

General Terms and Conditions of Sale and Delivery

Status: November 2018

1 – General

1. Our general terms and conditions of sale shall apply to all deliveries and services which IWT (Infrarot-Wärmetechnik GmbH) renders to companies and legal entities under public law.
2. We do not recognise any terms and conditions of the customer which conflict with or deviate from our general terms and conditions of sale unless we have expressly agreed to their validity in writing. Our general terms and conditions of sale shall also apply if we carry out delivery to the customer without reservation, in the knowledge that the customer's terms and conditions conflict with or deviate from our general terms and conditions of sale.
3. All agreements between us and the customer, in particular ancillary agreements and alterations to the contract, must be in written form to be effective, without prejudice to the written form requirement stipulated in certain places in these terms and conditions.
6. Should individual provisions of these general terms and conditions of sale and delivery be invalid, this shall have no effect on the validity of the remaining provisions.

2 – Offers and conclusion of agreements

1. Our offers are subject to change and non-binding. A contract shall only be concluded if we confirm this in writing.
2. Supplements, amendments or ancillary agreements must be made in written form and shall not be deemed accepted until they have been confirmed in writing.
3. If we agree to the cancellation of a contract without the customer being entitled to a legal or contractual right of withdrawal, all services rendered up to this point in time shall be invoiced in full.
4. The customer shall bear sole responsibility for delays, incorrect deliveries, incorrect performances, etc., which were due to a failure to provide the necessary information or due to the provision of incorrect information.

5. The customer undertakes to provide, at the start of a project or order, all the information which is necessary for its implementation unsolicited. It shall be the responsibility of the customer to verify the correctness of such information.

6. All illustrations, drawings, pricing documents, calculations and other information and technical data relating to the products provided by us are subject to our proprietary rights and copyrights. They may not be made accessible to third parties unless we give our express written consent. We shall not be bound by obvious errors, printing errors, miscalculations, spelling mistakes or calculation errors and these shall not be deemed to entitle the customer to performance or damages.

7. German and English are the exclusive contract languages.

3 – Prices

1. All prices shall be in euros and shall be understood to be ex-factory (Incoterms 2010 EXW) and exclusive of such ancillary costs as freight, customs and packaging. Any other terms and conditions of supply shall require our written consent.
2. VAT is not included in our prices and will be shown separately at the statutory rate on the day of invoicing.

4 – Payment

1. For new customers and customers located abroad outside Europe, payment shall exclusively be effected in advance and in full. Any other terms of payment require our written consent.
2. Payments by customers within the FRG and the EU shall be effected within thirty days of invoicing and without discount, or, following written agreement, within fourteen days at a 2% discount.
3. All other terms of payment and agreements must have our written consent.
4. A bank guarantee may be required for order volumes exceeding €50,000 or for new

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customers; the customer shall bear all costs for this.

5. Fees for payments outside the FRG such as bank charges or discount charges shall be borne by the customer and may not be deducted from our account.

6. If the customer is in default of payment, we shall be entitled to demand default interest at a rate of 5% p.a. above the respective interest rate of the Deutsche Bundesbank. Furthermore, we are entitled to suspend the delivery of ordered goods – even if they concern another order – in whole or in part until payment has been made in full.

5 – Delivery

1. Delivery dates and periods stated by us are not binding unless otherwise agreed in writing.

2. The observance of delivery dates presupposes the timely fulfilment of the customer's pre-performance obligations necessary for the delivery. The delivery period begins after the clarification of all the details regarding the execution of the order (release and binding acceptance) and receipt of all the documents and other information to be provided by the customer and required for the execution of the order and, if agreed, after receipt of a corresponding down payment. The delivery period shall also be considered fulfilled if the goods in question have left our warehouse at the time agreed, or our readiness to ship the goods has been communicated to the customer but, due to no fault of our own, shipping cannot be performed

3. The delivery period shall be extended appropriately in the event of measures taken within the framework of industrial disputes and in the event of unforeseen obstacles which we cannot reasonably be expected to influence, insofar as these have a considerable influence on the completion or delivery of the goods. This shall also apply if the circumstances occur at subcontractors and we cannot reasonably be expected to procure a replacement elsewhere.

4. Unless otherwise stated in the order confirmation, delivery shall be "ex-warehouse".

The risk of loss or deterioration shall pass to the customer when the goods are handed over to the forwarding agent, carrier or any other person, including the customer's own carrier.

5. In the event that shipping is delayed due to circumstances beyond our control, the risk shall pass to the customer upon communication of readiness. The same shall apply in the event that the customer is in default of acceptance.

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7. We may refuse delivery if it becomes apparent after conclusion of the contract that our claim to payment is at risk due to the customer's inability to pay. Our right to refuse performance shall lapse if the payment is effected or security is provided for it. We may determine a reasonable period of time within which the customer shall, at their discretion, either render payment or provide security concurrently with the delivery. We may withdraw from the contract after the unsuccessful expiry of the deadline.

