

**Terms & Conditions of Sale and Delivery of Infracore GmbH & Co. Höchst KG**

**1. SCOPE**

**1.1** All current and future products and services provided to our contract partners (hereinafter referred to as "Customer") shall be governed exclusively by these General Terms and Conditions of Business. Provisions that conflict with these Terms and Conditions, including, but not limited to, the Customer's terms and conditions of business (including any codes of conduct and/or supplier codes of conduct) shall not apply, even if we do not specifically object to their application separately. Nor shall we be deemed to have accepted such terms and conditions of business if we make reference to a writing that contains or makes reference to the Customer's or a third party's terms and conditions of business or if we unconditionally deliver or perform in full knowledge of the Customer's conflicting terms and conditions.

**1.2** Some products or services are subject to special terms and conditions which may amend or modify these Terms and Conditions of Sale and Delivery.

**2. OFFER AND FORMATION OF CONTRACT**

**2.1** Unless otherwise specified on a case-by-case basis, our offers can only be accepted within 30 days of being extended; they are revocable prior to acceptance.

**2.2** All contracts regarding our products and services which fail to satisfy the written-form requirement are only valid if confirmed by fax or by a writing with a handwritten signature. Unilateral contractual declarations regarding the contract, including, but not limited to, notices of termination, must be in writing and signed under the maker's own hand; written declarations can also be served by fax.

**2.3** Information regarding the subject-matter of the product or service (e.g. weights, dimensions, values in use, loads, tolerances and technical data), as well as depictions thereof, shall be understood to be descriptions or markings. They shall only impose a stricter standard of liability if we expressly agree to be bound by them in writing. Deviations are allowed to the extent they do not adversely affect the relevant product or service's fitness for the contractual purpose and (a) are customary in the trade or industry, (b) are required under legal regulations, or (c) represent technical improvements.

**2.4** We reserve all rights in and to the offers and cost estimates that we provide; and all rights in and to the tools, aids, samples, specimens, illustrations, descriptions, models, calculations, collections of data records (including those that originated with other orders) and other documents supplied to the Customer by us or third parties. The Customer may not give third parties access to the items or any content regarding the items, publicize them, copy them, or make use of them directly or through third parties without obtaining our consent. The Customer must return all such items and any copies thereof upon our request if he no longer needs them in the ordinary course of business or if the negotiations have not culminated in a contract.

**2.5** Contracts based on our offers and cost estimates must be treated confidentially.

**2.6** German Civil Code (BGB) § 312g (1) sentence 1, nos. 1 to 3 and sentence 2 shall not apply to e-commerce contracts.

**3. BILLING, SET-OFF, DEFAULT**

**3.1** Our prices only apply to the agreed-upon scope of supply and services. Extra and special work shall be charged separately.

**3.2** Our invoices list before-tax amounts and are due immediately without any discounts, unless otherwise agreed upon.

**3.3** The Customer can only set off his claims against our claims or withhold payment if his counterclaim is undisputed, upheld by final and absolute judgment or ready for a decision. In addition, claims for additional production costs or defect remedy costs can also be set off provided they are not claims for damages in lieu of specific performance as defined by the German Civil Code (i.e. damages due to delays within the meaning of BGB § 286, violations of secondary obligations or consequential damages due to defects pursuant to BGB § 280 (1) or BGB § 282).

**3.4** Without prejudice to our other rights, we are entitled to require advance payment on pending deliveries and demand immediate payment of all amounts outstanding from the business relationship in cases of default or reasonable doubt as to the Customer's solvency or creditworthiness. Our delivery obligations shall be suspended for as long as the Customer is in default with a past-due payment. We can charge the legally allowed interest rate on past-due payments.

**4. SHIPPING**

**4.1** The Customer shall bear the transport risks, even if partial deliveries are made or we have agreed to provide other services (shipping, delivery, etc.) but have not agreed to discharge our obligation at the Customer's place of business ("Bringschuld"). The Customer is responsible for offloading and storage. If shipment or delivery is delayed due to circumstances caused by the Customer, the risk shall pass to the Customer on the ready-to-ship date. The Customer shall bear the storage costs incurred after the passage of risk.

**4.2** If the Customer arranges a pickup from the point of delivery, he or his authorized agent shall be responsible for loading the vehicles. All relevant dangerous-goods regulations must be followed. When bulk deliveries are made, the Customer must ensure the tanks or other storage containers are in sound condition and cause the discharge lines to be connected to the intake system on his own responsibility.

