

# General Terms and Business Conditions of IMST GmbH

January 2017

## 1. Scope, general

1.1 These General Terms and Conditions apply exclusively to companies within the meaning of Section 14 of the German Civil Code (BGB) i.e. natural persons or legal entities that purchase goods or services for commercial or professional purposes.

1.2 The terms and conditions set forth below (General Terms and Conditions) apply exclusively to our business relations with our customers - hereinafter referred to as "customer" - also with respect to information and advice. Where our General Terms and Conditions are implemented in business with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed in writing.

Differing terms and conditions of the customer shall only apply if and to the extent we have expressly acknowledged them in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgement or consent, and this shall also apply to future contracts.

Our General Terms and Conditions shall apply in place of any terms and conditions of purchase of the customer, also where such terms and conditions stipulate that acceptance of an order is deemed to be the unconditional acknowledgement of the terms and conditions of purchase, or where we perform, after the customer has indicated the validity of its general terms and conditions of purchase, unless we have expressly waived the validity of our General Terms and Conditions. The exclusion of the customer's general terms and conditions shall also apply if the general terms and conditions do not include a separate regulation for individual stipulations.

1.3 If framework contracts or other contracts have been concluded with our customers, these shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific regulations have been agreed.

1.4 If claims for damages are specified below, this shall in the same way also mean claims for the reimbursement of expenses within the meaning of Section 284 BGB.

## 2. Subject-matter of the order (scope of service), estimates of cost

2.1 Our quotations are subject to change unless they are expressly designated as binding or expressly contain binding commitments or their binding nature was otherwise expressly agreed. They are requests for purchase orders.

2.2 The customer shall be bound by its purchase order as a contract application for 14 calendar days - in the case of electronic purchase orders 5 working days (in each case at our registered office) - after our receipt of the purchase order unless the customer must expect our acceptance on a regular basis also at a later date (Section 147 BGB). This shall also apply to reorders of the customer.

2.3 The information included in our quotations, especially in the task description, describe the service owed unless otherwise agreed with the customer. If the form of order placement differs from this, the validity of the order in question shall depend on our express consent. The same applies if the content of the order placed differs from our previous quotation.

2.4 We shall only be deemed to have given a guarantee in the legal sense if we have designated a property and/or an outcome of performance in writing as "guaranteed by law".

2.5 We shall only assume a procurement risk within the meaning of Section 276 BGB by virtue of a separate written agreement stating "we assume the procurement risk...".

2.6 Unless otherwise expressly agreed, the applicability of our service due according to the contract for the customer's purposes shall not be owed.

2.7 Unless otherwise expressly agreed in writing, we shall be bound by our quotation for four (4) weeks.

2.8. If we take over materials resp. other work results of the customer or third parties with the consent of the customer, the customer shall be responsible for the timely provision of materials, the intended functioning, compliance with the specifications resp. the accuracy of the results of the materials provided unless the inspection of the materials is the object of the contractual engagement on our part.

2.9 The customer shall receive the result of the contract in the form of a report unless otherwise expressly agreed in writing.

2.10. Our estimates of cost shall only be binding when expressly designated in writing as binding and the performance included therein can begin immediately.

## 3. Cooperation of the customer

3.1. Unless otherwise agreed, the customer shall provide in full, in time and free of charge all cooperation from its sphere that is required to enable us to provide the service owed in due time. This includes especially the provision of all necessary information, documents and data from the customer's sphere.

3.2 If the customer fails to fulfil its duties to cooperate, we shall, after prior notice, have the right but shall not be obliged to take the actions incumbent upon the customer in its place and at its expense. Our legal rights and claims shall not otherwise be affected by failure to cooperate, delayed or by inadequate cooperation.

## 4. Time of service

4.1 Binding dates and periods for service must be agreed expressly and in writing as binding. We shall make every endeavour to meet dates and periods for service that are not binding or approximate (approx., about etc.).

4.2 Periods for service shall begin with the customer's receipt of our order confirmation, in the absence thereof within 5 calendar days of our receipt of the purchase order from the customer but not before all details about the execution of the order have been clarified and all other requirements to be fulfilled by the customer are met, especially advance payments or securities agreed and cooperation owed by the customer have been made and provided in full. This shall apply accordingly to dates for delivery and service. If the customer has requested changes after placing the order, a new, reasonable period for delivery and/or service shall begin when we confirm the change.

## 5. Force majeure / Delivery subject to availability

5.1 If we do not receive deliveries or services from our sub-contractors to provide a service which is due from us under the contract, despite due and proper stocking prior to conclusion of the contract with the customer in terms of quantity and quality under our service agreement with the customer (so-called congruent stocking) or it is incorrect or not in due time for reasons for which we are not responsible, or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify the customer immediately in writing or text form. In such case, we shall have the right to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk or service guarantee. Events of force majeure are strikes, lock-outs, official intervention, energy shortages and shortages of raw materials, transport bottlenecks or obstructions through no fault of our own, company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, and any other obstructions which, when considered objectively, were not caused by our negligence.

