

# Terms and Conditions of Sale and Delivery Issued by incco systems GmbH

## § 1. Application

- (1) These terms and conditions of Sale and Delivery shall apply to offers, contracts, deliveries, payments and warranty agreements made to business people, legal entities under public law, estate properties under public law and corporations owning public funds.
- (2) Deliveries and services shall exclusively be handled on the basis of the applicable order confirmation, any special agreements made in writing, and in accordance with the following conditions. Any other terms and conditions, particularly purchase terms and conditions, do not apply unless incco systems GmbH has approved of their validity expressly in writing.
- (3) Offers from incco systems GmbH are subject to change. An Agreement comes into effect with the order confirmation from incco systems GmbH in text form.
- (4) These Terms and Conditions also apply to all future deliveries and services until new terms and conditions of sale and delivery from incco systems GmbH come into effect.

## § 2. Conclusion of Agreement, Content of Agreement

- (1) The rights and obligations between us and contractual partners are determined exclusively on basis of these terms and conditions of sale and delivery. Our offers, deliveries and services shall also be exclusively subject to these terms and conditions of Sale and Delivery. Divergent business conditions of deviating terms and conditions of the Customer shall have no validity and shall not become a component of the contract. These shall also not be binding for us, if we have not acknowledged them in written form in an order confirmation or in a separate agreement
- (2) Our terms and conditions of sale and delivery shall be regarded as having been accepted at the latest with receipt of the delivery or with the performance of the service. Our offers are nonbinding and noncommittal if they have not been expressly characterized as being obligatory or containing a specific acceptance period. They shall have a maximum validity of thirty days, at most. Contracts shall be solely created by our written order confirmation or by performance of the order.
- (3) Technical and formal deviations from descriptions and details in brochures, offers and written documents, as well as changes in performance, construction and material in the course of technological progress shall be reserved, without the Customer being entitled to derive any rights therefrom. Details regarding our products (technical data, measurements and similar) do not constitute guaranteed qualities, unless such guarantee has been explicitly given in writing.
- (4) We reserve for ourselves proprietary- and copyrights in relation to samples, drawings, schematic or written representations of our products, cost estimates and similar, also in electronic form. They may not be made accessible to third parties without approval and our prior permission, and they shall be returned immediately upon request without delay. The reproduction of copies on paper or in electronic form is not permissible without our prior consent. Customer shall repair any damages to us which may ensue from the transgression of our property and copyrights, except, if proven that the damage occurred inadvertently.

## § 3. Prices, Payments

- (1) If not otherwise agreed upon, the prices quoted on offer shall apply ex works including loading and excluding packing and unloading. The statutory rate of value added tax at actual and in the respectively valid amount shall be added to the prices.
- (2) Packing shall take place in accordance with usual commercial practice; the packing costs shall be billed separately.
- (3) Customs, taxes or other statutory duties shall be borne by the Customer and shall be billed separately, in as far as nothing else has been explicitly agreed.
- (4) Customer shall be obliged to fetch the ordered article from our premises at his expense and risk Services to be rendered for delivery, installation and assembly shall be the subject of a separate agreement.
- (5) If our purchase costs, labour costs or other costs on our products increase during the time between the conclusion of contract and the delivery, then we shall be authorized to appropriately increase the agreed prices.
- (6) If not otherwise agreed upon, the following installment payments shall fall due without discount. One third of the contract price (plus value added tax) shall be due at conclusion of contract within 10 days, starting from the date of order confirmation. One third shall be due with the report of the status "Ready for delivery", within 10 days before delivery or assembly. One third shall be due after delivery or acceptance within 10 days.
- (7) The right to offsetting and retention of payments by the Customer shall be excluded, unless the counterclaim is undisputed or has been established legally final.

