

Supplementary Terms and Conditions for Contracts

Contracts concluded with IBW shall be based on the following terms and conditions:

1. Scope

1.1 The following terms and conditions shall be valid only in respect of merchants – if the contract relates to their commercial operations –, in respect of public law entities or in respect of special funds under public law.

1.2 In the case of longstanding business relations, if the present terms and conditions have formed the basis of an earlier contract between the partners they shall also apply to future transactions even where no specific reference is made to such terms and conditions. Where different provisions are to replace the present terms and conditions such other provisions must be expressly agreed between the partners.

1.3 Where the plant and equipment planned, proposed or delivered by IBW includes special IBW machines, special IBW materials or special aggregates of third parties, the general terms and conditions of the third party shall rank subordinate to the present terms and conditions, provided they have been made part of the customer's contract with IBW.

2. Offers

2.1 All parts of offers that are not designated as "fixed offers" shall be without any engagement whatsoever.

2.2 Initial offers (e.g. cost estimates, overview) shall be free of charge.

2.3 IBW reserves the right to **demand appropriate reimbursement of expenses from the interested customer/supplier** for a specified offer that does not lead to a contract and that involved extensive drafting work, calculations, tests or travelling expenses, but was not based on either a development order or planning order.

2.4 Unless expressly stated as binding, documents such as illustrations, drawings, weight and measurement data that form part of the offer shall only be **deemed approximate**.

2.5 IBW shall be bound by its offer for 3 months from the date of the offer.

2.6 As the property of IBW all offer documents must be returned to IBW immediately if the contract does not materialise.

3. Requirement for written form

3.1 In principle, contracts with IBW must be concluded in writing. Where contracts are concluded verbally they must subsequently be immediately confirmed in writing (order confirmation). In cases of doubt the agreements contained in IBW's order confirmation shall be authoritative.

3.2 If IBW's order confirmation contains additions, restrictions or other changes to the contract, then the customer/supplier shall be deemed to have given its approval to these if it does not object to them immediately in writing.

3.3 In cases of doubt, the scope of contractual performance shall be determined according to the **following ranking**: contractual agreements, IBW's order confirmation and/or offer issued by IBW.

3.4 In order for them to be valid, any additions, amendments or subsidiary agreements to the contract shall require written confirmation.

4. Scope of delivery

4.1 Partial deliveries shall be permitted.

4.2 The scope of delivery shall include 2 copies of documentation. Additional copies shall be supplied for an **additional charge**.

4.3 If the customer/supplier demands special protective devices for the machine or equipment to be supplied by IBW (e.g. company regulation, standards for a particular profession, requirement due to a particular instalment location, etc.), this shall be at the expense of the customer/supplier.

5. Delivery period

5.1 Delivery periods shall be agreed between the parties.

5.2 The delivery period shall commence on the date that IBW's order confirmation is received by the customer/supplier, but not before all documents required for providing contractual performance have been received and the advance payment effected by the customer/supplier. Where there is a fixed delivery date such delivery date shall be postponed by the same period of time by which the delivery period is reduced following receipt of the order confirmation by the customer/supplier due to the latter's late submission of documents and/or of an advance payment.

5.3 The delivery period shall be deemed to have been complied with if the object of the contract has left IBW's premises or the production location specified by IBW by the end of the delivery period or was unable to leave after notification had been given that the object was ready for delivery, due to circumstances for which the customer/supplier is responsible.

5.4 The delivery period shall be extended appropriately in the event of measures involving industrial disputes, especially strikes and lockouts, and also in the event of unforeseen

hindrances arising that are not of IBW's volition and that considerably affect the completion or delivery of the object of the contract. This shall also apply if the circumstances arise with sub-contractors.

IBW shall not even be deemed responsible for the aforementioned circumstances if they arise during an exIBWing delay. In important cases IBW shall notify the customer/supplier immediately of the start and end of hindrances.

