

Terms & Conditions Implen, Inc.

Version September 2010

I. General

1. These Terms and Conditions apply to all our delivery contracts - also to future business relationships of the same kind.
2. Our offers are without any obligation. A contract shall not come into existence until it has been confirmed by us or delivery has been made. There may be minimal deviations from the specifications we give regarding size, weight, condition and quality.
3. We expressly reject our contract partners' general conditions to the extent said conditions conflict with or deviate from these Terms and Conditions of Sale. They shall be binding upon us only if we have expressly declared our agreement thereto in writing. This shall also apply if we perform despite being aware of conflicting or deviating general conditions of the purchaser but without declaring any reservation.

II. Prices

1. All prices are in US\$ and apply ex works. The prices applicable on the order date shall apply plus the statutory value added tax / sales tax of California.
2. If any significant cost increases are incurred after the contract has been concluded and which we could not foresee, in particular due to any collective bargaining agreements, exchange rate fluctuations or fluctuations in the cost of materials, we reserve the right to pass on any such increases to our contract partners provided there are more than 4 weeks between the date upon which the contract was concluded and the date of delivery or consignment of the goods.

III. Payment Conditions

1. Our invoices are payable net and without deduction by no later than 30 days after the invoice date. Cheques and accepted bills of exchange are accepted only on account of performance, the latter only if explicitly agreed. Any costs of bills of exchange and discount charges in accordance with the rates of the private banks shall be to the debit of the purchaser. Payments shall not be deemed to have been discharged until the date upon which we are able to dispose of the invoice sum without any loss.
2. The contract partner can claim a right of retention or right of setoff only with claims which are undisputed or have become final and absolute.
3. In the event of any delay in payment, interest on arrears at a rate of 10 % above the base interest rate shall be payable without prejudice to the right to assert any further damages.

IV. Reservation of Title

1. All goods delivered by us remain our property until our contract partner has settled all outstanding amounts under its business relationship with us (extended reservation of title). Any kind of disposal by our contract partner of goods which are subject to a reservation of title is only permitted in the course of its ordinary business.
2. Our contract partner is entitled to sell the goods subject to a reservation of title provided our contract partner has fulfilled its obligations under this agreement and, provided in particular that our contract partner is not late with its performance. No attachment or assignment by way of security is permitted. The purchaser is under an obligation to make any resale of the goods which are subject to a reservation of title (resale) in turn subject to a further reservation of title. In case of resale, the purchase price paid shall take the place of the goods subject to a reservation of title. Our contract partner already now assigns to us all of its claims which arise out of any resale. Our contract partner has authority to call in the claims under the resale which have been assigned to us, at any time until we revoke such authority. If our outstanding claims are due, the contract partner is under an obligation to promptly pay over to us any sums collected. Under no circumstances is the contract partner entitled to assign any claim to third parties.
3. Our contract partner is under an obligation to notify us of any third-party access to the goods subject to a reservation of title promptly after becoming aware thereof and is under an obligation to provide us with the necessary information and documents for an intervention. Our contract partner shall be liable for the costs incurred in order to suspend the access, in particular but without limitation through the institution of third-party proceedings, to the extent such costs cannot be collected from the third party who is executing against the contract partner's assets.

4. In the event that our contract partner acts in breach of contract, in particular but without limitation if our contract partner is late with payment, we shall be entitled to take back the goods delivered. This shall be considered the equivalent of rescinding the agreement only if we have expressly given a written declaration to this effect. The contract partner must pay the costs of taking back the goods. We are entitled to realize any goods which we have taken back and which are subject to a reservation of title and to offset the proceeds - less reasonable costs of realization - against our outstanding claims.

