

**General Terms and Conditions of  
inmex GmbH  
Status: October 2018**

**§ 1 General stipulations and scope**

- 1.1 Our products and services are supplied exclusively on the basis of the following General Terms and Conditions. We expressly object to any terms and conditions of business and purchase of the customer. Such terms and conditions shall only be binding on us if we have expressly agreed to such in writing. Our General Terms and Conditions shall also apply even if we effect delivery to the customer without reservation in awareness of amending, conflicting or deviating terms and conditions of the customer.
- 1.2 Individual covenants and agreements concluded with the customer in individual cases (including subsidiary agreements, amendments and changes) shall always take precedence over these General Terms and Conditions. Subject to evidence to the contrary, the content of such agreements shall be governed by a written contract or our written confirmation.
- 1.3 Declarations and notifications of the customer having a legal effect with regard to the agreement (e.g. setting of a deadline, notification of defects, withdrawal or reduction) must be issued in writing, i.e. in written or text form (e.g. letter, e-mail, fax).
- 1.4 Our General Terms and Conditions shall only apply to entrepreneurs, legal entities under public law or special funds under public law in the meaning of § 310, section 1 of the German Civil Code.
- 1.5 These General Terms and Conditions shall apply in the version applicable at the time of the customer's order or in any case in the version last notified to the customer in text form as a framework agreement, including for similar future contractual agreements, without us having to make any reference to these again in each individual case.
- 1.6 Any references to the applicability of legal provisions are only for the sake of clarification. Even without such clarification, statutory provisions therefore apply to the extent that these are not directly amended or expressly excluded in these General Terms and Conditions.

**§ 2 Offer and conclusion of agreement**

- 2.1 Our offers are subject to change and are non-binding. This also applies to all consultations, in particular our energy measurements and energy analyses, technical documentation, other product descriptions and documents (e.g. illustrations, drawings, dimension and weight data, layouts) unless otherwise agreed upon in writing. The results produced by energy measurement are for information purposes only.
- 2.2 The customer's ordering of our products and services shall be deemed to constitute a binding contractual offer. We reserve the right to accept this offer within a period of 4 weeks. Acceptance may be declared either in writing or by delivery of the goods to the customer.
- 2.3 We reserve title, copyright and the rights set out under the German Patent and Utility Model Act (*Patent- und Gebrauchsmustergesetz*) to technical documentation, product descriptions or any other documents made available to the customer by us within the framework of the initiation of the agreement. Such are only provided to the customer for the purposes of our respective offer and may not be duplicated or disclosed to third parties, even in the form of excerpts, without our express consent. The documents shall be returned to us free of charge if the order is placed elsewhere.
- 2.4 If in connection with our free-of-charge energy measurements we provide the customer with so-called "plasticising units" or other devices or products which the customer installs in its machines free of charge, such shall be used solely for test purposes for the agreed-upon test period, but for no more than a maximum period of 30 days. After the expiry of this test period, the customer shall be obligated to return the products to us free of charge. Statutory provisions governing the loaning out of devices and products shall apply to transfer free of charge, i.e. in particular, our liability for defect shall be limited to fraudulent intent as laid down in § 600 of the German Civil Code and our

liability shall be limited to wilful intent and gross negligence as laid down in § 599 of the German Civil Code.

### **§ 3 Obligations of the customer to cooperate**

- 3.1 The customer must ensure that repairs or service work, energy measurements or geometric measurements are carried out undisturbed. In particular, the customer shall act to ensure that qualified contact persons are present. We reserve the right to invoice the customer for costs incurred in connection with waiting times for which the customer is responsible.
- 3.2 Repair and service work is only performed on the inmx product, not on a complete machine in which the inmx product is installed. The customer must ensure that the product to be processed is freely accessible and, if necessary, dismantled from the machine. In the event of measurements being performed, the customer must ensure that the machine components that are to be measured have been dismantled - if necessary into their individual parts. When measuring energy, the customer must ensure that the machine and its switching cabinet are easily accessible. The customer must ensure that no voltage is running through the machine used to connect the measuring instruments. We shall not undertake any assembly or disassembly work on third-party machines.
- 3.3 If the customer performs the installation of the heating elements on an inmx plasticising unit, it has the option of renting an appropriate installation aid for a period of 10 working days. The customer must return the installation aid to us at its own expense and risk at the latest upon expiry of the rental period.

