

General Terms and Conditions of Delivery and Payment of IMS Gear SE & Co. KGaA

1. Scope of Application

1.1 These General Terms and Conditions of Delivery and Payment of IMS Gear SE & Co. KGaA, Heinrich-Hertz-Strasse 16, 78166 Donaueschingen, Germany (hereinafter called "Terms and Conditions") shall only apply to trading operations between IMS Gear SE & Co. KGaA (hereinafter called "IMS Gear" or "we"/"us") and companies; irrespective whether these are considered as commercial companies ("Kaufmännische Unternehmen") pursuant to Art. 934 of the Swiss Code of Obligations ("CO") or not.

1.2 Unless otherwise agreed, these Terms and Conditions shall apply exclusively to all - including future - deliveries and services (hereinafter uniformly and generally referred to as "Deliveries") to customers.

1.3 The general terms and conditions of our customers shall not become part of the contract even if we do not explicitly object to them.

2. Contract Conclusion, Contract Content; Contract Termination

2.1 Our offers shall not be binding unless indicated differently in the offer. The customer shall be bound to its order for a period of 14 days. The contract shall be concluded when we confirm the order in writing or carry out delivery within this period. The written-form requirement shall also be met by facsimile, email and EDI.

2.2 Verbal collateral agreements or commitments of our employees that exceed the content of the written contract or amend the Terms and Conditions hereof to our detriment shall only become effective after our written confirmation.

2.3 Our illustrations, drawings, weight and dimensions information shall only present approximate values unless a) they have been expressly indicated by us as binding, b) they are objectively material or c) they have been indicated by the customer in writing as material for it.

2.4 We reserve all our rights of title and copyrights regarding cost estimates, drawings and other documents. These must not be made available to any third party without our prior written agreement.

2.5 We shall be entitled to terminate in writing any framework agreements or price agreements with a term of more than 12 months with a notice period of 6 months, at the earliest with expiration of the first 12 months.

3. Tools

In the event we manufacture tools to carry out the delivery orders on request of the customer we reserve our right of title on those irrespective of whether the tools are amortized by customer grants or through the price of the parts.

4. Price and Payment

4.1 Our prices are FCA IMS Gear delivering plant Incoterms® 2010 in EUR, plus the cost of packaging and the respectively applicable VAT.

4.2 For contracts with delivery periods of more than 2 months, annual contracts, other framework agreements or price agreements with a term of more than 2 months, we are entitled to increase the agreed prices accordingly if, after conclusion of the contract, prices for energy, material or raw material, or in personnel cost have changed materially, and we are not responsible for these changes. In the event a price increase exceeds 5% the customer is entitled to terminate the contract within a period of 2 weeks after notification of the price increase.

4.3 Unless otherwise agreed payment shall be provided within a period of 30 days after delivery and receipt of invoice without any deduction and free of charge to our bank account. Decisive for determining punctual payment shall be the receipt of payment. Bank charges shall be borne by the customer. Such shall be immediately due.

4.4 In the event the customer receives notice that our bank account details have changed or will change then the customer shall verify this information prior to any transfer to another account by written request to our Head of Accounting. In the event the customer does not carry out any verification and transfers the invoice amount to

an account that does not belong to us, the customer shall not be discharged of its payment obligation by such bank transfer.

4.5 If the agreed term of payment is exceeded, we will charge default interest in the statutory amount, without any prior reminder.

4.6 The customer may only setoff or claim any right of retention to the extent its counter claims are uncontested or recognised by final judgment. Further, the customer may only claim any right of retention if its counterclaim is based upon the same contractual relationship.

