



**IMA SCHELLING**  
GROUP

**General Terms and Conditions of Sale and Service  
("GTC")  
(As of: January 2025)**

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**A. General section**

Terms and conditions of business applying to all legal relationships between us and the customer.

**§1 Exclusive application of these GTC; protective clause**

- (1) These GTC are valid for the following companies:
- IMA Schelling Deutschland GmbH Industriestraße 3, 32312 Lübbecke, Germany
  - IMA Schelling Austria GmbH, Gebhard-Schwärzler Straße 34, 6858 Schwarzach, Austria
- (2) These GTC shall apply to all business relationships with our customers. Specifically they shall apply to contracts for sale and/or supply of movable goods, irrespective of whether we manufacture these ourselves or buy in from suppliers/subcontractors. Our installation conditions shall also apply to machine assembly, set-up, modernization, repair, and overhaul works, including if the subject of the installation is goods supplied under these GTC. These GTC shall only apply, however, if the customer is a trader within the terms of section 14 of the German Civil Code (BGB), a legal entity under public law, or a special fund under public law.
- (3) Our GTC shall apply exclusively. The customer's terms of business that are contradictory, that deviate from or

supplement these GTC are hereby rejected and shall not form part of the contract unless we expressly consent in writing to their applicability. It shall not constitute consent, for example, if we, knowing the customer's terms of business, unreservedly accept orders, make deliveries or render other services, or refer directly or indirectly to documents that contain the customer's terms of business or those of a third party.

(4) Unless otherwise agreed the respective version of our GTC shall apply as a framework agreement at the time of the customer's order, including to subsequent contracts within the terms of para. (2), with the same customer, without the need for us to refer to them anew. See also section 305, para. 3 BGB.

**§2 Conclusion of the contract; written form; representation; no guarantees or assumption of procurement risk**

(1) Our quotations are subject to change and non-binding. Prior to acceptance, the customer shall point out to us obvious errors (e.g., typographical or calculation errors) and omissions in our quotations, including any concomitant documents, for the purpose of correction or completion by us; the contract shall otherwise be deemed to have not been concluded.

(2) The customer's order shall be deemed a legally binding offer to conclude a contract. Unless it ensues otherwise from the customer's offer, in the case of orders for spare parts we can accept these within 10 working days of receipt (Monday to Friday, regardless of statutory public holidays) and in all other cases within 20 working days of receipt.

(3) Our acceptance will be issued in writing, e.g., by our order confirmation. The contents of this declaration shall be authoritative for the contents of the contract. The customer shall bear responsibility for the order's accuracy. The customer shall be responsible for sending us any necessary information concerning the goods ordered within a reasonable timeframe, so that the order can be executed in accordance with the contract. Material legal declarations and notifications that the customer makes to us after conclusion of the contract (e.g., deadlines, reminders, claims for defects, advice of repudiation or diminution) must be in writing to take effect. See para. (4) below.

(4) Communication exclusively by e-mail, even without an attached document scan, shall suffice to observe the written form within the terms of these GTC. We reserve the right to request proof in the event of doubts regarding the declarer's authority.

(5) The written contract, including these GTC, which form an integral part of the written contract, fully reproduce all agreements reached between us and the customer concerning the subject of the contract. Any verbal agreements or assurances given by us before the written contract is concluded shall not be binding and shall be replaced fully by the written contract unless it expressly ensues from them that they should continue to be binding.

(6) Individual contractual agreements, including verbal, shall always take precedence over these GTC. Subject to proof to

the contrary, a written agreement or, if such does not exist, our written confirmation shall be authoritative as proof of their content.

(7) With the exception of our managing director, authorized officers, and other employees expressly named to the customer as contacts in their respective authorized configurations, our employees shall not be authorized to make offers, conclude contracts, reach written or verbal agreements, or give assurances. Any such statements (or acceptance of statements) are irrelevant and do not bind us.

(8) There shall be no guarantees or assumption of risks with the exception of guarantees and/or assumptions of procurement risk expressly agreed as such contractually.

### **§3a Copyright and other property rights; rights to software; confidentiality**

(1) We retain all titles, copyrights, and other property rights to all documents (such as materials, quotations, catalogs, price lists, estimates, plans, drawings, illustrations, calculations, samples, and models) and other physical and/or electronic documents, information, and other objects ("contractual documents") which we make available to the customer in connection with a business relationship. Transfer of rights to contractual documents shall occur only if a provision of the contract expressly provides for such transfer.

