

# **General Terms and Conditions of Sale and Delivery of INPAC Medizintechnik GmbH**

## **§ 1 General Information, Scope**

- (1) These General Terms and Conditions of Sale and Delivery (hereinafter “GTCs”) of INPAC Medizintechnik GmbH (hereinafter “INPAC”) for customer orders shall apply exclusively; INPAC does not recognize any terms and conditions of its customers that are contrary to or deviate from the GTCs unless INPAC has expressly consented to their applicability in writing. If INPAC and the customer agree on individual provisions deviating from the GTCs (that are recorded in the order confirmation from INPAC), then these provisions shall apply, and the GTCs shall apply as a supplement in the further scope of application. The GTCs shall also apply when INPAC fulfills the customer’s order unconditionally with knowledge of terms and conditions of its customers that are contrary to or deviate from the GTCs.
- (2) The GTCs only apply in relation to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law, or special funds under public law.
- (3) The GTCs also apply to all future transactions with INPAC’s customers.
- (4) INPAC’s order confirmation including these GTCs reflects the entire content of the agreement between INPAC and the customer for performance of the customer’s order.

## **§ 2 Offer, Offer Documentation**

- (1) Offers from INPAC are non-binding unless they are expressly designated as binding.
- (2) If a customer’s order qualifies as an offer pursuant to Section 145 BGB, INPAC can accept the order within 2 weeks.
- (3) INPAC retains the right to make changes after conclusion of the contract with respect to minor color, design, weight, measurement, or shape deviations in the product to be delivered or created by INPAC, as well as those customary in the trade, subject to the requirement that this is reasonable for the customer.
- (4) The particulars (dimensions and other technical specifications), information, and figures contained in the offers, brochures, catalogs, data sheets, documentation (e.g., drawings, plans, calculations, cost estimates, references to DIN standards), other product descriptions or documentation from INPAC—also in electronic form—are estimated approximate values customary in the trade unless they are expressly designated by INPAC as binding.
- (5) INPAC retains all ownership rights and copyrights as well as the right to apply for intellectual property rights to INPAC’s offers, figures, drawings, cost estimates, information, and other documentation (also in electronic form). This applies particularly to documentation (also in digital form) that is designated as “confidential” or is obviously to be treated as confidential. The customer is required to have INPAC’s express written consent prior to providing it to third parties.

- (6) Contract conclusion occurs subject to the reservation of correct and timely receipt of deliveries from INPAC's component suppliers. This only applies to the case where INPAC is not responsible for non-delivery, particularly upon conclusion of a congruent covering transaction with INPAC's suppliers. The customer will immediately be informed of the non-availability of the services; INPAC is entitled to withdraw from the contract. The consideration will be refunded immediately. INPAC will immediately submit the covering contract to the customer and assign the rights deriving from it to the customer to the extent necessary.
- (7) If the customer places an order subject to the condition of release of initial sample parts, then such release is considered granted unless the customer refuses release within 14 calendar days after being notified by INPAC of the completion of these initial sample parts.
- (8) The display of services in catalogs or on INPAC's internet presence does not represent any offer to conclude a service contract.

### § 3 Prices, Payment Terms

- (1) Unless stated otherwise in the order confirmation, the prices are valid for delivery "ex works Birkenfeld" excluding postage, packaging, insurance, and transport; these excluded services will be charged separately.
- (2) Statutory value-added tax is not included in INPAC's prices. Unless already mentioned in the offer or the order confirmation, value-added tax will be added to all prices in the currently applicable amount. It will be shown separately on the invoice on the date of invoicing.
- (3) All contractually agreed prices shall apply until the agreed delivery date. INPAC retains the right to reasonably adjust its prices if cost increases for which INPAC is not responsible occur after INPAC's conclusion of the contract and after the agreed delivery date, particularly due to collective bargaining agreements or changes in materials prices.
- (4) Deducting cash discounts requires a special agreement.
- (5) Unless otherwise shown in the order confirmation, the invoices shall be paid net (without deductions). The legal regulations applicable to the consequences of default of payment shall apply.
- (6) Upon expiration of the foregoing payment period, the customer shall be in default. The remuneration shall earn interest during the period of default at the currently applicable statutory default interest rate. INPAC reserves the right to claim further damage caused by delay. With respect to merchants, our claim to commercial maturity interest (Section 353 of the German Commercial Code ("**HGB**") shall remain unaffected.
- (7) After setting a reasonable deadline and the due date occurs, INPAC is entitled to withdraw from the service contract if the customer does not pay the remuneration by this deadline.
- (8) In case of unforeseeable obstacles or additional costs within the framework of performing the service, INPAC will inform the customer thereof and is entitled to charge the customer any additional expense.
- (9) The customer is only entitled to offsetting rights if the customer's counterclaims have been held to be final and absolute, are uncontested, or are acknowledged by INPAC. In addition, the customer is only authorized to exercise a right of retention insofar as the customer's counterclaim is based on the same contractual relationship.