4.7 In case of reasonable doubt concerning the customer's ability to pay, caused, for instance, by single debt enforcement against the customer or by payment delay, we are entitled to request provision of security or cash payment concurrently against performance. Should the customer not meet this request within a reasonable period, such period being solely at our discretion, we may, at our option, (a) request immediate payment of the total price, (b) withdraw from the not yet fulfilled part of the supply contract and request re-winding, (c) claim damages or (d) request the customer (irrespective of fault) the immediate payment of liquidated damages accounting for ten percent (10 %) of the total contractually agreed price. A deadline is not necessary if the customer is obviously not able to provide any security, like, for example, when insolvency proceedings were instigated against the assets of the customer.

5. Supply, Transfer of Risk, Part Deliveries, Reservation of Self Supply

5.1 Delivery shall be carried out FCA our delivering plant Incoterms® 2010. The respective delivering plant is indicated in our order confirmation.

5.2 Should the shipment be delayed without our fault, risk shall pass as soon as we notify the customer about our readiness to dispatch, even in the case we have assumed further services like e.g. shipment cost or transport, including carriage by own transport personnel. On request of the customer, we shall obtain insurance coverage for the shipment, on customer's expense.

5.3 We shall be entitled to carry out partial deliveries.

5.4 Our delivery obligation is subject to timely and accurate own supply by our suppliers unless such inaccurate or delayed own supply was caused by our fault. In case delayed or inaccurate supply to us is not caused by our fault we shall be entitled to withdraw from the contract. If we decide to withdraw, we will carry out the right of rescission without delay and refund the respective consideration to the customer without delay.

5.5 Further, our delivery obligation shall be subject to the granting of necessary export licenses and subject to the absence of other hindrances stemming from applicable export regulations. If we are not responsible for any such hindrance we shall be released from our performance obligation. To the extent the goods were already finished according to the contract at the moment a hindrance becomes obvious, and if we cannot use it for other purposes, the customer shall be obliged to pay the agreed price.

6. Period of Delivery

6.1 Dates and periods of delivery shall only be approximate unless otherwise agreed in writing.

6.2 The delivery period shall commence with receipt of the order confirmation, however, not prior to the clarification of all details of order execution and technical issues as well as receipt of the good to be treated and the agreed down payment or payment security. Any delivery date shall be rescheduled accordingly.

6.3 The date or period of delivery shall be considered as met once the good is ready for shipment upon the expiration of the agreed period or date. If shipment is delayed without our fault the delivery period shall be regarded as observed as soon as the information on readiness for shipment is received.

6.4 Any change request from the customer shall extend the delivery period until we have checked feasibility and by the term necessary for implementing the new specification into production. Any delivery date shall be rescheduled accordingly. If the current production is

