

Terms and Conditions of Purchase of Instrument Systems GmbH

Dated September 2022

I. GENERAL PROVISIONS

1. Unless otherwise agreed in writing, all deliveries and services (hereinafter: Deliveries) to Instrument Systems GmbH (hereinafter: IS) shall be subject to the following Terms and Conditions of Purchase. Any terms and conditions of the supplier to the contrary shall only apply if they have been expressly accepted by IS in writing. The tacit acceptance of deliveries or services of the supplier as well as payments by IS do not imply agreement with conflicting conditions of the supplier.
2. Orders, delivery call-offs, contracts of all kinds as well as amendments or supplements thereto shall only be effective if they are made in writing. The written form requirement shall also apply to the cancellation of this formal agreement. Oral agreements prior to or upon conclusion of the contract require written confirmation by IS in order to be effective.

II. REQUESTS AND OFFERS

The requests made by IS are subject to confirmation and non-binding. The supplier shall be bound by its offer made subsequently at least one month after receipt by IS.

III. CONCLUSION OF CONTRACTS AND ORDERS

1. The supplier must confirm the order or the change within an existing order from IS to IS in writing within three days.
2. If IS has not received a proper confirmation from the supplier within 14 days of the order or the amendment of an order, IS shall be entitled to revoke the order without giving reasons. The supplier cannot derive any claims from this.
3. IS is entitled to demand changes with regard to design, appearance or similar, delivery quantity or delivery time up to the time of the final order confirmation. The supplier must implement the changes within a reasonable period of time as far as reasonable.
4. Appropriate arrangements shall be made by mutual agreement regarding the effects of the changes, in particular with regard to additional and reduced costs as well as delivery dates. If no agreement can be reached within a reasonable period of time, IS shall decide at its own discretion.
5. The supplier shall ensure that it obtains all data, information and circumstances relevant for the fulfilment of its contractual obligations, including the use intended by IS, in good time.

IV. PLACE OF PERFORMANCE, TERMS OF DELIVERY

1. The place of performance shall be the place designated by IS, unless otherwise specified.
2. The products are to be packed according to custom and usage. This applies in particular to the ESD-compliant packaging of electronic components and assemblies as well as their protection against dust and other contamination of optical components and optically relevant surfaces and coatings. IS is entitled to specify the type and method of packaging to the supplier and to return reusable packaging to the supplier free of transportation charges against reimbursement of the value of the packaging.
3. IS and the recipient designated by IS, if applicable, shall be notified of the product shipment at the latest one day before the date of shipment.
4. If the delivery is agreed "ex works", IS and the consignee designated by IS, if applicable, shall be notified in good time of the dimensions and weight of the delivery.
5. A delivery note in duplicate shall be attached to the delivery. The delivery note shall bear the order number, article number and supplier number.
6. A technical description and instructions for use shall be supplied free of charge with the delivery. In the case of software products, devices, machines and systems, the obligation to deliver shall only be fulfilled when the complete (system-technical and user) documentation has been handed over. In the case of programs specially created for IS, the program must also be delivered in fully compilable source code.
7. The transport insurance will be taken over by IS if IS has undertaken to do so in writing.
8. The supplier is obliged to comply with the relevant export control regulations and to provide IS with the foreign trade data of the products immediately after the order without being requested to do so. Should additional data and/or documents be required for the export, the supplier undertakes to provide them. Should the export not be possible, IS is entitled to withdraw from the contract without monetary compensation. If the supplier violates his obligations, he shall bear all expenses and damages incurred by IS as a result.

