



## **General Terms and Conditions of Delivery and Sale**

### **I. Application of General Terms and Conditions of Delivery and Sale**

1. These General Terms and Conditions of Delivery and Sale apply to current and all subsequent contracts with customers of the company IMA Schelling Deutschland GmbH or IMA Schelling Austria GmbH - hereinafter referred to as IMA SCHELLING -, pertaining mainly to the **delivery of goods** to the customer - hereinafter referred to as goods or the delivery item -. Additional obligations assumed by IMA SCHELLING shall not affect the validity of these General Terms and Conditions of Delivery and Sale. For machine installation, setup, refurbishment, repair and overhaul work, the Terms and Conditions for Installation of IMA SCHELLING additionally apply, also if the supplied goods pertain to the installation work in accordance with these General Terms and Conditions of Delivery and Sale.

2. Conflicting or differing **Business Terms and Conditions of the Customer** shall not be deemed accepted by IMA SCHELLING even if IMA SCHELLING does not object to them or if IMA SCHELLING unconditionally renders performance or accepts the customer's performance. Neither is IMA SCHELLING obliged to accept the Business Terms and Conditions of the Customer when they deviate from statutory provisions, irrespective of the contents of these General Terms and Conditions of Delivery and Sale.

3. These General Terms and Conditions of Delivery and Sale are intended for contracts that do not fall under the special **provisions of the consumer good purchase** and/or the customer is the **consumer**. Should this assumption not apply, the customer shall immediately inform IMA SCHELLING in writing in each such case; Otherwise, the "General Terms and Conditions for the Sale of Consumer Goods" of IMA SCHELLING shall then apply which will then be sent on request in lieu of these General Terms and Conditions of Delivery and Sale.

### **II. Conclusion of the contract**

Prior to the conclusion of the contract, the customer is obliged to **give written notice** to IMA SCHELLING if the goods to be delivered:

- are to be fit not only for normal use;
- will be used in circumstances which are unusual or which present a particular risk to health, safety or the environment;
- are intended for the processing of unusual material or material with a high risk potential is to be used.

A warranty for the suitability of the delivery item for a specific use is granted only, if we have warranted such suitability in the order confirmation / supply contract in writing.

2. **Customer orders** have to be made in writing. If the customer's order deviates from the proposals or the tender submitted by IMA SCHELLING, the customer will highlight such differences.

3. All orders, in particular also those received by employees of IMA SCHELLING, will take effect **exclusively** if followed by a **written order confirmation** by IMA SCHELLING (for the definition, see Section XI). The actual delivery of the ordered goods, any other conduct of IMA SCHELLING or silence on the part of IMA SCHELLING does not permit the customer to assume the conclusion of the contract. IMA SCHELLING can place the written order confirmation of spare part orders up to and including **fourteen (14) calendar days** and up to and including **twenty eight (28) calendar days**, after the customer's order has been received by IMA SCHELLING. Up until this time, the customer's order is irrevocable.

4. With respect to the content and scope of our obligation to render services, our written order confirmation or (ii) the written contract signed by both parties is authoritative. All information regarding the delivery item provided in catalogues, product descriptions, data sheets, plans, non-binding offers, drawings, specifications, in particular information on the availability, performance data, quantity, dimensions, use, colour, etc., are non-binding; they shall only become a legally binding part of the supply contract if and to the extent they are expressly referred to in (i) our written order confirmation or (ii) the written supply contract signed by both parties. In this regard, information and features only represent warranted characteristics, if they are expressly identified as such in writing. The customer shall receive no guarantees in the legal sense from IMA SCHELLING.

5. We reserve the right to change the design or materials to the extent that the delivery item's customary use or its use required by the supply contract is not significantly impaired and the changes are reasonable to the customer. Changes proposed by the customer always require written confirmation from IMA SCHELLING.

6. Confirmations produced by the customer are of **no effect** without any objection by IMA SCHELLING being necessary. In particular, neither the actual delivery of the goods, any other conduct of IMA SCHELLING or silence on the part of IMA SCHELLING shall give rise to any belief by the customer in the relevance of its confirmation.



## IMA SCHELLING GROUP

7. The **employees** as well as commercial agents or other sales intermediaries of IMA SCHELLING are not authorised to dispense with the requirement of a written order confirmation by IMA SCHELLING or to make promises which differ from its content or guarantees.

### **III. Obligations of IMA SCHELLING**

1. Subject to an exemption according to Section VII. 1. b) IMA SCHELLING must **deliver the goods** specified in the written order confirmation and transfer the property of these goods. If the goods to be delivered have to be specified in more detail, then IMA SCHELLING shall provide **specification**, taking into account its own as well as any warranted interests of the customer that are discernible to IMA SCHELLING. IMA SCHELLING is **not obliged to render services** not stated in the written acknowledgement of the order by IMA SCHELLING or in these General Terms and Conditions of Delivery and Sale, in particular IMA SCHELLING is under no obligation, if not explicitly agreed upon in writing, to publish documents or furnish information or to supply accessories and/or tools, to install additional safety devices, to provide assembly instructions, to carry out installation work or to advise the customer.

2. IMA SCHELLING obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the conclusion of the contract, in particular the **customer's buyers**, are not entitled to request delivery to be made to them or to assert any other claim arising from the customer's contract with IMA SCHELLING. The customer's responsibility to take delivery continues to exist even if it **assigns rights to third parties**. The customer gives IMA SCHELLING an unlimited indemnity against all claims made by third parties against IMA SCHELLING out of the contract made with the customer.