- interrupted due to a change request we shall be entitled to advance and complete other orders. We shall not be obliged to keep capacities for production during such delay.
- 6.5 With respect to delays in delivery our liability regarding damage caused by the delay shall be limited, in case of simple negligence, to the contractual and foreseeable damage. In such case we shall be liable to the amount of 0.5% per completed week of delay; in total, however, up to a maximum of (i) 5 % of the net invoice amount of the part of the delivery that is subject to the delay, or (ii) up to a maximum amount of EUR 25,000 per case, whichever amount is lower. The claim of the customer for damages instead of performance and due to gross negligent delay shall be subject to section 10 of these Terms and Conditions and not be affected thereby. The customer shall inform us, at the latest, upon the conclusion of contract about any liquidated damages vis-à-vis its own customer.
- 6.6 In case of delayed shipment due to circumstances we are not responsible for,
- we will invoice monthly a minimum 0.5% of the net invoice amount of the stored shipment for storage in our plant;
 - the customer must, in particular, bear such cost and risk resulting from non timely instructions it must give or the non timely execution of necessary formalities – like e.g. obtaining import licenses.
- 7. Force Majeure**
- 7.1 Force majeure and other unforeseeable, inevitable events which are non-attributable to us (like e.g. legitimate strike or lockouts, difficulties in material and energy purchase, transport delays, lack of workers, energy or raw material, measures of authorities, or difficulties in obtaining licenses, in particular import or export licenses) shall extend the delivery period by the term of disruption and its effects. This shall also apply in the event any such hindrance occurs at our suppliers or during an existing delay.
- 7.2 In the event the hindrance is not only of limited period both contracting partners shall be entitled to withdraw. Damage claims shall be excluded pursuant to the cases as indicated in the section 7.1.
- 8. Reservation of Title**
- 8.1 We shall reserve our title to the delivered goods (hereinafter called "reserved goods") until all payments due with the customer are received. In the existence of a current-account relationship the reservation of title shall refer to the accepted balance.
- 8.2 The customer shall be obliged to handle the reserved goods with care and to maintain them in good condition; in particular, sufficient insurance coverage for any replacement value regarding any damage or loss, shall be taken out at customer's costs. The insurance policy as well as the proof of payment of the policy shall be provided upon request. The customer shall assign to us, already now, any claims resulting from the insurance relationship, with resolving effect on the transfer of ownership. We accept such assignment.
- 8.3 The working on and processing of the reserved goods by the customer shall always be carried out for us without obligating effect on us. In the event of combination and mixing with other goods we shall acquire co-ownership on the new good in relation to the net invoice amount of the reserved good to such of processing and the other materials.
- 8.4 The customer shall be entitled to resell reserved goods in the ordinary course of business; it shall, however, already at this point, assign to us in advance any and all claims accruing to it by further sale or further use in the ratio of the net invoice amount of the reserved goods to such of the processing and the other materials. We accept such assignment.
- 8.5 The customer shall be entitled to collect the claims assigned to us. The entitlement for collection shall expire in the event the customer does not meet its payment obligations regarding the collected revenues. In this case we may revoke the entitlement for further sale and use and request that the customer discloses to us the assigned claims and their debtors, provides all details necessary for collection, provides us with the relevant documents and informs the debtors about such assignment. In addition, the customer shall send a list of reserved goods to us, even for goods already processed.