5.2 If a date for service or a period for service is agreed with binding force and the agreed date for service or the agreed period for service is exceeded due to events according to para. 5.1., the customer shall have the right, after a reasonable extension of time has elapsed without result, to rescind the contract for that part not yet fulfilled. The customer shall have no further claims, especially claims for damages, in this case.

5.3 The above provision according to para. 5.2 shall apply accordingly if, for the reasons stated in para. 5.1, also without contractual agreement of a fixed date for service, the customer cannot be objectively expected to adhere further to the contract.

## **6. Remuneration and payment terms, due date**

6.1 All prices are quoted net in euros, excluding value added tax (if incurred by law) which shall be borne by the customer at the legally valid rate.

6.2 If possible, the specific scope of service shall be specified, based on the pre-contractual information of the customer and a fixed price agreed. In the event that pre-contractual information provided by the customer proves to be incorrect and as a result the scope of the service required from us increases or the scope of the service due from the contractor according to the contract changes through additional performance requirements or change requests of the customer, the fixed price shall be adjusted accordingly to the changed scope of performance.

6.3 If billing according to actual expense is contractually agreed, billing shall be according to actual expense up to the specified payment cap. We undertake in this respect, if it is recognised that the agreed cost cap shall be exceeded without achieving the desired order objective, to notify the customer immediately and submit proposals in terms of further procedure.

6.4 In the case of work, the purchase price shall be due, unless otherwise agreed, upon acceptance, in the case of services, unless otherwise agreed, monthly on the first of the month for the current month.

6.5 Once in default, default interest of 9 percentage points above the respective base interest rate shall be charged when the claim for payment falls due. We reserve the right to assert damage in excess of this. This shall not affect Section 352 HGB [German Commercial Code].

6.6 Where a transfer is agreed, the date payment is received by us or credited to our account resp. the account of the place of payment specified by us shall be deemed the payment date.

6.7 The customer's default in payment shall cause all claims for payment under the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments, agreements on the term of bills of exchange and payment by instalment, all liabilities of the customer due to us shall in this case become due for payment immediately.

6.8 If payment terms are not met or circumstances known or recognisable that, in our proper commercial judgment, give rise to justified doubts as to the creditworthiness of the customer, also including such facts that existed when the contract was concluded but which were unknown to us or did not have to be known to us, we shall have the right, notwithstanding further legal rights in such cases, to cease further work on current orders, and to request advance payments or the provision of appropriate, customary securities e.g. in the form of a bank guarantee issued by a German credit institution participating in the Deposit Protection Fund at the expense of the customer, for services still outstanding, and, after expiry of a reasonable extension of time to provide such securities without result, to rescind the contract with respect to that part of the contract not yet fulfilled irrespective of other legal rights. The customer shall be obliged to reimburse all damages incurred by the failure to execute the contract.

6.9 The customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have not been recognised by declaratory judgment.

6.10 The customer can only exercise a right of retention if its counter-claim relates to the same contractual relationship.

6.11 Incoming payments shall first be used to repay costs, then interest and finally the principal claims according to age. Any determination to the contrary by the customer when making payment shall be disregarded.

6.12 Timeliness of payment, by whatever means it is made, shall be determined solely by the date on which it is credited to our account. The value date shall be decisive for cheque payments. Payments by the customer must be made for our benefit, postage and charges paid.

## **7. Rights to the outcome of performance**

7.1 The customer is granted a non-exclusive, non-sublicensable right to use the specific outcome of performance of the order with regard to property rights, copyrights and other know-how.

7.2 If, in performing, we have recourse to our existing rights, the customer shall also be granted a non-exclusive, non-sublicensable right to use them if this is required to use the outcome of performance due according to the contract. If, in order to utilise the object of the contract, the customer must have recourse to our existing rights, we shall grant the customer a non-exclusive, non-sublicensable right of use for consideration to these rights to be granted separately. If we intend to give up rights, on which rights of use of the customer have been established, we shall notify the customer immediately of this intention in writing or text form and, in response to the customer's request in written or text form, transfer those rights on reasonable terms to the customer by special written agreement. We shall retain a non-exclusive right of use free of charge to all property rights and copyrights and to relevant "know-how" (i.e. to such information which is objectively to be assigned to us, has its own economic value and is known only to a strictly limited number of persons) for own purposes.

