

**GENERAL CONDITIONS OF SALE  
of IWG Isoller Wendt GmbH**

**1. General**

1.1 The following conditions of sale and delivery apply to any and all business transactions, including future ones, between Supplier and Customer. The following conditions apply exclusively; contradictory or deviating conditions of the Customer will not be accepted unless the Supplier specifically agrees to them. This will apply just the same if the Supplier delivers in knowledge of contradictory General Terms and Conditions of Business of the Customer which deviate from the following conditions of sale and delivery.

**2. Contract Conclusion**

2.1 Offers of the Supplier will always be without engagement and not binding unless it is specifically stated in writing that they are "binding".

2.2 A handling fee on the basis of our price list will be charged for the preparation of an offer. This handling fee can be offset in case an order is placed with us.

2.3.1 The Seller will be bound to "binding" offers for twenty (20) working days.

2.4 In principle, every contract has to be in written form unless Supplier and Customer waive the written form requirement in mutual agreement.

2.5 If a contract is not concluded by means of a uniform document signed by both the Customer and the Supplier it will take effect only at the time the Customer places the order in writing and the Seller acknowledges it in writing.

2.6 The Customer may assign rights and duties resulting from the Contract to third parties only with the written approval of the Seller.

2.7 The Supplier reserves himself any and all property rights and copyrights over cost estimates, drawings and similar documentation unless these are effectively transferred to the Customer. Each and every use, reproduction or other use, especially the transmission to third parties, requires the prior written approval of the Supplier.

2.8 Should the order not be placed with the Supplier, drawings and other documentation belonging to offers are to be immediately returned upon request.

**3. Prices**

3.1 All prices are quoted in € (euros) to which the value added tax at the relevant applicable statutory rate will be added. Value added tax will be charged to account separately. Prices of deliveries are calculated ex shop/warehouse and do not include packaging, freight, postage and insurance costs.

3.2 Price alterations are permitted if more than four (4) months lie between the conclusion of the contract and the date of delivery agreed and the Supplier has a justified interest in the price adjustment. Such a justified interest especially exists if prices of raw materials and/or the procurement of material have increased more than inconsiderably. In such a case the list price valid on the day of delivery will be considered as agreed for the delivery.

The Supplier will promptly inform the Customer about the reason and the amount of the price adjustment required. The Customer will be entitled to withdraw from the contract if the price increase amounts to more than 25%. The Customer shall also be entitled to withdraw from the contract if he can provide proof that a special interest of the Supplier in the price adjustment does not exist.

Should the Customer be a consumer in the sense of the *Bürgerliches Gesetzbuch* (German Civil Code), he may withdraw from the contract within a term of two (2) weeks following receipt of the notification that the price has increased without this depending on the amount of the increase or the reason.

3.3 A right of withdrawal on the basis of price increases does not exist.

**4. Payment**

4.1 If and to the extent to which no other terms of payment will be agreed, invoices have to be paid promptly without deduction.

4.2 Should the Customer fail to pay an invoice when it falls due, the invoiced amount will bear interest in the amount of eight percent (8%) above the relevant base interest rate according to § 241 *BGB*. The Supplier is at liberty to provide proof of a higher damage caused by delay.

The Customer will also be in default without a reminder if

- a) the payment date is determined on the basis of the calendar or
- b) the Customer does not effect payment within thirty (30) days after its due date and receipt of the invoice, and the Customer is not a consumer in the sense of § 286 Para 3 *BGB*.

If the Customer is a businessman and if the receipt of the invoice is not clearly ascertainable, the Customer will be in delay thirty (30) days after the receipt of the delivery by the latest.

4.3 Payment will only then be considered as having been effected at the time the Supplier can dispose of the amount, i.e. at the time payment has been credited to his account and in the case of payment by cheque at the time it is honoured. As from the second reminder, the Seller will be entitled to charge € 5.00 for each reminder.

4.4 All liabilities of the Customer vis-à-vis the Supplier will fall due immediately should a bill or cheque be protested, in case of financial collapse or late payment.

