

**General Terms and Conditions of Delivery**  
**imtech GmbH & Co. KG**  
 Status: October 2009

**§ 1 Validity of General Terms and Conditions of Delivery**

1. These General Terms and Conditions of Delivery, complementary to other contract agreement, shall apply to all commercial transaction of imtech GmbH & Co. KG, hereinafter imtech, and the buyer, customer or purchaser, hereinafter customer

imtech does not accept other conditions - also in case of unconditional performance or payment acceptance - unless imtech has expressly agreed to their validity in writing.

2. These General Terms and Conditions also apply to all future business without further involvement until new General Terms and Conditions of Delivery are adopted by imtech.

**§ 2 Consulting**

imtech shall advise the Client only upon his or her explicit wish. In statements omitted there is no advice.

The advisory services of imtech are based solely on empirical values from within the company and include the state of the science and technology only non-binding.

The advice from imtech extends only to the quality of their products, not their use by the customer or their own customers; nevertheless the advice given for application by client is non-binding.

The advice given by imtech extends as product-and service-related advice exclusively to products created and services provided by imtech: contract-related advice.

It does not extend to consulting not related to a contract, i.e. those explanations that are given without the need for services to be provided by imtech.

**§ 3 Conclusion of Agreement**

1. imtech's offers are subject to change, they are an invitation to tender. Information in brochures, catalogues and technical documentation are not binding and they do not relieve the customer from their own investigations.

2. Essentially, the order placed by the customer represents the offer for conclusion of Contract.

The order should contain all information for order execution. This applies to all supplies, services or work performed by imtech. These include in particular, but not exclusively, information about item description, quantity, size, material, material number, material composition, pre-treatment, treatment details, treatment instructions, heat and surface treatment, storage, standards, and all other technical parameters and physical characteristics.

Missing, incorrect or incomplete information shall be considered as expressly not arranged and shall not create obligations on imtech, neither in the sense of fulfillment and warranty nor for the purposes of claims for damages. Should the order issued by the customer differ from the offer made by imtech, the Client will indicate the differences separately.

3. imtech is entitled to obtain any additional information that serve the proper performance of the Agreement.

4. Orders shall be issued in writing, orders transmitted by telephone or in some other electronic manner are executed at Client's risk.

5. The adoption of the order should take place within 10 working days after receipt of order, unless a longer ac-

ceptance period is specified.

6. The services of imtech result from the order confirmation.

7. imtech reserves the right to carry out processing of items or services provided at no extra cost to the customer in some other company or have it carried out.

**§ 4 Order modifications**

1. If the Customer wishes to change items or services to be provided after the Agreement has been concluded,, this will require a separate contractual agreement. Machine downtime costs conditioned by the change shall be borne by the Customer.

2. In case of missing or incorrect information, imtech shall reserve the right to adequately change the items or services to be delivered. Disadvantages caused by the missing or incorrect information, particularly additional costs or damages, shall be borne by the customer.

3. Technical changes to items and services to be delivered that do not compromise the aims of the agreement are subject to change.

**§ 5 Delivery period**

1. If a delivery or service period is agreed, this begins with the dispatch of the order confirmation, but not before complete clarification of all details of the order and the proper performance of all obligations of the Customer, the same applies to delivery or performance dates.

By mutual changes of the order subject, the delivery or performance deadline as well as the delivery or performance dates are to be arranged anew.

This also applies when the ordered item has been renegotiated after conclusion of Contract, without a change of the ordered item being made.

2. Delivery or performance deadlines and delivery or performance dates are subject to the defect-free and timely deliveries and unforeseen production problems.

3. The delivery or performance time is considered as complied with if up to its expiry the delivery or service item has left imtech's plant or imtech has given notice for collection.

4. If delivery or performance is delayed by the customer, imtech may charge, for every month commenced, storage costs of 0.5%, however a maximum of 5% of the power supply or price.

Contract parties are free of the burden of proof of higher or lower storage costs.

imtech has the power to determine, at the Customer's cost and risk, a suitable depository location and to ensure the delivery or service items.

5. imtech is entitled to deliver the agreed items or services prior to agreed time.

