



## **General Terms and Conditions relating to Sale and Delivery**

**IKA Innovative Kunststoffaufbereitung GmbH & Co KG,  
IKA Innovative Kunststoffaufbereitung Geschäftsführungsgesellschaft mbH**  
(both hereinafter referred to as "IKA")

### **1.Scope**

1.1 All sales and deliveries and related services to a third party ("purchaser" or "customer") are performed solely based on these General Terms and Conditions relating to Sale and Delivery ("General Terms and Conditions") of IKA.

1.2 We do not accept any conditions of the purchaser contrary to or deviating from these General Terms and Conditions unless we have provided our express written consent to its applicability. Our General Terms and Conditions also apply if we perform unconditionally in the knowledge of any conditions of the purchaser contrary to or deviant to our General Terms and Conditions.

1.3 All agreements made between us and the purchaser for the purpose of performing the contract must be set forth in writing in this contract. This also applies to ancillary agreements.

1.4 Our General Terms and Conditions also apply to all future transactions with the purchaser.

### **2. Offer and acceptance**

Offers from IKA are without obligation. A contract comes into existence only after written order confirmation by IKA and is based solely on the content of the order confirmation and on these General Terms and Conditions.

### **3. Prices and terms of payment**

3.1 Our prices are euro prices and apply, unless otherwise agreed, ex works.

3.2 Statutory VAT is not included in our prices. It is shown separately on the invoice at the rate applicable upon the date of invoicing.

3.3. In case of increase of freight costs, customs duties or other public levies, taxes or charges after conclusion of the contract IKA is entitled to increase our prices correspondingly.

3.4. Deduction of cash discount requires express written agreement.

3.5. Payment periods stated on the order confirmation and/or invoice, in particular also those for the calculation of periods relating to deduction of cash discounts, begin upon the invoice date. Unless otherwise indicated in the order confirmation, payment of the net invoice amount (without deduction) is due within 30 days of the invoice date.

3.6 Should the purchaser be in default of payment, IKA is entitled to demand default interest. If the amount is invoiced in Euro, IKA is entitled to charge default interest at 8 percentage points above the base interest rate notified by the German Bundesbank and applicable at the date upon which default



occurred. If the amount is invoiced in another currency, IKA is entitled to charge default interest at 8 percentage points above the discount rate of the highest banking institution of the country in whose currency the amount was invoiced. Irrespective of this, IKA is entitled upon provision of proof to assert a claim for further damage for default of payment.

3.7. Set-off or retention by the purchaser is excluded unless the claim for set-off or retention is undisputed or legally final and binding. IKA is entitled to avert the exercise of the right of retention by providing a security, including in the form of a suretyship (Bürgschaft).

3.8. Should the purchaser cease making payments, should overindebtedness be given, or should the opening of composition or insolvency proceedings be applied for, or should the purchaser default on cashing due bills of exchange or cheques, IKAs total claim shall become immediately due. The same applies upon any other major deterioration of the purchaser's financial situation. In these cases, IKA is entitled to require sufficient provision of security or to withdraw from the contract with immediate effect.

#### **4. Delivery, transfer of risk and transport**

4.1 Unless otherwise indicated on the order confirmation, delivery ex works is agreed upon.

4.2 The Incoterms in its latest version are deemed to form part of the contract.

4.3 Delivery dates and delivery periods are only binding upon IKAs written confirmation and if the customer, in due time, has notified IKA respectively has provided IKA with all information and documents necessary for the delivery to be executed and has made any advance payments which may have been agreed upon. Periods agreed upon begin on the date of the order confirmation.

4.4 Should we be in default of delivery for reasons for which we bear responsibility, and should the purchaser, after we are already in default, set us a reasonable grace period while threatening to otherwise refuse acceptance of delivery (Fristsetzung mit Ablehnungsandrohung), then after expiry of this grace period without results the purchaser is entitled to withdraw from the contract. This grace period shall amount to at least three weeks. The purchaser is only entitled to claims for damages for non-performance amounting to the foreseeable damage if the default is due to intent or gross negligence.

4.5 Compliance with our delivery obligations requires the purchaser's timely and orderly fulfilment of its obligations. Should the purchaser be in default of acceptance or should he breach other duties to cooperate, then IKA irrespective of its other rights shall be entitled to appropriately store the products at the risk and expense of the purchaser or to withdraw from the contract.