5.5 If the customer/supplier can prove that it has suffered damage as a result of a delay for which IBW is responsible, then to the exclusion of any further claims, it shall be entitled to demand compensation for delayed performance. This shall amount to 0.5% for each full week of delay, up to a maximum total of 5% of the value of the respective part of the overall delivery that cannot be used on time or that cannot be used in accordance with the contract because of the delay.

5.6 If dispatch is delayed at the request of the customer/supplier, then commencing one month after notification that the goods are ready for delivery, the customer/supplier shall be charged any storage costs arising, subject to a minimum of 0.5% of the invoice amount per month. IBW shall, however, be entitled to set the customer/supplier an appropriate deadline by when it must accept the object of the contract; after an additional period of time has passed without result IBW shall be entitled to dispose of the object of the contract elsewhere. IBW shall however still be obliged and entitled to fulfil the contract, subject to the proviso that the delivery period for the customer/supplier shall start afresh from the moment the object of the contract is disposed of. Any damage arising for IBW as a result of producing the object of the contract again shall be borne by the customer/supplier.

5.7 IBW's compliance with the delivery deadline shall require concurrent performance of the obligations incumbent on the customer/supplier under the contract.

6. Transfer of risk and taking delivery

6.1 The risk of loss of or of deterioration in the object of the contract shall pass to the customer/supplier on the day on which written notification is issued that the object of the contract is ready for dispatch; this shall also apply if partial performance is effected or if IBW has agreed to provide other services, e.g. dispatch costs, delivery or installation.

6.2 At the request of the customer/supplier IBW shall insure the items being dispatched against theft, breakage, transport, fire and water damage or other insurable risks; the cost of any such insurance shall be borne by the customer/supplier.

6.3 If dispatch is delayed due to circumstances for which the customer/supplier is responsible, risk shall pass to the customer/supplier on the day on which written notification is issued that the object of the contract is ready for dispatch; however, at the request of the customer/supplier, IBW shall be obliged to arrange the insurance demanded by the customer/supplier, if it is possible to arrange such insurance, whereby the customer/supplier shall bear any associated costs.

6.4 Without prejudice to its rights pursuant to No. 1, the customer/supplier must take delivery of dispatched items even where immaterial defects are present.

6.5 Partial deliveries shall be permitted.

6.6 Installation and assembly must be carried out by the customer/supplier and at its expense. At the request of the customer/supplier assemblers supplied by IBW or personnel to be provided by the customer/supplier shall work under the supervision of IBW's assembly foreman. The customer/supplier shall be obliged to ensure that all requirements for problem-free assembly are in place in good time. The work of IBW's personnel shall be limited to installation and commissioning of the products. The respective assembly rates (daily rates, overtime, work on Sundays and public holidays, outward and return travel, overnight accommodation) shall be charged for all work carried out by IBW's assemblers and assembly foremen. Travelling time and waiting time shall count as work time.

6.7 Special contractual agreements must be concluded where a request is made for the production process to be accompanied, for further training and for induction of personnel belonging to the customer/supplier.

7. Acceptance

7.1 Following a request by IBW the customer/supplier must perform mechanical and electrical acceptance for the object of the contract during a test run at IBW's regIBWered office or at the production location specified by IBW (**mechanical acceptance**).

7.2 If the customer/supplier fails to fulfil its obligations in respect of mechanical acceptance following a written request by IBW, then mechanical acceptance shall be deemed to have been granted implicitly after twelve days.

7.3 **Following assembly** of the object of the contract at the final place of installation and a test run, the customer/supplier must perform a final acceptance procedure for the object of the contract when requested by IBW (**final acceptance**). The customer/supplier must provide the raw materials, semi-

finished goods, tools, etc. required for final acceptance and the test run to be performed prior to this. Immaterial defects shall not stand in the way of acceptance.

7.4 If the customer/supplier fails to fulfil its obligations in respect of final acceptance following a written request by IBW, then final acceptance shall be deemed to have been granted implicitly after twelve days, but at the latest on commencement of production, even if production takes the form of test runs.