3. IMA SCHELLING may make partial deliveries, unless excluded by the parties in writing.

4. IMA SCHELLING undertakes to place the goods, packaged according to IMA SCHELLING's standards, at the agreed time of delivery **FCA (Incoterms 2020) at the customer's availability for collection** at the vendor's premises. Previous separation or marking of the goods or notification to the customer of the goods' availability is not required. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones are simply a variation on the provisions regarding transportation, risk assumption and transportation costs; besides that, the provisions laid down in these General Terms and Conditions of Delivery and Sale remain applicable.

5. If the readiness for shipment and/or transportation of the delivery item is delayed due to circumstances beyond the control of IMA SCHELLING, irrespective of the agreed delivery terms and conditions, the risk shall pass to the customer at the latest upon the notification of the readiness for shipment. Irrespective of the agreed delivery terms and conditions – unless otherwise expressly specified in writing in the order confirmation – the unloading as well as transportation of the delivery item from the unloading site to the place of installation shall not be part of the obligations of IMA SCHELLING.

6. Agreed **delivery deadlines or delivery dates** are subject to the customer's procuring any required documents, releases, permits or approvals in sufficient time, making down-payments as agreed and performing all other obligations incumbent upon them properly and in good time. Moreover, agreed delivery deadlines begin on the date of the written order confirmation by IMA SCHELLING. IMA SCHELLING is entitled to deliver earlier than the agreed delivery time or to select the date of delivery within the agreed period for delivery. Unless otherwise expressly agreed in writing, the delivery period shall be deemed met if we have notified the customer of the readiness for shipment within the delivery period or the delivery item has left the manufacturing plant.

7. The delivery period shall be reasonably extended if IMA SCHELLING is unable to meet its delivery obligation, or unable to meet its delivery obligation on time, due to circumstances beyond its control and which were not reasonably foreseeable at the time the supply contract was concluded. Circumstances beyond its control shall in particular include the failure of suppliers to deliver properly and on time, force majeure, labour disputes as well as delays in obtaining government approvals. IMA SCHELLING shall inform the customer as soon as possible about the beginning and the end of the respective circumstance. If the impairment lasts longer than six months or if it has been established that it will last for more than six months, both the customer and IMA SCHELLING may declare the cancellation of the supply contract. In all of these cases, any liability for damages vis-à-vis the customer shall be excluded.

8. If IMA SCHELLING is culpably in delay of delivery due to a circumstance IMA SCHELLING is responsible for, the customer may, after having set a reasonable grace period of at least 60 days in writing, which then lapse without a successful delivery, rescind from the supply contract within another four calendar weeks – calculated from the last day of the grace period set. If the customer does not exercise this right in writing within this time period or if the delivery item is ready for delivery prior to the receipt of the customer's declaration of withdrawal from the contract by IMA SCHELLING, the customer loses the right to rescind from the supply contract (= forfeiture).

9. To the extent permitted by law, any further contractual or non-contractual claims, in particular any liability or damages claims of the customer against IMA SCHELLING due to a delay in delivery shall be excluded – irrespective of whether or not IMA SCHELLING is



## IMA SCHELLING GROUP

responsible for the delay in delivery. The exclusion from those liability or damages claims mentioned in the previous paragraph in particular applies to damages to assets or consequential damage to assets, especially but not exclusively to profit loss, production downtimes, business interruptions, lost revenue and wasted expenditures.

10. Irrespective of whether IMA SCHELLING, the customer or a third party transports the goods, the transfer of **risk** passes to the customer in accordance with **FCA (Incoterms 2020)** as soon as loading begins. The **loading** of the goods is part of the customer's obligations. The agreement of other Incoterms or of clauses such as "delivery free....." or similar ones are simply a variation on the provisions regarding transportation, risk assumption and transportation costs; besides that, the provisions laid down in these General Terms and Conditions of Delivery and Sale remain applicable.

11. IMA SCHELLING is not obligated to procure **documents** or certificates not expressly agreed, to obtain any licenses, authorizations or other **documents** necessary for the export, transit or import, or to provide **security** or customs clearance and is in no case liable to fulfil the duties associated with the import and the putting of the goods into circulation outside Germany or Austria. IMA SCHELLING is not obliged to bear levies, duties and charges accruing outside Germany or Austria. Furthermore, IMA SCHELLING is not responsible for complying with weight and measuring systems, packaging, labelling or marking requirements or registration or certification obligations applicable outside Germany or Austria or for complying with any other legal provisions applicable to the goods outside Germany or Austria. Stipulated or other available translations of documentation or documents on the goods in a language other than German shall be provided at the customer's own expense and at its own responsibility.

12. If, after the conclusion of the supply contract, IMA SCHELLING becomes aware of any circumstances that justify reasonable doubts as to the customer's solvency or creditworthiness and on the basis of which our payment claim under the concluded supply contract is at risk, IMA SCHELLING may refuse its service until the payment under the concluded supply contract has been received or a security for the payment has been provided, and the customer has fulfilled any other due payment claims of IMA SCHELLING.

13. If IMA SCHELLING requests damages from the customer in case of a default in taking over the delivery or default of payment of the contract price in addition to performance under the supply contract or if IMA SCHELLING postpones the delivery date at the customer's request, IMA SCHELLING may also request from the customer the payment of additional expenses, in particular storage costs, pursuant to the above paragraph.