- (8) We are entitled to dispatch deliveries or to render still pending services only against advance payment or on the deposition of security, should it become known after conclusion of contract that circumstantial evidence exists to cause doubt of the credit-worthiness of Customer; doubt which could substantially endanger the payment of our outstanding arrears by Customer. Such payments shall cover all cases in which outstanding claims relating to particular contractual relationships or involving other special orders covered by the same basic agreement apply, are endangered.

## § 4. Delivery, Assembly

- (1) Agreements regarding an obligatory time of delivery or assembly (performance time) shall be carried out in writing. Our punctual performance presupposes, that all mercantile and technical questions have been settled between the Customer and us, and that the Customer has fulfilled all obligations incumbent upon him, such as the provision of required official approvals or down-payments. The performance time shall be duly extended, if Customer does not pay up his financial commitments or is late in providing technical details or supplying information on delivery and installation, or if permissions he is obliged to produce are still pending. Customer shall have the right to prove to us that we are responsible for any deadline transgressions.
- (2) Our delivery time shall be regarded as having been met, if our product has left the plant until the expiry of this time, or if we have reported readiness for dispatch until such time. In as far as an acceptance / approval has to be conducted, the date appointed for acceptance / approval shall be authoritative; this shall not apply for a justified rejection of acceptance / approval.
- (3) We shall inform the Customer immediately if we cannot perform on schedule.
- (4) We shall not bear responsibility for delays, such as in case of lack of energy and power supply, import or export difficulties, operational and traffic obstruction, strike actions, force majeure or delays, incorrect or unpunctual deliveries of our suppliers. In such cases liability on our part for non-performance shall be ruled out. The time of performance shall be appropriately prolonged. If we also cannot perform after appropriate prolongation, then we and also the Customer shall be entitled to find mutual agreement or rescind the contract. Customer claims for compensation shall be ruled out, except Customer proves that the delay have been caused by gross negligence or through deliberate inaction.

## § 5. Place of Delivery, Passing of Risk, Insurance

- (1) Place of delivery for all obligations resulting from our contractual relationship, is the location of our address, Erlenweg 12, 92521 Schwarzenfeld, Germany if nothing else has been designated.
- (2) Risk is passed to the Customer upon transfer of the delivery to the shipping company or carrier, albeit no later than when the delivery leaves the factory or warehouse. This also applies if a carriage paid delivery, ex works delivery, or similar arrangements have been agreed upon. Insofar as the acceptance of delivery is to be made, acceptance is authoritative for the passing of risk. Acceptance is due immediately by the acceptance date, alternatively after incco systems GmbH reports consent to accept. This shall also be valid, if we assume further performances, such as particularly if we bear the transportation costs or assume the delivery. The Customer may not refuse to accept delivery on account of a nonessential defect.
- (3) If shipping or acceptance is delayed or not undertaken as a result of conditions that are beyond incco systems's control, risk is passed to the Customer from the day of the delivery or consent to accept.
- (4) We shall be obliged to insure the product upon express request of the customer and at his expense.

## § 6. Reservation of Title

- (1) incco system GmbH reserves the right of title to delivered goods up to receipt of all payments due to incco systems GmbH (Secure Goods) arising from the business relationship with the Customer.
- (2) If the Customer defaults on a payment due date, incco systems GmbH shall be entitled to re-enter the goods in its inventory after issuing a dunning notice. incco systems GmbH may also repossess the goods without prior withdrawal from the Agreement. The Customer herewith agrees to allow incco systems GmbH to enter its premises without delay during normal business hours and repossess such goods. The same applies upon the Customer's submission of the statutory oath of disclosure for filing an arrest order to submit a statutory oath of disclosure by the Customer, or for a Customer's request to open insolvency process for the Customer's assets.
- (3) If the customer should be completely or in considerable extent in default of paying a due partial payment for more than ten days, and if an adequate

period of respite we have granted has expired fruitlessly, then we shall be entitled to demand the surrender of the Secured Goods by the customer, without having previously declared our rescission from the contract. The same shall apply, if insolvency proceedings have been instigated upon the assets of the customer, which have not been cancelled within ten days. If the customer does not comply with the demand to surrender the Secured Goods, or if loss or deterioration of the Secured Goods should be imminent, then we shall be authorized to take possession of the Secured Goods. We shall be entitled to enter into the location of the Secured Goods for this purpose. The customer shall bear the costs for the retrieval. We may utilize Secured Goods which we have recovered as we see fit and in the best way possible. In as far as the proceeds should exceed our protected demands, such excess shall be entitled to the customer.