V. PRICES AND PAYMENT CONDITIONS

1. The prices stated in the order are maximum prices. They include all expenses in connection with the deliveries to be made by the supplier.
2. Unless otherwise agreed, the shipping costs shall be borne by the supplier. In the case of pricing ex works or ex sales warehouse of the supplier, shipment shall be made at the lowest cost, unless IS has specified a specific mode of transport. Additional costs for any accelerated transport necessary to meet a delivery date shall be borne by the supplier.
3. If the prices are not fixed when the order is placed, they must be announced at the latest with the order confirmation. IS has the right to object to the prices within eight working days. If there is no objection, the prices shall be deemed approved (with the exception of repair and spare parts orders).
4. Invoices shall be issued immediately after dispatch of the product, stating the order number, article number and supplier number. Value added tax shall be shown separately. The invoice shall be issued in duplicate to the agreed invoice address of IS, stating the complete order number and in compliance with the new accounting regulations according to the Tax Amendment Act 2003. Incorrectly submitted invoices shall not be deemed to have been received by IS until they have been corrected.
5. Unless otherwise agreed, payment shall be made within 8 days after receipt of the product and invoice with 3% discount or within 14 days with 2% discount or within 30 days net. Discounts may also be deducted if IS offsets or withholds payments in an appropriate amount due to defects. With regard to the retained amount, the payment period shall commence after the defects have been completely remedied.
6. Payments shall be made subject to proper delivery. If a defect subject to warranty is discovered, IS shall be entitled to withhold payments in an appropriate amount.
7. The payment shall in no case imply recognition of the correctness of the invoice or proper delivery.
8. The supplier shall only be entitled to set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged by IS. The supplier is not entitled to assign claims against IS or have them collected by third parties without prior written consent.

VI. DELIVERY PERIODS AND COMPENSATION FOR DELAY

1. The stated delivery time or delivery date is binding. It begins with the date of the order confirmation. For the timeliness of delivery without assembly, it depends on receipt at the place of delivery specified by IS, for the timeliness of deliveries with assembly as well as work contractual services on their acceptance. Delivery delays must be notified immediately.
2. If the supplier is unable to meet the delivery time due to force majeure, industrial action, lockout, fire, natural catastrophes, war or similar circumstances or due to unavoidable disturbances in his own business, he must inform IS of this immediately, stating the expected duration of the delay. The delivery time will only be extended in these cases by mutual agreement for the expected duration of the hindrance to delivery.
3. If, apart from the aforementioned cases, the supplier does not fulfil his obligation within the agreed delivery period, he will also be in default without a notice of default.
4. The compensation for delay shall amount to 0.5% for each full week of delay, but in total no more than 5% of the value of that part of the total delivery which cannot be used on time or in accordance with the contract as a result of the delay. Further legal claims remain reserved. IS is entitled to declare the reservation of the contractual penalty to the supplier until final payment. The contracting parties are at liberty to prove higher or lower damages caused by default.
5. In addition to the aforementioned rights, IS shall be entitled after a period of 21 days of default or more, without force majeure, to terminate the delayed part of the delivery without liability and to cover the demand for the non-delivered products with a third party. The supplier will bear the corresponding additional costs.

VII. STATUTORY PROVISIONS

1. The supplier shall ensure that all legal and official regulations are complied with in his company, including the Regulation on Hazardous Substances, EU Chemicals Regulation REACH (Regulation (EC) No. 1907/2006 of 30.12.2006), as well as the Stockholm Convention on Persistent Organic Pollutants, RoHS 2011/65/EU as amended, the Electrical Installations Act (ElektroG) and the safety recommendations of the responsible German professional bodies or associations, e.g. VDE, VDI, DIN. The supplier is obliged to deliver only products without conflict minerals according to the

- Dodd-Frank Act, a written confirmation will be presented by the supplier upon request of IS. At IS's request, the supplier shall issue a written confirmation from which country of origin the products/goods/product components supplied by him originate.
- Furthermore, the supplier is obliged to inform himself about the current state of the laws and guidelines applicable to the components of the delivery and to comply with them. The Supplier shall separately indicate avoidance and hazardous substances in accordance with the applicable laws and guidelines. Corresponding safety data sheets shall be delivered with the offer and with the respective initial delivery with the delivery note. Furthermore, IS must be notified immediately of any exceeding of substance restrictions and the delivery of prohibited substances.
 - The supplier shall be solely responsible for compliance with the accident prevention regulations upon delivery. Any necessary protective devices and instructions of the manufacturer must be supplied to IS free of charge.

