

Translation from German

**General Terms and Conditions**

**1. General**

- 1.1. These General Terms and Conditions ("GTC") shall apply to all contracts, including future ones, for deliveries or other services to be rendered or obligations to be fulfilled or purchases made by entities of the IMR Group ("IMR"), even if effected without use of or express reference to these GTC. General terms and conditions of the relevant third party ("Contracting Party") shall not be accepted to the extent that they are in conflict with the present GTC. This shall also apply where IMR does not expressly object to them, for example in an acknowledgement or confirmation of an order.
- 1.2. These GTC shall apply to the entire range of services of the entities of the IMR Group, irrespective of whether IMR submits or accepts an offer, and to every subject matter of a contract which is manufactured/produced/made/executed/performed/rendered/delivered for approval.
- 1.3. Any deviation from these GTC shall be made in writing and requires IMR's and the Contracting Party's consent. Oral side agreements cannot amend these GTC.

**2. Offer; Ordering; Conclusion of contract**

- 2.1. All transactions concluded between IMR and a Contracting Party shall be made in writing in order to be effective.
- 2.2. Offers of IMR shall always be non-binding. Contracts and modifications of or amendments to contracts shall become binding only upon IMR's written confirmation.
- 2.3. Orders and changes to orders made by the Contracting Party vis-à-vis IMR shall in any case be binding for the Contracting Party.
- 2.4. These GTC shall be deemed agreed upon on conclusion of the contract. They will, in principle, be attached to every acknowledgement or confirmation of an order by IMR (physically or electronically) and are available for download from IMR's website [http://www.imr-metalle.com/Media/2020-04-02\\_AGBs-IMR\\_EN.PDF](http://www.imr-metalle.com/Media/2020-04-02_AGBs-IMR_EN.PDF) (in German [http://www.imr-metalle.com/Media/2020-04-02\\_AGBs-IMR\\_DE.PDF](http://www.imr-metalle.com/Media/2020-04-02_AGBs-IMR_DE.PDF)) at any time. This also applies to side agreements, amendments to or modifications of the contract which can only be agreed in writing.
- 2.5. If the Contracting Party wishes to assign rights or duties under a contract with IMR to one or more third parties before IMR has fulfilled its obligation, such assignment shall require IMR's prior written consent. If the Contracting Party violates this obligation, IMR shall be entitled to rescind the contract by giving

written notice without granting a grace period. The right to claim damages shall remain unaffected thereby.

- 2.6. The current acknowledgement or confirmation of an order from time to time by IMR shall in any case be decisive for the relevant content of the contract.
- 2.7. Any acceptance or rejection of a purchase order placed by IMR shall be confirmed or rejected by the Contracting Party in writing within three days of receipt of the order letter. If IMR receives no written acknowledgement/confirmation/rejection from the Contracting Party within fourteen days, IMR shall be entitled to cancel the purchase order free of charge.

### **3. Terms of payment; Prices**

- 3.1. The stated/agreed prices shall be net prices exclusive of VAT (where applicable), unless the transaction is a consumer transaction. Rebates and cash discounts shall not be granted unless agreed in writing.
- 3.2. Prices shall be ex works (Incoterms 2020). The costs of transportation, insurance, loading, shipment, transit, customs duties and official charges shall be borne by the Contracting Party.
- 3.3. The prices stated in the offers shall be non-binding. The prices stated in IMR's acknowledgement or confirmation of an order shall be decisive.
- 3.4. The price shall become due without any deduction on the day the goods are delivered unless expressly agreed otherwise. The definite payment period shall be one week (7 days) from the day of delivery/performance in fulfilment of the contract. In the case of late payment by the Contracting Party, late payment interest as defined in Section 456 of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*] shall be deemed agreed. In the case of late payment the Contracting Party shall bear any and all dunning and collection charges and any costs which are necessary for an expedient pursuit of the claim. IMR shall be entitled to charge a flat rate of up to EUR 360 for reminders.
- 3.5. If the Contracting Party fails to fulfil its payment obligations, IMR may call for immediate payment of all accounts receivable without regard to payment dates that may have been agreed. If after conclusion of the contract well-founded doubts about the Contracting Party's solvency or creditworthiness arise, IMR shall be entitled to ask for payment in cash or for collateral to be furnished prior to delivery or to rescind the contract (including with respect to outstanding parts of deliveries or services).
- 3.6. Even if defects are notified or counterclaims are asserted, the Contracting Party shall be entitled to offset claims of its against IMR, withhold or reduce payment or services only if the counterclaims are beyond dispute or have been ascertained in a non-appealable/final manner.

