

## **General Terms and Conditions**

of INGENERIC GmbH, Dennewartstr. 25-27, 52068 Aachen, Germany.

### **Scope of Application**

The following Terms and Conditions shall apply to all current and future agreements entered into and offers, order acknowledgements, order acceptance of any products covered herein (hereinafter: "Business Transactions") issued by or to the company of INGENERIC GmbH, Dennewartstr. 25-27, 52068 Aachen, Germany (hereinafter referred to as "Contractor") and its contractual partner (hereinafter "Orderer"), save as varied by express agreement accepted in writing by both parties. Any conditional or different terms proposed or used by the Orderer are objected to and will not be binding upon the Contractor even if he does not express his disagreement, unless such terms are expressly accepted in writing. These Terms and Conditions shall apply to all Business Transactions notwithstanding the Orderer's domicile.

### **I. Contract, Orders and Specifications**

1. Offers made by the Contractor shall be subject to change irrespective whether they are made orally or in writing. No order by the Orderer shall be deemed to be accepted unless and until confirmed in writing by the Contractor or the Contractor delivers his products.
2. The quantity, quality and description of and any specification for the products shall be those as set out in the Contractor's quotation or the Orderer's request if so accepted by the other party. The Orderer shall be responsible for the accuracy of the specifications of any order submitted. He shall give the Contractor any necessary information relevant for the performance under the specific contract.
3. If goods or products are to be manufactured by the Contractor according to a specification submitted by the Orderer, the Contractor reserves the right to make any changes in the specifications if such changes are required to conform with any statutory requirement or which do not materially affect the product's quality or performance. Other changes will be agreed upon with the Orderer.
4. All agreements and specifications, if applicable, must be in writing. This also applies to supplementary agreements and warranties and to subsequent changes to the contract. Supplementary agreements in oral form must be confirmed in writing in order to be valid.
5. Conferment of rights and duties resulting from the contract to third parties by the Orderer need prior written affirmation by the Contractor.

## **II. Prices and Payment**

1. The price of the products shall be the Contractors quoted price or, where no price has been quoted, the price listed in the Contractors published price list current at the date of acceptance of the order. Where the products are supplied for export from Germany, the Contractors published export price list shall apply.
2. All prices are in Euro (€) unless otherwise agreed upon. Prices do not include VAT. Concerning deliveries within the European Community, the Orderer will notify the Contractor of the VAT- identification number at the time of placement of the first order at the latest.
3. Except as otherwise stated under the terms of any quotation, order or price list of the Contractor and unless otherwise agreed upon, all prices are considered to be ex works (EXW) Aachen. Package, transportations charge, postal charges, insurances and other costs of transportation are not included. The Orderer furthermore bears the sole responsibility and all costs to obtain all necessary authority approvals, customs declarations and export related approvals and documentation, where applicable.
4. Prices termed in an offer of the Contractor shall be valid under the condition that the underlying order data remains unchanged until the execution of the order. The Contractor reserves the right to increase the price to reflect increase in the cost to the Contractor which is due to any factor beyond the control of the Contractor (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture), if the parties have agreed upon delivery four month after the date of the contract, or the delivery takes place late due to Force Majeur. The change of costs will be illustrated to the Orderer.
5. Payments (net price plus VAT) are due thirty (30) days from the date of invoice without any reductions. The invoice will be issued on the day of delivery, part-delivery or readiness to deliver (in the case of default of acceptance). In the case that the quotation or order comprises of a pre-payment arrangement, the invoice for such pre-payment will be issued on the date of the conclusion of the agreement or the agreed date. Payments shall be effected by inter-bank payment transactions only; no cheque or bill of exchange will be considered as fulfillment of the payment obligation. In the case of delayed payments, the Orderer forfeits all rebates, compensations or other benefits agreed upon by the parties, as the case may be.
6. If the pecuniary circumstances of the Orderer deteriorate and therefore payments are at risk, the Contractor may demand advance payments and payment of all issued invoices, including invoices which are not yet due and may retain products not yet delivered and the Contractor may discontinue any running orders. The Contractor shall also be entitled to these rights if payments by the Orderer are delayed.
7. The Orderer shall be entitled to any rights to set off the purchase price only if his counterclaims have been acknowledged by the Contractor or adjudicated upon by a competent court.