**4.3** Any of our employees who assist in loading and tanking activities are acting at the Customer's sole risk, and not as agents for whom we are vicariously liable.

**4.4** All shipping-related terms and conditions shall apply mutatis mutandis to deliveries made by third-party transportation providers if and to the extent we can be held liable for their conduct. This is, however, without prejudice to the third party's liability.

**4.5** The Customer shall bear any freight charge increases that occur after the contract is formed, and any extra costs incurred due to transportation delays or obstacles caused by circumstances not attributable to us. If we accept returned goods in whole or in part, the Customer shall bear all costs incurred thereby, regardless of the reason for the return.

**4.6** We shall not insure the shipment against theft, breakage, fire, water, transit damage or other insurable risks except at the Customer's expense and express request.

**5. FORCE MAJEURE**

Force majeure events and other disturbances not attributable to us that could not be foreseen when the contract was concluded (e.g., operational upsets, delivery delays or non-delivery by our suppliers, energy or material shortages, traffic holdups, strikes, lockouts, or

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government decrees) shall exempt us from our obligation to provide the product or service for as long as the disturbances exist and to the extent that they affect us. If this delays performance by more than one month, the performance shall be deemed to be unavailable. We shall in this case be entitled to withdraw from the contract with respect to the amount so affected by the disturbance, provided that we notify the Customer of the unavailability without undue delay and refund the contracting party's counterperformance without undue delay.

**6. CLAIMS FOR DEFECTS**

**6.1** The Customer must forthwith verify whether the delivered product or service has the contractually agreed quality and is fit for the intended purpose. The provisions of German Commercial Code (HGB) § 377 apply to the cases stated above in all other regards.

**6.2** If defects in the delivered products or services are timely brought to our attention in writing, we must cure the defects by, at our option, repairing the defective goods or services or replacing them with non-defective ones. If we fail to cure the defect or if the BGB does not require a deadline to be set, the Customer may, at his option, – without prejudice to any claims for damages under Sec. 7 of these Terms and Conditions – reduce our compensation in conformity with statutory provisions or – provided that the defect does not relate to construction work – withdraw from the contract.

If defects are cured, this is done without recognizing any legal obligation.

**6.3** Rejected goods may only be returned with our express consent. We shall refund the costs of the cheapest shipping method if the notice of defects was justified.

**7. LIABILITY**

**7.1** We are unrestrictedly liable for willful misconduct and gross negligence, and for any type of negligence in cases of injury to life, limb or health. We are also liable in cases where strict liability applies (such as cases governed by the German Product Liability Act (Produkthaftungsgesetz)).

**7.2** Our liability for all other culpable violations (slight negligence) of material contractual obligations ("Kardinalpflichten") (obligations whose satisfaction is essential to the proper performance of the contract and upon whose satisfaction the contracting party may consistently rely) is limited in amount to the typical and foreseeable damages for the contract, regardless of legal grounds.

**7.3** We are not liable for slightly negligent violations of other contractual obligations that are not material contractual obligations.

**7.4** If we place orders with third parties on behalf, for the account and with the consent of the Customer, we shall only be liable for diligently selecting and monitoring the third party. No further liability is assumed.

**7.5** The aforementioned liability provisions also apply to our employees and other agents for whom we are vicariously liable.

**8. LIMITATION PERIOD**

Claims against us for contractual violations attributable to us shall become time-barred after one year. This does not apply to claims arising from willful or grossly negligent violations, to claims arising from injuries to life, limb or health, to violations of material contractual obligations (for any type of negligence) or to claims brought by the Customer for defects in accordance with BGB § 438 (1) no. 2 and § 634a (1) no. 2. Claims under strict liability

(including, but not limited to, under the Product Liability Law) remain unaffected. The statutory regulations shall determine when the limitation period begins. The consumer rights set forth in BGB § 475 shall remain unaffected thereby.

**9. RETENTION OF TITLE**

**9.1** We retain title to all goods that we deliver until the Customer has repaid all claims owed from the business relationship with us (hereinafter: "retained goods").

**9.2** We also retain title to new products created by processing the retained goods. The processing shall be performed for us as the manufacturer. If the goods are processed, combined or commingled with goods not belonging to us, we shall acquire an ownership share in relation to the invoice price of the retained goods to the invoice prices for the other materials.

**9.3** The Customer may dispose of goods which we own or co-own in the ordinary course of business as long as he is willing and able to properly satisfy his obligations towards us. Specifically:

**a)** If the Customer grants his customers an extension in paying the purchase price, he must retain title to the modified goods vis-à-vis his customers. The Customer is not authorized to dispose of the retained goods unless he retains title to them.