- 3.7. Invoices issued to IMR shall always include the purchase order number and the article number and state VAT separately; invoices which do not meet the requirements of Clause 3.7. cannot be approved for payment by IMR.

#### **4. Delivery/Service; Default**

- 4.1. Dates or periods of delivery/service may be agreed in a binding or in a non-binding manner and shall require written form. Delivery or service periods shall be the times confirmed by the Contracting Party upon IMR's purchase order. They shall, in principle, commence upon conclusion of the contract.
- 4.2. The Contracting Party shall be in default if and when the mutually agreed binding date or period is not observed.
- 4.3. If a non-binding date or period of delivery/service is not observed, IMR may ask the Contracting Party in writing to effect the delivery or provide the service within a reasonable period of time. After fruitless expiration of the grace period IMR shall be entitled to rescind the contract free of charge by giving written notice and to claim damages for non-performance/default.
- 4.4. If the Contracting Party becomes accidentally unable to effect the delivery/provide the service while being in default, it shall nonetheless be liable according to the foregoing principles, unless the damage had occurred even in the case of timely delivery/performance.
- 4.5. In the case of force majeure or business disruptions occurring with the Contracting Party or its supplier(s) which temporarily hinder the Contracting Party to effect the delivery/provide the service at the agreed date or within the agreed period without any fault of its, the said dates or periods shall be extended for the duration of the defaults in performance caused by such circumstances. Events of force majeure in accordance with these GTC shall include, in particular, war, war-like conditions, epidemics, authority measures and other events that cannot be averted with the diligence of a prudent entrepreneur. If such disruptions lead to a delay in performance of more than two months, IMR may rescind the contract. Other rights of rescission shall remain unaffected thereby.
- 4.6. IMR shall be entitled to delivery by instalments. IMR may issue a pro rata interim invoice for any instalment that has been delivered and ask for immediate payment by the Contracting Party.
- 4.7. In the case of default on the part of IMR the delivery periods or dates stated by IMR shall, in principle, be non-binding and in the case of default on the part of IMR shall not entitle the Contracting Party to claim damages on whatever legal ground, unless agreed otherwise. Events of force majeure shall release IMR, without making IMR liable for compensation, from the obligation to deliver at all or for the duration of the event of force majeure.
- 4.8. If IMR is late with performance of the contract, the Contracting Party may be entitled to rescind the contract after having granted a reasonable grace period.

The Contracting Party shall grant a grace period that is at least reasonable in writing and at the same time threaten to rescind the contract.

## **5. Retention of title; Setoff**

- 5.1. The subject matter of the contract which is delivered, assembled or otherwise handed over by IMR shall remain the property of IMR until full payment. This shall also apply where payments of the customer have been made for specifically advised accounts payable by IMR.
- 5.2. The Contracting Party shall take all actions which are necessary according to the relevant provisions to be able to substantiate the agreed retention of title for the benefit of IMR (registration in books, registers, etc.).
- 5.3. The Contracting Party shall store and mark the subject matter of the contract separately.
- 5.4. As long as title is retained, any disposal, pledging, transfer of ownership by way of security, processing or conversion, commingling, letting or other assignment or modification of the subject matter of the contract diminishing the security of IMR shall be permitted only upon IMR's prior written consent.
- 5.5. In the case of third-party access to the subject matter of the contract, including but not limited to attachments, the Contracting Party shall point out the retention of title and immediately notify IMR in writing or by phone for IMR to be able to enforce its ownership rights. If IMR incurs costs in this connection, the Contracting Party shall indemnify IMR against the same.
- 5.6. Accounts receivable by the Contracting Party from a third party under a sale of the subject matter of the contract or processing, mixing, commingling, amalgamation or combination of the subject matter of the contract with third-party property shall be assigned to IMR at the moment they develop, irrespective of whether the subject matter of the contract was resold unchanged or only after processing, mixing, commingling, amalgamation or combination with third-party property. The Contracting Party shall inform the acquirer of the subject matter of the contract (including a processed, mixed, commingled, amalgamated or combined object) about the assignment of those accounts receivable to IMR. Until the consideration or price has been paid in full the Contracting Party shall make note of this assignment in its books and on its invoices and advise its debtors thereof. The Contracting Party shall make available to IMR any and all records and information which are required for claiming the assigned accounts receivable and claims upon request.
- 5.7. Pledging or transfer of ownership by way of security of the subject matter of the contract prior to fulfilment of all obligations by the Contracting Party shall not be permitted. Already at this point the Contracting Party shall fully assign by way of security the accounts receivable from a third party (including all balances of receivables under current account agreements) that may arise from a resale of the subject matter of the contract or due to any other legal ground (insurance, tort) with respect to the subject matter of the contract. IMR

