

# GENERAL BUSINESS CONDITIONS 2018.1

## 1. Area of application

- 1.1 These conditions apply to all performances of INOVAN GmbH & Co. KG, in particular to the sale and delivery of goods to persons who are not consumers within the meaning of § 13 ( German Civil Code).By placing the order, at the latest at taking the delivery of goods, the purchaser declares his agreement with these conditions
- 1.2 Diverging provisions of the purchaser, which are not expressly accepted by us in writing, are without obligation for us, also in case we do not expressly oppose to them.

## 2. Price and payment

- 2.1 Our prices are ex works, duty fees, packing, insurance and postage excluded. As a principle, price agreements shall only apply to the specific order. Additional orders shall be considered new orders. The prices for packing materials will be charged.
- 2.2 Unless a fixed price is agreed upon, the prices in processed condition for precious metals on the date of delivery shall be charged. In the case of transfer from the precious metal account, delivery of the precious metals must be carried out sixty days before the delivery of the processed goods.
- 2.3 For tools, job orders, precious metals (also in processed condition), the net prices will be charged, and shall be paid immediately upon receipt of the invoice.
- 2.4 Other deliveries and service: Due date for payment shall be thirty days from the date of invoice. In the case of payment by means of a bill of exchange, no discount shall be granted. In the case of delay in payment, we reserve the right to charge interests at a rate which is 2% higher than the current discount rate
- 2.5 In the absence of an express agreement, payments become due immediately after receipt of the invoice, at the latest 2 weeks after the invoice date, without deduction, net.
- 2.6 In case the time limit for payment is exceeded, interest on payment in arrears at the amount of 8% above the respective basic interest rate fixed by the Central Bank will be charged. Special formal notice is not required.
- 2.7 Receipt of payment for cheques and remittances is the day at which we can dispose of the amount. Bills of exchange and other means of payment are only accepted in fulfillment. Discount, collection and other expenses are at the expense of the purchaser.
- 2.8 With counter claims, the purchase may neither offset nor assert a right of retention owing to these claims, unless the claims are undisputed or determined by final judicial decision.

## 3. Dispatch

- 3.1 In case the goods are on request of the purchaser sent to him, the danger of fortuitous loss or the fortuitous deterioration of the goods passes on to the purchaser at their delivery out to the forwarder, at the latest, however, at leaving the plant or warehouse, independently of whether the delivery is effected from the place of performance or of the one who carries the freight charges. When the goods are ready for dispatch, and in case the delivery is effected from the place of performance or of the one who carries the freight charges. When the goods are ready for dispatch and in case the delivery is delayed for reasons which the seller is not held responsible for, risk passes to the purchaser at the receipt of the indication of readiness for dispatch.
- 3.2 Deliveries are carried out on request of the seller either by railroad transport "LCL free to station, area freight excluded", or by a freight carrier, or by mail "free at destination". For export deliveries, special conditions shall apply.
- 3.3 Special packings will in any case be charged additionally.
- 3.4 For invoicing, the weights and number of pieces indicated and determined by the seller are decisive.

## 4. Delivery

- 4.1 Weights, qualities and measurements are indicated approximately. Deviations according to DIN are permissible.
- 4.2 Partial delivery to a reasonable extent, as well as surplus and short deliveries owing to production up to 10% of the total order quantity are permitted.
- 4.3 The purchaser is obliged to carry out an inspection of incoming goods.
- 4.4 The delivery date is considered as an approximate indication, as far as no fixed delivery date has been agreed. It is considered as being observed, in case the goods have left the plant/warehouse at the time agreed upon, or in case of delivery possibility, the readiness for dispatch has been indicated to the customer. In case of delay in delivery, an adequate additional period of grace must be fixed. Deliveries on call must be taken at the latest within 12 months after order confirmation. In case we are prevented from the fulfillment of our obligation by the occurrence of unforeseeable extraordinary events, which we cannot avert despite of the care and diligence reasonable according to the conditions of the individual case - no matter, whether occurred in our plant or at our previous supplier - in particular official interventions, stoppages, industrial actions, delays in delivery of essential raw and indirect materials, the delivery period is prolonged to an appropriate extent. In case delivery or performance becomes impossible, within the meaning of § 275, I - III (German Civil Code), owing to the aforesaid events, we are released from the delivery commitment, without the purchaser being entitled, to withdraw from the contract or claims damages. In case the aforementioned events occur at the purchaser, the same regulations apply also to his obligation to take delivery. The contracting partners are obliged to inform the other party without delay of impediments described above.
- 4.5 In the case of rescission from the agreement without an important reason, the manufacturing costs incurred until the date of rescission must be paid.

