

# General Terms and Conditions of Purchase of IMS Gear SE & Co. KGaA

1. Regarding any and all – also future – orders for supplies and services (hereinafter collectively called “Supplies”) only the following Terms and Conditions shall apply, unless stipulated otherwise in writing. Any deviating terms and conditions of the supplier or contractor (hereinafter collectively called “Supplier”) shall not apply even in the event we do not expressly disagree.
- 2.1 Only **orders, call-offs** and agreements that are effected in writing or by telex shall be binding. The written form requirement shall also be met by facsimile, email and EDI. Our staff is not authorized to make any verbal agreements or commitments which go beyond the content of the written contract or to alter these GT&C to our prejudice.
- 2.2 If the Supplier does not confirm our Order in writing within 10 days following the date of our Order we shall no longer be bound by the Order.
- 2.3 If a price or a delivery period is not specified in our Order and the Supplier adds either such term to an order confirmation, a binding agreement shall only be reached when we do not revoke our Order within a period of 14 days after receipt of the order confirmation.
- 2.4 The Supplier is permitted to award **subcontracts** only with our previous written agreement.
3. The agreed prices are fixed **prices** including packing, plus the value-added tax, if any, applicable on the date of the invoice and shall be delivered to delivery address on a DDP basis (Incoterms 2010).
- 4.1 The agreed **delivery dates and periods** shall be binding. The agreed delivery date is the date on which the products have to arrive on our facilities. In the event acceptance is agreed or provided by law the successful acceptance by a person authorized by us is required. As soon as the Supplier is able to reasonably anticipate that it might not be possible to comply with the required delivery time in whole or in part, it shall notify us of this in writing immediately, stating the reasons and the anticipated duration of the delay.
- 4.2 Cases of **force majeure**, including lawful strikes and lockouts, interruptions of operations or other obstacles which are unforeseeable, unavoidable and beyond such party's reasonable control shall exempt such party from the fulfillment of its contractual duties for the term of the disruption and its repercussions. The party not performing due to force majeure event shall notify the other party immediately of the beginning and end of the disruption. In the event the performance of the contract is delayed not only of a temporary nature, each party shall have the right to cancel the contract with respect to the delivery affected by this disruption. No damage claim shall be possible in such cases. In the case of force majeure at our Supplier we shall be entitled to request that the Tools and the necessary equipment be returned to us so that we can continue production.
- 4.3 **Part shipments** are admissible only with our written agreement.
- 4.4 If the Supplier fails to make the delivery on time, we have the right to request liquidated damages for delayed delivery in the rate of 1% per week as of due date, however, maximum in the rate of 5% of the agreed total price. We have the right to claim these liquidated damages until the time of the final invoice. The same applies when acceptance was agreed or provided by law and the Supplier does not observe an acceptance date.
- 4.5 Any **deviation** from the contractually agreed upon technical specification as well as planned changes in the manufacturing, materials, manufacturing supplies, etc., including change of subcontractors must be reported to us in writing immediately and shall be subject to our prior written approval.
- 5.1 The products shall be packed in compliance with generally accepted commercial standards or in accordance with any **special packing** as instructed by us. The Supplier shall be liable for any damage sustained as a result of defective packing.
- 5.2 The Supplier shall be obliged, on request, to take back the packing at the delivery site. We shall have the right to dispose packing and charge the Supplier with reasonable disposal costs instead.
6. Unless agreed otherwise, the risk shall pass to us according to DDP delivery address. If acceptance is agreed or required by law the risk shall pass to us as soon as we confirmed the acceptance in writing.
7. Each delivery must be accompanied by **delivery notes** bearing the particular details of our order and the item number.
8. The **invoice** bearing the particular details of our order shall be sent to us separately for each order. We shall pay at our discretion within fourteen (14) days from receipt of the invoice with three percent (3 %) discount or ninety (90) days from receipt of invoice strictly net. We shall pay following full receipt of products in conformity with the contract, however, not prior to any agreed delivery date.
9. A right of retention on part of the Supplier shall only apply when its counterclaims are uncontested or recognized by declaratory judgment.
10. The Supplier **guarantees** that the delivery items are free from defects of title or material defects and conform to the samples we released, conform to the recognized state of the art, to the pertinent laws, to safety and accident prevention regulations, and to the usual technical standards (e.g. DIN, VDE, VDI, Ex-guidelines). In the event different versions of these standards exist, the German version shall apply.
- 11.1 The Supplier shall be obliged to inspect the outgoing items. We inspect incoming goods for apparent **defects**, identity, and shortfall and outside transport damage. There shall be no duty to carry out inspection beyond this. We shall report defects to the Supplier without delay from their discovery. The Supplier shall waive the defense of late complaint concerning any defect.