V. Delivery Terms / Impediments to the Contract

1. Delivery times are only approximate unless they have been acknowledged by us in writing as being binding. Only the units listed in our price list, as applicable from time to time, can be delivered.
2. We are entitled to make part deliveries. Each part delivery can be invoiced separately. In the case of any call order the call must be made at least two weeks prior to the requested delivery date.
3. Any interruptions in performance or delays due to force majeure or similar circumstances which make performance impossible either in the long-term or temporarily or which unreasonably impede performance and for which we are not responsible (lawful strike or strike in third-party operations, lock-out, official orders) entitle us to postpone delivery or performance by the duration of the impediment plus a reasonable start-up period. In such event, our contract partner cannot claim any damages.
4. In the event that we suffer any material detriment as a consequence of the interruption in performance or delay, in particular any difficulties with deadlines, we shall be entitled to rescind the agreement in respect of the non-fulfilled part, either in whole or in part. In the event that the obstacle lasts for more than 6 weeks, the contract partner shall be entitled to rescind the agreement in respect of the non-fulfilled part after the contract partner has granted a reasonable additional period of time.
5. Our performance is subject to us receiving correct and timely supplies. We are entitled to rescind the agreement if our suppliers do not supply us in good time and we are unable to obtain the goods to be delivered elsewhere at a reasonable cost.
6. Dispatch
 - a. If it is necessary to dispatch the products such dispatch shall be ex our headquarters and for the account of our contract partner. Unless otherwise agreed, we are free to choose the transportation company and the means of transport. The risk shall pass to the contract partner with effect from dispatch. This shall also apply if a delivery is agreed to be carriage-free.
 - b. If the dispatch or delivery is delayed due to circumstances for which our contract partner is responsible the risk shall pass upon notification that the goods are ready for dispatch or delivery. The costs thereby incurred (in particular storage costs) shall be borne by our contract partner.
 - c. We are under no obligation to insure the consignment or have it insured against transport damage unless we have assumed such an obligation in writing.
7. We do not assume any risk of procurement and give no guarantees whatsoever unless expressly agreed in writing with the contract partner.
8. We are entitled to refuse performance if it becomes apparent after a contract has been concluded that our rights to payment are jeopardized due to any lack of ability to pay on the part of our contract partner. The right to refuse performance shall lapse when our claims have been settled or security for them has been furnished. If we request our contract partner to, at its option, settle our claims or to furnish security within one week, we can rescind the agreement if the deadline lapses with no avail. Paragraph 323 of the German Civil Code (BGB) shall apply mutatis mutandis.
9. In the event that the goods have already been delivered we can rescind the agreement subject to the conditions under sub-clause 8 and demand that the goods be returned. In this event our contract partner's right to resell the goods shall lapse.

VI. Liability for Defects

1. We shall not be liable for our goods being useable or suitable for the purpose desired by our contract partner. Any advice we give regarding the application of the goods is given to the best of our knowledge but is in any event without obligation and does not exempt our contract partner from the obligation to inspect our goods for their suitability and usability for the contract partner's purposes.
2. We shall be liable for defects for the period of one year beginning with the delivery.
3. Some of our products have a limited shelf-life. The minimum shelf-life and information on proper storage are stated on the packaging or documentation enclosed with the products or on our website. The minimum shelf-life depends on compliance with our storage instructions. Please note that we shall not be liable for defects which are due to the expiry of the specified shelf-life.

4. Notifications of non-latent defects of goods delivered or deviations or incorrect deliveries shall be made in writing within one week after receipt of the goods at the latest. Latent defects shall be notified in writing without undue delay after their discovery. We are not liable for defects which are not notified according to these limits.
5. We shall cease to be liable for defects if the goods are improperly handled, stored or processed (mixed or combined) unless the defect is not due to such handling, storage or processing.
6. We are furthermore entitled, at our option, to remove the defect or to deliver a replacement (subsequent performance). If we opt to remove a defect we are entitled, exercising equitable discretion, to choose that the damaged part be returned to us for subsequent remedy of the defect or to carry out the repair/subsequent remedy of the defect on the premises.
7. In the event that the subsequent performance fails our contract partner shall have the right to reduce the price or, at its option, to rescind the agreement provided the contract partner is not responsible for the failure due to any conduct in breach of duty.
8. Sub-clauses (6) to (7) shall not apply in the event that we fraudulently concealed the defect or gave a guarantee as to the condition of the goods.