## 5. Reservation of ownership

- 5.1 Until complete payment of all outstanding debts from the business relationship between us and the purchaser, the goods remain in our property. The allocation of individual outstanding debts to a current account, as well as drawing the balance and its confirmation do not affect the reservation of ownership. Only the receipt of the money value on our account is considered as payment.
- 5.2 The purchaser is entitled to sell reserved goods during normal business; pledging or transfer of ownership by way of security is., however, not allowed to him. The purchaser is obliged, to secure our property in case of reselling reserved goods on credit.
- 5.3 Outstanding debts of the purchaser from the resale of reserved goods are already now assigned to us; we accept this assignment. Without prejudice to these provisions, the purchaser is entitled to collection as long as he fulfills his obligations towards us and does not become insolvent. On our request, the purchaser must give the necessary information on the assigned outstanding debts and notify the debtor of the assignment.
- 5.4 Possible processing or conversion of reserved goods is carried out by the purchaser, without obligations occurring for us. In this case or in case of connecting or mixing reserved goods with foreign goods, we are entitled to receive the joint ownership part resulting from reserved goods. In case the purchaser acquires sole ownership, the contracting parties agree that the purchaser will grant us joint ownership in relation to the value of our reserved goods at the value of the other part and will keep the goods safe for us free of charge.
- 5.5 In case reserved goods are resold together with other goods, i.e. immediately, whether without or after processing, connection, mixing, the above agreed assignment in advance is only applied at the amount of the value of reserved goods resold together with other goods.
- 5.6 On execution proceeding of third parties in reserved goods or in outstanding debts assigned in advance the purchaser must immediately inform us by handing over the documents needed for an intervention. In case a third party action against execution or another intervention becomes necessary, the purchaser must carry the costs arising from legal proceedings.
- 5.7 We commit ourselves to release the securities to which we are entitled according to the above mentioned provisions, at our option, on request of the purchaser, in so far as their value exceeds the claims to be secured by 20%.
- 5.8 The purchaser is obliged to take out insurance for reserved goods at his expense against fire, theft and water.

## 6. Warranty, liability, notice of defects

- 6.1 Warranty claims: in case the goods delivered by the seller are not free of material defects, or it is damaged within the legal warranty period owing to manufacturing and material faults, the seller at first has the optional right to rectify the faults or to supply replacement. If we cannot supply replacement or the rectification of faults is impossible or finally fails, the purchaser is entitled to rescind from the agreement. The same applies, if an appropriate period of grace granted to us has not been adhered to. Finding out of such deficiencies must immediately - in case of visible deficiencies at the latest 10 days after taking delivery of the goods, in case of non-visible deficiencies immediately at their visibility - be indicated to us in writing; otherwise, the goods are considered as approved. The same applies, if the purchaser does not oppose to our rejection of the notice of defects given by him within 4 weeks. In any case, we must be given the opportunity to examine the goods. The maximum warranty period under the precondition of appropriate storage is 1 year, calculated from the day of delivery ex works, with the exception of the cases defined in §§ 438, I, No. 2, and 634a, I, Nr. 2, (German Civil Code). If in the individual case a longer warranty period than 1 year is agreed, the warranty obligation ends in case of processing of the goods in the first 6 months from delivery of the goods after 6 months calculated from the day of delivery ex works; in case of later processing of the goods within the agreed warranty period at the time of processing. For defects occurring due to unsuitable or improper use, maintenance and storage, incorrect mounting or commissioning on the part of the purchaser or third parties, natural wear, incorrect or negligent treatment, no warranty is given, as for results of improper modifications or such made without our previous consent or repair work carried out by the purchaser or third parties. We do neither give any warranty for materials provided by the purchaser, unless something else has been expressly agreed in the individual case. For replacement deliveries and rectifications of faults we give the same warranty as for original goods. Application-technical consultations, indications and information on suitability and application of our goods are without obligation unless we have declared them as being obligatory in the individual case. They do not release the purchaser of own examinations and tests. At all models, samples and illustrations, drawings and other documents, we reserve the property right and copyright. They may not be made accessible to others without our previous consent and must on request be returned to us immediately. In case industrial property rights of third parties are infringed during manufacturing of goods according to models, drawings, samples or other indications of the purchaser, he will release us from all claims asserted by third parties. Models, tools and special devices manufactured by us also remain in our property, in case of cost sharing, unless the customer is willing to buy the models, tools and special devices at the end of the business relationship against reimbursement of full cost. Order-related production facilities, e.g. models and tools, which have been provided by the purchaser, will be kept safe by us free of charge for the period of three years after the last cast. After that, the customer must pay an appropriate rent until the decision on the whereabouts of the production facilities has been taken. The purchaser is obliged to indicate within period fixed by us, whether the production facilities are to be returned to him on his expense and risk or are to be destroyed against reimbursement of the purchaser's cost. In case the period fixed by us is not adhered to by the purchaser, it is up to us, whether we return the production facilities to him at his expense and risk or destroy them against reimbursement of costs of the purchaser.
- 6.2 Claim for damages  
Claims of the contracting partner due to liability on the basis of danger shall be excluded. The seller neither shall be liable for any damage to the contracting partner which was caused by a slight negligence of obligations or other actions of slight negligence of the seller, his agent or any person employed in performing an obligation. He neither shall be liable for any damage due to the gross negligence of an obligation which is not essential under this agreement by an individual employed in performing such obligation. The amount of liability shall be limited to the compensation of damages which are typical in the kind of business in question. The exclusion and limitation of liability shall not apply to damages due to injuries to life, body and health, as well as to claims under the German product liability law.