7.3 The customer shall be granted the rights of use to the outcome of performance stated in paragraph 7.1 and/or 7.2 above only upon full payment of the contractual remuneration. Until then, ownership and all full rights of use shall remain with us in accordance with Section 449 BGB. The customer shall, however, be permitted to resell any expectancies to the above-mentioned rights of use in the ordinary course of business. The customer undertakes in this respect to assign to us already in advance all claims arising from the sale resp. granting of such expectancies on the rights of use including securities and ancillary rights. The customer may not conclude any agreement with its buyers which excludes or prejudices our rights in any way or nullifies the advance assignment of the claim. In the case of unreal factoring, we shall have the right to rescind the contract.

The customer shall remain entitled to collect the claim assigned to us until revoked by us, this revocation being admissible at any time. We undertake, however, to revoke the direct debit instruction only in the case of a legitimate interest. Such legitimate interest shall exist, for example, if the customer fails to fulfil its payment obligations properly or defaults in payment. At our request, the customer shall be obliged to give us in full the information and documents required to collect assigned claims and, if we do not do so ourselves, to notify its buyers immediately of the assignment to us.

## **8. Warranty (claims for breach of duty due to defective performance)**

8.1. According to the state of the art, it is generally not possible to detect all errors resp. deviations relating to properties due from products, systems and developments in information and telecommunications technology under all conditions of use. We undertake in the context of statutory warranty to observe scientific diligence and to comply with the recognised state of the art when concluding the contract for the proper processing and documentation of the contractually agreed service. The contractor shall expressly not assume an obligation that goes beyond this to such an extent that all product resp. system errors could be recognised and documented and accordingly taken into account in implementing the order, unless this was otherwise expressly agreed, or we have assumed a performance guarantee to that effect.

8.2. The customer shall give us notice of recognisable defects in our service immediately but at the latest 12 days after the service is provided but the customer shall give us notice of hidden defects in writing or text form at the latest within the period of limitation in respect of warranty according to para.

8.3. A notice of defects that fails to comply with requirements of time and form shall exclude any claim by the customer for breach of duty due to defective performance. This shall not apply in the case of an intentional, grossly negligent or fraudulent act by us or our vicarious agents, in the event of injury

to life, limb or health or the assumption of a guarantee for the absence of defects or a procurement risk according to Section 276 BGB or other mandatory legal basis for liability.

8.3 The period of limitation in respect of warranty for defects in our service is 12 months, unless otherwise expressly agreed, calculated from the date of acceptance in the case of work and from the date of providing the service in the case of services and the customer's knowledge of breach of duty. This shall not apply to damage claims arising from a guarantee, the assumption of a procurement risk within the meaning of Section 276 BGB, claims for injury to life, limb or health, a fraudulent, intentional or grossly negligent act by us or our vicarious agents or if otherwise a longer period of limitation is mandatory by law. There is no connection between the reversal of the burden of proof and the foregoing stipulation.

## 9. Exclusion and limitation of liability

9.1 Subject to the exceptions specified below, we shall not be liable in the case of breach of duty arising from the obligation undertaken, especially not for claims by the customer for damages or reimbursement of expenses, for whatever legal reason.

9.2 The above exclusion of liability according to para. 9.1 shall not apply if statutory liability is mandatory, and:

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations. "Material contractual obligations" are obligations that protect the legal positions of the customer which have to be specifically granted to the customer under the contract in terms of subject matter and purpose. Material contractual obligations are furthermore contractual obligations, the fulfilment of which makes the due performance of the contract possible at all in the first place, and where the customer has regularly relied on and may rely on compliance with such obligations;
- in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents;
- in the case of default if delivery and/or service by a fixed date was agreed;
- where we have assumed a guarantee for the quality of our goods or the existence of an outcome of performance, or a procurement risk within the meaning of Section 276 BGB;
- in the case of liability under the Produkthaftungsgesetz [German Product Liability Act] or other mandatory statutory liability.

9.3 If we or our vicarious agents are responsible only for slight negligence and none of the cases specified in bullet points 4, 5 and 6 of para. 9.2 above exist, we shall be liable, in the case of violation of material contractual obligations as well, only for damage typical for the contract and for foreseeable damage.

9.4 Our liability is limited in amount for each individual event of damage to a maximum liability coverage of EUR 1,000,000.00. This shall not apply if we or our vicarious agents are responsible for fraudulent intent, intent or gross negligence, for claims due to injury to life, limb or health, and in the case of a claim based on an unlawful act or an expressly assumed guarantee or the assumption of a procurement risk according to Section 276 BGB or in cases of different higher liability coverage prescribed by law. Any further liability shall be excluded.

9.5 Exclusion resp. limitation of liability according to para. 9.1 to 9.4 above and para. 9.6 shall apply to the same extent for the benefit of our bodies, our executive and non-executive employees and other vicarious agents as well as our sub-contractors.