### **§ 4 Prices, terms and conditions of payment, arrears on payment and retention rights**

- 4.1 Solely the prices and terms of delivery stated in our offer or confirmation of order shall apply. Prices are ex works and exclude packaging, shipping, insurance and statutory value-added tax. Statutory value-added tax is shown separately in the invoice, taking into account the respectively applicable value-added tax rate.
- 4.2 The purchase price is due and payable without deduction within 30 days of invoicing and delivery or acceptance of the goods. Even within the framework of an ongoing business relationship, however, we shall be entitled to effect delivery in whole or in part only in return for advance payment at any time. We herewith declare a reservation to this effect at the latest upon confirmation of order. Particularly in the case of custom-made products, we reserve the right to effect a down payment of 50% of the net price (delivery value) after receipt of order.
- 4.3 The customer shall be deemed to be in default upon expiry of the aforementioned period of payment. We shall be entitled to charge default interest at a rate of 5% p.a. above the respective base interest rate beginning with the date on which default comes about. If we are able to demonstrate greater damage has been incurred by the delay, we shall be entitled to claim such.
- 4.4 If it becomes apparent after conclusion of the agreement (e.g. through an application being filed for the opening of insolvency proceedings) that our claim to the purchase price is at risk due to the customer's inability to pay, we shall be entitled in accordance with statutory provisions to refuse performance and - if necessary after setting a deadline - to withdraw from the agreement (§ 321 of the German Civil Code). In the case of agreements for the manufacture of non-substitutable items (custom-made items), we may declare our withdrawal immediately; this shall not affect statutory provisions governing waiver of any deadline.
- 4.5 The customer shall only be entitled to set-off or retention rights to the extent that its claim has been established by a court of law or government authority or is undisputed.

## **§ 5 Reservation of title**

- 5.1 We reserve title to the goods sold until full payment of all our current and future claims emanating from supply of our products and services and from an ongoing business relationship (secured claims). In the case of a current account, this retention of title shall be deemed to constitute security for the balance of our claim.
- 5.2 Goods subject to retention of title may not be pledged to third parties or transferred as collateral until the secured claims have been paid in full. The customer must notify us immediately in writing if an application is filed for the opening of insolvency proceedings or if the goods belonging to us are seized by third parties (e.g. by way of attachment).
- 5.3 If the customer acts in breach of the agreement, in particular if the purchase price due is not paid, we shall be entitled to withdraw from the agreement in accordance with the statutory provisions or/and demand the return of the goods based on our retention of title. Demand for surrender shall not at the same time be deemed to include declaration of withdrawal from the agreement; instead, we shall be entitled to merely demand surrender of the goods and to reserve the right to withdraw from the agreement. If the customer does not pay the due purchase price, we may only assert these rights if we have unsuccessfully set the customer a reasonable deadline for payment beforehand or if such setting of a deadline is unnecessary under statutory provisions.
- 5.4 The customer shall be entitled to resell and/or process the goods subject to retention of title in the ordinary course of business until such entitlement revoked in accordance with letter c) below. In this case, the following provisions shall apply in addition:
- a) Retention of title shall extend to cover the full value of the products resulting from processing, mixing or combining of our goods, whereby we shall be deemed to be the manufacturer. If the title of third parties remains in force in the event of processing, mixing or combination with goods of third parties, we shall acquire co-title in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the product that comes about as to the goods delivered subject to retention of title.
  - b) The customer hereby assigns to us as collateral any claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-title share in accordance with the above section. We accept this assignment here and now. The obligations of the customer set out in section 5.2 shall also apply with regard to the assigned claims.
  - c) The customer shall along with us remain authorised to collect the claim. We shall be obligated to refrain from collecting the claim as long as the customer meets its payment obligations towards us, there is no impingement on the customer's ability to pay and we do not assert retention of title by exercising a right in accordance with section 5.3. If this is the case, however, we may demand that the customer inform us of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform debtors (third parties) of the assignment. In this case, we shall also be entitled to revoke the customer's authority to resell and process the goods subject to retention of title.
- 5.5 If the realisable value of the collateral exceeds our claims by more than 10%, we shall release collateral as we see fit if the customer so requests.