6. Partial deliveries or service are allowed and may be settled separately.

**§ 6 Force majeure**

In the event of force majeure, delivery and performance deadlines of imtech are extended by the duration of the occurred disorder.

This includes, but is not limited to, business interruption, strikes, lockouts, traffic congestions, acts of higher authority at imtech or preliminary suppliers.

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Manager: Mister Ivica Mataija District court Freiburg - HRA 602819 Tax number: DE 814601943	Bank connection: Sparkasse Villingen-Schwenningen Deutsche Bank Villingen-Schwenningen Bank code number: 694 500 65; Account number: 102 450 694 700 39; Account number.: 128 - 165 IBAN: DE16 6945 0065 0000 1024 50 IBAN: DE48 6947 0024 0012 8165 00 SWIFT/BIC-Code: SOLADES1VSS SWIFT/BIC-Code: DEUTDEDB694	General partner: imtech Verwaltungs GmbH District court Freiburg - HRB 603062

This applies also when these circumstances occur in cases when imtech was already in default.

imtech shall immediately inform the Customer about the beginning and end of such hindrances. If delivery or performance is delayed by more than six weeks, both the customer and imtech are entitled to withdraw under the scope of services affected by the performance.

#### **§ 7 Prices, payment**

1. Unless otherwise agreed, the agreed prices are in € "ex works" plus VAT, customs, freight, special packaging and transport insurance costs.

An insurance of goods to be sent is done by imtech only on request and at the Customer's expense..

2. imtech is entitled to change the agreed price accordingly, if there is an increase of cost after the conclusion of the Agreement, particularly due to wage contracts, material and energy price changes.

3. imtech is entitled to change the agreed price accordingly if before or during the performance of the offer modifications arise, in that the information or documents provided by the Customer were faulty or some other changes are desired by the Customer.

4. imtech is entitled to demand a reasonable advance payment at conclusion of Agreement. Interests are not refunded for that.

5. Invoices are payable within 14 days after receipt by the customer with a 2% discount, or after 30 days without deduction. In the case of non-payment, the Customer will be in default after 30 days without further warning.

6. imtech explicitly reserves the right of acceptance of bills of exchange or checks. Bills of exchange and checks are accepted subject to the approval of imtech only on account of performance and shall only be accepted as payment after crediting.

7. If there are several accounts receivable of imtech towards the customer and if the payments of the customer are not made on a particular claim, imtech has the right to determine onto which of the accounts receivable is the payment made.

8. In cases of delay in payment, deferred payment or instalment, imtech is entitled to demand default interest rate of 8 percent per year above the base rate and withhold further services until settlement of all due invoices. The proof of a greater damage is reserved.

9. If there are reasonable doubts about solvency or creditworthiness of the Customer, imtech is entitled to demand advance payment or an appropriate guarantee for the services to be delivered by the Customer.

If the Customer is not willing to pay in advance or to grant security, imtech is entitled, after a reasonable period, to withdraw from such contracts and to require compensation for non-performance.

10. Granted terms of payment will cease and accounts receivable are due and payable immediately, if the opening of insolvency proceedings is requested over the assets of the customer or if the client has provided incorrect information regarding their creditworthiness or other justifiable doubts as to solvency or creditworthiness of the customer.

11. Rights of set-off are granted to the Customer regarding his or her claims against imtech only if the counterclaim is recognized or legally established.

The abandonment of claims directed against imtech must be approved by imtech.

12. A right of lien of the customer only exists if the counterclaim is based on the same contract relationship and is recognized or legally established or if imtech has substantially violated their obligations under the same contract despite a written warning and has not offered adequate security.

If a service provided by imtech is undisputedly defective,

the Customer is entitled to retention only to the extent of the amount withheld in proportion to the defects and the estimated cost of repairing the defect.

13. The payment dates shall remain even when there are delays in the delivery by no fault of imtech.

14. In case of new orders, imtech is entitled to, in addition to the contract price for the delivered item, charge reasonable and customary one-time programming and scaffolding costs for the delivered item.