#### **§ 4 Provision of material by the customer**

- (1) If the customer provides plans, drawings, sample parts, materials, or semi-finished products, or if the customer makes corresponding technical/organizational requirements available to INPAC, INPAC assumes no liability for the correctness of the dimensions, functionality, and quality. The customer shall bear sole responsibility for this. INPAC retains the right to refuse to install provided materials and semi-finished products insofar as they do not comply with INPAC's quality requirements.
- (2) For the case that INPAC develops or manufactures technical programs, tools, production resources, jigs and fixtures, or other resources in order to perform the contract, these items shall remain the property of INPAC and shall not be surrendered to the customer.
- (3) If provided materials/semi-finished products have been processed by INPAC, INPAC acquires ownership thereof. Surrender to the customer only need occur for the purpose of contract performance.

#### **§ 5 Delivery period**

- (1) The beginning of the delivery period specified by INPAC requires clarification of all technical issues.
- (2) Compliance with INPAC's delivery and performance obligation further requires timely and proper performance of the customer's duties. These particularly include performance of the cooperation obligations such as provision of plans, provision of sample parts, as well as the necessary releases and payments by the customer by the agreed upon deadlines. The objection of failure to perform the contract remains reserved.
- (3) If the delivery date is delayed due to cases of force majeure (see § 8 (5)), then the delivery period will be extended automatically by the period of the corresponding delay.
- (4) The delivery period is deemed complied with when the object of delivery has left the INPAC plant by the expiration of the delivery period. Insofar as acceptance must occur—except in cases of justified refusal of acceptance—the acceptance date shall govern, or alternatively the customer's notification of readiness to accept or the customer's placing the delivery object in service.
- (5) If the customer is in default of acceptance, or if the customer culpably violates other cooperation obligations, INPAC is entitled to demand reimbursement for the damage arising to INPAC in this respect, including any additional expenses. Further claims or rights remain reserved.
- (6) Insofar as the requirements of Para. 4 have been met, the risk of accidental destruction or accidental deterioration of the item delivered or manufactured by INPAC transfers to the customer at the moment when the customer enters into acceptance default or debtor's default.
- (7) Periods and deadlines for performance of service announced by INPAC shall always be considered merely approximations unless a fixed period or a fixed deadline has been expressly agreed upon. Otherwise, INPAC shall perform the service within customary commercial periods.

## **§ 6 Transfer of risks, acceptance**

- (1) Risk shall transfer to the customer when the item to be delivered by INPAC has left INPAC's plant, specifically even when partial deliveries occur or INPAC has assumed other services, e.g., shipping costs or delivery and setup. Insofar as acceptance must occur, this acceptance governs the transfer of risks. It must be carried out at the acceptance date without undue delay, alternatively after INPAC's notification of acceptance readiness. The customer is not permitted to refuse acceptance if a non-material defect exists.
- (2) If shipping or acceptance is delayed or does not occur due to circumstances that are not attributable to INPAC, the risk shall transfer to the customer on the date of notification of shipping or acceptance readiness.
- (3) Partial deliveries and partial services are permitted insofar as they are reasonable for the customer.

## **§ 7 Liability for defects**

- (1) Claims for defects by the customer presume that the customer has properly complied with its obligations to inspect and to give notice of defects pursuant to Sections 377, 381 HGB.
- (2) Insofar as a defect exists in the new item delivered or manufactured by INPAC, INPAC is entitled, at its option, to provide subsequent performance in the form of corrective action or to deliver or manufacture a new, defect-free item. In the case of corrective action or replacement or manufacture of a new item, INPAC is obligated to pay all expenses necessary for the purpose of subsequent performance, particularly transport, road, work, and material costs, insofar as they are not increased due to the new item delivered or manufactured by INPAC having been delivered to a different location than the place of performance, in which case INPAC will only pay the necessary expenses up to the amount of the price charged to the customer for the new item originally delivered or manufactured by INPAC.
- (3) The place of subsequent performance is at the registered office of INPAC.
- (4) If the subsequent performance pursuant to § 7 (2) fails twice, the customer is entitled to demand rescission or price reduction, at its option.
- (5) Justified notifications of defects shall not otherwise affect the performance of the contract. The right to withhold payments is excluded insofar as the value of the items for which notification was given (calculated on the corresponding basis of the purchase price) does not exceed payments already made.
- (6) The limitation periods pursuant to Section 438 (1) (3) BGB and 634a (1) (1) BGB shall be shortened to 1 year. The statutory regulations on commencement of the limitation period, suspension of expiration, suspension and recommencement of periods shall remain unaffected.