9.6 There is no connection between the reversal of the burden of proof and the foregoing stipulations.

## 10. Confidentiality

In the interest of a frank exchange of views between the parties to the contract, we and the customer undertake(s) to treat as confidential and keep secret with respect to third parties all knowledge, documents, performance requirements and business transactions of the respective other party to the contract which become known by reason of the contract concluded by us if the other party to the contract has not consented to the disclosure unless there is an official or legal obligation of disclosure. The mutual obligation of the parties to the contract to treat such information confidentially exists both during the term of the contractual relations and shall also survive thereafter for a period of three (3) years. The obligation of confidentiality shall not apply to such information which was already known to the parties prior to the contract, in particular was in the public domain without violation of the contractual obligation to respect confidentiality or has been made accessible by a third party authorised to do so.

## 11. Special extraordinary rights of termination

Notwithstanding legal extraordinary rights of termination, the following extraordinary rights of termination exist for us and the customer:

11.1. If the customer fails to provide the required cooperation or information provided by the customer has gaps, is inappropriate or incomplete, we shall have the right, after setting a reasonable period to make good the corresponding cooperation and information requirements and expiry of that period without result, to terminate the contract without notice. At the same time, we shall have the right to terminate the contract without notice if violations of cooperation or information requirements or change requests by the customer require an additional workload which is not included in the contractually agreed order calculation and we have set the customer a reasonable period to assume the additional costs without result. The customer shall reimburse us in full for costs and damages we incur from termination without notice.

11.2. Both parties to the contract are otherwise entitled to a right of rescission with a period of one month to the end of the month if, after expiry of six (6) months after accepting the order, no material work progress was achieved and this is also not to be expected and the terminating customer is also not responsible for this. After valid termination, we shall make the work result achieved by then available to the customer. The customer shall be obliged to pay the contractor the (partial) remuneration to which it is entitled up to that date.

## 12. Acceptance

12.1 Acceptance of the contractual services shall take place immediately after completion of the work and immediately after sending the notification thereof to the customer. Minor defects shall not entitle the customer to refuse acceptance. On the contrary, these shall be included by the parties to the contract in a list of defects and remedied by us immediately.

12.2. Our services which are ready for acceptance shall be deemed accepted if the customer uses them commercially for a total period of more than 14 calendar days.

## 13. Place of performance / Place of jurisdiction / Applicable law

13.1 Place of performance for all contractual obligations is our company's registered office unless otherwise agreed.

13.2 Any disputes shall be settled, if the customer is a business person within the meaning of the Handelsgesetzbuch [German Commercial Code], and unless otherwise agreed, exclusively before a competent court of law at the location of our company's registered office. For the avoidance of doubt, this jurisdiction regulation shall also apply to such circumstances between ourselves and the customer which can give rise to non-contractual obligations within the meaning of Regulation (EC) No 864 / 2007. We shall also have the right, however, to bring an action against the customer at its place of general jurisdiction.

13.3 The law of the Federal Republic of Germany shall apply exclusively to all legal relations between the customer and ourselves, in particular to the exclusion of the UN Sales Convention (CSIG). It is expressly stated that this choice of law is also deemed to be such choice within the meaning of Art. 14 (1) (b) Regulation (EC) No 864 / 2007 and shall, therefore, also apply to non-contractual obligations within the meaning of this Regulation. If the application of foreign law is mandatory in individual cases, our General Terms and Conditions shall be interpreted as meaning that the economic intent pursued by them is preserved to the maximum possible extent.

#### **14. Written form / Severability clause**

14.1 All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to the waiver of the written form requirement. This shall not affect the precedence of an individual agreement in written, text or verbal form (Section 305b BGB).

14.2 If any provision of these General Terms and Conditions is or shall become invalid / void or unenforceable in whole or in part for reasons relating to the Law of General Terms and Conditions according to Sections 305 to 310 BGB, legal provisions shall apply.

If any current or future provision of the contract is or shall become invalid / void or unenforceable in whole or in part for reasons other than the provisions relating to the Law of General Terms and Conditions according to Sections 305 to 310 BGB, this shall not affect the validity of the remaining provisions of these General Terms and Conditions unless the performance of the contract, also in consideration of the following provisions, would present an unreasonable hardship for one of the parties. This shall also apply if, after a contract has been concluded, it is found to have a gap that requires filling.

Contrary to any principle, according to which a severability clause in principle is to reverse the burden of proof only, the validity of the remaining provisions of the contract shall be maintained in all circumstances and therefore Section 139 BGB waived as a whole.

The parties shall replace any invalid / void / unenforceable provision or gap that requires filling for reasons other than the provisions relating to the Law of General Terms and Conditions according to Sections 305 to 310 BGB by a valid provision that corresponds in its legal and economic content to the invalid / void / unenforceable provision and the purpose of the contract as a whole. Section 139 BGB (partial nullity) is expressly excluded. If the invalidity of any provision is due to a measure of performance or time (time limit or date) stated therein, a measure which most closely corresponds to the original measure in a legally admissible way must be agreed for that provision.