### **III. Delivery and Transfer of Risk**

1. Dates of delivery are binding only if such dates have been confirmed by the Contractor explicitly and in writing. The declaration of a date of delivery will neither qualify the order as firm deal nor the exceedance of such date as essential breach of contract, unless expressly so agreed in writing. Concerning subsequent changes to orders, any date of delivery shall be freshly agreed upon. Otherwise the primal date of delivery shall not be binding. The beginning of any time schedule declared by the Contractor requires that all technical questions and all terms and conditions of the relevant order have been clarified. The fulfilment of the date of delivery requires that the Orderer performs his obligations timely and properly, namely that he provides for complete documentation and data, that he makes advance payments if agreed upon and that all necessary advanced performances by the Orderer or any third person are fulfilled.
2. Unless explicitly otherwise agreed upon, the Contractor shall not be liable for late delivery if the delay is caused by failure or delay of external suppliers.
3. The products shall be collected by the Orderer from the premises of the Contractor at any time after the Contractor has notified the Orderer that the products are ready for collection. If it is agreed upon to deliver products by carriage-paid-deliveries, the Contractor may choose the mode of transport and packaging unless otherwise agreed upon, with reasonable care. The products will be insured according to the terms and conditions of the chosen carrier. A special transportation insurance will be provided for by the Contractor if the Orderer explicitly instructs the Contractor accordingly and the Orderer bears the costs of such insurance.
4. The risk of accidental loss, destruction or deterioration of the products passes to the Orderer at receipt or – in case of agreed deliveries – at the time of handover to the contracted carrier. If dispatch is delayed due to the Orderer's wish or for reasons for which the Orderer is responsible, the said risk passes to the Orderer at the time of notification that the products are available for collection

### **IV. Reservation of Property Rights**

1. All products delivered remain property of the Contractor until all claims of the Contractor against the Orderer existing at the date of invoice have been paid for. The Orderer is permitted to resale products only in the regular course of business. The Orderer now conveys to the Contractor all his claims to the amount of the final invoiced sum (including VAT) which arise from resale to the Orderer's purchasers or third parties, irrespective whether the products are resold with or without processing. The Contractor hereby accepts the conveyance.
2. The Orderer remains authorised to collect outstanding claims. The authorisation of the Contractor to collect such claims remains untouched. The Contractor is obliged not to collect claims as long as the Orderer complies with his payment obligations concerning taken proceeds, is not in arrears with payments and particularly insolvency has not been filed or the Orderer ceases payments. In such cases however, the Orderer will at the

Contractor's discretion disclose all conveyed claims and debtors, will give all information necessary to collect such claims will deliver corresponding documentation and will inform the debtors (third parties) of the conveyance.

3. If third parties pledge to otherwise dispose of the products or processed products, the Orderer shall immediately notify the seller in order to enable the seller to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure (ZPO). If the Orderer fails to do so in due time he will be held liable for any damages caused.
4. The Contractor will on demand of the buyer release any part of the collateral if the value of the collateral held in favour of the Contractor exceeds the value of the claims being secured. It is to the Contractor's decision to release those parts of the collateral suitable.

## **V. Defects, Liability and Complaints**

1. The Orderer is obliged to examine the products without delay after receiving them at the appointed place and to notify the Contractor about obvious defects in writing without undue delay. If the products are shipped, the Orderer is obliged to carry out the said examination without undue delay at the time of arrival. Otherwise performance shall be considered contractual. The same applies to any claim by the Orderer in respect of any product which is based on any defect in the quantity, quality or condition of the products or their failure to meet specification.
2. If parts of the delivered products are defective the Orderer may not object to the whole delivery unless partial delivery is of no interest for the Orderer.
3. In the case of defects, the Contractor is entitled to supplementary performance ("Nacherfüllung"). In such case, the Contractor may at its discretion choose to correct the defect or to deliver new products free of defects. The Contractor may at any time undertake two attempts to correct such defects. If the Contractor fails with the supplementary performance, the Orderer shall have the right to reduce the price or cancel the contract, at his own discretion.
4. The Orderer's claims against the Contractor, his legal representatives, agents, vicarious agents and employees for damages are limited to foreseeable damages, excluding consequential harms such as loss of profits and/or loss of production. Any remaining liability shall be limited to the order value, excluding taxes. The Contractor, his legal representatives, agents, vicarious agents and employees shall not be liable for damages resulting from slight negligence. Notwithstanding the aforesaid, liability will remain untouched if fundamental contractual obligations are infringed, damages are caused by injuries to Life, body and health or stem from wilful acts or gross negligence. Furthermore, a possible Contractor's liability according to the German product liability act ("Produkthaftungsgesetz") shall remain untouched.
5. If the Orderer processes the Contractor's products in order to manufacture his own products the Orderer shall indemnify, defend and hold the Contractor, its affiliates, agents and employees safe and harmless against any and all loss, cost, claims, actions, liability and/or suits (including attorneys' fees) suffered or incurred beyond the sphere of the

Contractor's liabilities. The Orderer hereby affirms that the products will be used in compliance with all applicable laws and regulations and that he will obtain all necessary approvals and documentation where necessary.

