer*). The General Terms and Conditions apply exclusively. We shall not accept the Customer's general terms and conditions of business and purchase even if they are referred to in the purchase order and we make no express objection to them. However, in such case, we reserve the right to request a new purchase order without such reference.
- (2) The General Terms and Conditions shall also serve as a framework agreement for future contracts with the same Customer (*ongoing business relationship*) without the necessity for us to refer to them again in each individual case. The General Terms and Conditions shall apply in the version valid at the time of the purchase order and available on our homepage at any given time or in any event in the version most recently disclosed to the Customer in text form.
- (3) Individual agreements (e.g. framework agreements, quality assurance agreements) and our specifications given in offers and order confirmations in particular, shall take precedence over the General Terms and Conditions. In case of doubt, commercial terms shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of concluding the Contract.
- (4) Our offers are subject to change and non-binding unless an express binding period is indicated. In any case, they shall be subject to any necessary authorisations, e.g. due to statutory export controls. The purchase order or placement of an order by the Customer shall be deemed a binding offer of Contract which, in the absence of any provision to the contrary, shall remain valid for a minimum of 2 weeks.
- (5) Once all technical and commercial details have been clarified, a written confirmation of order or delivery of the goods together with the delivery note shall constitute a binding Contract for the service specified. This shall also apply if the confirmation of order or the delivery show minor or customary deviations from the purchase order (e.g. with regard to dimensions, finishes, material, colours, design, etc.). Such deviations shall be deemed approved if the Customer does not object to them without delay (usually within one week).
- (6) Legally relevant declarations and notifications made by the Buyer after conclusion of the Contract (e.g. deadline, objection, notification of defects, abatement/rescission) shall be made in writing. Written form within the meaning of these General Terms and Conditions shall include written and text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the declarant, shall remain unaffected.

### 2. **Pricing and payment terms**

- (1) Unless otherwise agreed or stated in accordance with clause 1(3), our current prices or rates at the time of conclusion of the Contract – ex warehouse plus statutory value added tax, public charges (e.g. customs duties, fees) and other ancillary costs – shall apply as the agreed remuneration. Unless collection by the Customer has been agreed for the goods, we shall charge additional packaging and shipping costs (including standard transport insurance, where applicable). All ancillary costs shall be quantified in the order confirmation where possible, or at the latest in the invoice.
- (2) As a rule, the agreed remuneration shall be due for payment without deductions within 14 days of the invoice date following performance of the service owed by us (e.g. dispatch or notification of the goods' readiness for dispatch), unless otherwise agreed (e.g. payment plan, down payment, advance payment) or stated in the invoice in favour of the Customer (e.g. cash discount, extended payment period). We shall also reserve the right at any time in the context of an ongoing business relationship to perform a service in whole or in part against advance payment only. We shall express such reservation with the confirmation of order at the latest.
- (3) We shall be entitled to cancel any price guarantee granted for a certain period of time if the Customer fails to call or accept contracted services as agreed or is in default of payment. The sending of a price list shall in case of doubt be non-binding and shall not constitute a commitment to a price. Any price commitment shall in any case lapse upon expiry of the binding period. Moreover, we shall reserve the right to make adjustment to the prices agreed for services not yet rendered at our reasonable discretion (Article 315 BGB) in the event of unforeseen changes to the calculation basis due to a not insignificant increase in costs of procurement or production. Should the price adjustments be unreasonable for the Customer, they may rescind the Contract. This shall not affect any further contractual and statutory rights of the parties.
- (4) Subject to the Customer's objection, we reserve the right to issue electronic invoices. All payments shall be made by bank transfer in EURO or in the agreed currency into the bank account stated in our invoice or by SEPA direct debit transaction (against cash discount, if applicable).

### 3. **Default of payment, reciprocal rights, rescission rights**

- (1) Upon expiry of the payment period in accordance with clause 2(2), the Customer shall be in default of payment. The default interest shall be 9 percentage points above the respective base interest rate per annum. Subject to further damages, we shall also be entitled to payment of a lump sum of 40 euros. Our entitlement to commercial maturity interest in accordance with Article 353 of the German Commercial Code HGB shall remain unaffected.