VII. Damages

Notwithstanding the provisions on liability for defects and other special provisions agreed in these Terms and Conditions we shall pay damages, irrespective of the legal ground for damages, only in accordance with the following provisions:

1. We shall pay full compensation for damage incurred due the absence of a guarantee expressly given by us regarding the condition or shelf-life of the goods, provided the purpose of such guarantee was to avoid the damage which occurred, as well as compensation for damage which we have caused intentionally or grossly negligently and compensation for injury to the life, body or health of our contract partner caused by slight negligence on our part.
2. If we have acted slightly negligently we shall furthermore pay damages in the event of any breach of material contractual obligations. In this case the liability for damages is limited to the foreseeable, typical and direct damage. No compensation shall be paid for consequential damage, such as lost profit. The quantum of damages shall be limited to the purchase price.
3. Sub-clause (2) shall apply mutatis mutandis to damage due to late performance provided our breach of duty is due to only slight negligence.
4. Sub-clauses (1) to (3) shall also apply if the damage was caused by our vicarious agents.
5. There shall be no right to damages in lieu of performance in the event that the duty to perform has been excluded (impossibility).
6. The provisions of the German Product Liability Act shall remain unaffected.
7. To the extent that our liability for damages is limited, such provisions shall also apply to the personal liability of our workers, employees, staff, representatives and vicarious agents.

VIII. Hazard Warning

1. It is expressly pointed out that all products are intended only for laboratory and research purposes. We therefore only supply public research, testing and teaching institutions, technical businesses or the relevant industry. We therefore exclude any liability for damage which could occur due to any improper handling or any household application or application on human beings and animals. We expressly prohibit any passing on of poisonous (hazardous) materials to private individuals. It is also expressly pointed out that the absence of a hazard label does not mean that a product is harmless. Furthermore, we exclude any liability for personal injury - or damage to property - caused by any improper handling or storage of the products at our contract partner's place of business. In the event that there are relevant national or international laws or regulations governing the market including delivery, storage, processing or trade with particular products, the contract partner must also comply with any such laws and regulations.
2. Our contract partner is under an obligation to indemnify us against any third-party claims, of whatever nature, based on any unlawful or incorrect application of our goods or any application of our goods without any official approval which is required or any application of our goods which is in breach of the above provisions of these Terms and Conditions of Sale or because of any other improper use. The indemnity obligation also includes a duty to indemnify us for any costs of legal defence (e.g. court fees and lawyers' costs).

IX. Licenses

In the event that our products are equipped with software pertaining thereto the following is pointed out: The software is protected by copyright. The license fee is included in the cost of the product. Our contract

partner is granted a non-exclusive license to use the software only for the product. The software may be assigned to a third party only in combination with the product. Any and all of our contract partner's rights of use shall lapse upon assignment. Any copies of the software which exist must be deleted or returned to us.

X. Third-Party Industrial Property Rights

We shall be liable for any third-party rights or claims based on industrial property rights or copyrights only if the third-party's right exists pursuant to the laws of the Federal Republic of Germany.

XI. Export Regulations

In the event that our goods are subject to export control provisions (in particular licences, permits and approvals), we shall ensure that such provisions are complied with. Our contract partner must comply with any provisions on importing the goods into our contract partner's country or into a third country.

XII. Sale of the Products

In the event that our products are sold, our contract partner must pass on its contractual obligations to the purchaser (in particular any restrictions on the rights of use to the software in accordance with Clause X above; compliance with export regulations).

XIII. Place of Performance and Jurisdiction

The place of performance for both parties is Westlake Village, CA. The place of jurisdiction for any and all disputes which arise either directly or indirectly out of this contractual relationship shall, for both parties, be Westlake, CA and all such disputes shall be decided according to the laws of the State of California. This shall also apply to any special actions for deciding claims arising out of any bill of exchange or cheque; we can, however, also sue the contract partner at any other place of jurisdiction applicable to the contract partner.

XIV. Final Provisions

The contractual relationship between the contract parties shall be governed by the laws of the State of California. The provisions of the United Nations Convention on the International Sale of Goods ("CISG") shall not apply. In the event that our Terms and Conditions of Sale are void in part or contain a gap, the validity of the remaining provisions shall not thereby be affected. In the event that only part of a provision is void this shall apply only in the event that the void part of the provision can be severed from the valid part.