#### **IV. Obligations of the customer**

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, and in particular irrespective of any relating installation services, the payment to be made by the customer is in any event **due for payment** at the time specified in the written order confirmation or - if a time for payment is not indicated - on receipt of the invoice for the goods in the currency specified transferring it without deduction and free of expenses and costs to one of the financial institutions designated by IMA SCHELLING. The periods granted for payment will cease to apply and outstanding accounts will be due for immediate payment, if the customer's buyers do not pay for goods supplied by IMA SCHELLING which are held under title retention, if insolvency proceedings relating to the assets of the customer are applied for, if the customer, without providing a justifiable reason, does not meet fundamental obligations due to IMA SCHELLING or to third parties, if the customer has provided inaccurate information regarding his creditworthiness or to the extent that the cover given by a credit insurer is reduced on grounds for which IMA SCHELLING is not responsible. Unconditional crediting to the bank account shall be authoritative for the **timeliness** of payment. IMA SCHELLING's employees, commercial agents or other sales intermediaries are not authorised to accept payments.

2. In the event that the customer has not made the agreed payment within a reasonable period of grace, IMA SCHELLING reserves the right after unsuccessful reminders to switch off the system by remote shutdown by notifying the customer of the measures undertaken.

3. The customer warrants that all legal requirements and documentations **for the handling regarding value added tax** of the delivery and/or any service will be fulfilled. To the extent that IMA SCHELLING has to pay German or foreign value added tax, the customer will indemnify IMA SCHELLING in all and every respect without prejudice to any continuing claim by IMA SCHELLING. The indemnity is granted by the customer waiving any further requirements or other defences, in particular waiving the defence of limitation and also includes the reimbursement of the expenses incurred by IMA SCHELLING.

4. With the **agreed purchase price**, the services to be rendered by IMA SCHELLING shall be settled including the standard packaging at IMA SCHELLING. Insofar as the delivery of spare parts shall not take place within four months after the conclusion of the contract, IMA SCHELLING shall replace the agreed price by the price which is IMA SCHELLING'S usual price at the time of delivery. The statutory **valid**



## IMA SCHELLING GROUP

**added tax** is charged separately and is to be paid additionally by the customer. In case instalment payments are agreed, the value-added tax incurred for the entire payment claim shall be paid in the respective statutory amount on the first instalment payment.

5. IMA SCHELLING is entitled at his own discretion to **set off** incoming payments against claims existing against the customer by virtue of his own or assigned rights at the time of payment.

6. Any statutory rights of the customer to **set off** against claims of IMA SCHELLING, to **withhold** payment or taking delivery of the goods, to **suspend** the performance of its obligations or to raise **defences** or **counterclaims** are excluded, except where the corresponding claim of the customer against IMA SCHELLING is in the same currency, is based upon the customer's own right and is either due and undisputed or has been finally adjudicated or where despite written warning by the customer IMA SCHELLING has committed a fundamental breach of his obligations due and arising out of the same contractual relationship, and has not offered any adequate assurance.

7. The customer undertakes to take delivery of the goods without taking any additional period of time and at the place of delivery resulting from the order confirmation and shall fulfil all the duties imposed by the contract, by these General Terms and Conditions of Delivery and Sale, by the rules of the ICC for the use of Incoterms® 2020 and by statutory provisions.

8. Irrespective of any statutory provisions, the customer shall at its own cost take care of or in any other way ensure renewed utilisation, material recycling or otherwise prescribed **waste disposal** of the goods delivered by IMA SCHELLING to the customer and of the packaging material. Irrespective of any national waste regulations, IMA SCHELLING is not obliged to take back goods supplied to the customer or packaging material from the customer or third parties.

### V. Preparation of installation work etc.

1. To the extent that IMA SCHELLING expressly and in writing agreed on delivery, installation, assembly and or commissioning services with the customer and have agreed on a respective date, the customer shall prepare the place of performance in a timely manner at its expense so that the planned work can be carried out. In particular, the customer shall make the following available at the place of performance

in a timely manner:

- any earthworks, construction works and other ancillary works from other sectors and industries including any skilled and non-skilled personnel, construction materials and tools required in this respect;
- a foundation that meets the requirements of our installation plan;
- any commodities and materials, such as scaffolding, lifting tools, lubricants and fuels, etc. required for the installation, assembly and commissioning;
- electrical connections, power, heating, water, pressed air connections, extraction unit and sufficient lighting;
- the required suitable non-skilled personnel in the number and for such time as necessary;
- sufficiently large, suitable, dry and lockable rooms for storing the machine parts, equipment, materials, tools, etc. and appropriate work and recreation rooms for IMA SCHELLING staff, including sanitary facilities; furthermore, the customer shall take the same measures for protecting IMA SCHELLING property and staff on the construction site that it would take for protecting its own property and staff;
- protective clothing and protective devices required due to special circumstances prevailing at the place the work is carried out.

2. Prior to the commencement of the work, the customer shall provide to IMA SCHELLING without any request the required information about the location of hidden power lines, gas and water pipes or similar facilities as well as the required static data.

3. If the customer's preparatory measures do not correspond to the agreed requirements, IMA SCHELLING may refuse or cease the work until the agreed condition has been reached; in particular if the foundation does not correspond to the installation plan. If the customer wants to prevent IMA SCHELLING from installing the intended safety devices on the delivery item, in particular protective fences, IMA SCHELLING is entitled to decommission the delivery item.

