

IPAS GmbH, General Terms and Conditions of Sale and Supply

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I. General provisions/contract conclusion

1. All supplies and services are subject to the present General Terms and Conditions of IPAS GmbH (herein after referred to as IPAS). Unless the present terms and conditions include more specific regulations, the General Conditions for the Supply of Products and Services of the Electrical and Electronics Industry (recommended by ZVEI) also apply.
2. For software products the IPAS End User Licence Agreements (EULA) apply in addition to the general terms and conditions.
3. Offers made in writing are valid for 90 days unless explicitly agreed otherwise in writing. In addition, all offers, price lists and other promotional materials are subject to change and non-binding. A contract shall come into effect either upon the timely acceptance of a written offer or otherwise at the time of confirmation of the order which determines the extent of the obligations accepted by IPAS. Any additional oral agreements are only binding after being confirmed in writing.

II. Prices

1. Prices shall be understood to be ex-works or warehouse in Duisburg excluding packaging plus value added tax applicable at the time of supply.
2. If no explicit fixed price has been agreed beforehand and if the time period between contract conclusion and date of supply or provision of service is more than 4 months, IPAS is entitled to charge the list prices applicable on the day of supply or service provision.

III. Retention of Title

1. All supplied goods remain the property of IPAS until such time when all claims against the purchaser on account of the business relationship have been fulfilled.
2. The customer may re-sell or process goods that are subject to retention of title in the ordinary course of business. However, the customer is not entitled to any other use of the retained goods. In particular, the customer shall be forbidden from pledging or assigning as security goods that are subject to retention of title until such time when all claims against the customer on account of the business relationship have been fulfilled.
3. On contract conclusion the customer assigns to IPAS in advance any claims, together with ancillary rights, resulting from the resale or processing of goods that are subject to retention of title. The same applies to all compensation claims of the customer due to loss or damage of the retained goods.
4. Customers may collect claims assigned to IPAS in their own name. However, IPAS is entitled to withdraw this permission if the customer falls behind with payment, if circumstances become known which may have a significant negative impact on the credit worthiness of the customer or if insolvency proceedings are started. In the event of revocation, the customer shall be obliged to apprise IPAS of the assigned claim and the name of the debtor and to make available to IPAS all information and documents that IPAS may require to enforce the claim. Upon request, the customer must apprise the third party debtor of the assignment.
5. In the event that IPAS revokes the permission to collect an assigned claim according to paragraph 4 above, IPAS – without prejudice to other claims - may take back retained goods as collateral security without prior or resulting rescission of the contract. IPAS is entitled to sell the retained goods and to offset the proceeds against the claim.

IV. Terms of payment

1. Payment shall be made to us strictly net within 30 days of the invoice date.
2. In case of payment default or extension for payment, IPAS is entitled to charge interest at a rate of 10% above the basic interest rate. The right to claim further default damages remains reserved.
3. If the customer suspends his payments or if insolvency proceedings are started against his assets, all claims become due immediately, without the need for a separate claim.
4. The customer may only offset or retain those receivables which are undisputed or have been established on a legally binding basis.

V. Deadline for deliveries or service

1. All our obligations are subject to correct and punctual supply to ourselves. An appropriate declaration to this effect by our suppliers is considered as sufficient proof to show that IPAS was prevented from delivering on time with no fault of our own.
2. Agreed delivery deadlines shall be extended appropriately in the case of force majeure or circumstances beyond our control, such as procurement difficulties, operational disruptions, strike, lock-out, shortage of means of transport, intervention by the authorities, problems with energy supply, etc. – even when these occur with our own suppliers or sub-contractors. However, IPAS is obliged to notify the customer immediately. If the delivery or service becomes permanently impossible due to such a circumstance or if IPAS is entitled to refuse the service due to such a circumstance (§ 275 clause 2 and 3 of the German Civil Code), IPAS may rescind from the contract.

If the delivery is delayed for more than two months, the customer is entitled to withdraw from the contract. Should the delivery time be prolonged due to such a circumstance or should IPAS be released from its obligation to supply, the customer has no right to derive compensation claims here from.

3. IPAS shall be entitled to make partial deliveries to a reasonable extent. Insofar as partial deliveries and services are reasonable, the interest of the customer in the service or delivery remains.

4. If the customer falls behind with the payment of a previous delivery, IPAS is entitled to withhold deliveries until payment for the previous delivery is received without being obliged to compensate for any damages arising there from.

VI. Construction modifications

IPAS reserves the right to make construction modifications at any time insofar as they do not result in any significant disadvantage for the customer. IPAS is not obliged to modify any already supplied products.