revocably authorises its Contracting Party to collect the accounts receivable assigned to IMR for its account in the Contracting Party's name. This collection authorisation may be revoked only if the Contracting Party does not fulfil its payment obligations properly. At IMR's request the Contracting Party shall provide the information about the assigned accounts receivable which IMR needs to assert those claims and shall inform the debtors about the assignment.

- 5.8. IMR shall be entitled to offset all of its claims vis-à-vis the Contracting Party against all claims of the Contracting Party vis-à-vis IMR and any of its group companies based on whatever legal ground. This shall also apply in situations where payment in cash has been agreed by one side and payment by bills of exchange has been agreed by the other side or where the payments to be offset against each other are otherwise similar. Those agreements may only concern the balance.
- 5.9. Unless a consumer transaction is concerned no counterclaims of whatsoever kind may be offset against claims of IMR.
- 5.10. IMR shall accept no retention of title for the benefit of the Contracting Party.
- 5.11. If accounts receivable by the Contracting Party (including in the case of setoff) are not due yet in a specific case, the Contracting Party already at this point agrees to early (including by way of setoff) settlement of those accounts receivable by IMR. However, this shall lead to no obligation of IMR or any of its group companies but only to a right to early payment of accounts receivable by the Contracting Party which are not yet due.

## **6. Passing of risk; Acceptance**

- 6.1. The risk of accidental loss or accidental deterioration of the subject matter of the contract shall in any and all cases pass to the Contracting Party once IMR keeps the subject matter of the contract, the material/product or the work ready for collection by the customer at the plant or warehouse, delivers it itself or has delivered it to a carrier. Any and all damage or loss that occurs after the subject matter of the contract has been dispatched or delivered to the carrier shall therefore exclusively concern the Contracting Party, even if it was caused by a fault of the carrier, third parties, by official measures or force majeure.
- 6.2. Independent of the mode of shipping agreed from time to time unloading shall always be in the Contracting Party's sphere of responsibility and at its cost and risk. Unloading shall always be effected without unnecessary delay, completely and without damaging/extraordinary soiling of the means of transport.
- 6.3. In the case of default in acceptance by the Contracting Party IMR shall in the case of specific performance be entitled to store the goods in a warehouse of IMR or a third party and IMR shall be entitled to a reasonable storage fee or to charge the Contracting Party the (storage) costs of third parties. IMR's right to call for immediate payment of the consideration for services rendered and to

rescind the contract after a reasonable grace period shall remain unaffected thereby.

- 6.4. If impossibility occurs while the Contracting Party is in default of acceptance or if the Contracting Party is solely or mainly responsible for the circumstances causing the impossibility, it shall in any case be liable to pay the consideration.
- 6.5. If the Contracting Party wishes to take out transport insurance at its cost, it shall notify IMR thereof in writing and, in addition, approves of any customary mode of shipping.