15. Initial samples made for the Customer are charged to the Customer, even if series order is arranged.

#### **§ 8 Place of execution, acceptance, passing of risk, packaging**

1. Place of execution for commissioned services is Bad Dürkheim (Germany). Unless otherwise agreed, the Customer will pick up the goods after completion there.

2. The Customer is obliged to accept the goods as soon as they are notified of the completion of the ordered services by imtech.

If the Customer does not accept the goods within 2 weeks after notification, the acceptance is deemed to have occurred.

3. The risk of destruction, loss or damage to the goods shall pass onto the customer with the notification of the completion of the product.

If the shipping was agreed, the risk will pass over onto the responsible transporter with dispatch of the goods or their handing over.

4. Unless another agreement has been reached, imtech determines the nature and scope of the package. Disposable packaging may be disposed of by the Client.

5. For supply orders with a minimum weight of 150 kg, imtech agrees to use packaging containers of the customer with appropriate labelling. This also applies to pallets (Euro pallet and one-time) and stacking frame, which are managed by imtech via returnable account.

6. If the shipping is conducted in returnable packaging, the packaging must be returned carriage free within 30 days of receipt of the delivery. . Loss and damage of the returnable packaging are to be covered by the Customer. Returnable packaging must not be used for any other purposes or for retaining any other items. They are intended only for the transport of the goods supplied. Labels must not be removed.

7. In case of damage or loss of goods in transit, an inventory control should be arranged immediately and imtech should be informed of that. Claims for any damage in transport must be made at the forwarding agent by the Customer immediately.

#### **§ 9 Goods delivery, reception inspection by imtech**

1. imtech shall not be liable for damage caused by inaccurate labelling and marking of the goods .

2. Goods to be processed are examined by imtech for obvious damage. imtech is not obliged to undertake further controls. Detected defects are indicated to the Customer within 10 working days from discovery of the defect.

3. The Customer is obliged to replace any damages including lost profits arising to imtech through the provision of unusable material.

#### **§ 10 Inspection and complaint obligation**

1. All claims of the Customer due to faulty goods or services require that the inspection and complaint obligation has been duly complied with pursuant to § 377 of the German Civil Code. Notice of defects must be made in writing.

If a deficiency in the goods could not be discovered at receipt, further processing of the item and service of delivery must be set up immediately upon discovery of

such.

The burden of proving the existence of a hidden defect is carried by the customer..

2. The provision of § 377 of the German Commercial Code shall apply accordingly to services and works,
3. If imtech has given no guarantee for the quality of the work or has unwillingly concealed a defect, the rights of the Customer are excluded on the basis of a defect after completion of the agreed acceptance by the Customer if the Customer had not reprimanded the defect despite the fact that it could have been determined at the agreed acceptance.
4. The Customer must give imtech for the examination of the alleged defect sufficient time and opportunity, especially to hand over the goods for that purpose. When complaints are unfounded, imtech reserves the right to burden the customer with shipping and handling costs and the costs of inspection.
5. The complaint does not relieve the customer of compliance with their payment obligations.

#### **§ 11 Guarantee**

1. If there is a defect in the supplier products by imtech, imtech is entitled to opt either for defect removal, replacement or credit note.
2. The repair may, after consultation with imtech also be conducted by the Customer. Claims by the Customer for the purpose of supplementary performance, in particular transport, travel, labour and material costs are excluded, if the expenses increase because the goods were taken to a place other than the branch office of the customer.
3. Excess and shortage in quantities up to 10% of the agreed order quantity are conditioned by the manufacturing process and do not represent a fault in supply.

#### **§ 12 Defects of title and trademark rights**

1. Orders executed according to drawings, sketches or other information given to imtech run on client's risk. If imtech as a result of the execution of such orders encroaches third party's trademark right, the customer shall exempt imtech from claims of these holder of rights.. Any further damage is carried by the client.
2. The liability of imtech for any violations of intellectual property rights, which are connected with the items and services to be provided or in combination or use of the items and services to be provided with other products is excluded.
3. In the case of defects of title imtech shall be entitled upon their own choice to:
  - obtain the necessary licenses with respect to the violated rights
  - or eliminate the deficiencies of the items or services to be provided by providing an object of supply or service with a reasonable amount of changes for the customer.
4. The liability of imtech for the violation of any third party trademark rights extends only to those rights that are registered and published in Germany.