## **§ 8 Joint and several liability**

- (1) INPAC is liable according to the statutory regulations insofar as the customer asserts claims for damage based on wrongful intent or gross negligence. Insofar as INPAC is not justifiably accused of any intentional or grossly negligent breach of contract, the liability to pay damages is limited to the foreseeable damage typically occurring, which is a maximum of three times the amount of the order value.
- (2) In addition, INPAC is liable under the statutory regulations insofar as INPAC culpably breaches a material contractual obligation; in this case as well, however, the liability for damages for simple negligence is limited to the foreseeable damage typically occurring, which is a maximum of three times the amount of the order value. A material contractual obligation exists when the breach of duty relates to an obligation whose performance the customer depended on and could also depend on.
- (3) Otherwise, insofar as the customer is entitled to a claim to reimbursement of damages instead of performance due to a negligent breach of duty, INPAC's liability is limited to reimbursement of the foreseeable damage typically occurring.
- (4) The liability due to culpable causation of death, bodily harm, or harm to health remains unaffected; this also applies to the binding liability under the German Product Liability Act as well as in case of fraudulent concealment of a defect, when assuming a guarantee, or when guaranteeing a characteristic, if a defect covered by them specifically triggers INPAC's liability.
- (5) INPAC is not liable in cases of force majeure (e.g., natural disasters, war, unrest, terrorism, sabotage, strike, as well as damage to machines/disruption of production, unless INPAC is responsible for this event).
- (6) More extensive liability for damages than provided for in Paras. 1 through 5 is excluded regardless of the legal nature of the asserted claim. This applies particularly to claims for damages arising from culpa in contrahendo, due to other breaches of duty, or due to criminal claims for reimbursement of property damage pursuant to Section 823 BGB.
- (7) This liability limitation also applies insofar as the customer demands reimbursement of futile expenses in place of a claim to reimbursement of the damage instead of performance.
- (8) Insofar as liability to pay damages in relation to INPAC is excluded or restricted, this also applies with regard to the personal liability for damages of INPAC's workers, employees, representatives, and agents.

## **§ 9 Securing reservation of title**

- (1) INPAC retains title to the item delivered or manufactured by INPAC until receipt of all payments arising from the business relationship. Insofar as a current account relationship exists, the reservation of title refers to the acknowledged balance. In case of behavior in breach of contract by the customer, particularly in case of payment default, INPAC is entitled to repossess the item delivered or manufactured by INPAC. The repossession of the item delivered or manufactured by INPAC includes rescission of the contract. After repossession of the item delivered or manufactured by INPAC, INPAC is entitled to utilize it; the proceeds of utilization shall be applied to the customer's liabilities, less reasonable costs of utilization.

- (2) The customer is obligated to treat the item delivered or manufactured by INPAC with care; in particular, the customer is obligated to sufficiently insure the item against fire damage, water damage, and theft at replacement value at the customer's own expense.
- (3) In case of garnishment or other interventions by third parties, the customer shall immediately notify INPAC in writing, so that INPAC can file suit pursuant to Section 771 of the German Code of Civil Procedure (ZPO). Insofar as the third party is not in a position to reimburse INPAC for the legal costs and out-of-court costs of a suit pursuant to Section 771 ZPO, the customer shall be liable for the loss incurred to INPAC.
- (4) The customer is entitled to resell the item delivered or manufactured by INPAC in the normal course of business; however, the customer already now assigns to INPAC all receivables in the amount of the final invoice amount (including value-added tax) of INPAC's receivable accruing to it against its buyer or third parties from the resale, regardless of whether the item delivered or manufactured by INPAC was resold without processing or after processing. The customer remains entitled to collect this receivable even after the assignment. INPAC's authority to collect the receivable itself shall remain unaffected. However, INPAC agrees not to collect the receivable as long as the customer complies with its payment obligations from the collected revenues, does not enter into default of payment, and particularly has not submitted any petition for commencement of insolvency proceedings or discontinuation of payment has occurred. However, if this is the case, then INPAC can demand that the customer inform INPAC of the assigned receivables and their debtors, provide all necessary information for collection, supply the corresponding documents, and notify the debtors (third parties) of the assignment.
- (5) The processing or transformation by the customer of the item delivered or manufactured by INPAC shall always be undertaken for INPAC. If the item delivered or manufactured by INPAC is processed together with other items not belonging to INPAC, INPAC acquires co-ownership of the new item in proportion to the value of the item delivered or manufactured by INPAC (final invoice amount, including value-added tax) to the other processed items at the time of processing. Otherwise, the same conditions apply to the item created by processing as to the item delivered or manufactured by INPAC subject to reservation of title.
- (6) If the item delivered or manufactured by INPAC is inseparably commingled with other items not belonging to INPAC, INPAC acquires co-ownership of the new item in proportion to the value of the item delivered or manufactured by INPAC (final invoice amount, including value-added tax) to the other commingled items at the time of commingling. If the commingling occurs in such a manner that the customer's item is considered the main item, it is agreed that the customer transfers co-ownership proportionally to INPAC. The customer shall keep the sole ownership or co-ownership thus created in custody for INPAC.
- (7) Upon request of the customer, INPAC agrees to release the collateral to which INPAC is entitled to the extent that the value of INPAC's collateral exceeds the receivables to be secured by more than 10%; INPAC shall have the duty of selecting the collateral to be released.

