

General Terms and Conditions of Sale of inge GmbH

1. Scope

These terms and conditions (the "Agreement") shall apply to the supply of any and all UF Modules (the "Products") delivered or any services provided by inge GmbH or any of its affiliates (the "Seller") to Customer or Products and services purchased or ordered by Customer from Seller.

2. Ordering

2.1 Following Seller's receipt of an order for the supply of Products or the provision of services (the "Order"), Seller may either accept the Order in writing ("**Confirmation**") or reject the Order. Any Order shall be deemed to be rejected by Seller, if Seller has not accepted the Order in writing within 30 (thirty) calendar days.

2.2 All Orders placed by Customer or any amendments thereto shall be legally binding upon Confirmation by Seller in writing.

3. Pricing and Payment

3.1 Unless stated otherwise, the prices for Products are in EURO and are quoted EXW, Greifenberg, Germany according to Incoterms 2010 (the "Price"). Prices are exclusive of packaging and any Value Added Tax or other taxes chargeable in respect of the supply of Products. Any such taxes chargeable shall be added to the Prices and shall be paid by Customer.

3.2 Payment of any amount is due following 30 (thirty) days of the invoice. Customer shall not set-off any claims it may have vis-à-vis Seller against Seller's right to receive payment, unless the Customer's claim has been acknowledged by Seller in writing or has been finally adjudicated by a court of competent jurisdiction.

3.3 Without limiting Seller's other rights and remedies for any failure of Customer to effect payment when due, Seller shall be entitled to charge Customer interest at a rate of 8% (eight per cent) p.a. calculated on the basis of actual days elapsed and the year of 360 (three hundred and sixty) days until the date of receipt of payment by Seller. In addition, Customer shall reimburse Seller for any and all costs and expenses of collection of payment, including reasonable attorney's fees.

3.4 In the event Customer fails to remit timely payment, Seller shall be entitled without liability to suspend any obligations under any Orders placed by Customer ("Suspension"). In the event of Suspension, Customer shall pay to Seller all additional costs and expenses incurred by Seller as a result of suspending and resuming the work in progress. Any delivery dates as well as other contractual time schedules shall be extended for a period corresponding to the time lost for reasons of Suspension. If Customer fails to remit payment following 30 (thirty) days of the due date, Seller shall be entitled to cancel the respective Order.

3.5 Either party shall support the other party in obtaining any tax exemption certificates, or official tax receipts issued by the tax authorities and shall give all such other assistance as may be reasonably required to avoid or redeem any withholding tax.

4. Shipment and Delivery

4.1 Unless explicitly stated otherwise, delivery of Products ("**Delivery**") shall be effected EXW, Greifenberg, Germany according to Incoterms 2010.

4.2 Unless otherwise specified in an Order, Seller shall provide its services at Seller's location in Greifenberg or at its election at any other place as it sees fit.

4.3 Any Delivery dates specified in a confirmed Order shall be automatically extended (i) if and to the extent Customer fails to comply with its obligations under this Agreement, including any amendment thereto or (ii) for the duration of any Force Majeure Event as defined in Section 11.

4.4 Partial shipments and partial deliveries of Orders shall be allowed. Seller may issue the respective invoice upon each Delivery of Products actually delivered.

4.5 If Customer fails to accept Delivery or if Seller is unable to deliver the Products due to a Force Majeure event, Seller may arrange storage at a suitable warehouse. Seller shall provide Customer in writing with all necessary details pertaining to such storage. Delivery of the Products to the warehouse (which shall be evidenced by a warehouse receipt) shall be deemed to constitute Delivery. Any costs reasonably incurred by Seller in connection with the warehousing, including where necessary retesting and repackaging, shall promptly be paid to Seller by Customer. If and when any change in circumstances allow Seller to deliver the Product, Customer shall forthwith give instructions to the warehouse in order to permit Seller to deliver the Product without delay.

5. Risk and Title

5.1 Risk of damage to or loss of Products shall pass to Customer upon Delivery in accordance with the respective Incoterm specified herein or in the respective confirmed Order.