The obligation to inspect incoming goods for apparent defects shall, however, not apply in the event acceptance of the goods was agreed or provided by law.

- 11.2 In case of defects we shall be entitled to replacement or rectification of defects, as we elect, a total and absolute discretion. Upon expiry of a reasonable grace period or if it is no longer commercially reasonable to grant a grace period due to particular urgency – we may, after informing the Supplier and at the Supplier's expense, have the defective products rectified by ourselves or by third parties, or we may obtain a replacement elsewhere. The Supplier shall reimburse us for the cost incurred by us, unless it is not responsible.
- 11.3 The Supplier shall bear all the cost for the purpose of rectifying defects or replacement of those at the respective site of use of the delivery item. Upon its request, we shall inform the Supplier regarding the site of use.
- 11.4 The statute of limitation regarding damage claims is 36 months as of delivery or – if agreed or provided by law – as of acceptance.
- 11.5 In the event the Supplier repairs delivery items or replaces them in whole or in part, the statute of limitation, according to 11.4 hereof, shall recommence regarding this defect, unless the supplementary performance is of minor nature or it is an express goodwill service on the part of the Supplier.
- 12.1 If a claim based on **product liability** is made against us, the Supplier shall indemnify us upon the first request in writing, if and insofar as a defect of the product delivered by the Supplier caused or contributed to causing the damage or loss. This shall not apply to cases of fault-based liability for damage in the case the Supplier is not responsible for the breach of duty.
- 12.2 The Supplier shall compensate us for the cost and expenditure proportionate to its contribution to any claim based on fault or negligence, including the cost accruing to us from measures for preventing damage or loss (e.g. recall action) and for any legal action; this shall also apply to identifiable and impending batch faults.
- 12.3 The Supplier is obliged to purchase and maintain an **insurance** providing appropriate cover against the associated risks, and upon our request, the Supplier must promptly furnish us with satisfactory evidence of maintenance of such insurance policy.
- 13.1 The Supplier guarantees that by the use of its delivered items it supplied no **property rights**, e.g. patent or industrial design rights, or any other rights, trade secrets or business secrets of any third party, also not on the site of use are violated.
- 13.2 The Supplier shall immediately upon first written demand indemnify and hold us harmless from and against any third-party claims.
14. All **information** (i.e. samples, models, Tools, our order, drawings and the like), which the Supplier – also incidentally - obtains within the framework of our business relationship, must be treated confidentially and not be made available to any third party. All information is and remains in our sole property. It must not be used by the Supplier for its own purposes or for purposes of others, and after the order has been completed the information must be returned to us free of charge, without having

been called upon to do so. Our company name or the company name of our customer for advertisement purposes may only be made reference to after our prior written consent.

15. **Tools** or other production equipment (“Tools“) manufactured by our Order and paid by us shall become our sole property, upon full payment. The transfer of possession shall be replaced in such way that the Supplier keeps the Tools in custody free of charge by using the diligence of a prudent businessman. The Supplier shall keep those separately from other items not belonging to us. Our ownership shall be marked by the Supplier on the items themselves and indicated in the business records. After the business relations have terminated the Tools shall be surrendered upon request. These Tools may neither be used by the Supplier for its own purposes nor made available to any third parties for any reason whatsoever. Insurance coverage against loss and damage must be obtained to sufficient extent.
- 16.1 If employees or agents of the Supplier perform work at our plants or on the premises of one of our customers, the Supplier shall advise them to observe the applicable accident prevention regulations, the Ex guidelines, the VDI regulations and our company's policy and internal guidelines or those of our customers.
- 16.2 The Supplier shall be liable for any and all damage or loss at our plant or on our customer's premises caused by it or its employees or agents with willful intent or negligence. It shall supply evidence of adequate liability insurance coverage upon request.
- 16.3 Assembly and installation work shall be subject to acceptance. Acceptance shall be regarded as effected when our authorized representative accepted the work performed in writing as in conformity with the contract. However, we shall be entitled to still claim defects when the final account is submitted. If we fail to fulfill any agreed upon acceptance obligation, the Supplier shall grant us a grace period of minimum three (3) weeks.
- 16.4 The number of hours worked and the materials provided by the Supplier must be confirmed in writing by our authorized representative immediately after the work has been performed, but no later than on the same day it was performed.
- 17.1 The **laws of the Federal Republic of Germany** shall apply with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.
- 17.2 The **place of jurisdiction for any and all disputes arising regarding the business relationship shall be Freiburg, Germany**. We shall, however, also be entitled to pursue legal action at the court competent for the Supplier's place of business.
- 17.3 **Place of performance** regarding any and all supplies and services shall be the delivery address, and regarding any and all payment it shall be our place of business.