

Selling and Delivery Terms of IPSEN INTERNATIONAL GMBH KLEVE

Unless other agreements are made, the following provisions or terms apply to all deliveries and services. Other terms and verbal agreements are only valid if they have been confirmed in writing by us. Should the customer's own purchase terms be contrary to these provisions, they require our explicit acknowledgement in writing.

Article 1

Offers and execution of contracts

- (1) Offers made by ourselves, our representatives or outside sales offices are not binding on our company in any way. Only upon our written confirmation is an order to be considered as having been accepted.
- (2) The terms and nature of the transaction are included in our written confirmation. Any alterations, additions or verbal agreements also require our written acknowledgement.
- (3) The information supplied in the firm's printed leaflets, offers and confirmations of orders, such as descriptions, illustrations, drawings, measurements and weights are based on careful research, but represent approximations only; unless it is explicitly stated, they should not be taken as binding.
- (4) Surpluses or shortages in weight, falling within the limits customary in the trade, do not entitle the customer to raise objections or demand reductions.

Article 2

Prices

- (1) Unless otherwise agreed the prices are quoted ex factory and do not include packing, loading costs and insurance.
- (2) Quoted prices are not binding and for firm prices explicit confirmation is required.
- (3) Should the prices of the material required for the manufacturing of our hardening equipment or the total cost of production change during the period between the date the contract has been signed and the date of delivery, we reserve the right to alter our invoice accordingly.

Article 3

Payment terms

- (1) Our terms of payment are net; payments should be made in EURO to our cash office.
- (2) Unless otherwise agreed payment is to be made as follows:
 - 40% value of the order at the time when the order is placed,
 - 30% value of the order 90 days prior to shipment,
 - 20% value of the order against shipping documents,
 - 10% value of the order when the machinery is installed and ready for operation, but not later than 90 days after delivery.
- (3) Any special agreements must be explicitly confirmed by us in writing.
- (4) If further credit is granted or if payment is delayed we shall charge interest for the period of the delay at the current interest rate together with charges at the same rates as charged by the banks for open account credits, minimum 8% above base rate of the EZB.
- (5) The customer may not withhold payment because of any claims he may have, and he may not set off payment against counter claims, unless this has been determined indisputably or legally binding.
- (6) Bills and checks may be used in settlement of accounts, but payment is not considered made until they are honoured; the costs of discounting and collection are to be borne by the customer.
- (7) Costs of installing and bringing the units into operational conditions are payable immediately on receipt of the invoice.

Article 4

Delivery time

- (1) The delivery time commences as soon as all the details of the order have been established and both parties have agreed on all terms of the transaction.
- (2) The delivery date is that date when the order is completed in the works. The keeping of the date depends on the customer fulfilling all his obligations, in particular meeting the agreed payment terms.
- (3) The delivery time may be extended for a reasonable period when unforeseen events, over which we have no control, occur. The same also applies if the approval of authorities or other parties for the carrying out of the order or the specifications of the customer are not received in time.
- (4) Any subsequent alterations required by the customer will interrupt the delivery time, which will recommence after the required alteration has been agreed upon.
- (5) No compensation of any kind for delay in delivery is payable, unless a considerable contract violation has been caused by us. In these cases we are liable as laid down in Article 6.
- (6) Delivery in instalments is permitted.

Article 5

Delivery and transport risks

- (1) The customer is to bear the costs of delivery.
- (2) Upon leaving our works the goods are transported at the risk of the customer, even if they are shipped free destination, F.O.B. or F.O.R.
- (3) Should the delivery be delayed through the fault of the customer, the risk is to be borne by him as from the day the goods have been made ready for delivery.
- (4) Insurance against damage in transit will be taken out at the specific request of the customer and at his expense. Otherwise the customer should insure the goods himself without being specifically requested to do so by us.
- (5) Transportation equipment (wooden supports, racks etc.) as well as packing material is charged at the cost to ourselves. It is not returnable.
- (6) The customer must bear the responsibility of the unloading.
- (7) Any irregularities arising out of the transportation are to be reported to us in writing immediately on receipt of the goods.

Article 6

Liability for defective goods and compensation

- (1) We accept liability for defective goods only in so far as we will replace F.O.R. Kleve without charge all parts which become unusable within 12 months after the delivery date.
- (2) Defects are to be reported to us in writing without delay.
- (3) Our liability is limited to faulty construction or defective workmanship. As regards defective material we accept liability only to the extent that the defect was such that we should have detected it, had we exercised proper care and attention.
- (4) Pre-condition of our liability for defective goods is a divergence of their central features compared to the features fixed in the contract. In case there are none specified, our liability depends on a lack of common features of the goods which restricts their usage defined by the contractual terms.
- (5) We accept no liability for damages arising out of normal wear and tear; nor shall we be held liable in cases of faulty or negligent treatment or where unsuitable servicing material have been applied.
- (6) The customer is to give us without charge the necessary time and opportunity to carry out all alterations that appear necessary and for the delivery of spare parts; furthermore, if we require it, he is to provide us with unskilled labour at his own expense.