## **7. Delivery of products that are not as contractually agreed or defective**

- 7.1. The Contracting Party shall notify IMR of any defects in the subject matter of the contract in writing within 7 days of receipt. In any case the Contracting Party shall report patent defects immediately after receipt of the products (Section 377 UGB). Latent defects shall be notified immediately after they have become noticeable. The Contracting Party shall also notify IMR in the case of wrong or false deliveries. A notification as stipulated in this clause shall always include a written statement of the reasons for it and shall be served on IMR by registered mail.
- 7.2. If the Contracting Party fails to notify defects in time, it may no longer assert warranty claims, claims for damages on account of the defect itself or on account of error about the object's freedom from defects. If IMR is granted no opportunity to check notified defects or if the Contracting Party alters goods complained about without informing IMR, the Contracting Party shall lose its relating warranty claims, claims for damages and other claims for compensation (agency without specific authority, unjust enrichment).
- 7.3. If a notification of defects is not made in time, the subject matter of the contract shall be deemed accepted.
- 7.4. The Contracting Party shall have no claim to substitute delivery or improvement for subjects matter of the contract that have already been processed.
- 7.5. The Contracting Party shall immediately discontinue any use or processing of a defective subject matter of the contract which might cause further damage or which may make identification of the cause more difficult or prevent the same.
- 7.6. If the subject matter of the contract is defective at the time the risk passes, IMR shall at its choice be entitled to effect substitute delivery or improvement. Several improvements shall be permitted.
- 7.7. If the delivered subject matter of the contract is defective, IMR may ward off additional warranty claims or claims for damages on account of defectiveness of the same by repairing the defect or effecting substitute delivery free of charge. Claims for consequential damages may only be asserted on the basis of mandatory legal provisions.
- 7.8. Advance deliveries by or services of the Contracting Party to IMR shall be permitted only upon IMR's express agreement.
- 7.9. With respect to deliveries by and/or services of the Contracting Party for IMR the latter in any case reserves a period of at least fourteen days for inspection of incoming goods and notification of defects. IMR shall notify the Contracting Party of latent defects not later than fourteen days after they were noticed.
- 7.10. If due to special circumstances, such as, for instance, particular urgency, repair of defects/subsequent performance by the Contracting Party is no longer possible, IMR may render the same itself (or instruct others to do so) and shall in any case be indemnified by the Contracting Party.

## 8. Liability

- 8.1. IMR (including its legal representatives, staff, agents [*Erfüllungs- und Besorgungsgehilfen*], etc.) shall be liable vis-à-vis the Contracting Party for contractual and non-contractual liabilities for damages, indirect damages and/or consequential damages (including but not limited to loss of production and/or business interruptions), for compensation for lost profit, damage/loss actually suffered in the form of lost earnings, lost savings or lost interest as well as for merely pecuniary damages only if the damage is attributable to at least gross negligence and/or wilful intent, with the Contracting Party bearing the burden of proving IMR's fault. Recourse as defined in Section 933(b) of the Austrian Civil Code [*ABGB*] shall in any case be excluded vis-à-vis IMR. In addition, IMR's total liability, independent of the legal ground, shall be capped at a maximum of 100% of the contract value of the delivery/service that caused the damage (excluding extra charges for dispatch, packaging, warehousing or customs handling, if any).
- 8.2. This limitation shall also apply to damage to a subject matter of the contract which has been taken on by IMR for processing.
- 8.3. Claims vis-à-vis staff, representatives or agents of IMR on account of damage which they cause the Contracting Party with no relation to a contract they may have concluded with the Contracting Party shall also be excluded.
- 8.4. IMR may be liable if the subject matter of the contract does not possess the properties that are required by law or usually expected. IMR shall not be liable for patent defects that are not notified immediately. In the case of services or deliveries specifically requested and specified by the Contracting Party IMR's liability shall expressly be excluded and there shall be no further control duty of IMR. In the case of specific requirements regarding a subject matter of contract IMR shall be under no duty to check the order. In this connection the Contracting Party shall have both a duty to report and a duty to cooperate.
- 8.5. IMR's liability shall be excluded, in particular, for damage caused by improper handling or storage, excessive use, non-observance of operating or installation instructions, faulty assembly, putting into operation or maintenance by the Contracting Party or third parties who were not authorised by IMR or natural wear and tear to the extent that the event was the cause for the damage. Likewise, liability shall be excluded if necessary maintenance is not carried out, unless IMR had assumed a maintenance obligation by contract.
- 8.6. The Contracting Party shall be liable vis-à-vis IMR for any contractual and non-contractual liabilities for damages, even if caused by slight negligence, with the Contracting Party bearing the burden of proving the absence of fault.