4. If the customer is responsible for the fact that IMA SCHELLING cannot carry out the specified work, cannot carry it out completely or not within an adequate period of time, in addition to a proper fulfilment of the contractual obligations by the customer, IMA SCHELLING may request a contractual penalty in the amount of 0.1 per cent of the net order value per working day, however, no more than 10 per cent of the net order value, for the duration of the delay and/or the duration the delivery period is exceeded. IMA SCHELLING may provide evidence of any damage exceeding the contractual penalty and request respective damages, in particular the reimbursement of additional costs incurred due to additional trips by our staff and the working time of our staff that is spent to no avail or required in addition. When

determining the damages, the additional costs for the additional work of our staff and the additional costs for additional trips can be calculated and added on the basis of IMA SCHELLING General Terms and Conditions of Installation as applicable.

#### **VI. Notification of defects and warranty rights**

1. The customer may only refuse receipt and/or acceptance of the delivery item if the delivery item is obviously and significantly defective or if the quantity deviates significantly. Such refusals shall be made in writing without undue delay, stating the reasons. In this context, the customer is aware that the full operational capability of individually designed machines will only be achieved after expiry of a reasonable running-in period. Changes in design, construction or material which reflect technical improvements do not constitute a lack of conformity with the contract.

2. Unless it has been agreed in writing that a joint acceptance test will be performed, the customer shall inspect the delivery item and/or the documents without undue delay after receipt and send us a written notification regarding any obvious defects in the delivery item and/or the documents without undue delay, however, no later than within 7 calendar days after receipt, and specify the type of defect in detail. If an acceptance test has been agreed in writing, inspection and notification shall be made no later than by the end of the day on which the acceptance test was performed or – if it was not performed at the customer's fault – should have been performed. If the customer commenced operation of the delivery item already prior to the acceptance test agreed in writing, notification shall be made no later than within 7 calendar days as of the commissioning.

The customer shall lose all the rights in case of defects in the delivery item and/or the documents recognisable within the scope of an inspection, if it fails to notify us accordingly in writing within the above-mentioned periods, specifying the type of defect in detail, irrespective of the customer's reasons for not complying with these requirements. The customer's written notification of defects shall be sent within the above-mentioned periods and/or provided to IMA SCHELLING no later than by the end of the acceptance test agreed in writing; moreover, the notification of defects sent in due time must actually be received by IMA SCHELLING.

3. Notifications with respect to hidden defects shall be made in writing to IMA SCHELLING without undue delay, however, no later than within 7 calendar days after the customer detected such defect. The customer shall lose all rights in case of a hidden defect if it fails to notify IMA SCHELLING accordingly in writing within such period, specifying the type of defect in detail, irrespective of the customer's reasons for not complying with these requirements. The customer's written notification of defects shall be sent within 7 calendar days after the customer detected such defect; moreover, the notification of defects sent in due time must actually be received by IMA SCHELLING.

4. If, after the customer has sent a notification of defects, a defect in the delivery item cannot be ascertained, the customer shall reimburse IMA SCHELLING for any costs incurred in connection with the inspection of the delivery item.

5. If there is a defect in the delivery item or the documents, IMA SCHELLING may remove such defect at its sole discretion, either by repair or by replacement delivery. If the customer does not give IMA SCHELLING this opportunity, IMA SCHELLING shall not be liable for the resulting consequences.

To the extent that the defect in the delivery item or the documents is not removed within a reasonable period of time by repair or by replacement delivery, the customer may – after having set in writing another reasonable grace period of at least 60 days to no avail – request reduction of the contract price in an amount proportional to the reduced value of the delivery item. If there is a defect in the delivery item or the documents, the customer may not request cancellation of the supply contract instead of reduction of the contract price.

Any and all other rights in case of defects, claims and rights on the part of the customer for removal of defects, any liability or damages claims as well as any and all further contractual and non-contractual claims of the customer against us shall be excluded to the extent permitted by law.

6. In the absence of a deviating written contractual provision, a defect does not exist merely because the delivery item does not comply with the technical and other norms applicable in the country of destination (registered office of the customer) or because the delivery item is not suitable for specific purposes.

7. A defect shall not be deemed to exist in the event of a merely insignificant deviation from the quality agreed, a merely insignificant impairment of the usefulness, an inappropriate or improper use of the delivery item, an incorrect assembly and/or commissioning by the customer or by a third party not engaged by IMA SCHELLING, natural wear and tear (in particular of consumables), an incorrect or negligent handling of the delivery item, insufficient maintenance measures, changes or extensions made by the customer or third parties and the resulting consequences, inappropriate supplies and replacement materials, poor construction works, inappropriate ground, chemical, electrochemical, electric or electronic influences, insofar as they are not attributable to the fault of IMA SCHELLING. If a customer or third party makes improper repairs, IMA SCHELLING shall not be liable for the resulting consequences.



## IMA SCHELLING GROUP

8. The limitation period for the assertion of claims arising from defects as to quality and defects in title shall – to the extent permitted by law and in deviation from the statutory provision – be limited to 12 months in 1-shift operation as of the day of receipt of the delivery item by the customer. Any deviations from this can be documented in the order confirmation.

With respect to improvements or replacement deliveries made by IMA SCHELLING, the limitation period for the assertion of claims arising from defects as to quality and defects in title shall end at the same time as the limitation period applicable to the delivery item pursuant to this Section ends.

