

GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY

FOR TRADING WITH MACHINES (AUSTRIAN CHAMBER OF COMMERCE)

1. Preamble

- 1.1. The contractor (hereafter called IMB-Spirk Ges.m.b.H.) accepts orders, sells, rents and delivers exclusively based on these terms and conditions of sales and delivery. The following terms and conditions apply to all services carried out by IMB-Spirk Ges.m.b.H. or one of its subcontractors named in the framework of this contract
- 1.2. Verbally agreed changes or additions to this contract are only effective, when they have been confirmed in writing.
- 1.3. Business or delivery conditions of the client are explicitly excluded from the objective legal transaction and from the complete business deal.
- 1.4. In principle offers are subject to change and are without obligation.
- 1.5. These general terms apply to all orders placed with IMB-Spirk Ges.m.b.H. and remain valid for all subsequent transactions between the parties to the contract without expressly stating these general terms and conditions again.

2. Deliveries

- 2.1. The delivery shall be made at the account and risk of the client.
- 2.2. IMB-Spirk Ges.m.b.H. reserves the right to make partial deliveries.
- 2.3. Complaints due to transport damages can only be accepted if they are recorded immediately with the carrier responsible on the delivery receipt when taking delivery of the goods. Furthermore, however, damages must be presented immediately, but at least within 8 days in writing.
- 2.4. Storage measures and storage costs, which become necessary for reasons that lie within the responsibility of the client are charged to the client.
- 2.5. Justified and appropriate changes of the service and delivery obligation of IMB-Spirk Ges.m.b.H., in particular reasonable delivery delays, are accepted by the clients in advance, except in the case of consumer contracts.

- 2.6. Delivery dates stated according to the order confirmation are only valid as guidelines. Acts of force majeure or other unforeseen circumstances in the sphere of IMB-Spirk Ges.m.b.H. or its subcontractors release IMB-Spirk Ges.m.b.H. from meeting the arranged delivery date.
- 2.7. Disruption in business and traffic and delivery by subcontractors not in accordance with the regulations are also part of unforeseen circumstances and release IMB-Spirk Ges.m.b.H. for the duration of the delay or at IMB-Spirk Ges.m.b.H.'s discretion also finally from the commitment to deliver, so that no claims based on the withdrawal by IMB-Spirk Ges.m.b.H. arise for the client.
- 2.8. If the time of delivery is exceeded by more than 30 days, the client is free to cancel the order by writing after having given a further limit of 90 days of delivery time. Also IMB-Spirk Ges.m.b.H. can withdraw, if the supply becomes impossible by force majeure, work conflicts or other obstacles, as for example transportation interruptions or termination of production inevitable by IMB-Spirk Ges.m.b.H.. In both cases IMB-Spirk Ges.m.b.H. is only committed to interest free payback of possibly received pre-payments.
- 2.9. It is the subject matter of IMB-Spirk Ges.m.b.H. to choose the respective type of packaging and dispatch of the goods and the means of transport.
- 2.10. The place of performance for delivery and payment is the business location of IMB-Spirk Ges.m.b.H.

3. Prices

- 3.1. The prices quoted do not include any value-added tax (VAT).
- 3.2. The calculation of the prices is based on euros.
- 3.3. For the calculation of the prices, the prices valid on the day of delivery are decisive.
- 3.4. Should wages based on collective bargaining regulations in the industry or internal business deals or should other cost centres relevant to the calculation or costs necessary for performing the service, such as those for materials, energy, transport, foreign workers, financing, etc., change, then IMB-Spirk Ges.m.b.H. is justified to raise the prices accordingly, except in the case of consumer contracts.

4. Payment

- 4.1. As far as possible invoicing is carried out immediately after delivery.
- 4.2. Payments are due after the receipt of the invoice without any deductions or expenses. The payment conditions which have been arranged for the total order apply to partial invoices equally.
- 4.3. For orders which include several schedule units, IMB-Spirk Ges.m.b.H. is justified to submit an invoice after delivery of each unit or service.
- 4.4. The client is not entitled to withhold payment because of incomplete delivery, guarantee or warranty claims or complaints.
- 4.5. Payments made by the clients and received by IMB-Spirk Ges.m.b.H. first of all pay off interest on interest, then interest and secondary expenses, followed by costs incurred prior to legal action, then costs for legal advice attorneys and collection agencies, and finally the amount due, beginning with the oldest debt .
- 4.6. Interest on overdue payments will be charged by IMB-Spirk Ges.m.b.H. at normal bank interest rates. In the case of non-payment of two instalments of the partial payments IMB-Spirk Ges.m.b.H. is entitled to enforce default of due date and correspondingly demand payment for acceptances.

5. Ownership

- 5.1. The supplied goods are absolute the property of IMB-Spirk Ges.m.b.H. until all claims of IMB-Spirk Ges.m.b.H. have been settled. This includes interest and costs. The client must provide for the upkeep in accordance with the regulations (maintenance and repairs) at his own expense during this time. Pledge of goods or assignment of goods before complete payment are ineligible.
- 5.2. When the client does not comply with the contractual obligations, IMB-Spirk Ges.m.b.H. is entitled to back out of the contract. In addition, IMB-Spirk Ges.m.b.H. is justified to claim for the goods to be returned,. In this case the clients commits himself to restitution.