#### **§ 13 Liability**

1. In the case of simple negligence, imtech is liable only for breach of an essential contractual obligation. In case of gross negligence, imtech is also liable for breach of non-fundamental contractual obligations. In the above cases, the liability is limited to typical, foreseeable damage.
2. Damages for wilful violation of contractual obligations by imtech, claims for personal injuries and claims from product liability laws are subject to the statutory provisions.
3. imtech is liable for contractual claims in accordance with the contractual liability.
4. Any further liability for compensation than under the

above regulations is excluded.

5. Statutory recourse actions by the Customer against imtech may exist only insofar as they have made no further agreements with the Customer that go beyond statutory defect and damages claims..
6. A liability of imtech is excluded if the customer has in turn effectively limited liability to their customer.
7. If the liability of imtech is excluded or restricted, this also applies to the personal liability of employees, workers, co-operators, agents, servants and agents of imtech.
8. If the liability is excluded or limited in accordance with the above mentioned, the Customer is obliged to exempt imtech at first request from third party claims.
9. In addition, the statutory provisions apply.
10. The Client is obliged to immediately inform imtech parties in writing about any claims by third parties and reserve imtech any protective measures and settlement negotiations.

#### **§ 14 Electrical and Electronic Equipment Act/RoHS**

1. Directive 2002/95/EC (RoHS) and the Electrical and Electronic Equipment Act include a prohibition of the use of certain environmentally hazardous substances, such as lead, which in certain electrical and electronic equipment may no longer be used.
2. Therefore, the Customer has to check before placing the order if the affected pieces fall after further processing within the scope of the Electrical and Electronic Equipment Act and say if this is the case. Unless imtech receives notification, imtech shall assume that the parts were not built in or associated with these products, and which are to be assigned to the product catalogue in § 2 paragraph 1 of the Electrical and Electronic Equipment Act.
3. The liability of imtech towards the Customer is excluded, in breach of the Electrical and Electronic Equipment Act, provided that the breach is based on a violation of the notification requirement of the Customer. Should due to this breach claims be brought against imtech by a third party, the Customer has to exempt imtech from these requirements.
4. If pieces that were not covered after further processing by the scope of the Electrical and Electronic Equipment Act, fall in particular through subsequent legislative changes in its scope and if the client informs imtech of this, this is considered a change in order in the sense of § 4 of these general terms and conditions. Costs incurred to imtech, especially for production changes are charged to the customer.

#### **§ 15 Limitation period**

1. The limitation period for claims and rights due to defects in products, services or work performed by imtech and the resulting damage is 1 year. The beginning of the limitation period is governed by the laws. This does not apply if the law in the cases of § § 438, par. 1, No. 2, 479 and 634 a par. 1 No. 2 of the German Civil Code prescribes longer periods..
2. The limitation period according to preceding paragraph 1 shall not apply in the case of intent, if imtech has fraudulently concealed the defect, with claims for damages for personal injuries or liberty of a person, for claims under product liability law and in a grossly negligent breach of duty.
3. Measures of supplementary performance inhibit neither the limitation period applicable for original service provision nor do they let the limitation period start over.

#### **§ 16 Acquisition of property, retention of title, lien**

1. imtech retains the ownership of all contract items until full settlement of all claims is made, to which imtech is entitled from the business relationship with the Customer.

imtech reserves all property and copy rights for pictures, drawings, calculations and other (technical) documents.

2. If property owned by imtech is processed, combined or mixed with property owned by a third party, imtech shall acquire ownership of the new item in accordance with § 947 of the German Civil Code.

3. If processing, combining or mixing is conducted in such manner that the service by a third party must be regarded as a main item, imtech acquires property in relation to the value of imtech service to a third party service at the time of processing, combining or mixing.

4. If imtech acquires property of an item through its service, it reserves property to this item until all accounts receivable from the business relationship with the customer are paid.