4.5 In case of late payment the Supplier will be entitled to withdraw in whole or part from all standing contracts to include contracts for which partial performance has already been provided.

4.6 The assertion of rights of retention and setoffs against counterclaims on the part of the Customer will be excluded unless they are recognized by declaratory judgment or are acknowledged in writing by the Supplier.

**5. Delivery**

5.1 Unless otherwise expressly agreed, delivery time details are not binding and without engagement.

5.2 The Supplier will be entitled to make partial deliveries. Delivery shortfalls and over-deliveries up to 10% will be considered as fulfilment of the relevant contract.

5.3 The precondition for compliance with the agreed delivery dates will be the timely receipt of all documents to be delivered by the Purchaser, all required approvals and clearances, especially of all plans, and observance of the agreed terms of payment and other obligations by the Customer. Should these conditions not be fulfilled in time, time-limits will extend adequately; this will, however, not apply should the Supplier be answerable for the delay.

Circumstances and events such as war, strikes, shortages of raw materials and energy for which the Supplier is not answerable and other cases of force majeure shall release the Supplier as long as the hindrance prevails from his obligation to supply to the extent to which performance is rendered impossible to the Supplier by it and he will not be answerable for the delay.

Should delivery be permanently impossible to the Supplier (non-availability), he will be entitled to withdraw from the contract provided he has immediately informed the Customer about the non-availability. If the Customer has already effected payment it has to be promptly refunded to him.

Should delivery be delayed and the Supplier is answerable for the delay, the Customer may grant the Supplier a reasonable extension for delivery. Should the Supplier again not perform within the fixed extension, the Customer may grant the Supplier a last extension of time of at least two (2) weeks. Should the Customer provide proof that acceptance of delivery is not of interest in case of non-compliance with the aforementioned extension of time the Customer will be entitled to statutory rights.

5.4 Should the Customer not submit any comments within the time-limit, the Supplier will be released from the delivery commitment. Any and all further claims will be excluded.

5.5 With regard to orders the fulfilment of which consists of several parts, non-fulfilment, improper or delayed fulfilment of a delivery has no influence on other deliveries of the order. Should in consequence of delivery obstructions the quantities of goods available be insufficient for the fulfilment of all deliveries, the Seller will be entitled to make uniform reductions. In addition, the Seller will be released from his delivery commitment.

5.6 With regard to the violation of obligations for which the Supplier is answerable, the Customer will be entitled to legal claims except as otherwise provided for in the above provisions. Liability of the Supplier to pay damages for unforeseeable damage is excluded. If the Supplier has taken out business liability insurance, liability with regard to amount will be limited to the insurance benefit of the business liability insurance if coverage covers the risk of damage typical for this type of contract and no risk exclusion of the insurance contract is applicable. Deductions from the insurance benefit by reason of participation, series claim, maximum annual cover or similar deductions have to be refunded by the Supplier as well. In other respects, the liability is limited to the amount of the order value. Liability for other damage will be excluded as far as it is not based on intentional or grossly negligent breach of duty on the part of the Supplier, his legal representatives and vicarious agents. Liability for other damage based on minor negligent breach of duty on the part of the Seller, his legal representatives or vicarious agents is excluded provided the breach of duty is not a breach of material obligations.

Liability for other damage will be limited to the reimbursement of the typical damage. Liability for unforeseeable financial losses will be excluded.

## 6. Risk Assumption

6.1 In principle, delivery will be ex shop/warehouse. Deliveries will always be at the Customer's risk and expense even if delivered carriage paid and/or with transport means of the Supplier. The risk of danger passes to the Customer at the time the goods are handed over to the first carrier. Goods which are not taken over in time will be stored at the risk and expense of the Customer. Purchase orders have to show the shipping instructions since otherwise the choice of the shipment mode will be left to the Supplier without engagement with regard to the fastest shipment at lowest costs. Without express indication by the Customer,

shipment will be uninsured at the Customer's risk and expense.