7.5 **Mechanical acceptance shall at the same time constitute final acceptance** if IBW has provided contractual performance with the object of the contract being handed over at IBW's regIBWered office or at the production location specified by IBW.

8. Reservation of ownership

8.1 IBW shall reserve ownership of the object of the contract/offer documents until full payment by the customer/supplier.

8.2 Prior to full payment, the customer/supplier may neither pledge the object of the contract nor transfer ownership of it by way of security; the customer/supplier must inform IBW immediately in the event of any levy of execution or attachment or of any other type of disposition by a third party.

8.3 If IBW asserts reservation of ownership or levies execution in respect of the object of the contract this shall not constitute withdrawal from the contract.

8.4 If the object of the contract is re-sold before it has been paid for in full the customer/supplier here and now assigns to IBW all of its claims against the purchaser arising as a result of the object being re-sold. IBW herewith accepts such assignment.

8.5 If the object of the contract is re-sold together with other goods that are not the property of IBW, then the customer/supplier here and now assigns to IBW its claims against the purchaser in the amount of the remuneration agreed between IBW and the customer/supplier. IBW herewith accepts such assignment. IBW undertakes not to collect the claims provided that the customer/supplier properly fulfils its payment obligations.

8.6 IBW's ownership of the object of the contract shall not end if the said object is combined, treated or processed. If the customer/supplier combines, treats or processes items that are subject to reservation of ownership by IBW with other items, then IBW shall be entitled to pro-rata co-ownership of the new item based on the value of all the processed items at the time of processing. To this extent, the new item resulting from such processing shall constitute an item subject to reservation of ownership in accordance with the present terms and conditions.

8.7 If the customer/supplier connects the object of the contract to a piece of real estate before remuneration has been paid in full, then the customer/supplier here and now assigns to IBW all claims against the real estate owner in the amount of IBW's claim in respect of remuneration. IBW accepts the assignment.

8.8 If the customer/supplier acts in violation of the contract, especially where this relates to a default in payment, then following a demand for performance IBW shall be entitled to take back the object of the contract and the customer/supplier shall be obliged to hand over the said object. On handing over the object the contractual purchase price shall be reduced only by the value of any resale price less all costs (e.g. in respect of additional processing, repair, storage, marketing or other damages) incurred by IBW as a result of the customer/supplier acting in violation of the contract.

9. Price and payment

9.1 All prices shall be subject to change without notice and shall only constitute fixed prices if a corresponding written agreement has been concluded on prices and on their period of validity.

9.2 In the absence of a special agreement, prices shall be net prices from IBW's regIBWered office or the production location specified by it; prices shall not include value added tax or any other taxes/duties.

9.3 Packaging, transport and insurance costs shall be invoiced separately by IBW.

9.4 In the absence of a special agreement, payment must be made in cash and without any deductions, free of charge at the appointed paying office of IBW and must be made as follows:

1/3 as an advance payment following order confirmation
1/3 after notification that the item is ready for dispatch
1/3 30 days after notification that the item is ready for dispatch

9.5 Any assertion of rights of retention or any declaration regarding offsetting against IBW's claims by the customer/supplier shall only be permitted if the counterclaim is undisputed.

9.6 In the event of any default in payment default interest shall be charged at 2% above the respective discount rate of the German Federal Bank.

9.7 For export transactions all taxes, charges, customs duties or other duties levied in respect of IBW, its personnel, one of IBW's subcontractors or its personnel outside the Federal

Supplementary Terms and Conditions for Contracts

Republic of Germany in connection with the conclusion of or the performance of the transaction shall not be included in the price. They must be paid by the customer/supplier or if IBW pays them in advance, the customer/supplier must reimburse IBW.

9.8 Cheques and bills shall only be accepted on account of performance subject to express agreement. Discounting and collection costs shall be borne by the customer/supplier. Credits in respect of cheques and bills shall apply subject to collection.