4.6 Partial deliveries are permissible.

4.7. Unless otherwise expressly agreed in writing, surplus and short deliveries shall be accepted up to 2 % of the ordered quantity or weight. Decisive is the net weight indicated on the dispatch note. If the import regulations of the country of destination prohibit deviations from the ordered amount, the purchaser is obliged to inform IKA together with the order. Should the Buyer omit this information, the Buyer shall be liable for all costs and damages. The prices shall increase or decrease equivalent to the amount of the short or surplus delivery.

4.8 In the case of returns, the purchaser bears the risk due to return transport.



## **5. Warranty for defects**

5.1 The purchaser's warranty rights require that the purchaser has duly fulfilled its obligations to inspect the delivery and to make complaints in respect of defects (Untersuchungs- und Rügepflichten). Therefore, the purchaser must inspect the goods immediately after receipt insofar as this is feasible according to proper business procedures and, should defects be noticeable, notify IKA thereof without delay. Notification must be made in writing and must specify the type and scope of the defects.

5.2 Should the purchaser fail to make such notification, the goods shall be deemed to have been approved, unless the defect was not identifiable upon examination. Notification of other defects is to be made without delay upon discovery. Furthermore §§ 377 ff German Commercial Code (HGB) apply.

5.3 In each case of a complaint regarding defects (Mängelrüge) IKA has the right to inspect and test the products complained about. At IKAs request the purchaser will return the defective products to IKA at IKAs expense.

5.4 The purchaser's warranty claims are restricted to removal of the defect or delivery of a defect-free object at IKAs option (together, "Subsequent Performance" [Nacherfüllung]). The purchaser shall grant IKA reasonable time and opportunity as required for Subsequent Performance. Should Subsequent Performance fail, should it be unreasonable for the purchaser, or if IKA has refused Subsequent Performance according to section 439 (3) German Civil Code (BGB), then the purchaser may at its option withdraw from the contract according to the statutory provisions.

5.5 Further claims of the purchaser, including but not limited to claims with respect to consequential damage caused by a defect (Mangelfolgeschäden), are generally excluded. This does not apply in the case of intent, gross negligence or breach of IKAs essential contractual obligations and in the case of loss of life, bodily harm or damage to health. The purchaser's right to withdraw from the contract remains unaffected.

5.6 Products replaced by IKA are to be returned to IKA at its request. The purchaser's rights regarding defects shall not apply if the defects occur for reasons for which the purchaser bears responsibility, e.g. owing to improper storage and use, faulty treatment, or faulty processing of the products by the purchaser.

5.7 The warranty period is 12 months, calculated from the transfer of risk (Gefahrenübergang). This period is a limitation period and also applies to claims for compensation for consequential damage caused by a defect, insofar as no claims deriving from tortious acts are asserted.

## **6. Liability and product liability**

6.1 Unless otherwise provided for above, IKA, its vicarious agents and persons employed to fulfil its obligations (Erfüllungs- und Verrichtungsgehilfen) are liable for the purchaser's claims for damages arising from a positive breach of contract (positive Vertragsverletzung), from breaches of duty during contract negotiations and from tortious acts as follows:

- a) Liability for personal injury follows the statutory provisions.
- b) Liability for direct material damage (Sachschaden) is limited to 250,000.00 € per damage event and 500,000.00 € in total.
- c) Liability for indirect damage, consequential and pecuniary damage, lost profit, loss of interest, damage from claims by third parties and omitted savings are excluded.



The limitation on liability under b) and the exclusion of liability under c) do not apply in so far as in case of damage to privately used objects according to the Product Liability Act (Produkthaftungsgesetz) or in cases of intent or gross negligence or in case of breach of material contractual duties or in case of a lack of warranted features (zugesicherte Eigenschaften) liability is mandatory for foreseeable damage typical for this type of contract (vertragstypisch vorhersehbare Schäden).

6.2 IKA is not liable should performance of delivery obligations be impossible or delayed if the impossibility or delay derives from due compliance, at the purchaser's instigation, with obligations under public law regulations in connection with the European Chemicals Regulation REACH.

## **7. Quality**

7.1 IKA guarantees commercial quality and only for intended purpose.

7.2 Our samples always show the typical values of material without further engagement for us and may not be analyzed by the purchaser for their chemical composition or manufacturing method outside of the contractual purpose.

7.3 Our indications in product specifications as to qualities and analysis are to be considered only as approximate indications, also as to the maximum and minimum limitations, as far as certain properties have not been expressly guaranteed by us.

## **8. Retention of title**

8.1 IKA retains title to the delivery item until all claims against the purchaser to which IKA is entitled have been fulfilled (title retention goods [Vorbehaltsgüter]), even if the individual item of goods has been paid for. Pledging or transfer by way of security (Sicherheitsübergang) of the title retention goods is not permissible.