## **9. Product liability**

- 9.1. IMR shall be liable for deliveries/services only if the defect existed as early as at the time the subject matter of the contract was put into the stream of commerce. The Contracting Party shall bear the burden of proving the defect in the relevant product. In such a case IMR shall, however, only be liable for personal injuries. IMR shall not be liable if the product was state of the art at the time it was put into the stream of commerce so that it was not possible to identify the defect as a defect at that time.
- 9.2. With respect to deliveries by/services of IMR the Contracting Party shall have a duty to monitor the market and to immediately inform IMR about any complaints or problems that have occurred and shall cooperate in recalls or repairs of defective products, if any. For any non-compliance with Clause 9.2 the Contracting Party undertakes to fully indemnify and hold harmless IMR.
- 9.3. If IMR purchases deliveries/services the Contracting Party shall be liable for any personal injuries or damage to property caused by defects in the product delivered by it which existed at the time it was put into the stream of commerce.
- 9.4. In any case the Contracting Party undertakes to fully assist IMR and to cooperate in repairing the damage and to indemnify and hold harmless IMR. This obligation of the Contracting Party vis-à-vis IMR shall also include defence against claims of third parties at the Contracting Party's costs.

## **10. Transportation; Exportation; Customs**

- 10.1. If the subjects matter of the contract are hazardous substances of any kind, the Contracting Party shall meet the statutory requirements, explain it to IMR and send IMR the specifically necessary documentation (safety data sheets, etc.) without request.
- 10.2. The Contracting Party shall obtain any permits that may be necessary/documents/certificates required by law concerning the subject matter of the contract in connection with importation or exportation of the same and transmit them to IMR in time.
- 10.3. The Contracting Party shall inform IMR in advance about such permits (as defined in Clause 10.2) in accordance with the export and customs regulations of the country of destination applicable from time to time and reasonably support IMR in obtaining/managing the same.
- 10.4. IMR reserves the right to advise the Contracting Party of special Austrian approval requirements, provided that the Contracting Party has asked IMR to provide such information timely in advance.

## **11. Intellectual property rights; Copyrights; Licences**

- 11.1. IMR is entitled to all copyrights, licences, intellectual property rights and other rights to data and information (both in electronic and printed form) that is included in the services/deliveries as well as rights to the content, design/layout/structure, concept and access interface, to the software or other delivery/service and related documentation.
- 11.2. Notices regarding current authors or other intellectual property rights which are included in the data or information of the deliveries/services may not be removed or concealed, including on printouts or in downloads.
- 11.3. Types of use other than those expressly stated in these GTC which infringe copyrights or other rights are prohibited and shall trigger liability of the Contracting Party in the case of infringement.
- 11.4. To the extent that software products are made available as a subject matter of the contract or the Contracting Party is enabled to use software products, the Contracting Party shall have a non-exclusive, non-transferable, non-licensable, restricted right to use the software products without changes for internal and contractually agreed purposes. As far as IMR is aware the software products made available or provided by IMR do not infringe upon any rights of third parties.
- 11.5. Unless a separate agreement is concluded, the Contracting Party shall be transferred no additional rights to software products.
- 11.6. No records made available by IMR to the Contracting Party, including but not limited to documentation on software products, shall be reproduced or disseminated/communicated in any way whatsoever for consideration or for no consideration.

## **12. Upstream suppliers - Software development**

- 12.1. With regard to potential upstream suppliers, in particular concerning the development of any software, the parties hereby stipulate that all rights pertaining to the same (commissioned works) shall arise with IMR or, if this is not the case, shall be transferred to IMR. The Contracting Party also agrees to make all necessary statements/execute all necessary documents in whatever form to grant and transfer to IMR all comprehensive rights relating thereto.
- 12.2. The rights granted in Clause 12.1 shall also include all rights to grant third parties sublicences as well as all rights to market and exploit the software, including but not limited to installation in machines.
- 12.3. All rights under Clause 12 shall be granted for an indefinite period of time and without restriction as to territory and for no consideration and shall be settled by the relevant contractually agreed entitlement to consideration.