These limitation periods shall also apply to any non-contractual claims arising from defects as to quality and defects in title. The assertion of claims shall always be subject to the prior, timely notification of defects pursuant to the above Paragraphs 2 and 3.

Without prejudice to the deadline referred to in this Paragraph, the warranty also expires when the delivery item has reached 2,500 operating hours.

9. Unless otherwise expressly agreed in writing, IMA SCHELLING shall deliver the delivery item free from intellectual property rights and copyrights of third parties exclusively in the country to which our delivery is made. If the normal use of the delivery item results in an infringement of intellectual property rights or copyrights in the country of delivery, IMA SCHELLING shall, at our expense, procure the right to further use of the delivery item for the customer, or reasonably modify the delivery item for the customer in such a way that the intellectual property right is no longer infringed. If this is not possible on commercially reasonable terms or within a reasonable period of time, the customer may rescind from the supply contract and request repayment of the contract price from IMA SCHELLING. Under the aforementioned conditions, IMA SCHELLING may also rescind from the supply contract.

10. IMA SCHELLING obligations set forth in the previous Paragraph shall be final and conclusive in the event of an infringement of intellectual property rights or copyrights. Any and all further rights based on defects, claims and rights of the customer for removal of defects, any liability or damage claims as well as any and all further contractual and non-contractual claims of the customer against IMA SCHELLING shall be excluded to the extent permitted by law.

Moreover, the obligations set forth in the previous paragraph shall only exist if

- the customer notifies IMA SCHELLING without undue delay in writing about any infringement of intellectual property rights or copyrights asserted;
- the customer supports IMA SCHELLING, to a reasonable extent and at its own expense, in connection with the defence of the claims asserted and/or enables us to perform the modification works pursuant to the previous Paragraph;
- all defence measures, including out-of-court settlements, remain reserved to us;
- the customer is not responsible for the infringement of intellectual property rights or copyrights;
- the legal defect is not based on any instruction by the customer and/or
- the violation of law and/or rights was not caused by the customer changing the delivery item without authorisation or using it in any manner not compliant with the supply contract.

Should the customer discontinue using the delivery item for reasons of reducing the damage or for any other good cause, it shall inform the third party that the discontinuance of the use does not imply an acknowledgement of the infringement of the intellectual property right. Any discontinuance of the use shall be coordinated with us in advance. In case the customer is responsible for the infringement, the customer shall indemnify us from third parties claims arising from the infringement.

11. If the customer culpably contributed to causing the defects, in particular due to non-compliance with its obligation to prevent and reduce damage, IMA SCHELLING may claim damages in an amount equivalent to the respective contribution.

12. In the event that any used delivery item is sold, any claims based on defects shall be fully excluded, unless a mandatory liability under statutory law applies.

### **VII. Warranty exclusion**

1. Information in catalogues, product descriptions, project descriptions, data sheets, offers, drawings or other documents concerning dimensions, colour, deployment, technical data and other characteristics, particularly regarding availability, read rates, measurement accuracy, etc., comprise the condition and the ensured characteristics of a delivery item, but, to the extent not otherwise expressly agreed, do not represent warranties within the meaning of the law and of this contract.

2. In the case of non-compliance with the guaranteed product characteristics, the customer is entitled to assert its rights against IMA SCHELLING in accordance with those set out in Section V.

#### **VIII. Software**

1. With respect to software of other providers included in the scope of delivery, the general terms and conditions and license terms of such other providers shall prevail. Should such terms not be available to the customer, IMA SCHELLING will provide them upon request. These General Terms and Conditions of Delivery and Sale shall apply additionally.

2. To the extent that software from IMA SCHELLING is included in the scope of delivery, the customer shall be granted a non-exclusive right to use such software including its documentation. It shall be provided for use on the delivery item intended for such use. Using the software on more than one system shall be prohibited. The customer may transfer the right of use to future owners or renters of the delivery item. If the right of use is transferred to third parties, the customer shall ensure that the respective third party is not granted any more comprehensive rights of use with respect to the software than those granted to the customer pursuant to this supply contract, and that the respective third party is at least subjected to the obligations under this supply contract existing with respect to the software. In this context, the customer may not retain any copies of the software.

3. The customer may not remove manufacturer information, in particular copyright notices. Moreover, the customer may only change manufacturer information upon prior written consent from IMA SCHELLING.

4. All other rights to the software and the documentation including the copies shall remain with IMA SCHELLING and/or the software provider, unless the customer is granted any more comprehensive rights on the basis of mandatory statutory provisions. In particular, IMA SCHELLING is not obliged to provide source codes of the software. The granting of sub-licenses is not permitted.

5. Unless otherwise agreed in writing, IMA SCHELLING is not obliged to provide updated versions of the software to the customer.

6. The software shall only be deemed to be defective if the customer has verifiable and reproducible proof of deviations from the specification. However, it will not be considered a defect of quality if it does not occur in the version of the Software most recently supplied to the customer and its use is deemed reasonable for the customer. Notifications of defects by the customer shall be made in writing within one week after the handover. This notification must include a description of the defect and the corresponding data processing environment in as much detail as possible.

7. With respect to software, IMA SCHELLING shall not be liable for claims based on defects

- in case of a merely insignificant deviation from the quality agreed;
- in case of a merely insignificant impairment of the usefulness;
- in case of any damage incurred due to incorrect or negligent handling;
- in case of any damage incurred due to special external influences not assumed under the supply contract;
- in case of any changes or extensions made by the customer or third parties and the resulting consequences;
- and related to the fact, if and that the software provided is compatible with the data processing environment used by the customer.