6. Assignment of claim

- 6.1. In the event of delivery under reservation of ownership, the client is required to assign immediately his claims against third parties to IMB-Spirk Ges.m.b.H. on account of payment, insofar as these arise through the sale or processing of our goods, until final settlement of our open debt claims. The client must name his buyer to IMB-Spirk Ges.m.b.H. on request and must notify his contractors of the assignment. The assignment shall be entered in the business accounts, in particular in the list of open items, and must be clearly visible to the buyer on delivery notes, invoices etc.
- 6.2. If the client is in arrears with his payments to IMB-Spirk Ges.m.b.H., sales venues received by him shall be kept separately and the client shall possess these solely in our name. Any claims against an insurer have to be assigned to IMB-Spirk Ges.m.b.H. within the limits of § 15 Versicherungsvertragsgesetz (insurance contract law).
- 6.3. Claims of client against IMB-Spirk Ges.m.b.H. must not be assigned, unless given the explicit consent.

7. Quotation

- 7.1. The quotation is formulated according to the best specialist knowledge, but no guarantee can be offered for the accuracy.
- 7.2. All offers are subject to change. Costs for drawing up a quotation - if incurred - will be charged to the client.

8. Reminder and collection expenses

- 8.1. In case of late payment the client is obliged to refund to IMB-Spirk Ges.m.b.H. all associated costs thus incurred, for example attorney fees and costs of collection agencies.
- 8.2. If IMB-Spirk Ges.m.b.H. himself issues reminders the client is obliged to pay an amount of euro 10,00 per reminder sent, in addition to the usual interest rates and costs.
- 8.3. In addition, any further financial damage, caused by non-payment, in particular the damage that arises through corresponding higher interest accumulating on all-due credit accounts of IMB-Spirk G.m.b.H. are to be refunded by the client independent of who is at fault concerning payment default.

9. Guarantee, assurance and liability

9.1. Should the supplied goods have any defects, the client can demand only the improvement or the replacement, unless, the improvement or the replacement is impossible for IMB-Spirk Ges.m.b.H., in the sense that this would be connected to disproportionately high costs compared to any other form of relief. Whether this is the case, also depends on the value of the defect-free goods, the gravity of the defect and inconveniences associated with this relief. IMB-Spirk Ges.m.b.H. is obliged to carry out the improvement and the replacement after delivery of the product by the client within an adequate period of time.

9.2. Should the improvement, as well as the replacement prove to be impossible or connected with a disproportionately high expenditure for IMB-Spirk Ges.m.b.H., the client has the right to receive a price reduction or the right of exchange, provided that it is not a matter of insignificant defects. The same is valid if IMB-Spirk Ges.m.b.H. refuses the improvement or the replacement or does not carry out the improvement or the replacement within an adequate period of time, or if these relief measures are connected with considerable inconvenience for IMB-Spirk Ges.m.b.H.

9.3. It is hereby agreed, that in order to make use of any guarantee claims regarding mobile and stationary things according to § 933 ABGB, the client must submit these to court within six months of claim date.

9.4. Parts subject to wear and tear and accessories, as well as repairs as a result of unauthorised interventions by third parties are excluded from the warranty. When the contractual objects are used in connection with equipment and/or programmes of third parties, then a warranty only exists for defects in function and/or performance, when such defects would also appear without such a connection.

9.5. Above and beyond the framework of the guarantee, additional assurance services can be ordered. These conditions of sale and delivery are also valid for these services. The rights of the client are not in any way affected by this assurance in such a case.

10. Avoidance of contract

10.1. With any failure of the client to complete a contract or because of any other important reason, in particularly due to bankruptcy of the client or rejection of insolvency for lack of fortune as well as in case of default of payment of the client then IMB-Spirk Ges.m.b.H. is entitled to withdraw from any contractual obligations irrespective of any claims or damages

10.2. In cases of withdrawal the client is obliged, irrespective of fault, to pay lump sum damage of 15 percent of the gross invoice amount.

- 10.3. In case of late payments by the client, IMB-Spirk Ges.m.b.H. is released from all further service and delivery commitments.
- 10.4. If the client cancels the contract without being entitled to do so or if he requests the cancellation, IMB-Spirk Ges.m.b.H. will have the option to insist on the fulfilment of the contract or to consent to the cancellation of the contract; in the latter case, the client will be obligated to pay flat rate compensation for damage in the amount of 15% of the gross invoice amount or the actually incurred damage.

11. Compensation

- 11.1. The client is not entitled to allow counterclaims to be cross-calculated against claims of IMB-Spirk Ges.m.b.H. unless, these counter-claims were acknowledged by IMB-Spirk Ges.m.b.H. in writing.

12. Force majeure

12. 1. Force majeure or other unforeseen obstacles in the area of responsibility of IMB-Spirk Ges.m.b.H. release IMB-Spirk Ges.m.b.H. from compliance with the agreed obligations for the duration of the force majeure.

13. Product liability

- 13.1. Recourse demands according to § 12 of product liability law are excluded, unless, the person entitled to seek recourse proves that the mistake was made in the area of responsibility of IMB-Spirk Ges.m.b.H. and there was gross negligence.

14. Venue and applicable law

- 14.1. In case of dispute it is explicitly agreed upon that the local responsibility of the responsible court shall be at the place of business of IMB-Spirk Ges.m.B.H.
- 14.2. Applicable law is Austrian substantive law. The applicability of the UN purchase right is excluded.

14.3. The legal venue for all disputes arising in connection with this contract against a consumer having his place of residence, normal domicile or place of employment within the country shall be one of the courts of the district where the consumer has his place of residence, normal domicile or place of employment.

15. Data protection and changes of address

15.1. The client gives his approval, that personal data in connection with fulfillment of the contract can be stored on computer and be computer processed.

15.2. The client is obliged to notify IMB-Spirk Ges.m.b.H. of any changes of address, both private and business, as long as the contractual obligations of the legal transaction have not been fulfilled.

16. Concluding provisions

16.1. The above definitions are only valid for sales to consumers according to consumer protection law in as far as the consumer protection law does not explicitly refer to other provisions.

14.2. Should one or more of these conditions of business become invalid or ineffective, then the validity of the remaining provisions remains unaffected.