The customer may not make the contractual documents or their content available to third parties or realize, reproduce or amend these. The customer shall use the contractual documents solely for the contractual purposes and return them to us in full on request. Any copies (including electronic) must be destroyed (or erased) if the customer no longer needs them in the ordinary course of business and in accordance with statutory retention periods. When we request it, the customer must confirm that the contractual documents have been returned and destroyed/erased in full and state which contractual documents the customer believes it still needs and for what reasons.

(2) If software is included in the scope of supply, we grant the customer a non-exclusive, non-transferable right of use according to the following provisions:

(a) The customer must use the software and its technical documentation only to the contractually agreed or legally permissible extent (sections 69a et seq of the German Copyright Act (UrhG)).

(b) The software is sold for use on the intended goods. The software is sold solely as object code, i.e. in mechanically legible form; surrender of the source code is not owed. Notwithstanding clause 3a of these GTC, use of the software regardless of the goods supplied or passing of the software to third parties is not permitted.

(c) Use of the software on more than one computer unit is not permitted (single user license). For the agreed duration of the right, the customer shall therefore be entitled to install, load, and run the software on no more than the agreed number of machines as a maximum.

(d) We shall not be obliged to issue the customer with software updates. Should such an obligation nevertheless exist, it shall be subject to provision of an update by the software manufacturer.

(e) We shall be entitled to take appropriate, effective measures to prevent the prohibited reproduction or other unauthorized use; prior to conclusion of the contract we will indicate such measures in the product description. We shall be entitled specifically to make the software's availability dependent on use of individually identified hardware (e.g., dongle/hardlock). We shall further be entitled to make the

software's availability dependent on prior personal registration of the user via the software manufacturer's online registration system. The customer's rights arising from section 69d para. 2 and para. 3 and section 69e UrhG shall remain unaffected.

(f) It shall be incumbent upon the customer to ensure routine safeguarding of programs and data. The customer shall take suitable precautions in the event of all or part of the program not working properly (e.g., by data backup, regular checks of the results). These customer precautions must not affect the running machine system. It is the customer's responsibility to safeguard the program's operating environment. If a customer breaches these obligations, we shall not be liable if this results in damage; in particular we shall not be liable for restoration of lost or damaged data or programs. The customer shall be responsible for securing the databases, including in respect of our use of the data. Remedying IT problems that arise during use of the customer's infrastructure shall also be the customer's responsibility.

(g) Manufacturer's and licensor's industrial property rights and copyrights generally pertain to the goods and corresponding documents. The customer may not amend, conceal or remove references to property rights. The customer shall be obliged to point out property rights and license conditions, particularly restrictions they contain, to its customers.

(h) We and/or the software provider shall retain all other rights to the software and data collected and/or generated, including copies, unless the customer is granted further rights due to compelling statutory provisions.

(3) Sublicenses may not be awarded. The customer can transfer its full right of use to subsequent owners of the goods. Rights may be passed to the third parties through permanent sale and without the right of return or option to buy back. In the event of transfer of the right of use to a third party, the customer shall ensure that the third party is not granted any rights of use to the software other than those that are due the customer under this contract and that as a minimum the obligations arising from this contract existing in respect of the software are imposed on the third party. The customer shall lose all rights of use upon transfer to the third party and the customer may not retain any copies of the software.

(4) The third party's general terms and conditions of business and license conditions shall take precedence for third-party software included in the scope of supply. If these are not in the customer's possession, we will send them to the customer on request. These General Terms and Conditions of Supply and Sale shall also apply.

### **§3b Information**

(1) The customer shall inform us of all general circumstances, particularly those pertaining to the customer that are material for compliance with statutory regulations, including all those of the EU. The customer shall assist us from the outset and immediately communicate to us all relevant information in this regard. This shall apply specifically in connection with EAN, CE, RoHs, REACH, RED, eco-design, WEEE, product safety, the Market Surveillance Regulation, and the Packaging Act. The customer shall furthermore inform us immediately in writing if third parties assert property rights (e.g., copyrights or patent rights) against it. The customer shall not acknowledge the violation of property rights asserted by third parties and shall either surrender any dispute, including any extra-judicial arrangements, to us or only conduct them by agreement with us. Claims against us shall be excluded if the customer is responsible for the property rights violation.