## 7. Defects as to Quality

7.1 The statutory period of limitation is one (1) year counted from delivery. Should building material which is normally used for the erection of structures be the item of delivery, the period of limitation will be five (5) years. To the extent to which a later commencement of limitation than the delivery date results from law, this commencement of limitation shall be authoritative. Data provided by the Supplier on the delivery and products/services are descriptions and/or markings only. Provided that no agreement or a guaranty of the Supplier results from the contractual agreements, such data do not constitute an agreement with regard to the legal and factual nature or guaranty of quality. Minor deviations or deviations of quality, colour, dimension, weight, equipment or design which cannot be technically avoided do not constitute a material defect of the delivery if the supposed use according to the contract is not impaired by the deviation or if the delivery is suitable for normal use and its properties are customary. This applies likewise to changes and improvements in the context of technical further developments by which the contractual purpose will not be jeopardized.

7.2 For purchase orders which are based on dimensions, data and sketches or drawings of the Customer, the latter will bear the sole risk for the correctness of data; the Supplier disclaims any and all liability for it.

7.3 The Customer has to examine the goods promptly upon receipt. He has to inform the Seller about noticeable defects promptly upon receipt of delivery and about latent defects promptly at the time of their discovery. If the Purchaser is not a businessman in the sense of the regulations of the *Handelsgesetzbuch* (German Commercial Code), instead of him being obligated to promptly object he will be obligated to object within a term of two (2) weeks counted from the above date.

7.4 Should delivery be partly or completely defective, the Customer shall grant the Supplier an appropriate extension of time for supplementary performance (remedy of defects or subsequent delivery). Should supplementary performance fail, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price. Legal supplementary performance is not required if it is impossible, if it is unreasonable for the Customer to refer to supplementary performance or the Supplier refuses supplementary performance. The Supplier shall be entitled to refuse supplementary performance in cases where this is unreasonable. With regard to contracts on construction works in the sense of the *VOB/A* (German Construction Contract Procedures), § 1, withdrawal on the part of the Customer will be excluded. The customer will, however, be entitled to a reasonable reduction of the purchase price.

For a possible claim for damages instead of fulfilment, the provisions of item 5 concerning the limitation of liability for the disclaimer apply mutatis mutandis.

7.5 Should the Supplier exercise his right to subsequent improvement, he may either remedy the defect himself or have it remedied by a third party appointed by him. Subsequent improvement will be carried out at the option of the Supplier in his company or at another place determined by him in his reasonably exercised discretion and by taking the significance of the defect into account.

7.6 Should the Customer not submit a notification on defects in time or should the goods be used or sold by him this will be considered as approval without reservation.

7.7 Warranty claims of the Customer will be forfeited in case of

any unauthorized interference with the goods or modifications thereto or any and all handling by the Customer or any third parties contrary to contract. In addition, they will be forfeited in case the Customer does not provide the Supplier access to the defective parts for examination by the latter in their condition at the time of the determination of the defect. Finally, they will also be forfeited insofar as the defect concerns a part from the production of a certain third party and the Customer refuses his approval to replace this part by an equivalent part from the production of somebody else.

8.6 Export or another resale to abroad including the free zones of good supplied under reservation of title is permitted only with the prior approval of the Supplier.

## 9. Place of Performance and Jurisdiction

9.1 Place of performance for the entire performance and especially for payment by the Customer shall be Berlin unless the parties agree otherwise. In case of the Customer's withdrawal because of a material defect, the place of performance shall be where the delivery is as specified in the contract.

9.2 To the extent permitted by law, Berlin or, at Supplier's option, the general place of jurisdiction of the Customer, will be established as place of jurisdiction. Exclusively the law of the Federal Republic of Germany shall govern the contractual relationships of the parties.

## 10. Data Protection

10.1 It is pointed out that customer data will be stored in accordance with § 33 of the Federal Data Protection Act (BDSG).