8.2 In case that IKA's title retention goods are sold to a third party – as permissible in the orderly course of business (ordnungsgemäßer Geschäftsbetrieb) – the purchaser here and now assigns by way of security the future claims against its customer deriving from a resale until all IKA claims have been satisfied, without any specific declarations being later required; the assignment also covers balance claims (Saldoforderungen) arising from existing current account relationships (Kontokorrentverhältnisse) or arising upon ending of such relationships of the purchaser with its customers. Should the title retention goods be resold together with other items without an individual price being agreed upon for the title retention goods, then the purchaser assigns to IKA, with precedence over the remaining claim, the part of the total price claim corresponding to the value of the title retention goods as invoiced by IKA. Until revoked, the purchaser is authorized to recover the assigned claim from the resale; but the purchaser is not entitled to dispose thereof in any other way, e.g. via assignment. At IKA's request, the purchaser shall notify the customer of the assignment and provide IKA with the documents required for the assertion of its rights vis-à-vis the customer, e.g. invoices, and to provide the required information. All costs of recovery and any interventions shall be borne by the purchaser. Should the purchaser receive any bills of exchange based on the purchaser's authorization to recover the assigned claims from the resale, title to these papers shall transfer to IKA together with the vested right by way of security. Transfer of the bills of exchange shall be replaced by an agreement whereby the purchaser holds the bills of exchange in trust for IKA and then without delay indorses them and delivers them to IKA. For the event that the equivalent amount of the claims assigned to IKA is received in the form of cheques by the purchaser or by a financial institution of the



purchaser, the purchaser is obliged to make immediate notification of such receipt and to make payment for IKA. Ownership of the cheques shall transfer to IKA together with the vested right as soon as the purchaser receives them. Transfer of the papers shall be replaced by an agreement whereby the purchaser holds them in trust for IKA in order then to deliver them to IKA without delay and indorsed.

8.3 If the purchaser processes the title retention goods, if it remodels the goods or connects them with other objects, then such processing, remodeling or connection shall be made for IKA. IKA will acquire direct ownership of the object produced through processing, remodeling or connection. Should this not be possible for legal reasons, then IKA and the purchaser agree that IKA acquires ownership of the new object in each moment of processing, remodeling or connection. The purchaser shall store the new object for IKA with the due care of a prudent businessman. Upon processing (Verarbeitung), remodeling (Umbildung) or connection (Verbindung) with other objects not belonging to IKA, IKA shall be entitled to co-ownership (Miteigentum) of the new object in accordance with the proportion of the value of the processed, remodeled or connected title retention goods to the value of the new object. For the event that the new object is sold, the purchaser hereby assigns to IKA its claim against its customer deriving from the sale with all ancillary rights by way of security without specific declarations being required later. However, the assignment applies only in the amount corresponding to the value invoiced by IKA for the processed, remodeled or connected title retention goods. The part of the claim assigned to IKA takes precedence over the remaining claim.

8.4 If the title retention goods are connected to property or movable assets by the Purchaser, then the purchaser shall also assign its claim to which it is entitled as remuneration for the connection together with all ancillary rights by way of security to IKA without further specific declarations being required. Should the purchaser be the owner of the property or should the purchaser be entitled to a claim for rent for other legal reasons, it shall also assign this claim for rent to IKA. As regards the amount of the claims assigned, Section 7.3 shall apply mutatis mutandis.

8.5 Should the purchaser be wholly or partially in default of its obligation to make payment or to cash due bills of exchange or cheques, should overindebtedness or cessation of payment be given, or should the opening of composition or insolvency proceedings have been applied for, IKA is entitled to immediately take possession of all goods still subject to retention of title; likewise, IKA may immediately assert the further rights arising from the retention of title; the same applies upon any other significant deterioration in the purchaser's economic situation. The purchaser shall grant IKA or its agents access to its entire business premises during business hours. The demand to surrender or take possession of the goods does not represent a cancellation of the contract. IKA is entitled to realize the title retention goods with the due care of a prudent businessman and to satisfy its outstanding claims by offsetting them against the proceeds from such realization.

8.6 Should the value of the security exceed IKAs claims against the purchaser arising from the ongoing commercial relationship by a total of more than 20 %, then IKA is obliged at the purchaser's request to release securities to which the purchaser is entitled at the purchaser's option.

## **9. Intellectual property rights**

9.1 No rights and no licenses to patents belonging to IKA, administered by IKA or for which IKA holds licenses are granted to the purchaser through the sale of the products. This does not mean, however, that the purchaser is not entitled to use and sell the products delivered under this contract which are covered by a patent.