5.2 Title to the Products shall pass to Customer upon Seller's receipt of full payment of the Price.

6. Warranty

6.1 Seller warrants that the Products are free from significant defects in design, material and workmanship at the transfer of risk in accordance with Section 5.1. The Products are considered free from such defects, if they comply with the specifications set forth in the applicable technical specifications available on Seller's homepage on the respective Confirmation date (the "Specifications") which are hereby incorporated by reference and form integral part of this Agreement. Seller disclaims any liability for public statements or any other information with regard to the Products, whether originating from Seller or any third party, such as is contained in brochures, advertisements, catalogues or as is otherwise brought to Customer's attention by any current or future media, including any marks or labels attached to the Products.

6.2 To the extent that the Products do not comply with the Specifications ("Defect"), Seller shall, at its sole option either repair or replace any defective item of the Products or the Product free of charge within a reasonable period of time (in the following referred to as "Replacement"). Customer shall return to Seller the defective Products or parts thereof CIP Incoterms 2010 to Seller's repair center together with a detailed failure report at the cost of Seller. Products received for Replacement by Seller shall be returned CIP Incoterms 2010 to the destination named by the Customer at Seller's costs. Any other costs and expenses incurred by Customer for deinstallation and Replacement of Products shall be borne by Customer.

6.3 Warranty claims are excluded

- in case of insignificant deviation from the Specifications;
- for consumable parts and natural wear and tear;
for Defects originating after the transfer of risk to the Customer, in particular those resulting from improper operation, usage or handling, excessive strain, the usage of unsuitable material for operation, disregard of Seller's "*Installation, Operation and Maintenance Guidelines*" in its then current version or other documentation or from the deficient performance of services for which Customer or any other third party is responsible;
- for defects resulting from improper integration into third party equipment, unless such integration was performed by Seller or its subcontractors;
- for defects resulting from exposure to conditions other than the agreed ambient conditions, power or operational constraints set forth in this Agreement, the relevant Specifications or Seller's "*Installation, Operation and Maintenance Guidelines*" or to conditions otherwise not assumed to exist by the parties; and
- if Customer or any other third party modify the Products without the written approval of Seller.

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- 6.4 Warranty claims for Replacement shall lapse twelve (12) months after Delivery and shall be considered time barred after such date. The warranty period for repaired / replaced Products or parts thereof shall end 90 days following the expiry of the respective warranty period for the Product that has become subject of the Replacement.
- 6.5 Seller expressly disclaims any and all further warranties, whether express or implied, other than those given in this Section and all liability for defects of the Products. In particular, Seller disclaims all warranties for the Product's fitness for a particular purpose and merchantability.
- 6.6 The remedies for Defects stated in this Section are Customer's exclusive remedy for any Defect. Any further rights or remedies of Customer because of Defects in the Products, including without limitation those for damages are hereby explicitly excluded.

7. Changes by Seller

Seller may propose to Customer to modify Products with respect to functional and technical specifications. Customer shall discuss those suggestions in good faith with Seller, however, Seller shall not modify the Products without Customer's prior written approval except that Seller shall be entitled to modify Products in any way that does not affect the Specifications, including, but not limited to, substitute Products or components of Products with products or components which are form, fit or function equivalent to the substituted Products.

8. Limitation of Liability

- 8.1 Seller shall be liable towards Customer under or in connection with this Agreement for damages only to the extent proximately caused by Seller's negligence or its willful acts or omissions, except where such liability is mandatory under applicable law.
- 8.2 Seller shall in no event be liable to nor indemnify Customer for loss of contracts, loss of business, loss of data (including but not limited to any and all costs for retrieving and restoring lost data), loss of interest, for lost profits or business interruption or any indirect or consequential damages, irrespective of the cause of action or the legal theory upon which such claim is based.
- 8.3 Except in case of personal injury and death, Seller's liability under or in connection with this Agreement or any Order placed thereunder shall be limited (i) per event to an amount equal to the lesser of EUR 500,000.00 (five hundred thousand Euros) or the Price of the Order under which the claim arose and (ii) for all events in aggregate to an amount of EUR 1,000,000.00 (one Million Euros).