(2) For deliveries to EU countries, the customer shall be obliged to notify us of its VAT identification number at the time of ordering, otherwise the customer shall exempt us from any ensuing consequences. Immediately after receipt of the goods, the customer shall also provide us with the evidence necessary for the delivery to be treated as an intra-Community supply and/or assist in obtaining it. The customer shall otherwise be obliged to pay us the agreed purchase price plus statutory value added tax. For exports to countries outside the EU, immediately after delivery of the goods the customer shall be obliged to provide us with the evidence required according to the applicable tax regulations, otherwise it shall exempt us from the consequences.

#### **§4 Delivery terms; passing of risk; delayed approval, cooperation; acceptance**

(1) Unless otherwise agreed "FCA (free carrier) Incoterms (2020)" shall apply to all our deliveries (based on the warehouse from which we deliver respectively). The customer's right according to A2 (clause 2), B10 (letter b) FCA INCOTERMS to determine the exact delivery date and to inform the vendor thereof shall be excluded. We shall inform the customer as soon as the goods in our warehouse are ready for collection or loading. The customer must organize collection using a carrier according to FCA INCOTERMS 2020 within seven (7) working days following notification. If the customer does not notify us of the carrier in good time, we can undertake shipment on the usual terms at the customer's cost and risk. We shall inform the customer as soon as the goods have been loaded onto the method of transport organized by the customer. Collection of the goods by road vehicle is only possible during the customary hours of business.

We shall not be obliged to supply certificates and licenses for export, transit or import that have not been expressly agreed, to procure permits or other documents, or to manage security approvals, export, transit or import stamps or Customs clearances and shall not be responsible under any circumstances for fulfillment of the obligations associated with placing of the goods on the market outside of Germany. Under no circumstance shall we bear duty and taxes incurred outside Germany either. Furthermore, we shall not be responsible for measuring and weighing systems, packaging, labeling or marking regulations, registration or certification obligations, or other legal prescriptions significant for the goods applying outside Germany. If we are not obliged to do so on a statutory basis, the customer shall be responsible for instigating any necessary translations of technical documentation or other documents or records pertaining to the goods in a language other than German at the customer's expense.

(2) Subject to an express agreement to the contrary, the price and performance risk shall pass to the customer as soon as the goods have been delivered according to clause 4 (1) above, and at the latest when title to the goods has passed to the customer. We only insure goods against theft, breakage, damage during transportation, by fire or water, or other insurable risks by express agreement with the customer and then solely at the customer's expense.

(3) By deviation from para. (1) and only if agreed, we will ship the goods to the destination stated by the customer. This shall take place – with regard to the packaging also – at the customer's expense. We shall be entitled to decide the type of dispatch (in particular the carrier and dispatch route) and packaging as we deem best. In the cases in sentence 1 of this paragraph, the risk shall pass to the customer on the

customer's receipt of our notification of dispatch readiness or, if there has been no contractual provision for this, upon issue of the goods to the freight forwarder, carrier or other transport person. This shall apply even if part deliveries take place or if we owe other services (e.g., the said dispatch or shipment) under the contract. Para. (1) and the regulations on place of performance (clause 13 below) shall otherwise remain unaffected.

(4) If the customer delays approval, fails to cooperate or if our performance is delayed for other reasons for which the customer is responsible, we shall be entitled to invoice compensation for the ensuing damages, including our additional expenses (especially warehousing costs).

(5) Section 640 para. 1 and para. 2 sentence 1 and para. 3 BGB shall apply if there has been express agreement that acceptance must take place in the sense of a contract for works. Use of the term "acceptance" within the scope of these GTC and the other contractual documents shall not lead to direct application of sections 633 et seq BGB, but merely means a joint final examination of the goods.

#### **§5 Prices, payment, retention of goods; exclusion of set off and retention rights; customer's inability to pay**

(1) Unless otherwise agreed, our current net prices, plus statutory value added tax if applicable (we refer to the provision in clause 3 (4) above), shall apply at the time of conclusion of the respective contract. Prices shall be understood as "FCA Incoterms (2020)" (clause 4 (1) above). Unless otherwise agreed any insurance, shipping, and packaging costs (clause 4 (2) and 4 (3) above) and taxes in addition to statutory value added tax, plus duties, shall be charged additionally.