(7) We are not obliged to repair any defects before the customer has met his payment obligations.

(8) We are not liable in the event of the customer himself carrying out any repair work or making any alterations.

(9) Where equipment has not been installed or brought into operational conditions by our own installation experts we will not accept liability if a subsequent claim can be traced back to faulty installation or inadequate work in bringing the unit into operational condition.

(10) Compensation claims of every kind, no matter on what less grounds they may be based, for direct or indirect damages, for consequential damages, especially for loss of profits and the like will not be entertained either for our own products or products acquired from outside parties. This also applies to installation and repair work undertaken by our personnel. The exclusion of compensation does not occur in cases, when the damage was caused by a considerable contract violation or by a severe negligence by legal representatives or executives of our company or the damage or contract violation has been caused intentionally by our employees.

A compensation for direct damages on the delivered equipment is limited to the amount of one (1) million euro, unless the damage incurred in a contract typical predictable type of damage.

(11) Over the guarantee period the customer must retain all the graphs of the gauges and regulating instruments, and put them at the disposal of our installation engineers and technicians at any time.

Article 7

Right of withdrawal and other rights

(1) The customer is entitled to withdraw from the contract if we do not correct a deficiency for which we are responsible within a reasonable period or if we are unable to effect any repair. No other claims of the customer will be considered, in particular no claims for compensation.

(2) If, after the contract has been drawn up, we learn that the customer's financial position is unsound, we are entitled to demand security for the payment or to withdraw from the contract by charging the expenses so far incurred by us.

(3) Except for the right to withdraw from the contract and the right to claim, as laid down in article 6, the customer may not raise any other claims against the supplier for compensation or exercise any other rights arising from possible disadvantages in connection with the contract or the unit delivered irrespective of the legal provision his claim is based upon.

Article 8

Retention of title

(1) We retain title to the unit delivered until all payments to be made under the contract have been received.

(2) The customer may neither mortgage the unit delivered nor pledge it as security. If the unit is mortgaged or seized or if other restrictions are imposed on it by third parties we must be informed without delay.

(3) If we demand that the units, to which we have retained title, be returned to us or if the delivered units are mortgaged by us, this shall not be construed so as to imply a cancellation of the contract.

(4) If units delivered are combined by us with other units so as to form a new unit it is agreed that the customer will transfer a proportionate part of the title of the new unit to us in the meaning of Article 947 paragraph 1 of the Civil Code and will keep the unit in custody on our behalf.

Article 9

Binding force of the contract

(1) Even though certain of the terms may not be legally effective, the contract as such will be considered binding. **The terms of the contract are to be interpreted solely in accordance with German law.**

(2) Any terms of the customer which are contradictory to these delivery terms will not be binding on us even though the order may have been based thereon and even though we may not have explicitly objected to them.

Article 10

Returns

(1) Units or spare parts may not be returned without our explicit approval and only in accordance with our transportation instructions. We reserve the right to charge the customer for the cost of returning the unit and for the cost of any repair if this may be required.

Article 11

Place of settlement and jurisdiction

(1) The place of delivery and payment is Kleve, Ndrh. 1.

(2) Legal issues directly or indirectly arising out of the contract and actions concerning bills are to be settled at Kleve, Ndrh. 1.

(3) We are also entitled to sue the customer at his principal place of business.

Special terms for deliveries which include the installation and bringing into an operational condition

(a) Unless otherwise agreed the price does not include the cost of installing and bringing the unit into an operational condition.

(b) We shall be refunded for any costs incurred on behalf of our technicians and engineers, in particular for overtime, Sunday and holiday pay. Travelling time and any waiting time will be considered to be working time.

(c) The customer is to certify the working time of our technicians and this will serve as a basis for the charge accounts.

(d) The cost of 2nd class rail travel of our technicians and for the transportation of their luggage and tools is to be refunded by the customer. For night travel, travel in foreign countries and all travel for engineers the cost of first class tickets will be charged.

(e) Special rates will apply for installation and bringing items into operational conditions in foreign countries.

(f) All necessary work on buildings to house our units must be completed before the installation so that the actual work of installation may be carried out immediately on delivery and without interruption.

(g) The customer is to provide a dry, lighted and lockable room, which is under supervision and guard, in which the parts, materials and tools etc. may be stored.

(h) At his own expenses the customer is to provide the following assistance when required:

- (1) Skilled and unskilled labour to the extent that we may require,
- (2) The necessary equipment and supplies for the installation,
- (3) Facilities for the unloading of railroad carriages and other means of transport and for the transportation of various items therefrom to the place of installation.

(i) The risk of transporting parts is to be borne by the customer.