8. If there is a defect as to the quality of the software, IMA SCHELLING may remove such defect at our sole discretion, either by making the necessary improvements or by offering a replacement delivery. As a substitute, IMA SCHELLING will provide a new version number (update) or a new version (upgrade) of the software, to the extent readily available to IMA SCHELLING or obtainable using reasonable efforts. Until an update and/or upgrade has been provided, IMA SCHELLING will provide the customer with an interim solution in order for the customer to mitigate the defect, to the extent possible using reasonable efforts and to the extent that the customer is no longer able to perform urgent tasks due to the defect. If a data carrier or documentation supplied is defective, the customer may only request that IMA SCHELLING replace such items by items that are free of defects.

9. IMA SCHELLING is free to decide whether the defect shall be removed at the customer's premises or at IMA SCHELLING. If IMA SCHELLING decides to have the defect removed at the customer's premises, the customer shall provide the hardware and software as well as any other operating conditions (including required computing time) together with adequately qualified staff. The customer shall provide IMA SCHELLING with any of its documentation and information required to remove the defect. Upon the request of IMA SCHELLING, the customer shall allow remote access.

10. The obligations of IMA SCHELLING for software defects set forth in this Section shall be final and conclusive. Any and all other rights based on defects, claims and rights of the customer for removal of defects, reduction of the contract price, cancellation of the supply contract, any liability or damages claims as well as any and all further contractual and non-contractual claims of the customer against IMA SCHELLING shall be excluded to the extent permitted by law.

11. The operation of machines delivered by IMA SCHELLING is only permissible with the **control systems** from IMA SCHELLING and the hardware and software components specified by IMA SCHELLING. IMA SCHELLING shall not accept any responsibility for any consequences caused by modifications made by the customer.

#### **IX. Data protection**

1. IMA SCHELLING complies with the provisions of the relevant legislation on data protection (GDPR - General Data Protection Regulation).

2. The customer grants IMA SCHELLING a non-exclusive and non-transferable right to the machine data, unlimited in place and limited in time to the term of this contract, to the use of this machine data in accordance with the following provisions.

3. The granted right of use authorises IMA SCHELLING to use the machine data for the purpose of troubleshooting, maintenance, compiling statistics, conducting other analyses and for improving and developing machines. The right of use also includes the right to merge anonymous data records of third parties for the above-mentioned purposes.

4. It is the joint understanding that the machine data is anonymous data which does not contain any personal references. The customer is obliged to ensure that the customer only provides anonymous data and data records to IMA SCHELLING and Microsoft Azure. It is exclusively the customer's responsibility to ensure that the data is transferred in accordance with the rules and procedures laid down in the data protection provisions. In particular, the customer is obliged to obtain the necessary consents from the affected individuals.

5. To ensure the necessary cooperation, the customer is obliged to allow IMA SCHELLING access to the machine data. If IMA SCHELLING does not have direct access to the machine data, the customer shall provide IMA SCHELLING access via the "Machine Data Management Platform" (ZIMBA).

6. IMA SCHELLING is prohibited to allow third parties access to machine data and other data or to disclose this data to third parties. The only exceptions being Microsoft Azure as the platform operator as well as associated companies in the company group of IMA Schelling Group GmbH which are not to be regarded as third parties. IMA SCHELLING must still ensure that these parties comply with the obligations resulting from the present agreement.

Microsoft Azure will only use the data in accordance with the conditions stated below:

- to process the data records only on instruction from IMA SCHELLING;
- to use the data records only for the purpose of storage on behalf of IMA SCHELLING or the customer;
- not to disclose the data records to third parties or give them access to this data;
- not to use the data records for own purposes;
- not to identify the natural individuals affected to whom the data records could refer - if this would be at all possible.

7. IMA SCHELLING is authorised to store customer data that IMA SCHELLING has been given access to during the contractual period and also continues without restriction beyond any termination and to use this data for the above-mentioned purposes, unless the customer explicitly requests its deletion. In this case, this will result in the termination of the warranty and general claims.

#### **X. Liability, damages**

1. If the delivery item cannot be used by the customer for the contractually agreed purpose, due to negligence or fault on the part of IMA SCHELLING in the execution of suggestions or advice before or after completion of contract or by breach of other contractual subsidiary obligations, particularly instructions for use and maintenance of the delivery item, then the arrangements specified under Sections V. and VII. shall apply correspondingly with the exception of further claims from the customer. 2.

2. IMA SCHELLING shall only be liable for damages not incurred on the delivery item itself – regardless of whatever reasons upon which such claims are based:

- a) on intent;
- b) in the event of gross negligence;
- c) in the event of risk to life, personal injury or physical harm,
- d) for defects which we have fraudulently concealed,
- e) if we have promised a guarantee,
- f) according to the regulations of the German Product Liability Act or



g) in the event of a breach of a key contractual obligation.

If a key contractual obligation has been breached by IMA SCHELLING in accordance with IX. Paragraph 2. g) i.e., an obligation, the fulfilment of which is a prerequisite for the proper performance of the contract and on the observance of which the contractual partner regularly relies and may rely, has been breached as well as an obligation the violation of which could jeopardise the fulfilment of the contractual purpose, caused by the ordinary negligence, our obligation to pay compensation is limited to foreseeable damages according to the type of contract.