The customer warrants that all the conditions and proof for treatment of the delivery and/or service for value added tax are met. The customer shall unreservedly release us, regardless of further claims, if we are required to pay German value added tax or foreign sales tax. The customer shall agree to release us while waiving other conditions or objections, in particular waiving the objection to limitation periods and shall also include reimbursement of the expenses below.

(2) Our list prices at the time of supply shall apply if the agreed prices are our list prices, if a fixed price (i.e. not subject to change) has not been expressly agreed and furthermore our supply is not to take place for more than four (4) months after conclusion of the contract. Any percentage of fixed discounts that have been agreed will be deducted unchanged from the price current at the time of supply. Para. (1) shall otherwise apply.

(3) We invoice the customer, in accordance with the agreed payment plan if applicable. The purchase price is to be paid after delivery and corresponding invoicing by us.

(a) Subject to agreements to the contrary, our invoices are to be paid within 14 calendar days of receipt. Payment must be transferred in euros (€) to the bank account stated on our invoice without any deductions, especially without applying a cash discount. The day payment is credited to the account shall be authoritative for compliance with the payment term.

(b) We are entitled, however, without stating reasons, to make our services dependent upon staged payments. If set-up or similar services (such as integration, installation, commissioning, configuration/adjustment) form an integral part of the services due from us, or if acceptance has been agreed, we shall not be due the right under this subparagraph (b) sentence 1 if the customer has a legitimate interest, generally to be assessed as 10% of the total price,

in not paying before completion of set-up or the similar service, or not paying the full remuneration before acceptance.

(4) The customer shall be in default automatically upon expiry of the payment term according to para. (3). Interest at the applicable statutory rate of default interest shall be charged on the purchase price during default. The statutory flat rate for default (section 288, para. 5 BGB) shall be charged additionally. We reserve the right to assert additional claims for default damages. Our statutory entitlement to the commercial interest on maturity (sections 352, 353 German Commercial Code (HGB)) with regard to merchants shall remain unaffected.

(5) The customer shall be entitled to (a) offset only if its counterclaim either (aa) is uncontested, or (bb) has been established as legally enforceable, or (cc) there is a reciprocal relationship to our claim (synallagmatic contract) against which the customer is offsetting; (b) assert a right of retention only if its counterclaim (aa) is uncontested, or (bb) has been established as legally enforceable, or (cc) is based on the same contractual relationship as our claim that the customer is opposing with the right of retention.

(6) We shall be entitled to refuse our services due under a contractual relationship if it becomes apparent after conclusion of the contract (e.g., as a result of an application for insolvency) that our payment claim arising from the respective contractual relationship is endangered as a result of the customer's inability to pay. Our right to refuse performance shall be voided if payment is effected or security is provided for it. We shall be entitled to stipulate a suitable period within which the customer has the option of effecting staged payment for our service or providing security for it. We may withdraw from the contract if the period expires without success. We may declare immediate withdrawal in the case of contracts for manufacture of unjustifiable items (one-off items). Statutory regulations concerning dispensation with a period of grace (cf para. (3) above and section 321 BGB) shall remain unaffected.

#### **§6 Delivery deadline; force majeure; self-delivery; part deliveries; our statutory rights; our liability for default and impracticality; no short selling**

(1) Delivery periods/deadlines for supplies and services (delivery deadlines) that we promise shall only be deemed approximate unless a fixed delivery deadline has been expressly agreed.

(2) If shipping has been agreed, a delivery deadline for a delivery of goods shall be deemed to have been met when we have handed the goods over to the carrier or could have handed them over in the event of the carrier's non-appearance or tardy appearance. Unless expressly agreed, we shall not be obliged to unload and transport the goods from the unloading location to the set-up location.

(3) If we foresee that it will not be possible to meet a delivery deadline, we shall notify the customer of this as soon as possible and inform it of the anticipated new delivery deadline.

(4) (a) We shall not be liable for impracticality or delays for which we are not responsible if they can be ascribed to force majeure or another occurrence that could not be foreseen at the time the contract was concluded (e.g., any kind of malfunction, fire, natural disasters, epidemics, pandemics, weather, floods, war, uprising, terrorism, transport delays, strikes, legal lock-outs, labor, energy or raw material

shortages, delays to issue of any necessary official permits, official/sovereign measures).