6 – Limitation of liability/Limitation of claims under producer liability in accordance with Section 823 German Civil Code (BGB)

1. Compensation claims against us are excluded, with the exception of the following cases in which the compensation obligation is limited to foreseeable damage:

- a) intent or gross negligence can be ascribed to us;
- b) the customer claims damages for the absence of a contractually warranted characteristic;
- c) we have negligently breached a contractually stipulated obligation; in this case, however, our liability for damages to property and personal injury is limited to the sum insured under our business or product liability insurance; we are prepared to grant access to our policy at the customer's request;
- d) in the event of claims under the German Product Liability Act;
- e) claims due to initial inability to perform or impossibility of performance for which we are responsible;

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To the extent that our liability is excluded or limited, this shall also apply to the personal liability of our staff, employees, workers, representatives and vicarious agents.

7 – Reservation of title

1. Until the fulfilment of all claims against the customer to which we are entitled for any legal reason, we shall be granted the following securities, which we shall release on request at our discretion, insofar as their value exceeds the claims by more than 20% on a sustained basis.

2. Goods shall remain our property. Processing or redesigning shall always be performed for us as manufacturer, but without obligation on our part. If our (co-)ownership expires due to combination, it is hereby agreed that the (co-)ownership of the customer in the uniform item shall pass to us in proportion to the value (invoice value). The customer shall keep our (co-)ownership in safe custody free of charge. Goods to which we are entitled to (co-)ownership shall hereinafter be referred to as reserved goods.

3. The customer shall be entitled to process and alienate reserved goods in the course of orderly business, subject to the following conditions.

- a) they may not be in default;
- b) no obstacles may impede the passage to us of the claims arising from the resale;
- c) the customer's customer may not have the option to set-off with a counterclaim;
- d) they may only supply reserved goods to a third party under reservation of proprietary rights.

4. Pledges or transfers by way of security are not permitted. If, after conclusion of the contract, we become aware of circumstances which are likely to reduce the creditworthiness of the customer, we may at any time prohibit the resale of the goods delivered under retention of title. The customer hereby assigns to us in full any claims arising from the resale or any other legal reason with regard to the reserved goods. We hereby accept the assignment. We authorise the customer to collect the claims assigned to us in his own name. This authorisation may be revoked at any time.

5. In case of third-party access to reserved goods, the customer must inform such parties that the items are our property and notify us of this without delay. In the event of actions on the part of the customer which violate the terms of the agreement, we shall be entitled to retrieve the reserved goods at the expense of the customer.

8 – Liability for defects

To the exclusion of any further guarantee claims, we shall provide the following guarantee:

1. Claims for defects by the customer presuppose that the customer has duly fulfilled their obligations to inspect and give notice of defects in accordance with Section 377 German Commercial Code (HGB). The notice of defects must be made in writing.

2. If there is a defect for which we are responsible, we shall be entitled, at our option, to remedy the defect or to make a replacement delivery. In the event of rectification, we shall be obliged to bear all necessary expenses. This does not apply to changes to the goods demanded after conclusion of the contract!

3. In the event that we are not prepared or able to rectify defects or provide a replacement, or if defect rectification or replacement is otherwise unsuccessful – excluding the effects of *forces majeure* – the customer shall be entitled, at their discretion, to withdraw from the agreement or demand an appropriate reduction in the purchase price.

4. The guarantee shall only apply to defects which are already present at the time of the transfer of risk.

5. The guarantee for defects does not apply to natural wear and tear, or to damage resulting from faulty or negligent handling/operation, excessive strain or unsuitable equipment. Furthermore, the guarantee excludes non-observance of the operating instructions. Damage caused by inappropriate or improper use is not covered by the guarantee.

6. Our guarantee obligation shall be cancelled by modifications or repair work undertaken by the

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customer or a third party without our prior written consent.

7. After consultation with us, the customer must give us the necessary time and opportunity to carry out all repair work and replacement deliveries which we deem necessary. We do not assume any guarantee or liability towards fully qualified merchants for the delivery of third-party products. Therefore, we hereby assign our warranty rights to the supplier to the customer.

9 – Additional terms and conditions regarding the delivery of complete systems

1. The preparation of documentation, in German, in accordance with IWT standards shall form part of the order value. Arrangements can be made for the provision of documentation in other EU languages. Outside the EU, documentation in accordance with IWT standards shall be provided in German and English. The provision of translations for countries outside the EU is possible, for an extra charge. Binding language specifications must be made with the order. A later change is not possible.

2. If no binding information is provided with written orders, special documentation formats shall only be realised for an extra charge.

3. The order value shall include all tasks outlined in the pre-planning stage. To the extent that subsequent modifications are required during implementation, these shall be invoiced.

4. Systems shall be delivered, in accordance with the article description in the order confirmation, in fully assembled form, to the extent that their transport is possible in this form. Should it be necessary to disassemble the ordered system for transport purposes, the costs of assembly at the assembly location shall be borne by the recipient.

5. If an assembly and/or commissioning or supervisory activities are to be performed by us at the installation site, all costs will be invoiced separately. For countries outside the EU visa costs will be charged additionally. Notification of assembly, commissioning or supervisory activities must be issued with the written order, or at the latest fourteen days after it.

10 – Data protection

Pursuant to Section 33 German Federal Data Protection Act, the customer is hereby notified that its data shall be stored and processed by us for the purpose of order fulfilment. Data processing shall take place in accordance with the Federal Data Protection Act.

11 – Place of performance and jurisdiction

The place of performance for all mutual obligations shall be Limeshain. The place of jurisdiction shall be Büdingen.