

General Terms and Conditions

Infiana Germany GmbH & Co. KG

The delivery contracts we conclude with entrepreneurs as defined in § 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law are based exclusively on the following general terms and conditions of business, even if we do not expressly reject the conditions of purchase of a Purchaser. The conditions below shall also apply to all future deliveries, services or quotations made, provided or submitted to the Purchaser.

1. Completeness

The legal relationship between us and the Purchaser shall be governed solely by the written sales contract between the parties, including these general terms of supply and delivery. This contract contains all the arrangements made between the parties thereto about the object of the contract in their entirety.

2. Prices, Offset

If delivery is not to be made until more than four months after conclusion of the contract, we reserve the right to increase the contractually agreed price by notification in writing at any time before the products are dispatched, if our costs increase due to fluctuations in foreign exchange trading, currency regulations, changes in customs duties and charges, rising raw material, personnel or transport costs and if this increase in costs is not under our control.

Purchaser shall be entitled to set off claims or to withhold payments on the basis of any counterclaims that it may have against us, if and insofar as such counterclaims are undisputed or have been confirmed by a competent court or are reciprocal (*im Gegenseitigkeitsverhältnis*) to our claims.

3. Prepayment - Securities

We shall be entitled to demand prepayment or the provision of securities before making outstanding deliveries or providing outstanding services, if facts become known to us after the contract has been concluded which have the potential to reduce the credit standing of the Purchaser to a significant extent and which jeopardise the payment of our outstanding claims by the Purchaser.

4. Checking of samples / trial reels

The Purchaser shall check any samples and trial reels submitted by us for all properties of importance in the use of the later products and approve the samples / trial reels in writing within a reasonable period of time. If changes are required, they must be marked clearly. It is the responsibility of the Purchaser to ascertain that products manufactured with / according to the approved samples / trial reels are suitable for the purpose intended by the Purchaser.

5. Tolerances

Quality tolerances and quantity tolerances per design in m² of up to 10% - with small orders for less than 4 000 m² or orders that are difficult to process up to 30% -attributable to the material and production process shall be permissible. Our deliveries shall be made in accordance with the general state of the art and their quality shall correspond to normal business standards, unless special arrangements have been agreed. Information about the object of the delivery or service (e.g. weights, dimensions and technical data) and our pictures of them (e.g. drawings and illustrations, printing and other originals / samples), particularly in advertising and technical prospectuses that are published by us, shall only be considered approximate, unless usability for the contractually planned purpose requires an absolute match. They shall not be guaranteed quality features; they shall instead be a description or characterisation of the delivery or services. Deviations from the agreed quality corresponding to normal business standards that do not have an adverse effect on usability for the contractually planned purpose shall be permissible.

6. Reservation of Title

6.1 Title to the goods supplied shall only pass to the Purchaser when the Purchaser has discharged all his liabilities with regard to the business connection with us, including the honouring of bills of exchange and cheques.

6.2 Processing or modification by the Purchaser of the goods purchased shall always be carried out for us as the manufacturer, without us assuming any commitments as a result. If the goods supplied are processed with materials from other owners and if the value of the goods processed is higher than the value of the goods supplied, then we shall become joint owner of the new goods according to the ratio of the invoice value of the goods supplied to the value of the new goods. If we do not become owner in this context, the Purchaser already assigns his future ownership or the above ratio of joint ownership of the new goods that are created to us as security. The same applies in other respects to the goods created by processing as applies to the goods purchased that are supplied subject to conditions.

6.3 The Purchaser shall be entitled to resell the goods purchased in the ordinary course of business, provided that he does not arrange non-assignability with his customer. If the goods supplied, including goods of which we are joint owner, are resold, the Purchaser cedes herewith the claims relating to these goods, including all ancillary rights and any current account claims, to us - in the case of joint ownership, the proportion of the claims corresponding to the share owned. The same shall apply to other claims that take the place of the goods supplied or are created otherwise with respect to the goods supplied, such as insurance claims or claims arising from tortious acts in the case of loss or destruction. We authorise the Purchaser to collect the claims ceded to us in his own name for our account. If the Purchaser falls at least one week in arrears with payment or if an application to institute insolvency proceedings with respect to his assets is submitted, we shall be entitled at any time to revoke the authorisation to collect, to disclose the cession to the buyers, to collect these claims directly and to demand from the Purchaser all the information and records necessary to do so.