(b) Incorrect or late delivery by one of our suppliers shall not constitute such an occurrence either if, after the business transaction, we adopted expedient measures and we cannot be accused of gross negligence in selecting the supplier(s) or the specific procurement.

(c) We will inform the customer immediately if we learn of an occurrence within the terms of clause 6 (4) (a) or (b). In the event of such occurrences, our periods/deadlines for rendering services shall be extended/postponed automatically by the occurrence's duration, plus a suitable response period. We shall be entitled to withdraw from the contract if such occurrences render provision of services significantly more difficult or impractical. Unless otherwise agreed, the parties shall expressly agree that either party may terminate the contract if the duration of the impediment exceeds six (6) months.

(5) Delivery deadlines shall be extended automatically to an appropriate extent if the customer does not fulfill its contractual obligations or other obligations to cooperate or perform duties. In particular the customer shall be responsible for sending us all the documents, permits, releases, information, patterns, samples, and other information and items in good time and in the correct format.

(6) We shall be entitled to make part deliveries if (a) the customer can use a part delivery as part of the contractually intended purpose, (b) provision of the remaining services is assured, and (c) the customer does not incur any appreciable additional expense as a result of the part delivery.

(7) Our statutory rights, specifically concerning any exclusion of our performance obligation (e.g., on grounds of impracticality or unreasonableness of the performance or subsequent performance) and due to the customer's delayed acceptance or performance shall remain unaffected.

(8) If we default on a delivery or service or if it is impractical for us, for whatever reason, any liability for compensation on our part shall be limited according to clause 10 below. Our business with the customer is neither a relative (actual) or absolute (figurative) fixed transaction unless expressly agreed otherwise in writing.

#### **§7 Extended retention of title**

(1) The retention of title agreed herein shall serve to secure our claims against the customer arising from the respective contractual relationship and all our further claims against the customer existing at the time of conclusion of the respective contract arising from supplies and services, including current account balance claims (jointly the "secured claims").

(2) We shall retain title to the goods we supply to the customer until all secured claims have been paid in full. These goods and/or the objects that replace the goods according to the following provisions that are also covered by retention of title shall be referred to as "reserved goods" hereafter. If the customer intends to bring the reserved goods to a place outside the country in which the vendor has its seat, the customer shall be obliged to fulfill all the statutory requirements there for emergence and maintenance of our retention of title at its expense and to inform us immediately when it has taken the above decision.

(3) The customer shall store the reserved goods for us free of charge. The customer must treat them carefully and insure

them adequately against fire, water, and theft for the replacement value. If service, maintenance or inspection work is necessary (this does not include any (subsequent) fulfillment to be rendered by us), the customer must carry this out in good time at its expense. Whilst the retention of title is in place, the customer shall grant our employees access to the goods subject to retention of title at any time during customary hours of business.

(4) The customer shall not be entitled to pledge reserved goods, to assign them as security, or to use them for sale-and-lease transactions. In the case of insolvency proceedings being commenced against the reserved goods and/or third-party access to them (e.g., attempts to levy distraint), the customer must clearly refer to our title without delay and inform us immediately so that we can legally assert our rights. The customer shall be liable to us for the judicial or extra-judicial costs incurred in this regard if the third party does not reimburse them.

(5) The customer shall be entitled to use, process, refashion, combine, mix and/or sell the reserved goods in the ordinary course of business if the requirements stated in para. (7) (b) are met (in particular no defaulted payments to us) and the enforcement event (para. (9)) does not occur.

(6) (a) Any linking of the goods to real estate shall be only temporary. If the reserved goods are not processed, mixed or combined, it is deemed that these are always undertaken for us, in our name and for our account, as the manufacturer. We shall acquire direct title to the newly created item or, if the processing, mixing or combining is undertaken with substances from several owners, joint title (fractional ownership) to the newly created item pro rata to the value of the reserved goods (gross invoiced value) to the value of the other processed/mixed/combined substances. In the event that we should not acquire such title or joint title for any reason whatsoever, the customer shall hereby transfer its future title and/or joint title to the newly created item in the ratio described above as security. We hereby accept this transfer.

(b) The customer shall safeguard for us our sole or joint title according to the above regulations, and shall do so free of charge.