VIII. QUALITY

- Unless otherwise agreed in writing, the characteristics of the specimens submitted and released by IS shall be deemed warranted with regard to the quality of the delivery.
- The supplier warrants that all deliveries/services will be carried out or rendered in accordance with the agreed specification, in a professional manner and using the most suitable materials and in accordance with the state of the art, the relevant legal provisions and the regulations and guidelines of authorities and trade associations.
- Release for production - in particular on the basis of specimens or specifications from IS - does not include the waiver of warranty claims and/or claims for damages.
- After IS has released the production, changes of any kind may only be made with the written approval of IS.
- The passing on of orders to third parties is not permitted without the written consent of IS. Irrespective of its other statutory claims, IS may withdraw from the contract or claim damages in lieu of performance if the supplier has been set a reasonable deadline for self-performance and this has expired unsuccessfully.

IX. ACCEPTANCE AND PASSING OF RISK

- The risk of accidental loss or incidental deterioration shall pass to IS at the time of receipt of the product. The receipt of the products is not considered as acceptance within the meaning of the statutory provisions. Upon delivery, delivered goods shall become the property of the purchaser. The supplier guarantees that no rights of third parties (e.g. reservation of title, lien) exist and indemnifies IS in this respect against claims of third parties.
- In the event of agreed installation and/or assembly of the product, the risk shall pass to IS upon successful completion of acceptance. Commissioning or use, even within an agreed trial run, shall not replace the declaration of acceptance.
- IS will only accept excess or short deliveries of up to 5 % of the ordered quantity in the case of customary products. In the case of special products, short deliveries are not permitted. Unless otherwise agreed in writing, overdeliveries shall not exceed 2%.

X. OBLIGATION TO FIVE NOTICE OF DEFECTS

- The products are inspected for obvious defects in the incoming goods inspection. Hidden defects shall be notified by IS as soon as they are discovered after the proper course of business.
- IS is entitled to return defective products to the supplier free of charge and to demand reimbursement of the invoice amount as well as a lump sum for expenses of 5% of the purchase price. If the defect can only be noticed during treatment or processing or during commissioning, IS shall be entitled, without prejudice to its other claims, to claim compensation for the fruitless work incurred. The contracting parties are at liberty to prove higher or lower expenses.

XI. WARRANTY, CLAIMS FOR COMPENSATION AND INSURANCE

- The supplier warrants that the delivery has no defects which could impair its value or its suitability and that none of the warranted characteristics are missing (hereinafter referred to as "material defect"). The warranty period shall be 24 months, unless otherwise agreed. It begins with the handover of the delivery item to IS or the third party designated by IS at the receiving location specified by IS. If acceptance is provided for by law or contract, the warranty obligation shall commence upon successful acceptance. If a defect occurs in the first 6 months of the warranty period, it is assumed that this defect already existed at the time of the transfer of risk, unless this assumption is incompatible with the nature of the item or defect.
- If the supplier has to perform on the basis of corresponding plans, drawings or other special information by IS, the conformity of the delivery with the requirements shall be deemed expressly assured. If the delivery does not comply with these requirements, IS shall be entitled to the rights under clause 5 immediately. By acknowledging receipt of deliveries and by approving submitted drawings, IS does not waive any warranty claims and other rights.