6. Any claims of the Orderer concerning defects shall become time- barred after one year beginning with delivery, collection or readiness for pickup respectively.

## **VI. Provided Materials, Intellectual/Industrial Property Rights**

1. Material provided for by the Orderer must – irrespective of its nature – be delivered to the Contractor at no cost. Receipt will be acknowledged without any obligation of the Contractor to examine delivered material with respect to its amount and quality. All claims of the Orderer hereto shall be excluded unless deficiencies would have been obvious to the Contractor without particular examination. If the amount of delivered material is not sufficient the Contractor may bill any resulting extra- charges to the Orderer.
2. In the case that the Contractor is ordered to render research and development performances in order to manufacture the products, any industrial and/or intellectual property rights and know-how developed shall remain with the Contractor, unless otherwise agreed upon. The same applies to such rights which at the time of the placement of the order were already held by the Contractor. The Contractor shall in these cases be obliged solely to transfer the property of the products manufactured and no licence whatsoever shall be granted under the contract of delivery. The Contractor reserves the right to cancel the order if a solution cannot be found within an appropriate amount of time.
3. Where the Orderer has supplied the Contractor with industrial and/or intellectual property rights and know-how, the Orderer shall remain the sole proprietor of such rights. The Orderer shall at the time of delivery of such information indicate the existence of such rights. The Contractor will use the rights/know-how solely to perform his contractual obligations.
4. If the products are shipped outside Germany, the Contractor will not be liable for the products being free of third party claims and rights which result from industrial- or intellectual-property-rights. The Orderer is responsible to examine the legal situation concerning such rights in the country of destination. As far as the Contractor has knowledge of the legal situation in the country of destination he will inform the Orderer hereof on written request. The Orderer will indemnify and hold harmless the Contractor from third party claims concerning such rights.
5. Where the Contractor delivers a user manual or quality documentation or safety notes with the products, the Orderer shall not be entitled to copy, modify or use parts of the original copy without the Contractor's prior consent. The Orderer shall be solely liable for any changes and modifications made.
6. The Orderer guarantees that all materials provided by him to the Contractor, particularly documents, records, product-specifications, drawings and objects, products, product-parts, raw-materials and methods, notwithstanding of their form, may be used by the Contractor

and its agents for the purposes of the fulfillment of the Agreement, that they may namely be used, fabricated, copied, processed, applied, exploited and put in circulation, namely that the use of such materials is not restricted by any third party intellectual and/or industrial property right such as national and international patents, registered inventions, utility- or design- patents, know-how, trademarks, commercial designations or copyrights which may restrict the use of such materials. Any restrictions as to the scope of usability must be declared by the Orderer expressly in the written form at the time of delivery of such materials. The Orderer will indemnify and hold harmless the Contractor from third party claims concerning the infringement of such third party rights.

## **VII. Confidentiality Clause, Documents**

1. The Orderer shall store and handle all documents, data and other tangible Information received by the Contractor – be it before or after the conclusion of the contract – with care and prevent unauthorised access of third parties at all times. All documents and data shall be returned to the Contractor instantly after termination of the contract without request. There shall be no right of retention concerning such documents and data.
2. All confidential information provided by the Contractor to the Orderer must be held by the Orderer in strict confidence at all times. Confidential information according to this clause shall be all information which is marked as confidential and such information which confidentiality arises from its nature, e.g. know-how. The Orderer will use the confidential information solely for the purpose of carrying out the underlying agreement. The Orderer will take all reasonable precautions to maintain the confidentiality of the information, such precautions to be at least equal to those taken by the Orderer in respect of its own confidential proprietary data.
3. The Orderer will not disclose confidential information to any third party, except to its consultants, advisors or attorneys who are bound by obligations of confidentiality at least as stringent as those contained herein, or use it for the Orderers benefit or for the benefit of any third party without the Contractor's prior written consent.

## **VIII. Miscellaneous Clauses**

1. Unless otherwise agreed upon or provided for in these Terms and Conditions place of execution for all contractual duties, particularly the duty of payment, shall be the Contractor's domicile.
2. The agreement shall not be assigned or transferred by either party except with the written consent of the other.
3. The contractual relationship between the parties shall be governed by and construed in accordance with German law, without reference to the German International Private Law and the UN Convention on Contracts for the International Sale of Goods (CISG). Place of venue shall be the domicile of the Contractor.

4. In the event of any provisions of these Terms and Conditions or the underlying agreement(s) being or becoming ineffective, the effectiveness of the remaining provisions shall not thereby be affected. The parties will in such case replace the ineffective provision by a valid one which corresponds to the intended economic purpose of the ineffective provision as far as legally possible.

Aachen, 1 January 2012