## **§ 6 Delivery period and delay in delivery**

- 6.1 Our delivery and service times are generally only approximate and non-binding. Covenants and agreements deviating from this involving a binding delivery time must be set out expressly and in writing. A delivery period agreed upon as binding shall only commence after final clarification of all details relating to execution. The delivery period shall be deemed to have been complied with at the same time as notification of readiness for dispatch. We shall not be responsible for any delays in performance which are due to breach of the customer's obligations arising from the contractual relationship; such delays shall lead to a commensurate extension of the delivery period.

- 6.2 If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of service), we shall inform the customer thereof without delay and at the same time inform the customer of the expected new delivery period. If the service is not available within the new delivery period, either, we shall be entitled to withdraw from the agreement in whole or in part; we shall reimburse any consideration already provided by the customer without undue delay. In particular, the non-availability of the service in this meaning shall be deemed to include failure of our suppliers to supply us in due time if we have concluded a congruent hedging transaction, neither we nor our suppliers are at fault or we are not obliged to procure goods or services in individual cases.
- 6.3 Should we fail to meet the agreed-upon delivery date for other reasons, the customer shall set us a reasonable grace period which shall in no case be less than 2 weeks. Whether we are in delay in delivery shall be determined in accordance with statutory provisions. In any case, a reminder from the customer is required.
- 6.4 We shall be entitled to effect partial deliveries and render partial services on a reasonable scale prior to expiry of the delivery period.

### **§ 7 Delivery, transfer of risk and delay in acceptance**

- 7.1 Delivery shall be performed ex works, which is where the place of performance for delivery and any subsequent performance shall also be. The goods shall be shipped to another destination (mail order purchase) if the customer so requests and at the customer's expense. Unless agreed otherwise, we shall be entitled to determine the type of shipping (in particular the transport company, shipping route and packaging) as we see fit. Transport packaging shall be invoiced at cost to the extent that such packaging appears necessary for the particular goods. Wooden crates shall be taken back in return for crediting 2/3 of the invoiced costs if they are in good condition and the crates are returned to us carriage paid.
- 7.2 The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon handover of the goods to the customer in the case of sale to destination upon delivery of the goods to the forwarding agent, the freight carrier or any other person or institution designated to carry out the shipment.
- 7.3 If dispatch is delayed for reasons for which we are not responsible, the risk shall pass to the customer upon receipt of notification of readiness for dispatch. The costs of storage shall be borne by the customer.

### **§ 8 Warranty claims of the customer**

- 8.1 Statutory provisions shall apply to the customer's rights in the event of material defects and defects of title if nothing to the contrary is stipulated in the following.
- 8.2 The customer's claims based on defects presuppose that it has fulfilled its statutory obligations to inspect and provide notice of defect (§ 377 of the German Civil Code). If a defect becomes apparent at the time of delivery, upon inspection or at any later point in time, we must be notified of such immediately in writing within 7 days at the latest. If the customer fails to properly inspect the goods and/or provide notice of defect, our liability for any defect not reported or not reported in a timely manner or not reported properly shall be excluded in accordance with statutory provisions. The customer shall bear the full burden of proof for all prerequisites for claims, in particular for the defect itself, the time at which the defect is discovered and for the timeliness of the notice of defect.
- 8.3 We shall not assume any warranty for damage or malfunctions which are due in particular to natural wear and tear, faulty installation or commissioning by the customer or third parties, improper use or operating errors or failure to perform necessary or recommended operating and/or maintenance work.
- 8.4 If there is a defect in the goods for which we are responsible and the customer has notified us in good time and in writing, we shall initially be entitled - while excluding the customer's right to withdraw from the agreement or to reduce the purchase price - to subsequent performance unless we are entitled to

refuse subsequent performance on the basis of statutory provisions. The customer shall grant us a reasonable grace period for subsequent performance for each individual defect.