- If a generic debt exists, the supplier shall also bear the procurement risk to the extent that he is liable for the faultlessness of the goods regardless of fault.
- If the delivery is afflicted with a material defect, IS's claims shall be governed by the following provisions.
- Supplementary performance
 - The supplier shall replace all parts of a delivery for which a material defect occurs within 24 months of the transfer of risk. IS shall in principle also be entitled to choose the type of subsequent performance in the case of a contract for work and services. § Section 439 BGB (German Civil Code) applies accordingly.
 - A supplementary improvement requires the consent of IS.
- Rescission and claims for compensation
 - If the supplementary performance fails, IS shall be entitled to rescind the entire contract, reduce the purchase price and/or claim damages.
 - In the event of a risk to operational safety or the risk of unusually high damages or the maintenance of IS's ability to deliver vis-à-vis the customers, IS may, in addition to its statutory claims for defects - after informing the supplier and a reasonable period of grace which has elapsed without success - carry out the rectification itself or have it carried out by third parties. Any costs arising therefrom will be borne by the supplier. In this regard, the statutory provision on self-performance in the case of a contract for work and services (§637 BGB) shall apply mutatis mutandis to the purchase contract.
 - Within the framework of liability for damages based on fault, the supplier shall also bear the costs incurred in connection with subsequent performance, in particular the necessary installation, dismantling and inspection costs. IS may demand compensation from the supplier for expenses incurred by IS in relation to its customer for the purpose of supplementary performance (in particular the transport, travel, labour and material costs incurred), if the defect asserted by the customer was already present at the transfer of risk to IS. The supplier will bear the costs and risk of returning defective delivery items.
 - The supplier shall be liable to IS for all damages and expenses incurred directly or indirectly as a result of the material defect. The supplier shall also be liable to pay compensation for expenses incurred in the course of an extended incoming product inspection if at least parts of the delivery were identified as defective as a result. This also applies to a partial or complete inspection of the deliveries received in the further course of business at IS or the customers of IS.
 - Furthermore, IS shall be reimbursed by the supplier for any expenses incurred by IS in the run-up to or in connection with events of liability for defects in order to prevent, avert or mitigate damage at an early stage, in particular recall actions.
 - In addition, IS shall be reimbursed by the supplier for any expenses which IS has to bear legally vis-à-vis its customers and which are attributable to the material defect of the Delivery.
- Statute of limitations
Irrespective of any statutory limitation periods, warranty claims shall become statute-barred within three years of the transfer of risk or shall become statute-barred 24 months after the notice of defects has been lodged within the warranty period, whichever is the longer. Claims due to defective construction work and due to defects in items which have been used for a building in accordance with their usual use and which have caused its defectiveness shall become statute-barred at the earliest 5 years after acceptance of the construction work or delivery of the items. If the supplier fulfils his obligation to subsequent performance by remedying the defect, the limitation period for this service shall begin anew after acceptance of the work to remedy the defect. If the supplier fulfils his obligation to subsequent performance by supplying a replacement, the limitation period for the product/work supplied as replacement shall begin anew after delivery/acceptance. With regard to defects of title, the limitation period shall be three years. This limitation period shall commence at the end of the year in which the claim arose and IS becomes aware of the circumstances giving rise to the claim and of the debtor's person, or should have become aware of them without gross negligence, irrespective of the knowledge or grossly negligent ignorance within ten years of their occurrence.
- The supplier is obliged to take out appropriate insurance cover for the risks of this clause XI. for the duration of the supply relationship. At IS's request, the supplier must provide evidence of this.
- The statutory rights shall remain unaffected.

XII. EXTENDED RIGHT OF RESCISSION

- IS shall be entitled to rescind the contract if the supplier does not fulfil its obligations under these terms and conditions after setting a reasonable deadline and IS proves to the supplier that there is no longer any interest in the service in whole or in essence due to the omitted action.
- Furthermore, IS shall be entitled to withdraw from the contract if IS is unable to accept the goods for reasons for which IS is not responsible and proves this to the supplier.
- If the supplier does not suspend payments only temporarily or if bankruptcy proceedings or judicial or extrajudicial composition proceedings are instituted against his assets, IS is entitled to withdraw from the contract without prejudice to other rights.

XIII. INDEMNIFICATION FROM THIRD PARTY CLAIMS

The supplier shall indemnify IS against all claims made by third parties against IS due to material defects, defects of title or other defects of a delivery made by the supplier and shall reimburse IS for the necessary costs of any legal proceedings necessary in this respect.

XIV. PROVISION OF PRODUCTION EQUIPMENT

1. Unless otherwise agreed in writing, tools, moulds and the like as well as software and test procedures which have been manufactured and/or developed in whole or in part at the expense of IS become the property of IS upon manufacture.
2. These are to be kept carefully by the supplier and handed over to IS at any time upon request.
3. Materials, parts, containers, special packaging, tools, measuring instruments or similar provided by IS remain the property of IS.
4. In the cases of §§ 947 and 948 BGB (German Civil Code) (processing, connection, mixing), the supplier transfers ownership or co-ownership of the new goods to IS already now and keeps them for IS. Should the transfer of ownership to IS not take place for any reason, the supplier hereby assigns to IS any claims arising from § 951 BGB (German Civil Code).
5. Clause 5 (4) shall also apply to copies of production equipment made available. Furthermore, these may only be produced and made accessible to third parties with prior written consent by IS and may not be used for purposes other than those agreed.