6.4 If the value of the securities to which we are entitled is more than 50% higher than our secured claims, securities in excess of this figure selected by us shall be released on the request of the Purchaser.

7. Term of Delivery - Force Majeure

7.1 The agreed term of delivery shall be extended appropriately if the Purchaser delays the provision of necessary assistance or requests subsequent changes to the contract.

7.2 We shall not be liable for impossibility of delivery or for delays in delivery to the extent that they have been caused by force majeure or other events for which we are not responsible and which were not foreseeable when the contract was concluded (e.g. interruptions in operation of any kind, transport delays, strikes, legitimate lockouts, lack of employees, energy or raw materials, difficulties in the obtaining of necessary permits from authorities, action by the authorities or non-delivery, incorrect delivery or delays in delivery by suppliers). If such events make it substantially more difficult or impossible for us to deliver the goods or provide the service and the disruption is not merely temporary in nature, we shall be entitled to withdraw from the contract. In the case of disruptions that are temporary in nature, the deadlines for delivery of the goods or for provision of the services shall be extended or postponed by the period of the disruption plus an appropriate start-up period. If it cannot reasonably be expected of the Purchaser that he accepts the delivery or the service provided due to the delay, he shall be entitled to withdraw from the contract by submitting a prompt written statement to this effect to us.

8. Delay in Taking Delivery

If the Purchaser fails to take delivery as agreed or if our delivery is delayed for other reasons for which the Purchaser is responsible, we shall be entitled to demand compensation for the damage attributable to this, including additional expenses (e.g. storage costs). We shall make a flat-rate compensation charge for this of 0.5% of the invoice amount for the goods stored per completed week up to a maximum of 5% of the invoice amount, starting with the delivery date or - if there was no delivery date - with the notification that the goods were ready to be shipped. Both parties reserve the right to demand and provide proof of higher or lower damage and of the fact that no damage at all was suffered. Our statutory claims and rights shall remain unaffected. The flat-rate charge shall, however, be deducted from any further claims for damages.

9. Call-off Orders

Delivery of such orders shall be taken in full and we shall be entitled to invoice such orders 3 months after the date of the order confirmation at the latest, unless agreement is made to the contrary.

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10. General Terms and Condition of Payment

10.1 If the agreed payment date is exceeded, interest at the statutory rate of 9 percentage points higher than the basic interest rate according to § 247 of the BGB at the time in question shall be charged. Our right to claim exceeding damages remains unaffected.

10.2 Ongoing failure to meet terms and conditions of payment or circumstances that raise serious doubts about the creditworthiness of the customer shall entitle us to demand immediate payment of all claims, particularly when payment deadlines have been reached and extensions have been granted. In this case, we shall also be entitled to demand prepayment for deliveries that are still outstanding and to withdraw from the contract after requesting payment within a reasonable period of time and after this period expires without payment being made.

11. Liability for Defects

11.1 The precondition for claims made by the Purchaser on the basis of defects shall be that the Purchaser has, if relevant, satisfied his examination and complaint requirements as specified in § 377 of the German Commercial Code (HGB).

11.2 If the goods purchased are defective, we shall be entitled at our discretion either to subsequent satisfaction of the performance requirements by eliminating the faults or to supplying new, faultless goods. If the option of eliminating the faults is chosen, we shall be obliged to pay all the expenses that are necessary to eliminate the faults, particularly transport, labour and material costs, to the extent that they are not increased by the fact that the goods purchased have been taken to a different location than the place of performance. If the attempt at subsequent satisfaction of the performance requirements proves to be unsuccessful, the Purchaser shall be entitled at his discretion to demand withdrawal from the contract or a reduction in price. The Purchaser shall in addition be entitled to demand damages in accordance with the provisions of section 12 (Liability).

11.3 Except where malice is involved, claims made on the basis of defects shall be subject fundamentally to a limitation period of 12 months starting with delivery. The statutory stipulated limitation periods shall apply in the case of claims for damages due to negligent fatal / non-fatal injury or harm to health, due to negligent violation of major contractual commitments and due to quality defects that have been caused intentionally or because of gross negligence by one of our legal representatives or by a senior person employed to carry out our obligations.