5. The Customer is obliged to keep the reserved product carefully and if necessary, perform timely maintenance and repairs at own expense. The Customer has to insure the reserved product at his own expense against loss and damage. Damages resulting from a damage event are to be ceded to imtech.

6. The Customer is entitled to resell the thing which stands in (co-) ownership of imtech in an ordinary course of business as long as they fulfil their obligations under the business relationship. In this case, the claim resulting from the sale shall be assigned to imtech in a proportion in which the value of the imtech performance secured through retention of title stands to the total value of sold goods. The Customer shall be entitled to collection of this claim even after the assignment. The power of imtech to collect this claim by itself remains unaffected.

7. The Customer's right to dispose of the property under retention of title by imtech and to collect the assigned accounts receivable expires as soon as they no longer meet their payment obligations and / or an application is filed for the commencement of insolvency proceedings. In any of the above mentioned cases, as well as in any other breach of Agreement by the Customer, imtech is entitled to withdraw the goods delivered under reservation of title without prior warning.

8. The Customer shall inform imtech immediately if risks exist to the property acquired under reserve, particularly in bankruptcy, insolvency and enforcement actions. At the request of imtech, the Customer has to provide all necessary information on the inventory of goods in (co-) ownership of the goods and inform imtech on ceded claims, and the customers about the assignment. The customer supports imtech at all measures necessary to protect the (joint) ownership of imtech and pays the costs resulting from that.

9. Because of all claims under the Agreement, imtech is entitled to a lien on items of the customer that came into possession of imtech under the Agreement. The lien may be asserted because of claims from previous deliveries or services if they relate to the supply or service item.

For other claims from the business relationship, the right of lien shall apply if it is undisputed or legally established. §§ 1204 et seq. of the German Civil Code and § 50 par. 1 § § 1204 of the Insolvency Act apply accordingly.

10. If the realizable value of the security is higher than the requirements of imtech by more than 10%, so shall imtech release, on request of the Customer, in this respect securities of their own choice.

## § 17 Framework Agreements

If imtech has agreed on a framework agreement with the Customer, according to which the full annual requirement is made and stored when demanded, the Customer shall oblige to purchase the entire remaining goods still in stock or goods still to be produced after the course of one year from the date of order. Within the term of the framework agreement, a modification of the ordered supplies or services is possible only by a separate contractual agreement between imtech and the Customer.

## § 18 Non-disclosure

1. The Supplier undertakes to treat as confidential all aspects of the business relationship confidential. In particular, the Supplier shall treat as trade secret all non-public commercial and technical details that might be available to him through the business. Supplier's obligations of confidentiality shall not apply to any information or aspects of the business relationship that were already publicly known at the time of disclosure, as well as any information or aspects of the business relationship that were known to the supplier prior to receipt of the information from imtech .

The supplier ensures that their employees respect the legitimate interests of non-disclosure of imtech .

2. Reproduction of the goods that were handed over to the Supplier is allowed only in the context of operational requirements and copyright regulations.

3. All documents, whether whole or partial, shall not be made accessible to third parties or be used outside the purpose for which they were left to the Customer without written consent from imtech.

4. Even a partial disclosure of the business relationship with imtech to third parties may only take place upon prior written consent of imtech; the Supplier should also oblige the third party in the context of a similar agreement also to confidentiality.

The Customer may only with the prior written consent present itself in a business relationship with imtech.

5. The supplier is also bound to non-disclosure after the end of the business relationship.

6. The Customer agrees not to directly or indirectly carry out transaction with the suppliers of imtech that correspond to the item of delivery or service.

## § 19 Applicable law

1. Court of jurisdiction is at the discretion of imtech the court competent for the seat of imtech in Villingen-Schwenningen or the court of jurisdiction of the customer.

2. Place of execution for payments from business relationship to be made to imtech is Bad Dürkheim.

3. The law of the Federal Republic of Germany shall be exclusively applicable to the contractual relations with imtech. The applicability of the CISG - "Vienna Sales Convention" - is excluded.

4. Should parts of these General Terms and Conditions be invalid, the validity of the remaining provisions shall not thereby be affected. The contracting parties shall seek to replace the ineffective clause with another clause that come closest to the economic purpose and legislative intent of the original formulation.