- (2) The Customer shall only be entitled to the right of set-off or right of retention to the extent that the claim has been legally established or is undisputed. This shall not apply, however, insofar as the counterclaim concerns directly our main obligation arising from the same Contract (e.g. abatement for defects).
- (3) If it becomes apparent (e.g. due to application to open insolvency proceedings, slow payments, etc.) after conclusion of the Contract that our contractual payment claims are jeopardised by the Customer's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and, if necessary, to rescind the Contract (Article 321 BGB) after granting a grace period. In the case of contracts for the manufacture of non-fungibles (customised products), we shall be entitled to rescind the Contract immediately. The statutory provisions on the dispensability of granting a grace period and further statutory claims shall remain unaffected in all cases.
- (4) If the Contract or its performance is subject to statutory export controls and if not all necessary permits and approvals have been obtained by the agreed delivery date or if they are finally refused, we shall be entitled to rescind the Contract. The same shall apply in the event of subsequent export bans and other unforeseen export or delivery restrictions.

#### **4. Damages, rescission**

- (1) We shall be liable for damages to the extent provided by law, unless otherwise stipulated below.
- (2) In the event of breaches of duty – regardless of the legal grounds – we shall be held liable for intent and gross negligence under fault-based liability.
- (3) We shall only be held liable for ordinary negligence and more lenient standards of liability (e.g. *diligentia quam in suis*) for
  - a) damage resulting from injury to life, limb or health, and
  - b) damage resulting from the not insignificant breach of a material contractual obligation (obligation whose fulfilment is essential for the proper performance of the Contract and on whose compliance the contractual partner regularly relies and may rely); in such case, however, liability shall be limited to compensation for the foreseeable, typically occurring damage.
- (4) The above limitations of liability shall also apply with regard to third parties and in the event of breaches of duty by or to the benefit of persons whose fault we can be held responsible in accordance with statutory provisions. For claims under the Product Liability Act, the statutory provisions apply exclusively.
- (5) The Customer shall only be entitled to rescind or cancel the Contract for breach of a contractual duty other than a defect if we can be held responsible for this breach of duty. The Customer's right to rescind the Contract for delay in delivery in accordance with clause 6(3) shall remain unaffected, including the statutory provision on the burden of proof. Otherwise, the statutory conditions and legal consequences shall apply to the rights to rescind and to cancel.

## **B. Contracts of sale and contracts for work and materials**

### **5. Terms of delivery, transfer of risk, acceptance**

- (1) The following provisions (without those set out in section C) shall apply to our legal relationship with the Customer (*Buyer*) for contracts of sale and contracts for work and materials for goods, including any agreed ancillary services such as assembly/installation, commissioning, maintenance and/or training.
- (2) Goods are delivered from our factory and registered office in Reutlingen, Germany, which is also the place of performance for the delivery and any supplementary performance. Unless collection by the Customer or a specific mode of dispatch has been agreed, delivery shall be made to the Buyer's place of business or the agreed delivery address using the mode of dispatch specified by us. In case of collection by the Customer, we shall reserve the right to handle the loading process for safety reasons.
- (3) The goods shall be dispatched at the expense (see clause 2(1)) and risk (loss, deterioration and delay) of the Buyer (cf. Article 447 BGB). We are entitled, but not obliged, to take out transport insurance customary in the industry at the Buyer's expense. If dispatch is delayed for reasons beyond our control, the risk shall be transferred to the Buyer at the time of notification of readiness for dispatch. The statutory transfer of risk due to default of acceptance as well as other rights arising for us from the default of acceptance (e.g. compensation for storage costs or other additional expenses) shall remain unaffected.
- (4) We shall be entitled to make partial deliveries within the delivery periods and to extent reasonable for the Buyer. Upon request, we shall take back packaging in accordance with the statutory provisions at the place of performance; otherwise, the Buyer shall ensure its proper disposal in accordance with the law.
- (5) If acceptance has been agreed, this shall be determinant for the transfer of risk. The statutory provisions of the law on contracts for work and materials shall also apply accordingly to an agreed acceptance.

### **6. Delivery period, non-availability of service, delay in delivery**

- (1) The delivery period shall be agreed individually or specified by us in the confirmation of order. In the case of approximate or non-binding delivery periods, the Buyer may specify a reasonable, binding delivery date in writing after expiry of such date. Delivery periods shall in all cases be subject to the information, permits and documents to be provided by the Buyer and shall not commence before we have received the above in full.
- (2) Should we be unable to meet a binding delivery period for reasons beyond our control (non-availability of the service, e.g. due to unforeseen disruptions in the supply chain, lack of supply by upstream suppliers or force majeure), we shall inform the Buyer immediately, indicating the reason for the delay and stating the new expected delivery period. Should the service not be available within the new delivery period also, we shall be entitled to rescind the contract and shall reimburse any payment already made by the Buyer.