11.4 If the end-user is a consumer and he makes claims on the basis of faults, paragraph 2 of this section 11 shall not apply with respect to claims by the Purchaser to subsequent performance in the context of recourse to the supplier in accordance with § 478 of the BGB, reimbursement of expenses in accordance with § 478 paragraph 2 of the BGB, withdrawal from the contract or reduction in the price. With respect to claims to reimbursement of expenses in accordance with § 478 paragraph 2 of the BGB, paragraph 3 of this section 11 shall not apply either.

11.5 With the exception of arrangements to the contrary made in this section 11 and section 12 below, our liability shall be excluded.

11.6 It is the responsibility of the Purchaser to check whether the products we supply are suitable for the purpose planned by the Purchaser; we shall only be liable for this to the extent that this has been agreed explicitly in writing.

11.7 The provision of samples / trial reels etc. as well as advice, information and suggestions about the use, processing and possible applications of our products shall not constitute any guarantee of quality features unless this is specified in writing. If we provide technical information or advice and this is not included in the services to which we have committed ourselves in the contract, this shall be done free of charge to the exclusion of liability of any kind.

12. Liability

12.1 Liability of any kind for damages, irrespective of the legal basis for it, shall be subject to the following restrictions.

12.2 Our liability shall be determined by the statutory regulations when major contractual commitments - i.e. contractual commitments, satisfaction of which is a distinctive feature of the contract and is what makes proper implementation of the contract possible in the first place - are violated and we are responsible for this. Provided that we are not responsible for intentional violations, we shall only be liable for the foreseeable damage that occurs typically, however.

12.3 We shall only be liable for all other breaches of duties if damage has been caused intentionally or because of gross negligence by one of our legal representatives or a senior person employed to carry out our obligations. In such cases, we shall only be liable for the foreseeable damage that occurs typically, unless the damage has been caused intentionally.

12.4 Liability in accordance with the German Product Liability Act shall not be affected by this; the same applies to liability due to negligent fatal / non-fatal injury or harm to health. If a guarantee is assumed, we shall be liable in accordance with the statutory regulations. Unless arrangements are made to the contrary above, claims against us for damages because of breaches of duties shall be excluded.

13. Third Party Rights, Copyright

Unless agreement is made to the contrary, the Purchaser shall be responsible for verification of whether the products we manufacture in accordance with the order placed infringe the rights of third parties. The Purchaser indemnifies us against all claims that may be made by third parties because of the violation of statutory regulations or rights of third parties due to the arrangements made in the order. We assume no liability for damage that is caused by non-compliance. Unless specific agreement to the contrary is reached, we reserve all copyright to the products we develop / manufacture.

14. Storage and Converting Guidelines

The client undertakes to follow the storage and converting guidelines as described in the datasheets, which if not already supplied can be requested. For damages caused due to noncompliance, we will not accept any liability.

15. Printing Documents - Production Resources

These shall remain our unrestricted property, even if the Purchaser has made specific contributions to the costs of them. Unless special agreement is made to the contrary, the obligation to keep them shall end 6 months after delivery of the last order produced with them.

16. Partial Invalidity

In the event of some of these terms and conditions being or becoming ineffective, the remaining provisions shall not be affected.

17. Trading Terms, Passing of Risk

Trading terms shall be interpreted in accordance with the latest Incoterms. If this contract fails to specify when the risk passes, the risk of the accidental loss / destruction and deterioration of the goods shall pass when the goods are supplied to the transport company, carrier or other third party chosen to make the shipment. The equivalent of delivery shall have been made if the Purchaser fails to accept delivery after due notice.

18. Place of Performance - Jurisdiction

The place of performance for all commitments arising from this contractual relationship and the place of jurisdiction for all legal disputes arising from the business connection with traders ("Kaufmann") and legal entities under public law as well as with Purchasers without a general place of jurisdiction in Germany shall be Forchheim/Oberfranken, Germany. We are, however, entitled to take legal action against the Purchaser at his general place of jurisdiction too. The laws of the Federal Republic of Germany shall also apply to all the legal relationships between us and the Purchaser; the United Nations Convention on Contracts for the International Sale of Goods and comparable international regulations shall not apply.

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