10. Special provision relating to tools and moulds

For tools and moulds the following provisions shall take precedence:

10.1 If IBW receives a drawing of an item and/or a sample detailing the raw material to be processed and the contraction factor relating to the item, as well as machine datasheets and any other documents from the customer/supplier, IBW shall produce the tool design drawings and submit them to the customer/supplier for inspection. The customer shall endorse the tool design drawings as "approved" and hand them over to IBW.

10.2 The customer/supplier shall acquire ownership of the design documents produced by IBW when production is authorised; such ownership shall be free of third-party rights. The design documents and the auxiliary materials such as models, patterns or electrodes, etc. required to produce the tool must be stored with the necessary due care and handed over to the customer/supplier after contractual performance has been provided. The corresponding remuneration shall be included in the price of the tool.

10.3 At the time the contract is being concluded the parties must reach agreement on who is to perform sampling.

10.4 In principle, the samples must be produced under the same conditions as those for series production.

10.5 If IBW performs sampling, the costs for this must be shown in the offer and in the order confirmation and charged separately. Sampling requires that the customer/supplier specifies and provides the production parameters and materials.

10.6 If the customer/supplier performs sampling, it shall be obliged to notify IBW of the result immediately, but at the latest within 4 weeks of receiving the moulds.

10.7 If IBW performs sampling, the delivery period shall be deemed to have been complied with if it submits outturn samples from the tool in its possession that are suitable for acceptance or if it has delivered outturn samples and tools.

10.8 If the customer/supplier performs sampling, the delivery deadline shall be deemed to have been complied with on delivery of the tool that is suitable for acceptance.

10.9 In the event of design changes – including those made after sampling – a new agreement must be reached on prices and delivery periods. Costs incurred up to that point shall be due immediately with reimbursement being made to IBW.

11. Warranty/liability

11.1 IBW shall warrant that the object of the contract represents the state of the art at the time the contract is concluded.

11.2 IBW's warranty for the object of the contract shall amount to **12 months in the case of one-shift operations**. The warranty period shall commence on the day on which the final acceptance log is signed or in the absence of such a final acceptance log on the twelfth day following IBW's request for acceptance, while in the event of a delay in the dispatch, installation or commissioning of the object of the contract for which IBW is not responsible it shall commence on the day on which risk is transferred, but it shall at the latest commence on the date on which production is commenced.

11.3 IBW must at its reasonably exercised discretion choose either to improve or re-deliver free of charge the part that within the warranty proves to be unusable or have considerably restricted usability as a result of a circumstance existing prior to the transfer of risk – including in particular as a result of faulty design, poor materials or defective execution. IBW must be informed immediately in writing when such defects are identified. Parts that have been replaced shall remain the property of IBW or shall become the property of IBW when they are disassembled.

11.4 After consulting with IBW the customer/supplier must allow IBW the necessary time and opportunity to rectify the defect, otherwise IBW shall be exempt from the obligation to rectify defects/liability. Only in urgent cases where operating safety is endangered and in order to prevent disproportionately high damages shall the customer/supplier be entitled to rectify the defect itself or to have the defect rectified by a third party and demand reimbursement by IBW of any necessary associated costs; in such cases the customer/supplier must notify IBW immediately.

11.5 In each individual case the right of the customer/supplier to assert claims in respect of defects shall become time-barred 12 months from the date of the respective complaint that was

submitted in good time, but at the earliest at the end of the warranty period, if the customer/supplier does not pursue rectification of the defect any further; the customer must provide evidence where rectification of the defect is pursued further.

11.6 For substantial third-party products IBW's warranty or liability shall be limited to assignment to the customer/supplier of its claims against the third party.

11.7 The customer/supplier shall be responsible for the practical suitability and correct design of the goods produced using the object of the contract; this shall apply even where IBW was consulted during the development process.

11.8 IBW shall not assume any warranty or liability for damages for which it is not responsible and that are attributable to unsuitable or improper use of the object of the contract by the customer/supplier or third parties, incorrect assembly, commissioning, maintenance or modification by the customer/supplier or third parties that has not been approved by IBW, natural wear and tear, incorrect or negligent handling by the customer/supplier or third parties, unsuitable equipment, substitute materials, defective construction work, unsuitable construction ground, chemical, electrochemical or electrical influences, or that are attributable to other similar circumstances.