3. IMA SCHELLING shall not accept claims for damages to assets or consequential damage to assets, especially for profit loss, production downtimes, business interruptions, lost revenue and wasted expenditures, with the exceptions of those cases listed in Section IX. 2. a) to f).

4. The liability on the part of IMA SCHELLING is in each case limited to the sum of the contract value, regardless of the legal framework with the exception of the cases mentioned in Section IX. Paragraph 2. a) to f).

5. As far as admissible by law, all further liability claims for employees, staff, bodies, sub-contractors and any other auxiliary persons from IMA SCHELLING are excluded.

6. To the extent that in other Sections of these General Terms and Conditions of Delivery and Sale, a further exemption from liability is intended, the provisions of Section IX. Paragraph 2 take precedence. The provisions stipulated in Section IX. Paragraph 2 apply in each case.

7. Moreover, the **amount of compensation for damages** for late or non-existent delivery is limited to 0.1 per cent for each full week of delay from the 15th day of delay, up to a maximum of 5 per cent, and for other breaches of obligations is limited to an amount of 100 per cent of the value of the machines/system of the part of the contract and the delivery of spare parts to a maximum of EUR 50,000, with the exception of the cases mentioned in Section VII. Paragraph 2. a) to f). Paragraph 348 of the German Commercial Code (HGB -**contractual penalties**) is not applicable.

8. Within the bounds of what is legally possible as well as within what is usual in the trade, the customer is in its commercial relationships with its buyers obliged to limit its **liability** both in principle and in amount.

#### **XI. Retention of title**

1. Delivered goods remain the **property of IMA SCHELLING** until the complete settlement of all of IMA SCHELLING's principal and secondary claims against the customer, regardless of the legal basis on which they arose and including those that will become due in the future. For a current account, the retention of title applies to the respective balance.

2. During the existence of the retention of title, the customer will grant **access** to IMA SCHELLING employees to the goods that are subject to the retention of title at any time during the usual business hours. The customer is obliged to **insure** goods that are subject to the retention of title against theft, damage, and destruction and, if requested by IMA SCHELLING to store the goods separately or isolate them suitably, **label them** as the property of IMA SCHELLING in a clearly visible manner, and to take all measures necessary to **comprehensively safeguard the title retention** at the customer's own expense. As a security, the customer hereby assigns, irrevocably and in the full amount, to IMA SCHELLING the claims accruing against the insurances; IMA SCHELLING accepts this assignment of claims.

3. During the existence of the retention of title, the customer will immediately **notify** IMA SCHELLING in writing if a third party asserts claims or rights to the goods that are subject to the retention of title or to the claims that were assigned to IMA SCHELLING in accordance with the provisions on the retention of title; the customer will also support IMA SCHELLING free of charge during pursuit of its interests. If, during the existence of the retention of title, a **third party** acquires rights to the goods that are subject to the retention of title, the customer's claims against the third party, including all rights, are hereby irrevocably assigned to IMA SCHELLING as a security; IMA SCHELLING accepts this assignment.

4. The goods that are subject to the retention of title may be **sold** by the customer within the scope of proper business management, provided that the customer is not in default of payment and the payment of the buyer to the customer is not due before the date on which the customer is obliged to make the payment to IMA SCHELLING. The customer is not entitled to any other dispositions about the merchandise under reservation of title (e.g. pledging and the transfer of ownership for security etc.). The customer's **claims against its buyers** to which the customer is entitled as a result of the disposal of the goods which are subject to the retention of title, including all



## IMA SCHELLING GROUP

ancillary rights, are hereby assigned, irrevocably and in the full amount, to IMA SCHELLING as a security. If the customer incorporates claims resulting from a disposal into an existing **current accounts relationship** with its buyer, the customer hereby assigns as a security, irrevocably and in the full amount, to IMA SCHELLING the current account receivables after balancing. IMA SCHELLING accepts the assignments.

5. The customer shall remain authorised to **collect** the payment claims assigned to IMA SCHELLING on IMA SCHELLING's behalf **in a fiduciary capacity** as long as the customer is not in payment default. The customer is not entitled to assign any claims to third parties. The customer must keep the **incoming payments** separate from other monies and immediately pass on these payments to IMA SCHELLING until the secured payment claims of IMA SCHELLING are completely settled. If payment takes place via bank transfer to the customer's financial institution, the customer hereby irrevocably assigns to IMA SCHELLING any claims against the financial institution to which the customer is entitled as a result of this. If the customer receives **bills of exchange** for the settlement of claims against third parties, the customer hereby irrevocably assigns to IMA SCHELLING the claims it is entitled to against the financial institution in the event of a discounting of the bill of exchange. IMA SCHELLING accepts the assignments.

6. The goods are only connected to the ground temporarily. **Handling and processing** of the goods is performed with IMA SCHELLING in the role of manufacturer, without IMA SCHELLING thereby incurring liabilities. If the goods supplied by IMA SCHELLING are **combined or mixed** with other goods in such a manner that the ownership of IMA SCHELLING lapses by law, then the customer shall already now assign its ownership or co-ownership rights to the new goods to IMA SCHELLING and store them for IMA SCHELLING free of charge and in a fiduciary capacity.