## 7. Deterioration of the financial situation of the purchaser

- 7.1 In case we, after conclusion of the contract, get knowledge of facts about an essential deterioration of the financial situation of the purchaser, which according to due trader's discretion could jeopardize our claim for counter-performance, we are entitled to demand the provision for an adequate security within an appropriate period until the time of our performance or performance against counter-performance.
- 7.2 In case the purchaser has a backlog of work in part performance, we may immediately make the residual claim due for payment and in case of delay in performance, owing to an essential deterioration of the financial situation, withdraw from the contract without fixing a period of grace or assert a claim for damages because of non-fulfillment. In case of non-capital-related delay in performance we may demand withdrawal from the contract after fruitless expiry of a reasonable period of grace.

## 8. Place of performance, court of jurisdiction, applicable law and separability clause

- 8.1 As place of performance for liabilities from a contract or a declared withdrawal, D-52224 Stolberg is agreed upon.
- 8.2 Court of jurisdiction is the court responsible for the principal place of business of the INOVAN GmbH & Co. KG, in so far as the purchasers are merchants, legal entities of public law or public-law special assets. Also in this case, we are entitled to bring the matter before the court responsible for the domicile or branch of the purchaser.
- 8.3 Applicable is the right of the Federal Republic of Germany under express exclusion of the laws in execution of the Hague Convention.
- 8.4 In case an individual contractual provision or a detachable part of a contractual provision is void or ineffective, the effectiveness of the total contract and the other provisions ins not affected by that. The void and ineffective provision is replaced by the parties by an effective provision.

## 9. Export control

- 9.1 The contract shall be concluded and performed in compliance with all applicable national, European and American export control directives including all European or American sanction lists and other personal embargos (together "export control directives").
- 9.2 Compliance with and performance of the relevant export control directives and other laws of Buyer's country and the country into which delivery is to be made shall be part of the sphere of responsibility of Buyer. Buyer shall notify Vendor in writing of all special matters resulting from said provisions upon conclusion of the contract.
- 9.3 Buyer hereby engages not to use the goods supplied for military or for nuclear purposes of any kind and also not to sell or procure said goods to for third parties with the aforementioned final uses in any other way, be it directly or indirectly. Upon request by Vendor, he shall provide the latter with the corresponding documents on the final destination in the form prescribed by the Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle) always as an original and without delay, albeit within a period of 10 working days.
- 9.4 In the event of Vendor establishing circumstances substantiating the assumption of a possible or actual breach against export control directives or Buyer's duties from the present section and its sub-sections following conclusion of the contract, Vendor shall notify the customer thereof in writing.
- 9.5 In each case in which circumstances substantiating the assumption of a possible or actual breach against export control directives or Buyer's duties from the present section and its sub-sections become known, arrears in performance by Vendor shall be ruled out for a suitable period of time in order to grant Vendor the opportunity of examination.
- 9.6 If actual breaches against export control directives or Buyer's duties from the present section and its sub-sections are established or cannot be ruled out, Vendor can withdraw from the contract.
- 9.7 Buyer engages to indemnify Vendor against any damage originating from defective or lack of performance of Buyer's duties from the present section and its sub-sections. The scope of the damage to be indemnified shall also entail reimbursement of all necessary and suitable expenditure which is or has been incurred by Vendor, in particular the costs and expenses of all and any legal defence, as well as all and any official monetary punishments or fines.

## 10. Privacy Policy/Data Protection Statement

Our privacy policy, especially our data protection statement is available at <https://www.inovan.de/de/datenschutz.html> or to request at Inovan GmbH & Co. KG, Zweifaller Str. 130, D-52224 Stolberg.