

# Terms and Conditions IMPERA GmbH

## § 1 Scope of Application, Orders

In the absence of any written agreement to the contrary, these Terms and Conditions will constitute the legal basis of all current and future business relationships between the customer and us. They shall apply by analogy also to the provision of services by us, even if these deliveries and/or services are carried out without special reference to these Terms and Conditions. Customer's terms and conditions, if any, will not be accepted, and we are not required to specifically object to them. Our terms and conditions shall be deemed accepted by the customer as soon as he places an order with us and upon acceptance of our service at the latest. Even our sending of a confirmation of order shall not be deemed an acceptance of the customer's contract terms. All agreements as well as all amendments and side agreements shall be confirmed in writing and shall apply only to a particular case. Our offers are non-binding and without engagement. Any changes in brochures and construction will be reserved. We reserve the right to alter and particularly to improve the design and the technical data of the deliverables to the extent the customer can be reasonably expected to accept such an alteration. Customer's orders, which shall be placed by duly signing our offer at the designated place, will be accepted only if we confirm the order in writing or by delivery and service. We may accept only parts of orders or refuse orders without stating any reason. In case the capacity or willingness of the customer to pay is doubtful, we are, even if we have already confirmed the order of the customer, entitled to demand payment in advance or to rescind the contract.

## § 2 Delivery

Delivery is effected at the - always non-binding - agreed date or on disposability of the contract goods, respectively. In case of time delay in delivery of over three months we will inform the customer. In case of delay in delivery the customer must not assert his legal rights before a granted grace period of at least six weeks by registered letter expired without success. In case of events of force majeure or other circumstances which are unforeseeable or dependent on a party's will (e.g. delayed delivery by our upstream supplier; unpredictable interruption of operations; official orders; delay in transport and customs clearance; damages in transit; shortage of energy, material and raw-materials; rejections of important elements and labour disputes) that result in delayed delivery, we may extend the delivery period as required by the circumstances. Delivery is effected at the customers' risk by us resp. post or freight forwarder at the address named by the customer. We may, in any event, provide partial deliveries and issue appropriate partial invoices for the service provided. In case the customer refuses to accept the goods, we are entitled to place them in storage at his risk and cost. After granting a grace period of 2 weeks we may rescind the contract or dispose of the goods otherwise. We reserve the assertion of our rights beyond these proceedings.

## § 3 Prices and Payment

Our prices are ex works Wels/Steinhaus exclusive of VAT, excluding transport costs and any ancillary services. All additional expenses, e.g. packaging, loading, customs duties, taxes and duties, shall be borne by the customer.

We do not accept bills of exchange. However, if we accept them by way of an exception, this is on account of payment. Checks are only accepted on account of payment. They shall constitute a payment only after they were honored. All related costs shall be borne by the customer. The Customer may not retain or set off payments unless these claims have been established by a court or accepted by us. The customer's rights and claims against us may not be transferred or pledged to third parties. If the customer is in default with payment or any other of his services, all his outstanding debts become due and we - notwithstanding any other rights - may retain our deliveries and/or services from this or other contracts concluded with the customer until the agreed counter-service has been provided, thereby maintaining the still unexpired delivery deadline, or we may rescind the contract after an appropriate grace period has expired and assert damages for non-performance. In this case as well as on new customers we reserve our right to deliver only against cash in advance.

Prices quoted in our price lists are without engagement. We charge prices according to the price list valid at the day of delivery, other than another price was offered in the concrete case in written form. The concrete conditions of payment - esp. date of payment and potential cash discount - arise from the particular invoice. If the term of payment is exceeded, default interest at a rate of 6 % above the relevant base interest rate within the meaning of Section 1 of the 1<sup>st</sup> Euro Judicial Accompanying Act and at least 18 % p.a. will be charged (in case our arising costs are not higher). All dunning, information and other costs incurred to recover a debt shall be borne by the customer to the extent these costs are required to enforce our rights. The customer is bound to pay an amount of € 40 per dunning letter by us as well as an amount of € 75,- per commenced term after the payment date for keeping the obligation evident in our dunning process. Incoming payments will generally be credited first towards default interests and dunning costs then towards the oldest debt.

## § 4 Performance of the Contract and Transfer of Perils

The risk will transfer to the customer upon delivery of the goods to the forwarder or carrier, however, at the latest when the goods leave the plant or the warehouse. This shall also apply if we deliver goods free destination using our own or third-party vehicles. In case delivery is delayed not on account of us, the risk transfers to the customer at readiness for dispatch. Deliveries on call shall be deemed called one year after they were ordered at the latest. As from the transfer of perils the customer bears all taxes, dues, fees etc. concerning the goods.

## § 5 Warranty and Notice of Defects

We warrant that the goods delivered by us are free from defects. However, customer is aware of and agrees to the fact that at the present state of the art it is impossible to write error-free software. Consequently, we only warrant that our products comply with the information in our brochures. In particular, we do not warrant that the software complies with the customers's needs, in particular with regard to expected profits or the distribution of earnings, respectively, or that the software works in combination with third parties' or customer's software. Unless expressly agreed in writing, we do not warrant the usability of the goods for a certain application. The acquisition of official or other required permission/approval - particularly for the operation of the goods - is up to the customer. We do not warrant the approvability resp. the possibility of legal operation with the delivered goods. Lack of permission/approval or possibility of legal operation is without prejudice to our claims against the customer. Generally, our claims against the customer are not alleviated in case the use of the delivered goods becomes impossible or pointless. We disclaim any warranty for the repair, refitting or alteration of obsolete or third-party goods and for the sale of used goods. The customer may assert warranty or damage claims against us only if he gives written notice of and proves defects no later than three days after delivery of the goods and/or hidden defects no later than eight days after identification thereof. If goods are directly shipped to third parties, the time-limits applicable to inspection and the obligation to give notice of defects will commence upon receipt of the goods by the third party. When asserting warranty, the customer has to verify, that the defect existed already at the time of delivery. The notice of defect shall not affect the customer's payment obligation and any other agreements. The warranty period and the period to claim liability for damage is three months from transfer of the risk. Our warranty shall extend only to systems or parts, respectively, which are delivered by us. We will warrant only by either repairing the goods or