- 8.6 Taking back the reserved goods shall not constitute any withdrawal from contract. However, in the event we declare withdrawal from contract, we shall be entitled to discretionary utilisation.
- 8.7 During the existence of a reservation of title the customer shall only be entitled to carry out any transfer by way of security, pledges or assignment of claims with our written consent. Access to the reserved goods by any third party shall be disclosed to us without delay. Any cost arising due to the denial of access shall be borne by the customer if such cannot be collected from the third party.
- 8.8 Should the value of the securities exceed our claims by more than 10 %, we will, upon customer's request, release inasmuch securities at our discretion.
- 8.9 Should we become aware of circumstances that may jeopardise our payment claims the provisions of section 4.7 hereof shall apply.
- 9. Liability for Defects**
- 9.1 The customer may claim any rights regarding defects as to quality only on condition that the customer has orderly fulfilled all of its statutory and contractual inspection and complaint obligations regarding the delivered goods. The customer shall inspect any and all received goods and notify us on possible defects without delay. We will remedy the communicated, actually existing defects as soon as possible. Safe of any notice of defect in compliance with this section 9.1. hereof Deliveries shall be regarded as in accordance with the contract. Other warranty claims can no longer be claimed unless such titles result from mandatory statutory regulation.
- 9.2 Customary or technically unavoidable deviation in quality, colour, width, weight or in equipment shall not be regarded as defect. For bulk materials or other goods delivered in large quantity, excess or shortage up to 10% of the order value shall be admissible unless guaranteed otherwise expressly and in writing.
- 9.3 Our product descriptions shall not present any warranty in the legal sense.
- 9.4 Any infringement of third-party rights shall only be regarded as legal defect if the applicable law foresees a respective mandatory protection standard. In case of a dispositive protection standard such shall herewith be excluded.
- 9.5 We are not liable for defects resulting from utilized technical drawings, drafts or other information provided to us by the customer.
- 9.6 In case of justified complaints, we shall, at our discretion, replace the good or repair the good up to two times. Should the replacement good also be defective, or should the subsequent performance fail then the customer may request, after expiration of a reasonable extension of time, a price reduction or - in the event the defect is considerable - withdraw from the contract and request damages pursuant to section 10 hereof.
- 9.7 Any cost of subsequent performance stemming from the delivery of the purchased goods to a location other than the commercial presence of the customer shall not be borne.
- 9.8 We will not bear the cost for removal of the defective good or the installation or mounting of the repaired or delivered faultless good if we are not responsible.
- 9.9 We are a supplier of single parts or components. Hence, the customer is not entitled to any right of recourse.
- 9.10 Should the defect have been caused by an essential third-party product, we shall, initially, be entitled to limit our liability to the assignment of our claims and rights for defect vis-à-vis the third-party supplier unless the assigned claim or right cannot be satisfied or not be asserted for other reasons. In this case the customer shall be entitled to the rights pursuant to section 9.6 hereof.
- 9.11 Claims for defects shall be statute-barred pursuant to the deadlines in section 10.4 hereof.
- 9.12 Regarding any unjustified notice of defect, we are entitled to invoice any and all incurred cost to the customer.
- 10. General Liability, Statute of Limitation, Obligation to Inform**
- 10.1 We shall not be liable for any consequential damage irrespective of whatsoever legal ground. The excluded types of damage shall include, but not be limited to, and always within the limits as indicated under section 10.3 hereof: lost income, lost profit, lost orders,