(7) (a) The customer hereby fully assigns to us, as security, its claims to payment against its consumers arising from resale of reserved goods, and those customer claims against its consumers or third parties regarding the reserved goods arising from other legal grounds, and/or assigns them to us to the value of any joint title. We hereby accept these assignments.

(b) We hereby revocably authorize the customer to collect the claims assigned to us in its name and for its account. This shall not affect our right to collect these claims.

(c) The prohibitions in para. (4) above shall apply accordingly to the claims assigned to us.

(8) If the customer requests, we shall release the reserved goods and the items and claims replacing them inasmuch as their estimated value exceeds the secured claims by more than 50%. We shall be free to choose the objects to be released.

(9) If, in accordance with the statutory provisions, we withdraw from the contract due to the customer's non-contractual behavior (realization) – especially due to it being in default of payment – we shall be entitled to request the reserved goods from the customer. Our declaration of withdrawal shall be included in our request for return at the

latest and also if we pledge the reserved goods. The customer shall bear the transport costs incurred for return. We may realize reserved goods taken back by us. The realization proceeds will be offset against those amounts owed to us by the customer after we have deducted an appropriate amount for the realization costs.

## **§8 Quality of goods**

(1) Our warranty is based primarily on the agreement reached on the quality of the goods. All product descriptions and manufacturer's information forming the subject of the individual contract or published by us (especially in catalogs or on our website homepage) at the time of conclusion of the contract shall be deemed agreement on the quality of the goods. Measurements, weights, illustrations and drawings, and other documents that form part of the offers are to be understood as approximative versions only unless they have been expressly described as binding.

We shall not be obliged to render performance that is not listed in our written order confirmation or these GTC. Specifically, we shall not be obliged to issue documents or provide information or supply accessories and/or tools, to affix additional safety devices, to convey assembly instructions, to perform assemblies or advise the customer, unless this has been expressly agreed in writing.

(2) In the absence of a written contractual provision to the contrary, a defect shall not be present if the goods do not comply with the applicable technical and other standards in the destination country (customer's seat) or are not suitable for specific purposes intended by the customer but not approved or expressly agreed by us. We reserve the right to amend the description of the goods with regard to the specification to the extent required to observe statutory requirements, provided that this amendment does not cause a deterioration in the order in terms of quality and serviceability.

(3) We provide advice on technical application and use to the best of our knowledge, based on our experience and expertise. All details and information about the suitability and use of our goods are, however, non-binding and shall not exempt the customer from its own checks. We do not assume responsibility for the goods being suitable for a specific purpose unless we have expressly consented to this liability.

(4) The delivery will be effected in the customary commercial packaging at our discretion. According to the packaging regulation, shipping and all other packaging will not be taken back. The customer shall dispose of the packaging for us at its expense.

## **§9 Warranty claims for material defects and defects of title**

### **§9a Warranty for defects**

(1) Unless specified otherwise or in addition in these GTC, the statutory provisions shall apply to the customer's rights for material defects and defects of title (including incorrect and short deliveries, incorrect assembly or instructions).

(2) Unless expressly agreed otherwise, (a) our goods and services must comply exclusively with the applicable statutory requirements at the vendor's seat and (b) the customer alone shall be responsible for integrating the goods into the technical, structural, and organizational circumstances at the customer's premises (customer's responsibility for integration).

(3) (a) Unless an acceptance has been expressly agreed, it shall be incumbent upon the customer to inspect the goods supplied without delay after delivery to it or to the third party stipulated by it and to notify us immediately of any defects. Sections 377 and 381 HGB shall apply to this and supplement the regulations in this paragraph. In the interest of time, notification must be effected in writing, in the form of an email. Its immediacy requires that it be sent at the latest within five (5) working days after delivery (section 377 para. 1 HGB) or, if it concerns a defect that was not apparent on inspection (section 377 para. 2 and 3 HGB), at the latest within three (3) working days of discovery of the defect. If, during normal use, the latter defect had been already evident at an earlier time than when it was discovered, this earlier time shall be authoritative for the start of the above notification period. Inspection of the goods after delivery must not be limited to external appearances and the delivery paperwork, but must also include an appropriate quality and functionality inspection with suitable random samples as a minimum.

(b) If an acceptance test has been agreed in writing, the inspection and objection submission must take place at the latest by the end of the day on which the acceptance test was conducted or, if the customer is responsible for it not being carried out, then when the test should have been conducted. If the customer commissions our goods before the acceptance test agreed in writing, the objection must be made at the latest within five (5) working days of commissioning.