XV. INTELLECTUAL PROPERTY

1. IS retains ownership of all documents, samples, drawings, models, samples, tools, moulds, production facilities, measuring and testing equipment, materials provided, works standard sheets and the like as well as software and test procedures which have been manufactured and/or developed in whole or in part at the expense of IS and/or which are handed over to the supplier for the provision of services. The supplier may not reuse, duplicate or make available to third parties any information on products to be manufactured or services to be rendered specifically for IS, in particular their models, drawings, means of production, etc., for other purposes; such information shall be regarded as a trade secret and shall be kept by the supplier with the due care and diligence of a prudent businessman free of charge and separate from other goods in his possession, marked as IS property and kept absolutely secret. If a contract is not concluded with the supplier, all documents, including all copies and duplicates, must be returned to IS immediately without being requested to do so, otherwise this must be done after completion of the order or at the request of IS.
2. Clause XV. 1 shall not apply insofar as this concerns generally known knowledge.
3. In the event of a breach of these obligations, a contractual penalty of EUR 25,000 shall become due immediately for each case of breach. The Supplier reserves the right to have the appropriateness of the amount of the contractual penalty determined by a court. Any contractual penalties paid shall be set off against claims for damages.
4. The Supplier shall be liable for all damages incurred by IS as a result of the breach of one of these obligations; criminal prosecution shall remain reserved.
5. The approval of plans, execution drawings, calculations, etc. shall not affect IS's claims for defects. IS shall be exclusively entitled to all rights of use to drafts, proposals, drawings or information of any kind. Articles manufactured by IS according to the documents of IS may not be made accessible to third parties by the supplier, nor may they be transferred or sold.
6. The processing or transformation of the material provided by IS shall be carried out for IS. IS becomes the direct owner of the new or transformed object. Should this not be possible for legal reasons, IS and the supplier agree that IS shall become the owner of the new object at any time of processing or transformation. The supplier shall store the new item for IS free of charge with the diligence of a prudent businessman.
7. Moulds, tools, samples, artwork, etc. invoiced to IS shall become the property of IS upon payment; they shall be kept by the supplier for IS free of charge and shall be surrendered upon request.

XVI. THIRD-PARTY RIGHTS

1. The supplier guarantees that the delivery does not infringe any commercial or other rights of third parties at home or abroad.
2. In the event that a third party asserts claims for infringement of its industrial property rights, the supplier shall indemnify IS against such claims. In addition, the supplier shall be liable for any further damage incurred by IS as a result of an infringement of such rights. IS is entitled, taking into account the due diligence of a prudent businessman, to obtain the consent of the entitled party to the contractually agreed use of the relevant delivery/service at the expense of the supplier.
3. If copyrights arise with regard to work ordered by IS, the supplier grants IS the exclusive and transferable right of use, unlimited in time and space. This also applies, as far as legally possible and economically feasible, to any copyrights of third parties commissioned by the supplier. Otherwise, the supplier must inform IS immediately in writing.

XVII. SOFTWARE

1. If the scope of delivery contains non-standardised software, the supplier undertakes to make changes and improvements to the software for a period of 5 years from delivery of the product, against reasonable reimbursement of costs. If the software originates from a sub-supplier, the supplier shall obligate this sub-supplier accordingly.
2. If the software or the data carrier from XVII. (1) is afflicted with a material or legal defect, IS can assert the claims regulated in clauses XI. and XII. with regard to the software or the data carrier.

XVIII. DATA PROTECTION AND CONFIDENTIALITY

1. IS shall be entitled to process the data about the supplier received in connection with the business relationship for its own purposes in accordance with the General Data Protection Regulation and the Federal Data Protection Act. Claims for damages based on the handling of such data are excluded to the extent permitted by law.
2. Furthermore, the supplier is obliged to treat all commercial and technical information which is not generally known and which becomes known as a result of the business relationship as confidential and not to pass it on to third parties.

XIX. PLACE OF PERFORMANCE AND JURISDICTION

1. The place of performance shall be the place of delivery specified by IS.
2. The contractual relationship shall be governed by German law with the exception of the conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. If the supplier is a merchant, the place of jurisdiction shall be Munich, subject to a deviating exclusive place of jurisdiction. However, IS shall also be entitled to sue the supplier at another jurisdictional court. The law of the Federal Republic of Germany shall apply.
4. Should a provision be or become invalid, this shall not affect the validity of the other provisions.