7.8 The Supplier assumes especially no warranty for damage which occurs for the following reasons:

- Improper or inappropriate use;
- Faulty installation and/or commissioning by the Customer or any third parties;
- Wear and tear;
- Faulty or negligent handling, especially excessive use;
- Use of equipment and substitute materials which are not in conformity with the operating manual;
- Chemical, electro-chemical or/and electric influences unless they are to be attributed to the Supplier's fault.

7.9 Warranty claims will be excluded to the extent to which the Supplier complied with a special instruction of the Customer with regard to the construction or the material to be used or to the extent to which the Seller informed the Customer in writing about the exclusion of warranty at the time the instruction was provided.

## 8. Reservation of Title

8.1 The goods remain the absolute property of the Supplier until all liabilities which resulted from the business relationship with the Supplier are fully paid. Pledging or the security assignment of the goods is not admissible. The Customer shall inform the Supplier about pledging immediately.

8.2 The Customer may, however, sell the goods subject to reservation of title in the context of proper business activities as long as he is not in arrears with the payment of goods. In case of the justified or unjustified resale of the goods subject to reservation of title the Customer herewith assigns his future accounts receivable from third parties from the resale in full to the Supplier who herewith accepts the assignment. On request, the Customer will be obligated to disclose the assignment to the third-party buyer and to provide to the Supplier the required information and hand over the documentation for the assertion of his rights against the buyers. The Customer is authorized to collect the assigned claims as long as he has properly fulfilled his payment obligations vis-à-vis the Supplier.

8.3 If the goods of the Supplier are blended or combined with other objects, the Supplier will, in this respect, be regarded as the manufacturer and will gain ownership of the intermediate and the final results. In this respect, the Customer is considered to be a safe-keeper only.

8.4 If the Customer has been handed over goods as a sample, his keeping silent after the expiration of the test period will be regarded as purchase for firm account of the Customer on the basis of the Supplier's terms of delivery and payment.

8.5 In case the Customer's conduct is contrary to contract, especially because of late payment, the Supplier shall be entitled to seize the goods which are subject to reservation of title at the Customer's expense. Seizure of the goods which are subject to reservation of title does not release the Customer from his payment obligation.

**GENERAL TERMS AND CONDITIONS OF PURCHASE  
of IWG Isolier Wendt GmbH**

**1. General**

- 1.1 These General Terms and Conditions of Purchase shall apply to all deliveries of goods and provision of services the Purchaser wants to buy from the Supplier.
- 1.2 In the following, the term "deliveries" also includes all other services the Purchaser wants to buy from the Supplier.

**2. Purchase Order and Order Acknowledgement**

- 2.1 In principle, all purchase orders and changes of purchase orders shall be set up in written form. Oral purchase orders shall be confirmed by the Supplier in writing unless and to the extent to which the written form is waived in mutual agreement. The burden of proof with regard to the waiver of the written form requirement rests with the Supplier.
- 2.2 All purchase orders and other agreements are exclusively based on the General Terms and Conditions of Purchase used by the Purchaser and other documentation mentioned in the purchase order.
- 2.3 General Terms of Delivery of the Supplier shall apply only if specifically confirmed in writing by the Purchaser prior to contract conclusion. This applies to the Supplier's General Terms of Delivery as well which are attached to his acknowledgements of orders.

**3. Supplier's Obligation to Deliver**

- 3.1 Delivery has to be in accordance with technical standards and guidelines (DIN, VDE, VDI, etc.) customary in the trade in Germany.
- 3.2 Details on properties (characteristics) of the deliveries ordered which the Supplier provided in offers, brochures or other similar documentation handed over by him will, in case of the availability of the prerequisites of a guarantee as procurement guarantee, be regarded as agreement on the legal and factual nature in the sense of § 434 Para 1 BGB (German Civil Code).
- 3.3 Any deviation from the contractually agreed delivery on the part of the Supplier is, also after having obtained the Purchaser's express written consent, permissible only if this is based on technical or other compelling requirements.