11.9 Of the direct costs arising as a result of rectification of a defect IBW shall in the case of a justified complaint bear the costs of the replacement item including dispatch and appropriate costs of removal/installation. In addition, if this can be reasonably demanded in an individual case, IBW shall also bear the costs of any necessary assemblers and auxiliary workers. The customer shall bear all other costs.

11.10 IBW shall provide 12 months' warranty on any replacement item or improvement, but at the least until the end of the 12-month warranty period in the case of two-shift operations; this shall not apply to replacement items that are subject to rapid natural wear and tear, even if this only emerges after commissioning. The warranty shall not apply to such parts (parts subject to wear and tear).

11.11 The warranty period shall be extended by the duration of any interruptions to operations caused by work relating to subsequent improvement.

11.12 IBW shall not assume any liability in respect of any further claims by the customer/supplier, including in particular direct or indirect consequential damages on account of defects or economic loss, unless such claims are based on intent or gross negligence on the part of IBW's company organs or senior executives and represent a gross infringement of fundamental contractual obligations.

11.13 In the event of culpable infringement of fundamental contractual obligations that are not based on intent or gross negligence on the part of IBW's company organs or senior executives, IBW shall only be liable for damages that are typical for the type of contract in question and that could objectively be foreseen.

11.14 Where IBW has only been commissioned to provide engineering or supervisory services, IBW shall only be liable for gross negligence and intent. IBW shall not be liable for the accuracy of calculations by the suppliers of plant components, subassemblies or independent machines.

12. Copyright and prohibition on imitation

12.1 All cost estimates, drawings and other documents that IBW hands over to the customer/supplier within the framework of an offer, performance of the contract or other occasion shall be strictly confidential. They shall constitute the property of and fall under the copyright of IBW. They may not be made accessible to third parties or used to reproduce machines/machine components. The customer/supplier undertakes not to copy, to have copied or enable third parties to copy the machines or parts supplied. If plans have been expressly designated as confidential by the customer/supplier IBW shall be obliged only to make such plans available to third parties with the consent of the customer/supplier.

12.2 Where permitted, IBW shall not be liable to the customer/supplier if the object of the contract or its use infringes patents or other third-party industrial property rights.

13. Right of the customer/supplier in respect of withdrawal/cancellation and other liability on the part of the supplier

13.1 The customer/supplier may withdraw from the contract if IBW is ultimately unable to provide full performance prior to the transfer of risk. The same shall apply in the event of inability to perform on the part of IBW.

13.2 If impossibility of performance occurs during a delay in acceptance or as a result of fault on the part of the customer/supplier, it shall remain obliged to provide counter-performance.

13.3 Provided that appropriate adjustment of the contract is not feasible in economic terms, IBW may withdraw from the contract either in whole or in part in the event of unforeseen

circumstances that considerably alter the economic significance or the performance content or that have a considerable effect on IBW's operations, or where impossibility of performance only emerges at a later date.

13.4 The customer/supplier may not assert any claims for compensation in respect of any such withdrawal. If IBW wishes to assert its right to withdraw, it must inform the customer/supplier immediately once the implications of the circumstances are realised; this shall even apply if an extension of the delivery period had initially been agreed with the customer/supplier.

14. Place of performance, place of jurisdiction and applicable law

14.1 Unless otherwise agreed in the contract, the place of performance shall be IBW's registered office, unless another production location is specified in the contract.

14.2 The place of jurisdiction shall be Ibbenbüren.

14.3 German substantive law shall apply. The UN Convention Relating to a Uniform Law on the International Sale of Goods shall be excluded.

14.4 The contract language shall be German.

15. Legal validity

If individual provisions of the present terms and conditions of business are or become invalid this shall not affect the validity of the remaining provisions. IBW and the customer/supplier shall be obliged to agree a new provision that approximates as closely as possible to the aim of the invalid provision.

Ibbenbüren, October 2002.