delivering a substitute or grant a deduction at our election. We have to be given adequate time and possibility to repair the goods. The warranty period does not begin again after repairing the goods or delivering a substitute or granting a deduction. If

failures of our delivered systems or parts, respectively, may be related to system or parts, which are not delivered by us, the removal of said failures shall be the customer's matter. Provided that customer has made any changes of what kind so ever to our delivered goods or services, in particular programs, we shall only be obliged to any warranty measures if customer provides us with a detailed documentation of the changes and proves that the detected failure may neither be directly nor indirectly related to the changes and confirms in writing that he will bear any additional costs on our side that may be related to the changes. If the consumer had been provided with a test version of a delivered software our warranty measures shall not cover such failures that customer had detected during the testing period or grossly negligent failed to detect. In case of unjustified notice of defects we are entitled to claim the remuneration of all our expenses in this context.

All advanced or other claims not mentioned in this Terms and Conditions of the customer - whichever legal ground - are barred. Claims under Section 933b Austrian Civil Code (*ABGB*) will forfeit, in any event, upon expiry of a time-limit of three months.

## § 6 Liability

Any liability for damage the customer may have suffered due to a breach of contract on our part, whether direct or indirect damage, lost profits or consequential damage caused by defect, shall be excluded beyond the scope of application of the Product Liability Act, unless we demonstrably acted with intent or crass gross negligence; the burden of proof, also regarding culpable conduct, shall lie with the customer. Any liability for slight negligence, the reimbursement of consequential damage and pecuniary damage, non-achieved savings, loss of interest and of indirect damage as well as damage from claims third parties are asserting against the customer shall be excluded. Any liability shall be excluded if any terms and conditions for the installation and use (e.g. as contained in the installation instructions) are not complied with. Any damages the customer may assert against us - in case he has such claims under the above provisions - will, in any event, forfeit within six months from becoming aware of the damage, unless they are asserted in court within this period.

Recourse claims, if any, asserted against us by contracting partners or third parties under the title of product liability within the meaning of the Product Liability Act shall be excluded, unless the party entitled to assert recourse claims proves that the mistake was within our control and caused by at least crass gross negligence.

## § 7 Retention of Title

We will retain exclusive title to the goods delivered until full payment of the purchase price and of all of our other - also future - claims under the business relationship (including default interest, dunning costs, in case of account current of payment balance request) even in case payment is effected under the designation of special claims. The customer assures us of the possibility to inspect the goods that are subject to the retention of title in his firm or the location the above mentioned goods are stored. In case of delay of payment or breach of contract by the customer or insolvency proceedings concerning his assets we are - at our choice by maintaining the contract - entitled, to claim the replevin of the goods that are subject to the reservation of title, pick them up and/or collect assigned book accounts for security.

Customer is entitled to sell the goods delivered by us in his business operations to third parties. Already with the conclusion of the contract he assigns his future claims against his customers with all ancillary rights to us, but remains entitled to collect these claims as long as no delay of payment vis-a-vis us occurs. We are entitled to inform the contractual partners of the customer of the assignment and/or to demand the annotation of the assignment in his business records. Furthermore, the customer has to provide us with all informations and documents required to assert our rights. In case an assigned invoice amount is received by a third party, the customer is obliged to reclaim this amount and transfer it to us. The customer is not entitled to other acts of disposal concerning the goods that are subject to the retention of title.

## § 8 Place of Performance and Place of Jurisdiction

Only Austrian law shall apply. The application of the UN Sales Convention shall be excluded unless we unilaterally declare the UN Sales Convention applicable. This declaration fixes the date from which on the UN Sales Convention is applicable to the contractual relationship with the customer.

Place of performance for all liabilities concerning this contract shall be 4641 Steinhaus. Exclusive place of jurisdiction for all - direct or indirect - disputes out of this contract shall the factual and local competent court for or office (4641 Steinhaus). However, we may also sue the customer at the competent court for 1010 Vienna or any other court competent for the customer.

## § 9 Miscellaneous

All copyrights, trademark rights and other incorporeal rights concerning the goods delivered by us (hard- and software) belong exclusively to us. The customer will respect these rights and take no actions to impinge upon our rights, esp. by altering, copying or duplicating the delivered software other than our permission is explicitly granted.

Without our written permission, the assignment of rights out of this contract to third parties is prohibited. Should any or several terms of these Terms and Conditions be invalid, this shall not affect the validity of the remaining terms hereof. The invalid term shall be replaced by a valid term which closest reflects the economic purpose of the invalid term.

In case of invoices with VAT, the customer is obliged to inform us immediately about a wrong or improper address or firm name. Furthermore the customer is in case of EU intra-Community deliveries obliged to inform us immediately about a wrong VAT Identification Number.

Personal (customer-) data is processed automation-assisted. Transmission of these data occurs only in payment transactions.