**4. Fixed Dates**

- 4.1 It is known to the Supplier that the Purchaser does not store goods and that he, for this reason, depends on absolute compliance with the delivery times specified by the Supplier. The delivery dates and terms of delivery in the purchase order are therefore binding.
- 4.2 Terms of delivery commence on the date indicated in the purchase order.
- 4.3 Should the Supplier exceed the agreed delivery times and/or delivery dates and if, according to the purchase order, the conditions of a transaction for delivery by a fixed date are given, the Purchaser shall at his option be entitled – without having to grant an extension for delivery or having to threaten with its refusal of acceptance – to withdraw from the contract or, should the Supplier be answerable for the delay, to claim damages on account of late performance. Instead of the special calculation of damages, the Purchaser may in the case of a delay in delivery claim fixed lump-sum damage for

delay in the amount of one percent (1%) of the value of the goods delivered for every full week, however, not more than 10% in total. Further legal claims are reserved. The Supplier is entitled to provide proof that in consequence of the delay no damage or a lower damage occurred. The Purchaser shall be entitled to legal rights, should the conditions of a transaction for delivery by a fixed date not be given. A reminder is not required if a date for performance is determined according to the calendar or the due date is determined in such a manner that it can be calculated forthwith on the basis of the calendar.

**5. Requirement to Examine and Complain in Respect of a Defect Immediately on Receipt of Goods**

- 5.1 The Purchaser will have to examine the goods delivered within a reasonable time with regard to variations in quality and quantity. A complaint in respect of noticeable defects of the aforementioned type shall have been made on time if received by the Supplier within eight (8) working days. Latent defects of the aforementioned type will be considered complained about if the complaint is received by the Supplier within eight (8) working days as from their determination and the goods have been properly examined upon receipt of delivery.
- 5.2 The above regulation shall apply also to cases in which goods have already become the Purchaser's property.

**6. Reservation of Title**

- 6.1 Title to the goods delivered will forthwith be transferred to the Purchaser. Reservation of title by the Supplier to the goods delivered does not exist.

**7. Warranty**

- 7.1 The Supplier is subject to the legal liability for material defects unless specified otherwise in the following conditions. He especially warrants that the goods delivered and the services provided are in the condition which has been agreed upon contractually or – should this condition not have been agreed upon – that it is as customary for objects of the same type. This condition also includes such characteristics which the Purchaser with regard to certain characteristics of the objects may expect on the basis of public statements made by the Seller and the Manufacturer or his vicarious agents especially in advertising or with regard to their marking according to § 4 Paragraphs 1 and 2 of the Product Liability Act.
- 7.2 In the case of a material defect, the Purchaser shall, at his option, be entitled to request the Supplier to remedy the defect by fixing a reasonable term or by a replacement delivery (supplementary performance). Should supplementary performance fail or if it cannot be reasonably expected of the Purchaser or should it be refused by the Supplier, the Purchaser shall, at his option, be entitled to withdraw from the contract or to reduce consideration. If the statutory prerequisites of § 437 Para 1 No. 3 BGB are given, the Purchaser may also claim damages or the refund of futile expenses.
- 7.3 The Supplier also has to bear the expenditure required for supplementary performance, especially travel and transport expenses as well as the costs of materials and other expenditures incurred due to the defectiveness of the delivery or because of supplementary performance at construction work performed or other things.

- 7.4 Should any faulty deliveries jeopardize completion dates which the Purchaser has to meet vis-à-vis any third parties, the Purchaser may request that materials required for supplementary performance are transported

to the place of use at the expense of the Supplier as quickly as possible. In such a case the Supplier has, at the request of the Purchaser, provide a means of transport for the fastest possible delivery as prescribed by the Purchaser as far as costs incurring thereby will not be out of all proportion to the damage presumably occurring if completion dates are not met.

amounts because of deficiencies. In such a case the time allowed for payment commences according to 9.2 after the complete remedy of defects.