- (4) inco systems GmbH shall be entitled to withdraw from the Agreement if the Customer acts contrary to the Agreement, in particular by defaulting payment. For returning goods as a result of cancellation or withdrawal, inco systems GmbH shall only be obligated to issue credit in the amount of the invoice value with a deduction of decreased value determined by equitable discretion as well as the return and disassembly costs, however at least over 30% of the invoice value. inco systems GmbH ensures higher credit if the Customer proves a higher recoverability of the value of the repossessed goods.
- (5) The Customer is obligated to take care of the goods; in particular the Customer is obligated to insure up to the replacement value for fire, water, and theft damage at the Customer's own expense. inco shall be authorized to insure the Secured Goods against theft, breakage, fire, water and other damages at the expense of the customer, provided that the customer does not submit proof to us, that he himself has effected an appropriate insurance. Through this, the customer already now transfers to us all claims directed towards the insurance.
- (6) The Customer is to inform inco systems GmbH immediately in case of seizure, confiscation or other act of disposal or encroachment by third parties.
- (7) The Customer shall be entitled to resell the delivered goods in accordance with proper, business practices. Seizure, charging as security or other acts of disposal is prohibited. If the Customer resells goods delivered by inco systems GmbH, regardless of the condition of such goods, the Customer shall cede to inco systems GmbH all receivables originating from mutual business relationships arising from the sale up to the value of the goods against its Purchasers with all ancillary rights to inco systems GmbH. The Customer shall be entitled to collect such receivables.
- (8) Entitlement to resale and collection of receivables can be revoked, if the Customer enters into default of payment or if the Customer financial circumstances or credit worthiness significantly deteriorates. Upon request, the Customer shall be obligated to disclose the withdrawal to its recipients unless inco systems GmbH does not inform the recipients of the Customer itself, and give inco systems GmbH the necessary information for the assertion of its rights against the Customer's recipients and surrender documents.

#### **§ 7. Warranty Claims**

- (1) In the event of a deficiency, the purchaser must inform inco systems GmbH immediately in writing.
- (2) The customer is obliged to inspect and examine the product immediately upon receipt. Recognizable defects shall be indicated to us in writing within one week after receipt of the product, or – if the defect appears at a later time - within one week as of discovery. If this does not happen, then the product shall be regarded as approved.
- (3) Our statutory liability due to defects shall be restricted to Subsequent Performance, i.e. as we may choose, the elimination of the defect or substitute delivery. The customer shall immediately grant us a sufficient opportunity for Subsequent Performance and shall not charge for doing so; we shall otherwise be freed from the liability for the consequences arising therefrom. Customer shall be entitled to eliminate the defect himself or to have it eliminated by third parties only in urgent cases, such as to uphold and preserve operational safety, to ward off disproportionately greater damages and cause unreasonably excessive damages. Customers are obliged to inform inco systems GmbH immediately. Expenses associated with such repairs can be submitted to inco systems GmbH for reimbursement. In any case, the customer shall return the exchanged parts to us. Goods which the Customer claims to be defective shall be returned to inco systems GmbH upon the request of inco systems GmbH and, where applicable, properly packaged with a packing slip indicating the order number.
- (4) If Subsequent Performance has failed, then the customer shall be entitled to decrease the service in return, or in case of considerable defects, to withdraw from the contract; this right of withdrawal shall not be applicable for construction work.
- (5) For newly produced objects and for work orders, including the accompanying planning- and supervisory services, we shall be liable for one year as of delivery or acceptance / approval. Excluded herefrom shall be buildings, including the accompanying planning- and supervisory services, as well as building materials, in as far as they are installed / incorporated; the statute period of limitation shall apply for these performances, provided

that the General Contractual Terms and Conditions for the Performance of Construction Work according to DIN 1961:2012-09, version December 2012 (VOB/B) have not been included.