## **§ 10 Protection of work products**

- (1) The customer shall ensure that the certificates, expert opinions, advisory opinions, and information ("work results") prepared by INPAC within the framework of the investigations themselves will only be used for the customer's own purposes. Duplication of excerpts of

work results requires INPAC's express prior consent. The customer agrees not to disclose the work results to third parties, also not in modified form. This does not apply to any legally required disclosure to government agencies. If the customer is part of a vertical or horizontal group of companies, these companies are also deemed to be third parties within the meaning of these GTCs. Copyright remains reserved.

- (2) Expertise that INPAC uses or acquires while providing services remains the property of INPAC. INPAC reserves the right to freely use its own expertise, particularly to provide services to other companies.

## **§ 11 Inventions and expertise**

INPAC shall be exclusively entitled to secret, valuable, and advanced knowledge existing at INPAC or obtained by INPAC in the course of performing the contractual obligations (expertise) as well as inventions made by INPAC and any intellectual property rights already existing or still to be registered in this respect—subject to separate agreement or the use or exploitation to which the customer is entitled according to the intent and purpose of the contractual relationship.

## **§ 12 Confidentiality**

INPAC and the customer each grant the other confidentiality regarding the information obtained in the context of the business relationship; disclosure of this information is not permitted unless this information has become publicly known without any action by the other party or legal regulations make the disclosure necessary (e.g., in a court proceeding, whereby in this case the disclosure is only permitted to occur for this purpose).

## **§ 13 Compliance with international sanctions lists and embargos**

- (1) With regard to economic and trade sanctions imposed by the European Union, the United Nations, the United States of America, or any other country, the customer shall continuously review and guarantee that:
  - (a) The customer is not subject to any economic sanction;
  - (b) To the best of its knowledge, the customer is not controlled by a natural or legal person or these persons are not the economic beneficiary, who is subject to economic sanctions;
  - (c) The customer complies with all laws and regulations applicable to it with regard to economic sanctions; and
  - (d) The customer is not involved in proceedings or the object of government investigations due to (alleged) violations of statutory regulations on economic sanctions applicable to it.
- (2) The customer shall indemnify INPAC for all losses, obligations, damages, penalty payments, costs and expenses accruing to the customer or arising against the customer as a result of a violation by the customer of Item (1) of the GTCs.

- (3) Notwithstanding other claims and legal remedies, INPAC is entitled to terminate any contractual relationships with immediate effect by written notice to the customer if the customer violates the provisions of Item (1) of the GTCs. In this case, the customer is not entitled to damages or other payments.

## **§ 15 Data security**

Personal data collected in connection with performance of the contract is processed in compliance with the currently applicable data protection provisions. The customer has a right at any time to information, correction, blocking, or deletion of its stored personal data free of charge.

## **§ 16 Legal venue, place of performance**

- (1) If the customer is a merchant within the meaning of the HGB, the courts at INPAC's registered offices shall have jurisdiction and venue; however, INPAC is also entitled to file suit against the customer with the court of the customer's registered offices. The foregoing agreement on legal venue shall also apply to customers with registered offices abroad, regardless of their capacity as a merchant within the meaning of the HGB.
- (2) The laws of the Federal Republic of Germany shall apply; application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- (3) Unless the order confirmation states otherwise, INPAC's registered offices shall be the place of performance.
- (4) Insofar as these GTCs contain lacunae, those legally valid provisions that the contracting parties would have agreed upon according to the economic objectives and the purpose of these GTCs if they had detected the lacuna shall be deemed agreed upon to fill these lacunae.
- (5) If one of the provisions of these GTCs is or becomes invalid for any reason whatsoever, the validity of the remaining provisions shall remain unaffected thereby. The specifically relevant legal provision shall take the place of the invalid provision.

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