9.5 Payments do not mean that the Purchaser accepts the delivery and/or services as contractually compliant.

9.6 The Purchaser will be entitled to legal set-off and retention rights.

9.7 On the basis of the provisions of the VOB (German Construction Contract Procedures) / B (valid version), the Purchaser will for the warranty period be entitled – with regard to work delivery performance – to withhold a ten percent (10%) security deposit on intermediate invoices and a five percent (5%) security deposit on final accounts.

## 10. Assignment of Claims

10.1 The assignment of claims the Supplier has against the Purchaser to third parties will be permissible only after having obtained the Purchaser's written consent.

## 11. Place of Performance, Venue and Applicable Law

11.1 Except as agreed otherwise, the place of performance for deliveries will be the place of delivery specified in the purchase order.

11.2 In case the Supplier is a merchant who has been entered in the commercial register and a common venue for the Purchaser and the Supplier does not exist, the venue for all disputes arising under this contractual relationship will be the head office of the Purchaser. The Purchaser will, however, be entitled to also sue the Supplier at the latter's venue.

11.3 With regard to the contractual relationship between the parties, applicability of German law is agreed.

## 12. Miscellaneous

12.1 The written form requirement applies to subsidiary agreements to the contract. Oral subsidiary agreements shall be effective only if both parties waive the agreed written form requirement and the subsidiary agreements are confirmed by an authorised representative of the Purchaser. A person the declarations of whom the Purchaser must let himself be imputed to in accordance with the principles of apparent authority and authority by estoppel, will be considered as an authorized representative as well.

12.2 The Supplier will be responsible that patents and property rights of third parties will not be violated by the fulfilment of his delivery commitments. Should any such rights be violated, the Supplier undertakes to hold the Purchaser harmless against any and all third party claims.

7.5 Should the Supplier not comply with his supplementary performance duty, the Purchaser may – after having granted a reasonable extension of time – also claim the reimbursement of the required costs of a covering transaction.

7.6 Should the Purchaser be entitled to claims on account of material defects, these claims will include the refund of handling expenses and manufacturing costs which have been spent in vain as well.

7.7 Claims of the Purchaser concerning supplementary performance, damages and the reimbursement of expenses that have been in vain fall under the statute of limitations in thirty (30) years if the deficiency consists of a third party's right *in rem* on the basis of which delivery can be requested. Should delivery concern one or more things which are to be used for a structure (delivery of construction materials) and should the defectiveness of the delivery result in the defectiveness of a structure the claims of the Purchaser fall under the statute of limitations in five (5) years. In other respects, legal requirements apply to the commencement and duration of limitations.

## 8. Prices

8.1 Prices agreed on at the time of ordering will be fixed prices for the entire time of delivery. They will, in particular, not be subject to change on the basis of cost increases, price alterations of sub-suppliers of the Supplier, force majeure or other such circumstances.

8.2 All prices are quoted inclusive of value added tax at the relevant applicable statutory rate, free place of use, inclusive of packaging, transport and freight costs except as agreed otherwise in the purchase order. A special agreement is required for the return of packaging. Costs possibly incurring for taking back packaging shall be borne by the Supplier to the extent to which a legal take-back obligation exists.

8.3 Prices include all costs of all material testing required and the relevant test certificates provided that they are customary in trade and/or contractually agreed.

## 9. Terms of Payment

9.1 A precondition for the processing of invoices of the Supplier is that they indicate the order number stated on the purchaser order in accordance with the specifications on the latter. The Supplier will be responsible for all consequences and delays resulting from the failure to comply with this obligation.

9.2 Payments will be effected net within 45 days unless agreed otherwise. A discount of three percent (3%) will be granted if payment is effected within fourteen (14) days.

9.3 The periods allowed for payment as stated under 9.2 commence as soon as all goods are delivered and all services are provided and a proper and verifiable invoice has been received by the Purchaser.

9.4 The deduction of discount according to 9.2 will also be admissible if the Purchaser offsets a claim to which he is entitled against the Supplier or retains appropriate partial