- (3) The conditions and consequences of any delay in delivery shall be governed by the statutory provisions. In particular, we shall not be in default if the delay (e.g. due to lack of information, permits or documents) is predominantly attributable to the Buyer, if the Buyer is in breach of its contractual obligation to cooperate or if the service is not rendered due to other circumstances outside our control. Written reminders from the Buyer are required in all cases.
- (4) Further contractual or statutory contracting party rights as well as the statutory provisions on the fulfilment of the Contract in the event of an exclusion of the obligation to perform (e.g. due to impossibility) shall remain unaffected.

## 7. Retention of title

- (1) We shall retain title to the goods (*goods subject to retention of title*) until all claims arising from the Contract and an ongoing business relationship have been paid in full.
- (2) The goods subject to retention of title must be treated with care and stored separately from other goods. They must be insured to the usual extent at replacement value against material damage (in particular damage caused by fire, water and theft).
- (3) The goods subject to retention of title may neither be pledged to third parties nor assigned as collateral before full payment of the claims secured. The Buyer shall notify us immediately in writing if application is made to open insolvency proceedings or if third parties shall seek to gain access to the goods subject to retention of title (e.g. seizures).
- (4) In case of behaviour in breach of contract by the Buyer, in particular in case of failure to pay the purchase price due, we shall be entitled to rescind the contract in accordance with the statutory provisions and/or demand the surrender of the good subject to retention of title on the grounds of retention of title. The demand to surrender the goods shall not at the same time constitute a rescission of the contract; rather, we shall be entitled to demand surrender of the goods subject to retention of title and at the same time reserve the right to rescind the contract. Should the Buyer fail to pay the purchase price due, we may only assert these rights if a reasonable deadline for payment has previously been unsuccessfully set or if such deadline can be dispensed with in accordance with the statutory provisions.
- (5) Until revocation in accordance with below c), the Buyer shall be entitled to further process and/or sell the goods subject to retention of title as part of the ordinary course of business (*extended retention of title*). In such case, the following supplementary provisions shall apply:
- a) Processing (including mixing and joining) is undertaken for us as the manufacturer of a newly created product. We shall obtain direct ownership of the products at full value or, if the processing is undertaken using materials from several owners, co-ownership of the products in the ratio of the value of the goods subject to retention of title to the value of the product. Otherwise, the same shall apply to the created products as to the goods subject to retention of title.

- b) The Buyer shall hereby assign to us by way of collateral any claims from third parties arising from the resale of the goods subject to retention of title or the product – in the case of our co-ownership on a pro rata basis. We shall accept the assignment. The same shall apply to other claims that supersede the goods subject to retention of title or otherwise arise in relation to the goods subject to retention of title (e.g. insurance claims or claims from unauthorised action in the event of loss or destruction). The obligations of the Buyer specified in clause 7(2) and 7(3) shall also apply with regard to the assigned claims.
- c) The Buyer shall remain authorised to collect the claim alongside us. We undertake not to collect the claim as long as the Buyer fulfils its payment obligations to us and not to enforce the retention of title by exercising a right in accordance with clause 7(4). However, should the above be no longer the case, we shall be entitled to demand the Buyer to inform us of the claims assigned and their debtors, to provide all information necessary for collection, to hand over the relevant documents and to inform the debtors (third parties) of the assignment. We shall also be entitled in such case to revoke the Buyer's authorisation to collect claims and to resell and process the goods subject to retention of title.
- d) Should the collateral's realisable value exceed our claims by more than 10 %, we shall release collateral of our choice at the Buyer's request.

## 8. Inspection and notification of defects

- (1) We shall not be held liable for defects which the Buyer is aware of or is gross negligent in not being aware of when the Contract is concluded (Article 442 BGB). The Buyer shall undertake to inspect the goods immediately for defects (including incorrect delivery and under-delivery) in accordance with the statutory provisions (Articles 377, 381 HGB) and, insofar as this is feasible in the ordinary course of business, to investigate any suspicion of defect with reasonable effort.
- (2) Should a defect become apparent upon delivery, inspection or at any time thereafter, the Buyer shall notify us thereof without delay. Obvious defects shall in any case be notified in writing no later than two weeks after delivery and defects not identifiable during inspection within the same period of time after their discovery. Damage incurred during transport shall also be notified directly to the carrier and recorded in the acknowledgement of receipt. All notices and notifications of defects must be made in writing.
- (3) Should the Buyer fail to properly inspect the goods and/or notify of defects, we shall not be held liable for any defects not notified or not notified on time or not notified properly in accordance with the statutory provisions. This shall also apply to goods intended for assembly, mounting or installation if, as a result of a breach of duty, the defect only became apparent after processing. In such case, the Buyer shall in particular not be entitled to claim compensation for any costs incurred as result (*costs for dismantling and installation*).