- 8.5 If the delivered goods are defective, we may choose whether to render subsequent performance by remedying the defect (subsequent improvement) or by supplying an item free of defect (replacement delivery). The customer must provide us ample time and opportunity to render the subsequent performance owed, in particular to hand over rejected goods for the purpose of inspection. In the event of a replacement delivery, the customer shall return the defective item to us in accordance with statutory provisions.
- 8.6 If subsequent performance fails or a reasonable period to be set by the customer for subsequent performance has expired without *actus reus* or can be waived under statutory provisions, the customer may withdraw from the agreement or reduce the purchase price. In the event of an insignificant defect, however, the customer shall not have any right of withdrawal.
- 8.7 Claims of the customer for damages or reimbursement of expenses incurred in vain shall only apply in accordance with § 9 of these General Terms and Conditions even in the case of defect and are otherwise excluded.

## **§ 9 Liability**

- 9.1 If nothing to the contrary emanates from these General Terms and Conditions including the following stipulations, we shall bear liability in the event of a breach of contractual and non-contractual obligations in accordance with statutory provisions.
- 9.2 We shall bear liability for damages or reimbursement of expenses - irrespective of the legal grounds for such - within the framework of liability for culpability in cases of wilful intent and gross negligence. In the event of ordinary negligence, we shall only bear liability subject to a less stringent standard of liability in accordance with statutory provisions (e.g. for diligence in our own affairs)
- a) for damage resulting from injury to life, limb or health,
  - b) for damage arising from a not insignificant breach of an essential contractual obligation (obligation, the fulfilment of which is essential for the proper performance of the agreement and the observance of which the contractual partner regularly relies on and may rely on); in this case, however, our liability shall be limited to compensation for foreseeable, typically occurring damage.
- 9.3 The foregoing exclusions and limitations of liability shall apply to the same scope in favour of our governing institutions, legal representatives, employees and other vicarious agents. They shall not apply if we have fraudulently concealed a defect or assumed a guarantee for the quality of the goods and for claims of the customer under the German Product Liability Act (*Produkthaftungsgesetz*). We maintain product liability insurance with worldwide coverage for this purpose.
- 9.4 We shall not be liable for the provision of information or consulting services outside the scope of services contractually owed by us. Any liability for damages resulting from faulty assembly by the customer or for damage caused by the customer providing us faulty measurements or the wrong unit for measuring is excluded.

## **§ 10 Statute of limitations**

- 10.1 Notwithstanding § 438, section 1, no. 3 of the German Civil Code, the general time bar for claims arising from material defect and defect of title shall be one year commencing with delivery of the goods.
- 10.2 The aforementioned time bar shall also apply to contractual and non-contractual claims for damage by the customer based on a defect in the goods unless the application of the regular statute of limitations (§§ 195, 199 of the German Civil Code) would lead to a shorter time bar in individual cases.

10.3 Claims for damage on the part of the customer based on wilful intent and gross negligence which result in injury to life, limb or health as well as under the Product Liability Act shall however expire under the statute of limitations exclusively in accordance with statutory time-barring periods.

#### **§ 11 Data privacy**

We attach tremendous importance to data privacy in accordance with the GDPR. Any information obligations pursuant to Art. 12 et seq. of the GDPR may be called up at [www.inmex.eu](http://www.inmex.eu) under the rubric of data privacy.

#### **§ 12 Non-disclosure**

The customer shall treat our know-how and all other business and trade secrets, including the contents of the contractual relationship with the customer, strictly confidential. The customer shall take all reasonable and necessary precautions to protect the aforementioned information from unauthorised access, unauthorised disclosure, duplication, passing information on to third parties and any other unauthorised use. The non-disclosure obligation shall also apply beyond the termination of this agreement.

#### **§ 13 References**

We shall be entitled to use results of research obtained during the processing of the contract for advertising and publication-related purposes without disclosing company-specific details. Any further use of company-related and personal data of the customer as well as citation of the customer as a reference shall be subject to the express consent of the customer.

#### **§ 14 Final stipulations**

14.1 The place of performance and legal venue for both parties to the agreement shall be our place of business. We reserve the right to take legal action against the customer at its place of business, however.

14.2 These General Terms and Conditions and the contractual relations between ourselves and the customer shall be governed by the law of the Federal Republic of Germany. Uniform international law, in particular the UN Convention on Contracts for the International Sale of Goods, is excluded.

10.1 Should individual provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions. Any ineffective provision shall be replaced by a valid provision that comes as close as possible to the intended objective.