(c) Our warranty obligation and other liability for the defect shall be excluded if the customer omits the proper inspection and/or notification. None of our statements, actions or omissions are to be understood as a waiver of the requirements and legal consequences of sections 377, 381 HGB and/or this paragraph.

(4) By deviation from section 640 para. 2 BGB, unreserved acceptance despite defects known to the customer shall not only lead to loss of the customer's rights as described in section 634 no. 1 to no. 3, 437 no. 1 and no. 2 BGB, but also loss of the compensation claims described in section 634 no. 4, section 437 no. 3 BGB. This shall not apply in cases where we assume a quality guarantee, or if we maliciously conceal a defect.

(5) Defective goods must first be returned to us without delay when we request, at the customer's expense. In the event of a justified complaint, i.e. of defectiveness, we shall reimburse the customer for the cost of the cheapest dispatch method. This shall not apply if the costs increase because the goods are located in a place other than that of the intended use. Para. (6) below shall remain unaffected.

(6) The customer shall give us the appropriate time and opportunity necessary to examine defects and other objections and for subsequent performance. This includes making the defective goods available to us for examination or, in the event of them being permanently set up or similarly fixed in place, making them accessible to us.

(7) We shall bear the expenditure required for examination and subsequent performance, especially shipping, road tolls, costs of work and materials, according to the statutory regulations only if a defect is actually present.

(8) If the goods supplied are defective, we shall be entitled and obliged first to render subsequent performance in the form of rectification of the defect (remedy) or to deliver a non-defective item (substitute delivery) as we choose. In the event of substitute delivery, the customer shall return the

goods to be replaced to us according to the statutory provisions. The same shall apply in the event of rectification for replaced spare parts. In the latter case this shall not apply until three attempts have failed.

(9) We shall be entitled to make subsequent performance dependent on the customer paying the purchase price or share of the purchase price still due, as applicable. The customer shall, however, be entitled to retain a suitable share of the purchase price pro rata to the (alleged) defect during the subsequent performance.

(10) The customer can optionally withdraw from the contract or reduce the purchase price if subsequent performance is impractical or fails, or an appropriate period for subsequent performance to be set by the customer expires unsuccessfully, or can be dispensed with according to the statutory provisions. There shall be no right of withdrawal, however, in the event of a negligible defect.

(11) The customer can only withdraw from or terminate the contract due to a violation of an obligation not based on defective goods if we are responsible for the violation. The statutory regulations shall otherwise apply. The customer's free right of termination, in particular according to sections 651 and 649 BGB, shall be excluded.

(12) Substituted goods shall become our property and the substitute goods shall only be covered by the warranties under these GTC if substitution is not made simply on the basis of goodwill.

(13) Claims for compensation shall exist according to clause 10 below only.

### **§9b Warranty for freedom from third-party industrial property rights**

(1) According to this clause 9b, we warrant that the goods are free of third-party industrial property rights or copyrights in the country of the delivery address. Each party will inform the other in writing without delay if claims are asserted against it for breach of such rights.

(2) Claims for breach of third-party industrial property rights or copyrights are excluded if this breach is based on an instruction by the customer, an unauthorized change, or non-contractual use of the goods by the customer.

(3) Claims for compensation shall exist according to clause 10 below only.

### **§10 Liability for compensation**

(1) Unless it ensues otherwise from these GTC (including clause 10), in the event of a breach of contractual and non-contractual obligations we shall be liable in accordance with the statutory provisions.

(2) We shall bear unlimited liability – on any legal grounds whatsoever – for compensation for damages based on an intentional or grossly negligent violation of obligations by us or by one of our legal representatives or vicarious agents.

(3) In the event of a breach of obligations that is merely ordinary or slight by us or one of our legal representatives or vicarious agents, we shall only be liable (subject to a milder measure of liability according to statutory provisions):

(a) for damages – although without limitation – resulting from loss of life, bodily injury, and damage to health.

(b) for damages arising from breach of material contractual obligations. Material contractual obligations are those whose



fulfillment facilitates due and proper execution of the contract and in whose fulfillment the customer routinely trusts and can trust. In this case our liability is, however, restricted in value to the typical damages predictable on conclusion of the contract.