### 13. Data protection

13.1. In the course of its business IMR uses data processing systems and stores data of its contracting parties to the extent that this is necessary for performance of the contract and permitted by the Austrian Data Protection Act [*Datenschutzgesetz/DSG*]. By means of its enquiry and/or purchase order the Contracting Party expressly agrees that any data which is transmitted to IMR electronically may also be stored and processed for advertising, consultancy and market research purposes. Such data will not be forwarded or disclosed to third parties unless this is required by law or necessary to fulfil contractual obligations.

In the case of purchase orders IMR shall ensure that a method will be used which is suitable for securing data traffic. In particular, IMR shall ensure that the Contracting Party's data will not become accessible to third parties in accordance with the foregoing provision and, above all, that third parties will not obtain knowledge of the name of the Contracting Party and its personal data at the same time.

13.2. In the case of conclusion of a contract all data related to the contractual relationship shall be retained until expiration of the period of retention prescribed by tax law (7 years), unless IMR is under a statutory or contractual obligation to store such data for a longer period.

13.3. The data concerning name, address, goods purchased and purchase date will be stored until the end of product liability (10 years). Data will be processed on the basis of the statutory provisions of Art 6(1)(a) (Consent) - separate statement and/or (b) (necessary for performance of the contract) of the GDPR.

13.4. Generally the Contracting Party has a right to information, rectification, erasure, restriction, data portability as well as to withdraw its consent and to object. If the Contracting Party believes that the processing of its data violates data protection law or that its rights under data protection law have been infringed in any other way, it may lodge a complaint with the supervisory authority. In Austria this is the Data Protection Authority [*Datenschutzbehörde*].

## **14. Secrecy**

- 14.1. The Contracting Party undertakes to treat as confidential any and all information, including but not limited to technical, commercial and/or business information, including prices and payment terms, formulas and product compositions, ideas, designs, electronically recorded data and product specimens, etc. provided to it by IMR or entities affiliated with IMR as defined in Section 189a Nos 6 and 7 *UGB* in connection with the business relationship and not to forward such information to third parties and to ensure that it will not come into the possession of third parties unless such information is or has become generally accessible or communicated to the recipient by a third party authorised to do so who is under no obligation to treat it as confidential or was demonstrably known to the Contracting Party before the date of receipt.
- 14.2. If the Contracting Party notices that information that needs to be kept secret has come into the possession of a third party or that a document to be kept secret has been lost or destroyed, it shall notify IMR thereof immediately.
- 14.3. Unless regulated otherwise by a separate contract the Contracting Party undertakes to refrain from exploiting the information received from IMR other than for the purposes agreed between the parties without express written consent.
- 14.4. The obligation to maintain secrecy shall extend to all staff and agents concerned, irrespective of the type and legal design of their employment. The Contracting Party undertakes to inform the aforementioned persons about the obligation to maintain secrecy and to put them under an appropriate secrecy obligation. The Contracting Party shall endeavour to keep the group of persons concerned as small as possible in the interest of secrecy.
- 14.5. The obligation to maintain secrecy shall not end upon termination of the business relationship. *Vis-à-vis* IMR the obligation to maintain secrecy shall in any case remain in force for thirty (30) years after termination of the business relationship.

## **15. Place of performance; Place of jurisdiction; Applicable law:**

- 15.1. The parties have agreed on Vienna as the place of performance of the relevant subject matter of the contract and for the Contracting Party's payment obligations unless agreed otherwise in writing in a specific case.
- 15.2. For all disputes arising out of or in connection with a contract, the competent court for Vienna, First District shall have exclusive jurisdiction. However, IMR is also entitled, at its own discretion, to assert claims against the Contracting Party before the court with subject-matter jurisdiction for the Contracting Party's registered office.
- 15.3. If any provision of these GTC or any provision under other agreements is or becomes ineffective or void, the effectiveness of all remaining or other provisions of these GTC or of all other agreements shall not be affected

thereby. The parties undertake to fill any gaps that may arise in accordance with the meaning and the presumed will of the parties.

- 15.4. All legal relationships (including bills of exchange and cheques payable) between the Contracting Party and IMR shall exclusively be governed by Austrian substantive law. Applicability of UN Sales Law/CISG and applicability of the conflict of laws rules of the Austrian Statute on Private International Law [*IPRG*] shall be expressly excluded.
- 15.5. The German version of these GTC shall be legally binding; the English version is for information only.

**IMR**

**April 2020**