**b)** The Customer hereby assigns to us all current and future claims, including checks and bills of exchange, accruing from the sale of the retained goods as security for our claims from the business relationship. If the Customer sells goods that we co-own, the assignment shall be restricted to the portion of claims that corresponds to our ownership share. If our retained goods are processed as part of a contract for work and materials ("Werkvertrag"), the Customer hereby assigns to us a portion of his current and future claims to invoiced compensation, and the portion so assigned shall correspond to the retained goods thus processed. The Customer is only authorized to resell or otherwise use the retained goods if the resulting claims are certain to transfer to us.

**c)** If the assigned claim is added to a running account, the Customer hereby assigns to us a portion of the running account balance that is equal to the amount of the assigned claim (including the corresponding portion of the final balance). If interim balances are calculated and carried forward by agreement, the portion of the old balance that accrued to us under the foregoing provisions shall be deemed as assigned to us in the new balance.

**d)** The Customer is authorized to collect the claims assigned to us until we revoke this authorization.

**9.4** As long as we retain title, the Customer must treat and store the retained goods with care for as long as he can dispose of them, and shall perform necessary and customary inspection, maintenance and upkeep work at his own expense. The Customer may not pledge or transfer ownership of the retained goods as security while title is retained. We must be notified without undue delay in writing or by fax if the retained goods are damaged or destroyed or if the retained goods are seized by third parties, such as for the purpose of attachment or confiscation. The Customer must bear all the necessary costs incurred to vacate the seizure and recover the retained goods, unless the costs can be collected from third parties.

**9.5** If the Customer violates his obligation to treat the retained goods with care, violates other duties of care, or defaults on paying secured claims, we are entitled to reclaim the retained goods. The reclamation only constitutes a withdrawal from the contract if we issue a written declaration of our withdrawal. We are entitled to realize reclaimed goods; the proceeds must be credited

to the Customer's liabilities after deducting reasonable realization costs. This applies mutatis mutandis to all other contractual violations committed by the Customer.

**9.6** If the realizable value of the security exceeds the value of the claims they secure by more than 10 percent, we shall release excess security selected by the Customer at his request.

**9.7** If retention of title clauses are not allowed in full or at all by the applicable laws of the Customer's country, our aforementioned rights shall be restricted to the legally allowed extent.

## **10 DATA PROTECTION**

**10.1** We may process personal data to the extent required for contract management purposes. Personal data is processed in accordance with data protection laws and regulations (GDPR, German Data Protection Act (BDSG), etc.), namely for the performance of a contract (GDPR Art. 6 (1) point (b) alternative 1), in order to take steps prior to entering into a contract (GDPR Art. 6 (1) point (b) alternative 2), for compliance with a legal obligation (GDPR Art. 6 (1) point (c)) or for the purposes of legitimate interests (GDPR Art. 6 (1) point (f)).

**10.2** Our policy can be accessed at the following link [www.infracerv.com/datenschutz](http://www.infracerv.com/datenschutz)

**10.3** The Customer hereby agrees to fulfill its information obligations vis-à-vis its employees, agents, servants and service providers (data subjects) under GDPR Art. 13 and/or 14 whenever it shares personal data concerning these data subjects with us and/or we contact data subjects.

**10.4** The Customer shall ensure that it complies with data protection laws, regulations and agreements and refrains from violating the rights afforded to data subjects under data protection laws and regulations.

**10.5** If a data subject holds us liable for the Customer's wrongful acts or omissions in this regard, the Customer shall hold us harmless from such claims and from all expenses that we may incur from or in connection with such claims.

## **11. GENERAL PROVISIONS**

**11.1** German law shall exclusively govern all legal dealings between us and the Customer in their entirety. The UN Convention on Contracts for the International Sale of Goods as of April 11, 1980 is excluded from application.

**11.2** The courts of Frankfurt am Main shall have exclusive jurisdiction over any and all disputes arising from the business relationship between us and the Customer, provided the Customer is a fully qualified merchant ("Vollkaufmann") or is not domiciled in Germany. The statutory provisions governing exclusive jurisdiction shall remain unaffected by this clause.

**11.3** If a provision in these General Terms and Conditions of Business or in supplementary agreements is or becomes invalid in whole or in part, this shall not affect the validity of the remaining provisions hereof or thereof. The Customer shall come to an agreement with us to replace the invalid provision or part of the provision with such legally valid provision as most closely approximates the intent of the invalid provision.