- lost use, production losses, waiting costs, loss of or damage to materials or products; system down times or delays; goodwill loss; loss of immaterial legal interest, action and omissions of auxiliary personnel, damage claims and liquidated damages of third parties vis-à-vis the customer; contractual liability obligations vis-à-vis third parties; recourse claims; recall costs; costs for the enforcement of rights, fines and contractual penalties, penalty payments, other financial or economic loss or damage, each independent from whether the respective losses or defects are direct, indirect or consequential defects or consequential losses or other defects or losses irrespective of the kind and of the factual or legal ground, as well as other, howsoever caused or arising, direct, indirect, atypical, incidental or consequential defects or losses.
- 10.2 To the extent the concluded contract and/or the mandatory applicable law do not prescribe anything else the total liability of IMS Gear shall be limited to the respective order value or to a total of 1 million EUR; whatever amount is lower. This amount shall be final and include the obligation to assume liability on whatever legal ground (e.g. contract, unlawful act, liability without fault). Section 6.5. shall remain unaffected.
- 10.3 Limits of liability set forth in sections 10.1 and 10.2 hereof shall not apply in the case of wilful intent or gross negligence, loss of life, bodily injury or damage to health or upon liability pursuant to the product liability law, mandatory statutory regulations and legal requirements.
- 10.4 Customer claims due to defects – always subject to the precondition of a valid notice of defect pursuant to section 9.1. hereof – shall be statute-barred 12 months following passing of risk, other claims 12 months after the statutory commencement of the limitation period. In deviation from sentence 1 above, guarantee provisions shall apply in case of a guarantee undertaken; damage claims pursuant to the product liability law, and claims regarding loss of life, bodily injury or damage to health and due to intentional or gross negligent infringement of obligations shall be subject to the respective statutory statutes of limitation.
- 10.5 For reasons of insurance coverage, the customer shall be obliged to notify us whether the products due to be delivered will be utilized in high-technology, safety-relevant areas (e.g. aviation, nuclear power industry).
- 11. Contract Hardening**
- 11.1 We warrant to handle the heat treatment goods with due diligence and suitable measures. We do, however, not warrant a successful heat treatment if
- the customer provided incomplete or inaccurate details as requested in the offer, in particular if the treated material can be hardened to different degrees,
 - we were unaware and could not recognize hidden defects in the workpiece prior to the heat treatment,
 - we were unaware or could not know about characteristics of the used material, shaping or the state of the delivered workpieces rendering the success of hardening impossible,
 - modifications have occurred in the prior workflow,
 - insulating agents against carburization or nitriding had been used, or
 - the customer failed to deliver the parts to be hardened in the agreed batch size.
- 11.2 With regard to the heat treatment, the customer shall be in charge for a production of the workpieces according to the technical state-of-the-art, for the accurateness and completeness of details as requested in the offer, and for the heat-treatment specification instructions adapted to the future purpose of use.
- 11.3 Since we are technically unable to conduct a comprehensive review, particularly concerning size accuracy, we will only carry out random sampling of the hardened workpieces regarding hardness (e.g. hardening depth) after hardening. Any further testing will only be carried out upon special written agreement and will be invoiced separately. This shall apply both to the initial sample testing and to our tests within the framework of serial production. We are not able to carry out any separate fracture test for straightening works commissioned by the customer.
- 11.4 The customer shall be obliged to examine size accuracy and other possibly important product parameters. The customer shall ensure that only faultless, true-to-size parts will go to further processing.
- 11.5 Should the customer omit the checks indicated in section 11.4 hereof, and accept the goods, then any liability at our side shall lapse.
- 11.6 The customer must prove that an alleged defect was exclusively caused by us. For a valid notice of defect, section 9.5 hereof shall apply accordingly.
- 11.7 We are not liable for any shrinkage occurring during hardening of mass-produced items and small parts since this is typical for the industry and the process.
- 11.8 We are not liable if a workpiece breaks during straightening works commissioned by the customer.
- 11.9 Furthermore, our liability shall be stipulated in section 10. hereof.
- 11.10 In addition to section 10., with respect to replacement services, and, in particular, for the amount of the damages, the following shall be taken into due consideration: the economic situations of the contracting partners, always as per the principle of good faith, the kind, scope and term of the business relationships, as well as the value of the hardening services.
- 11.11 Section 10.4. hereof shall apply accordingly to the statute of limitation regarding claims for defects, however, calculated as of our notice of completion vis-à-vis the customer.
- 12. Packaging**
- 12.1 Within Germany (however, not from private consumers), we take back our packaging material, at our company seat during usual business hours. The customer shall bear the cost of any return delivery. The packaging must be clean, free of foreign substances and sorted according to types. The handling of packaging material outside Germany is subject to the customer's charge, pursuant to the applicable legal provisions.
- 13. Miscellaneous**
- 13.1 Safe of any other agreement, the place of performance for any and all services under the contractual relationship with the customer shall be our company seat.
- 13.2 By entering into a contractual relationship with us the customer expressly undertakes not to use any of our products or sub-products, nor any technical information or data in connection with our products, for the purpose of developing or manufacturing weapons, of whatsoever kind, for any military purpose, or nuclear use, directly or indirectly.
- 13.3 The Terms and Conditions hereof and any and all contracts concluded on this basis shall be subject to Swiss law with the exclusion of the conflict-of-law rules. The UN Convention on the International Sale of Goods of 11 April 1980 shall be excluded.
- 13.4 Any and all litigation and claims from or in connection with a contract pursuant to the Terms and Conditions hereof, including issues regarding validity, invalidity, breach or termination shall be decided by arbitration proceedings pursuant to the Swiss Rules of International Arbitration, issued by the Swiss Chambers' Arbitration Institution (SCAI; thereafter „Swiss Rules“), and their version in course at the moment of request for settlement shall apply. The arbitration court shall generally consist of one member; parties may exceptionally consent on a three-member board. Arbitration proceedings shall be held in Zurich, the language of proceedings shall be German. The decision shall be issued after an accelerated procedure (Art. 42 Swiss Rules) within 6 months. Each appeal to the arbitration courts shall be preceded by a serious, documented attempt of the parties to reach agreement within a period of 60 days after the dispute has arisen.
- 13.5 In the event certain provisions of these Terms and Conditions are ineffective, in whole or in part, the remaining provisions shall remain effective.