VII. Transfer of risk

1. When supplying installations the risk for the goods shall pass to the customer at the point of delivery even if IPAS or the customer still need to mount the installation and the commissioning through IPAS has been agreed.

2. The risk including that of confiscation by the authorities shall be passed on to the customer upon transfer to a transport company but at the latest when the delivery leaves the plant or IPAS warehouse.

VIII. Guarantee, rights of the customer in the event of a defect

1. IPAS does not assume any liability or guarantee for the condition of the goods. Any declarations made by IPAS regarding the nature or certain characteristics of the goods serve only to establish the agreed nature of the goods as per article 434 of the German Civil Code (BGB).

Any guarantee of condition beyond the above requires an explicit and written agreement by IPAS to offer a warranty that goes beyond the scope of the customer's statutory warranty entitlement, granting the customer rights that are independent of statutory entitlements.

2. Any guarantees of durability shall only be effective and binding if they have been made in writing and if the written guarantee contains the content, scope and limits of the guarantee. If any of the requirements in the first sentence are not met, the guarantee shall be invalid.

3. Incorrect deliveries or defects must be reported in writing by the purchaser without undue delay citing concrete designations of the defect or incorrect delivery. They shall not entitle the customer to withhold payments. On delivery the customer shall immediately ascertain that the packaging is intact. Any defects must be notified without delay. Furthermore, the customer must immediately organise an assessment of damage and notify IPAS of any damage that has occurred as otherwise the assertion of any claim for transport damage is excluded.

If the delivered goods are faulty, the customer can request subsequent fulfilment. Subsequent fulfilment shall take place either through rectifying the defect or through providing defect-free goods. The customer's claim for subsequent performance does not include the elimination of defects or functional problems that have occurred as a result of faulty or negligent handling on part of the customer or are due to external influences which are not presupposed by the contract. Should the subsequent performance not be successful or should IPAS fail to remedy a defect after a reasonable grace period set by the customer, the customer shall be entitled to withdraw from the contract or reduce the amount of payment. Any claims of the buyer beyond this for damages or for compensation of wasted expenditure according to section IX hereof will remain unaffected.

5. Claims by the customer for subsequent fulfilment, damages or expenses incurred in vain shall lapse 12 months after delivery of the goods. The customer's withdrawal due to services not rendered according to the contract shall be invalid if the customer's claim for subsequent fulfilment according to sentence 1 lapses and IPAS refers to this.

6. The remedy of defects and the shipment of goods outside of the warranty deed shall be at the customer's expense. For all products returned the risk shall only transfer to IPAS at the time of acceptance by us.

IX. Limitation of liability

1. IPAS shall be liable to the customer in the event of infringement of obligations material to the contract unless IPAS can prove not to be responsible for the infringement. A customer's claim as per sentence 1 is limited to the substitution of typical damage foreseeable at conclusion of contract insofar as no intent or gross negligence on part of IPAS exists. In the event of infringement of other duties arising from the contractual obligation (including the duty to respect the rights, objects of legal protection and interests of the customer) the liability of IPAS, particularly for consequential damage, is excluded.

2. The above limitations of liability shall not apply if the customer is entitled to rights from a special guarantee accepted by IPAS or insofar as IPAS is liable for personal injury and death caused intentionally or as a result of gross negligence. No change in the burden of proof to the detriment of the customer is associated with the above regulations in section IX.

X. Product returns

1. Product returns outside of a warranty claim require the prior written consent of IPAS and can only be accepted within a period of 90 days following the delivery date. Goods must be returned to us free of charge.

2. The redemption fee for goods that cannot be repaired or faultless goods in their original packaging amounts to 25% of the value of the goods, but no less than EUR 100 for each process.

XI. Instruction and product liability

1. The customer must pay careful attention to all product instructions issued by IPAS and verifiably pass these on to his buyers with particular references.
2. The customer undertakes to formulate an agreement according to the above regulation with all buyers of IPAS products.

XII. Export control requirements

For the export of IPAS products all corresponding export and control regulations must be adhered to. Any approvals or licenses required must be obtained by the customer in good time and presented to IPAS. Failure to do so entitles IPAS to withdraw from the contract without being required to pay compensation to the customer. The responsibility to assess whether a product requires an export license or is subject to special export control lies solely with the customer. The buyer shall release IPAS from all third party claims owing to a violation of such requirements. This also applies to any costs that IPAS may incur in exercising our rights.

XIII. Final provisions

1. German substantive law shall apply to all legal relations between IPAS and the customer.
2. The place of contract fulfilment and jurisdiction for all disputes is Duisburg.
3. Should individual provisions of these Terms and Conditions of Sale and Supply be or become invalid, the validity of the remaining provisions as well as the Terms and Conditions of Sale and Supply shall remain unaffected.