7. If not yet fully paid goods that are subject to the retention of title are in the customer's safekeeping and the opening of insolvency proceedings on the customer's assets is requested or the customer does not fulfil its obligations owed to IMA SCHELLING or third parties without demonstrating a justifying reason, IMA SCHELLING **can revoke the customer's right to ownership** and demand the surrender of the goods without cancellation of the contract. IMA SCHELLING shall not be entitled to demand the surrender of the goods if the insolvency administrator decides upon the fulfilment of the contract and the purchase price is paid.

8. In the event of a contract withdrawal, particularly owing to payment default upon the part of the customer, IMA SCHELLING shall be entitled to **freely dispose of the goods** and to avail itself of the proceeds from such disposal. Notwithstanding other rights to which IMA SCHELLING is entitled, the customer shall be obliged to reimburse IMA SCHELLING for the **expenditures** IMA SCHELLING has incurred owing to the concluding of the agreement, the current contractual execution and the dissolution of the agreement as well as the costs for the return transport of the goods and to pay a **usage fee** in the amount of 3 per cent of the value of the goods for each new month begun since the transfer of risk was made.

### XII. Other regulations

1. All notifications, declarations, announcements, etc. have to be exclusively **in German or English**. Communications by means of fax or e-mail fulfil the requirement of being **in writing**.

2. References to the HGB (Commercial Code) in these General Terms and Conditions of Delivery and Sales refer to the German Commercial Code.

3. The **data** received by the customer in connection with the business relation will be **processed** by IMA SCHELLING as laid down in the GDPR (General Data Protection Regulation).

4. The customer shall, without any demand being necessary, inform IMA SCHELLING if IMA SCHELLING has to observe any particular duties of reporting or registration or providing information or prior notification or retaining documents or any other **requirements for access to market**, under the **provisions in force** in the customer's country or in the country where the goods are to be used. Moreover, the customer will **monitor the delivered goods in the market** and inform IMA SCHELLING directly and in writing of any concern that the goods might pose a risk to third parties.

5. The customer shall inform IMA SCHELLING immediately if the **authorities** have been activated or become involved in connection with the goods. Moreover, the customer will **monitor the delivered goods in the market** and inform IMA SCHELLING directly and in writing of any concern that the goods might pose a risk to third parties.

6. Without prejudice to IMA SCHELLING's continuing claims, the supplier will indemnify IMA SCHELLING without limit against all claims of third parties which may be brought against IMA SCHELLING based on **product liability law**- or similar provisions to the extent that the

liability is based on circumstances which - such as, for example, the presentation of the product - were caused by the customer - or other third parties without express written consent of IMA SCHELLING. In particular, the indemnity also includes the reimbursement for expenses incurred by IMA SCHELLING and is granted by the customer waiving further conditions or other objections, in particular without requiring compliance with control and recall obligations and waiving any defence of limitation.

7. In relation to pictures, drawings, calculations and other **documents** as well as computer software, which have been made available by IMA SCHELLING in a material or electronic form, the latter reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights. These documents must be kept confidential and not be disclosed to any third party and must be used exclusively for performing the respective order.

8. Regardless of other legal provision, the **suspension of the statutory limitation** also ends if the negotiations on which the suspension is based have not progressed in a period of four weeks. A restart of the period of limitation for claims of the customer requires the explicit written approval by IMA SCHELLING in any event.

## **XII. General contractual terms**

1. Unless otherwise agreed in writing, the place of performance and payment is the headquarters of IMA SCHELLING.

2. For the contractual and non-contractual legal relationships with the customer, exclusively the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply. The CISG applies, above and beyond its own area of application, and regardless of reservations adopted by other states, to all contracts to which these General Terms and Conditions of Delivery and Sale are to be applied according to the provisions of Section I. If individual provisions shall not be covered by CISG, the national laws of the country where IMA SCHELLING has its headquarters shall be agreed, excluding application of the provisions of international private law. Where standard terms of business are used, the Incoterms® 2020 of the International Chamber of Commerce apply where in doubt, taking into account the provisions stipulated in these General Terms and Conditions of Delivery and Sale.

3. All contractual and extra-contractual disputes as well as disputes under insolvency law, arising out of or in connection with contracts to which these General Terms and Conditions of Delivery and Sale apply, including its validity, invalidity, violation or cancellation as well as other disputes arising out of the business relationship between the parties shall be finally resolved by arbitration according to the Swiss Rules of International Arbitration (SCA) without recourse to the ordinary courts of law. The **tribunal** shall consist of three arbitrators, one of them shall be nominated by the claimant, one of them by the defendant and the tribunal chairman shall be nominated by both of the appointed arbitrators, and if the amount in dispute is inferior to € 50,000 from an arbitrator appointed by the Swiss Rules of International Arbitration (SCA). The location of the arbitration proceedings is Zurich/Switzerland; the language of the arbitration proceedings is German and/or English. This jurisdiction excludes in particular any other jurisdiction that may be legally provided because of personal or material association. If this arbitration clause is or shall become void, the exclusive local and international jurisdiction of the courts which have jurisdiction for the headquarters of IMA SCHELLING is agreed for all disputes instead. However, IMA SCHELLING shall be entitled in the individual case to also take legal action in the state courts which have jurisdiction for the commercial residence of the customer or other state courts which are competent under law.

4. Should any provision of these General Terms and Conditions of Delivery and Sale be or become invalid, this shall not affect the validity of the remaining provisions. The parties shall be bound to replace the invalid provision with a legally valid provision which most closely corresponds to the commercial sense and purpose of the invalid provision.

As of: 04/2023