## 9. Buyer's claims for defects

- (1) The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect delivery and under-delivery as well as improper assembly/installation or poor instructions), unless otherwise specified in the following. The statutory provisions on the sale of consumer goods (Articles 474 et seq. BGB) and the rights of the Buyer arising from separately issued manufacturer's warranties shall remain unaffected in all cases.
- (2) Liability for defects is based above all on the agreement reached on the specifications and intended use of the goods (including accessories and instructions). All product descriptions and manufacturer's details which are subject of the individual Contract or which were made public to us (in particular in catalogues or on our homepage) at the time the Contract was concluded shall be deemed an agreement on the specifications of the goods.
- (3) In all other respects, the question of defectiveness shall be assessed in accordance with the statutory provisions (Article 434 (3) BGB). To the extent that compliance with requirements governed by public law (including product or market-related duties) is of relevance in this context, only the regulations directly applicable to the marketability of the goods in the Federal Republic of Germany and the European Union shall apply as a reference. Requirements in other countries, in particular the country of destination of the product, which deviate from the above to our disadvantage, shall only apply if expressly agreed in individual cases.
- (4) For goods with digital elements or other digital content, we shall only be obliged to provide and, if applicable, update the digital content if expressly stated in an agreement on the legal and factual nature of the goods according to paragraph 2.
- (5) The Buyer's claims for defects shall be subject to the condition that it has satisfied its obligations to inspect and notify according to clause 8. Minor or customary deviations of the delivery from the goods ordered (e.g. with regard to dimensions, finishes, material, colours, design, etc.) shall not constitute a defect, provided these are of no significance for the proper functioning of the goods.
- (6) Should the delivered goods be defective, we shall be free to choose whether to provide supplementary performance by remedying the defect (rectification of defects) or by delivering defect-free goods (replacement delivery). The Buyer shall be entitled to reject the type of supplementary performance chosen by us if this should prove unreasonable for the Buyer in the individual case. Our right to refuse supplementary performance pursuant to the statutory requirements shall remain unaffected.
- (7) The Buyer shall provide us with the time and opportunity required for supplementary performance and, in particular, hand over the objected goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective items to us at our request in accordance with the statutory provisions. However, the Buyer shall not have the right to request the return. We shall be entitled to make supplementary performance conditional on the Buyer paying the purchase price in full. The Buyer, however, shall be entitled to withhold a reasonable instalment of the purchase price in proportion to the defect.
- (8) Supplementary performance shall neither include the dismantling, removal or de-installation of the defective item nor the assembly, mounting or installation of a defect-free item, provided that we were originally not obliged to perform these services. The Buyer's claims for reimbursement of related costs (*costs for dismantling and installation*) shall remain unaffected.
- (9) Should a defect in fact exist, we shall bear or reimburse any expenses incurred for the purpose of inspection and supplementary performance, in particular, costs for transport, travel, labour and material as well as any costs for dismantling and installation, in accordance with the statutory provisions and these General Terms and Conditions. Otherwise, we shall be entitled to demand reimbursement of such costs from the Buyer if the latter was aware or could have been aware that there was in fact no defect. In any case, we shall bear travel costs, in particular to the place of installation of the goods, only to a reasonable extent. We shall be entitled to demand reimbursement of any costs exceeding this reasonable extent from the Buyer.
- (10) In urgent cases, e.g. if operational safety is jeopardised or to avert disproportionate damage, the Buyer shall be entitled to remedy the defect without first setting a deadline and demand reimbursement from us of the expenses incurred. We shall be notified without delay, in advance if at all possible, of any such self-remedy of defects. Such right of self-remedy of defects shall not apply if we would be entitled to refuse supplementary performance in accordance with the statutory provisions.
- (11) Should a reasonable deadline set by the Buyer for supplementary performance expire to no avail or be dispensable in accordance with the statutory provisions (e.g. due to failure), the Buyer shall be entitled to rescind the Contract or reduce the purchase price. However, there shall be no right to rescind the Contract in the event of an insignificant defect.
- (12) Buyer claims for reimbursement of expenses pursuant to Article 445a (1) BGB shall be excluded, unless the last Contract in the supply chain constitutes a sale of consumer goods (Articles 478, 474 BGB) or a consumer contract for the provision of digital products (Articles 445c sentence 2, 327 (5), 327u BGB). Even in the case of defects, Buyer claims for damages or reimbursement of futile expenses (Article 284 BGB) shall only arise in accordance with the statutory provisions.
- (13) Notwithstanding Article 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title (warranty period) shall be one year from delivery, respectively 6 months, in the case of pre-owned or refurbished goods. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance in accordance with Articles 634a, 640 BGB. The reduced periods shall also apply in the event of a statutory recommencement of the limitation period.
- (14) Claims for defects shall be excluded after expiry of the warranty period. This also applies to claims for damages due to defects. Special statutory provisions on the limitation period (Article 438 (1) No. 1 and 2, (3), Articles 444, 445b BGB) shall remain unaffected.