- (6) Our liability shall be generally excluded for the sale of second-hand / used products.
- (7) Further-reaching claims of the customer because of defects beyond those described in the preceding numbers shall be excluded. We shall therefore not be liable for damages which have not arisen at the product itself, and not for other damages to the assets of the customer.
- (8) Any damages caused by any of the reasons listed below and for which we are not held responsible as a breach of duty do not constitute a right to claim under warranty: Inappropriate or improper use after passing of risk, particularly excessive use, incorrect storage, assembly, installation and startup by the Customer or third party, natural wear and tear, incorrect or negligent handling, unsuitable operating material, improper maintenance, replacement materials, use of unsuitable operating resources, inadequate construction work, inobservance of operating instructions, unsuitable operating conditions, particularly unsuitable chemical, physical, electromagnetic, electrochemical or electrical influences, climatic or environmental influences as well as excessively high or low ambient temperatures and damages which result from repairs or from other work of Customer or third parties which have not been explicitly approved by inco systems GmbH.
- (9) The period of limitation for warranty claims is one (1) year as of the beginning of the legal period of limitation.
- (10) Any additional claims are exclusively subject to § 7 of these Conditions.

#### **§ 8. Liability**

- (1) Our liability, regardless for which legal justification, shall be confined to firm intention and gross negligence.
- (2) All limitations of liability listed in Terms and Conditions of Sale and Delivery shall not be valid in cases of firm intention or gross negligence on our part or on the part of our vicarious agents, injuries to persons and damages, which have resulted from the lacking of a quality, which we have guaranteed.
- (3) Any other liability for damages other than those stated above is void, without taking the legal nature of the submitted claim into consideration. This applies in particular to unauthorized acts pursuant to §§ 823, 831 BGB, unlimited liability pursuant to the German Product Liability Act remains unaffected.
- (4) Right of Withdrawal  
inco systems GmbH can withdraw from the Agreement either in part or in full by written declaration, in the event of the Customer's inability to pay, over-indebtedness of the Client, discontinuation of payment by the Client or if the Customer has filed for insolvency. inco systems GmbH shall be entitled to exercise its right to withdraw from the Agreement until the opening of insolvency procedures for the Client's assets. The Customer herewith agrees to provide inco systems GmbH access to its place of business during normal business hours and repossess the goods.

#### **§ 9. Export Restrictions**

The delivery and/or service described in the order confirmation may be subject to export control regulations stipulated by German, European, US American or international law, for example due to the type or intended use, or final destination of the delivery and/or service. This means each order applies subject to the fact that the delivery/service is not prohibited under these regulations and that approvals, authorizations or permissions are given which inco systems GmbH requires for fulfilling the contract.

#### **§ 10. Place of Performance, Place of Jurisdiction and Applicable Law**

- (1) Unless otherwise stated in the order confirmation, inco systems GmbH headquarters in Schwarzenfeld, Germany is the place of performance.
- (2) The place of jurisdiction for any direct or indirect legal actions resulting from the Agreement is Schwandorf, Germany if the contractual partner is a business entity.
- (3) The provisions of this agreement, even if goods and services are sent to other countries, are subject to German law. The United Nations law governing the international sale of goods (CISG) is not part of this Agreement.

#### **§ 11. Final Provisions**

- (1) As far as the contract or these General Terms and Conditions contain regulation gaps or invalid regulations, those legal regulations deemed to be valid upon considering the economic objectives of the contract and the purpose of these general terms of delivery, shall be considered as agreed upon, which the contracting parties would have agreed upon, if they had recognized the regulation gaps or invalid regulations. The invalidity of an individual contractual term does not affect the validity of the remaining terms.