9. Intellectual Property Infringement

- 9.1 If any claim, suit, action or proceeding is brought against Customer by a third party based on any infringement of intellectual property rights owned by such third party and protected under the laws of the United States of America, Canada and the Member States of the European Union, such as but not limited to patents, utility models, design patents, copyrights or mask work rights owned by third parties, by any Products purchased by Customer from Seller under this Agreement ("Claims"), and if, as a result of such a Claim, Customer becomes enjoined or it is likely, in Seller's opinion, that Customer will become enjoined from using the Products, Seller shall at its election and subject to the conditions and limitations stated herein below:
- a) procure for Customer the right to use the Products;
 - b) provide Customer with a non-infringing replacement product or modify the Products so that they become non-infringing, provided that the replacement product/modified Products meets substantially the same functional specifications as the Products; or
 - c) upon return of the infringing Products at Seller's request, refund to Customer the purchase price actually paid by Customer for the infringing Products.
- 9.2 Upon Seller's execution of one of the options set out in this Section, Seller shall be released of any further obligation or liability to Customer as a result of any such infringement and Seller shall not be obligated to deliver any further Products.

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- 9.3 Customer will take all reasonable steps to cooperate with Seller in Seller's efforts to mitigate any potential damages, costs and expenses incurred by Seller under this provision.
- 9.4 Seller shall only be liable as set out in Section 9.1 if Customer has given Seller prompt written notice of any alleged or threatened Claims and all reasonable assistance and information as may be requested by Seller.
- 9.5 Seller shall not be liable with respect to any Claims arising out of or relating to either
- a) use or incorporation in any Products of any design, technique, modification (including Software Adaptations) or specification furnished or requested by Customer, or
 - b) the combination with or incorporation into the Products or elements thereof with any other equipment, product, software, or subassembly not supplied by Seller if such infringement would not have occurred without such combination.
- 9.6 This Section 9 states the entire liability of Seller and the exclusive remedy of Customer with respect to infringement of any intellectual property rights, either statutory or express or implied, including but not limited to any patent rights, copyrights, moral rights, trade secrets, trade names, service marks, know-how and any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force. Except as expressly stated in this Section, all warranties against infringement of intellectual property rights as mentioned before are hereby disclaimed to the fullest extent permitted by law.

10. Assignment

Except for Seller's right to payment for supplies of Product, no party shall assign any of its rights or obligations under this Agreement or any Order without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any such assignment for which approval is required shall be effective only upon signature by Customer, Seller and the assignee of an agreement under which the assignee shall agree to observe and perform all of the provisions of this Agreement applicable to the assigning party. Seller, however, shall not be prevented from appointing sub-contractors to perform work in connection with the performance of its obligations under this Agreement.

11. Force Majeure

No party shall be liable for any delay in performing its obligations hereunder if such delay is attributable to any event caused by circumstances beyond the reasonable control of a party, including but not limited to Acts of God, flood, storm and earthquakes and other natural catastrophes, fire, explosion, insurrection, war or riots, civil commotion, strikes or lock-outs, impossibility of obtaining materials, shortage of components and the failure to obtain necessary governmental or other required approvals, in particular any export license.

12. Applicable Law

This Agreement shall be subject to the substantive laws of the Swiss Confederation (Switzerland) without reference to its conflicts of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) dated April 11th, 1980, as amended from time to time, shall be excluded.

13. Arbitration

- 13.1 All disputes arising out of or in connection with this Agreement and the delivery and ordering of Products shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- 13.2 The arbitration proceedings shall take place in Frankfurt am Main, Germany.
- 13.3 The language to be used in the arbitration proceedings shall be English.

14. Miscellaneous

- 14.1 No modification to, amendment of, or waiver of any provision of this Agreement or any Order will be binding unless made in writing and signed by a duly authorized representative of the party to be bound thereby. Any waiver of this requirement for the written form shall likewise be in writing.
- 14.2 Unless otherwise explicitly set forth in this Agreement, no delay or omission of the parties in exercising any right, power, or privilege under this Agreement shall impair or shall be construed as a waiver of any such right, power or privilege, nor shall any partial exercise of such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege.
- 14.3 The partial or entire invalidity, illegality or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of the remaining part or any other provision. The invalid or unenforceable provision shall be replaced by a provision which, in so far as it is legally permissible, reflects the actual intentions of the parties as closely as possible or, considering the meaning and purpose of the Agreement or of the invalid or unenforceable provision, the presumptive intentions of the parties had they considered the point at the time of concluding the Agreement. The foregoing shall also apply to the extent that this Agreement does not completely regulate any question that may arise with respect to its subject matter or otherwise contains any gap.