9.2 IKA possesses all rights to further developments arising in the course of the manufacturing and delivery of the products to the purchaser and is entitled to apply for patent protection or other protection of intellectual property rights for these products.

## **10. Force majeure**

Events that are unforeseeable, unavoidable and lying outside of IKAs sphere of influence and for which IKA bears no responsibility such as natural disasters, war, industrial disputes, shortages of raw materials and power, shortages of means of transport, disruptions to operation, damage by fire or explosion, or official requirements release IKA, while those events last, from its obligation to make delivery or performance in due time. Periods agreed upon shall be extended by the duration of the disruption. The purchaser will be notified in an appropriate manner that the disruption has commenced. Should it be impossible to foresee when the disruption will end or if the disruption lasts for longer than two months, each Party is entitled to withdraw from the contract. A confirmation issued by the responsible Chamber of Commerce and Industry in the country of the seller or the purchaser serves as proof of the existence of circumstances of force majeure.

## **11. Export Control, Compliance**

11.1 The purchaser commits himself and is obliged to provide without delay at any time on IKAs request all requested information, data and documents, of any nature whatsoever, for the authentication of the purchaser and its ultimate beneficial owners. This is for example necessary for anti-money-laundering laws and provisions or examination of sanction lists or any other provision or law. The purchaser is obliged to inform immediately about all changes of already given information, data and documents in course of the present provision.

11.2. It is explicitly stated that the fulfilling of our contractual obligations is subject to the condition that the fulfillment is not prevented by any impediments arising out of national or international laws and provisions, in particular, regarding foreign trade laws, or by any embargos or any other sanctions. If one of the contractual parties is subject to sanctions or embargos and the other party is no longer permitted by law – in particular pursuant to foreign trade laws – to trade with the other party, the parties will immediately terminate the business relationship. In this case, each party must bear its own costs.

11.3. The purchaser shall carefully consider and comply with all provisions governing cross-border trade, in particular, foreign trade laws. The purchaser shall use all delivered goods only for peaceful and non-military purposes. Further, the purchaser shall comply with all provisions regarding to anti-corruption, competition law as well as tax law.

11.4. The buyer is prohibited from using, selling or in any other way making available any IKA products for military purposes, in ABC weapons or launchers.

## **12. Confidentiality**

12.1. The purchaser irrevocably undertakes and agrees to keep the conclusion of the contract as well as all other information, data, trade and business secrets, provided by IKA in connection with the business relationship confidential. The purchaser shall not make any of the respective information, data, trade and business secrets available, in whatever kind, to any third party or the public without



IKAs prior written consent. The purchaser shall use the respective information, data, trade and business secrets exclusively for the performance of the contract.

12.2 Any advertisement and publications with regard to business relationships with us as well as the naming of us as a reference or the inclusion of us in a reference list shall need our prior written consent.

### **13. Applicable Law and Jurisdiction**

13.1 The law of the Federal Republic of Germany applies excluding any conflicts of law provisions according to international private law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

13.2 The German version of the General Terms and Conditions is binding. Should these General Terms and Conditions also be made known to the purchaser in another language apart from the language in which the contract is concluded (language of contract), this is done for the sole purpose of facilitating understanding. Terms of these General Terms and Conditions to which a German translation has been added shall be interpreted as having the meaning assigned to them by the German translation.

13.3 Insofar as no other indication is given on the order confirmation, IKAs place of business is the place of performance for all contractual and statutory claims.

13.4 If the purchaser has its seat within the European Union the exclusive place of jurisdiction for any disputes arising from the contractual relationship is IKAs place of business. However, IKA is entitled to bring an action before any legally competent court.

13.5 If the purchaser has its seat without the European Union the following arbitration clause applies: All disputes or claims out of or in connection with this contract including disputes relating to its validity, breach, termination or nullity shall be finally settled under the Rules of Arbitration of the Chamber of Industry and Commerce of Munich and Upper Bavaria (IHK München) without recourse to the ordinary courts of law by three arbitrators appointed in accordance with said rules.

13.6 Upon our request the purchaser is obliged to confirm in written form the existence and content of the jurisdiction clause or arbitration clause and the choice of law clause.

13.7 All agreements such as amendments or additions to the contract and these General Terms and Conditions as well as ancillary agreements require written form, irrespective of whether they were made upon or following conclusion of the contract. This also applies to any alteration to this written form requirement.

13.8 Should individual provisions be invalid; the remaining parts of the contract will remain binding. Should a provision be wholly or partially invalid, the parties shall endeavor without delay to achieve the economic purpose intended by the invalid provision in another, legally permissible manner.