## **C. Contracts for work and services**

### **10. Service work, remuneration**

- (1) Any specific service work we provide commissioned by the Customer (e.g. installation, inspection, maintenance, repair, calibration, staff training, support) shall always be provided under a separate Contract for which the Customer shall owe remuneration. Unless otherwise agreed (e.g. lump sum), remuneration shall be based on time spent and our special cost rates. Material costs shall be charged at cost.
- (2) No separate obligation to pay remuneration exists for services which we owe on the basis of a Contract in accordance with section C of these General Terms and Conditions as ancillary services or (within the warranty period) as rectification of defects or similar in connection with equipment supplied by us.
- (3) Furthermore, we shall provide telephone support for our equipment via our 24/7 service hotline free of charge for the first 30 minutes per enquiry (technical issue). Thereafter, we shall charge the Customer our hourly rate for technicians (where applicable with time-related surcharges), which the service technician shall point out in the telephone call once the free time has been used up. A time unit shall be 15 minutes.

### **11. Contracts for work and repairs**

- (1) Should the repair of defective equipment or other work services have been agreed, including as part of a lump-sum contract, the statutory provisions of the law on contracts for work and materials (Articles 631 et seq. BGB) shall apply, unless otherwise agreed or stipulated below.
- (2) Professional repair requires a complete and accurate description of the fault by the Customer. Customer data stored in the equipment should be backed up beforehand to prevent loss due to repair. Equipment submitted to us for repair must be properly packaged (ESD packaging/antistatic gear) and listed in full on the receipt of posting. If repairs are carried out on the Customer's premises, the equipment shall be provided in the individual case as far as possible in working order and with sufficient personnel and energy to our instructions.
- (3) Our fault diagnosis shall cover all standard tests and otherwise begins with determining the most likely cause of the fault or, at the Customer's discretion, the cause of the fault that is most cost-effective to rectify. Should we identify further defects requiring repair in addition to the fault described by the Customer which are likely to increase the costs of repair by more than 10 %, we shall obtain the Customer's consent on how to proceed.
- (4) Should the cause of fault not be identifiable or should it not be possible to rectify the fault for other reasons (e.g. due to lack of spare parts) or only with disproportionate effort, we shall be entitled to terminate the Contract or repair and claim reimbursement of the costs incurred up to this point from the Customer. The claim for reimbursement of costs shall not apply if the repair is owed as part of a lump-sum contract. Our statutory claims shall remain unaffected.

- (5) Identifiable defects in our performance shall be notified to us in writing without delay, i.e. no later than two weeks after acceptance or recommissioning. Should the defect only become apparent at a later date, the time of discovery shall be determinative. Timely dispatch of the notification shall be sufficient to meet the deadline. Should written notification be omitted or delayed, our liability for the defect in question shall be excluded.
- (6) Notwithstanding Article 634a (1) No. 1 BGB, the general limitation period for claims arising from material defects and defects of title (warranty period) shall be one year from acceptance or recommissioning. The reduced periods shall also apply in the event of a statutory recommencement of the limitation period.
- (7) We shall be entitled to store or/and dispose of equipment submitted by the Customer at its expense if the Customer should fail to respond to our offer or cost estimate and at minimum one further attempt to make contract or if it cannot be reached by any of the means of communication provided. We shall specifically draw the Customer's attention to these possible consequences when to last attempt to make contact is made.

### **12. Choice of law, place of jurisdiction**

- (1) These General Terms and Conditions and the contractual relationship between the parties shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the United Nations Convention on Contracts for the International Sale of Goods (CISG). The choice of law shall also apply to non-contractual obligations that are closely related to the Contract. Otherwise, the scope and extent of the choice of law shall be determined in accordance with the statutory provisions. The conditions and effects of retention of title shall be governed by the law in force at the item's respective storage location, insofar as the choice of law made thereafter shall be inadmissible or ineffective in favour of German law.
- (2) The sole place of jurisdiction, also internationally, for all disputes arising from the contractual relationship shall be Reutlingen, Germany, our registered office. In all cases, however, we shall also be entitled to bring action at the place of performance of the delivery obligation or at the Buyer's general place of jurisdiction in accordance with the statutory provisions. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

**As at: May 2024**