(4) The limitations of liability under para. (3) shall not apply if we maliciously conceal a defect or have assumed a compensation-backed guarantee for the quality of the goods, or a quality risk. Any mandatory statutory liability, in particular arising from the German Product Liability Act, shall otherwise remain unaffected.

(5) If our liability is excluded or limited according to the above regulations, this shall also apply to the personal liability of our executive bodies, legal representatives, staff, employees, and vicarious agents.

### **§11 Limitation period**

(1) In deviation from section 438 para. 1 no. 3 BGB the limitation period for any claims, including non-contractual, on grounds of material and legal defects shall be one (1) year from delivery. This shall not apply, however, to intentional or grossly negligent breach of obligations (see clause 10 (2) above), for damages resulting from loss of life, bodily injury, and damage to health (see clause 10 (3) a) above), to malicious concealment of a defect and/or mandatory statutory liability (see clause 10 (4) sentence 1, option 1 or sentence 2 above). In each of the cases above, the statutory limitation period alone shall apply. Rectification can only affect the limitation period for the part/subsections whose defect triggers a rectification obligation. Further special statutory regulations on limitation periods (specifically sections 438 para. 1 no. 1, para. 3, section 444, and section 479 BGB, as well as section 478 para. 2 in conjunction with section 445b BGB (trader's recourse to the supplier) shall also remain unaffected.

(2) The time of supply in accordance with clause 4 refers to delivery in the sense of para. (1) sentence 1. If acceptance has been agreed, the limitation period shall not commence until acceptance.

### **§12 Rights of use to machine data; data privacy**

(1) The customer shall remain the owner of all machine data. Machine data is the data generated automatically by the goods about its status ("status data"), functional processes, operation, and all other internal mechanical processes that are specifically captured in file format by sensor systems and processed, stored, and forwarded digitally. The customer shall grant us a global, non-exclusive, temporally unlimited right to use the status data that can be transferred to affiliated companies. The right of use shall be limited to evaluation of the status data for internal purposes, specifically to improve our own products. Further use, especially commercialization of the status data, shall be excluded. It is mutually understood that machine data is anonymous data that does not contain any personal references. The customer shall be obliged to ensure that it only delivers appropriately anonymous data and data sets to the manufacturer. It is exclusively a matter for the customer to ensure that forwarding of the data is permitted in accordance with the data protection provisions. In particular, the customer shall obtain the necessary consents from data subjects, as applicable. The customer shall undertake to cooperate as necessary to facilitate access by us to the machine data and at our request shall make available access via the Machine Data Management Platform (ZIMBA).

(2) We warrant that we will make the customer's technical and non-technical information and data that we receive within the scope of the contractual relationship known to authorized personnel only. Unless otherwise arranged below, we must use all the customer's information and data that we obtain, specifically production secrets, product-related information and data, as well as know-how, exclusively for our own purposes.

### **§13 Place of performance**

The place of performance for our deliveries shall be the warehouse from which we deliver. This shall also apply to non-performance. If, however, we also owe set-up or similar services (such as incorporation, installation, commissioning, configuration or adjustment), the place of performance and subsequent performance shall be the place at which this is to take place according to contract.

### **§14 Choice of law and jurisdiction**

(1) These GTC and the contractual relationship between us and the customer shall be subject exclusively to the law of the Federal Republic of Germany (FRG). The United Nations Convention on Contracts for the International Sale of Goods (CISG) and other international uniform law shall not apply. Any claims of a non-contractual nature in connection with these GTC or the contract shall also be subject exclusively to the law of the FRG.

(2) Any disputes arising from or in connection with this contract or concerning its validity shall be subject to a final decision according to the rules of arbitration of the German Arbitration Institute (DIS), excluding due legal process.

- (a) The arbitration tribunal shall consist of three arbitrators.
- (b) The place of arbitration shall be Lübecke.
- (c) The language of the proceedings shall be German and/or English.
- (d) The law applicable in the matter shall be the law of the Federal Republic of Germany.

### **§15 Miscellaneous; severability clause**

(1) Any notifications and statements, etc. are to be composed in German or English only.

(2) Should all or part of these contractual regulations, including these GTC, not form part of the contract or be void or ineffective, this shall not affect the effectiveness of the remaining regulations. The ineffective regulation shall be replaced by a legally valid regulation that most closely reflects the recognizable economic purpose of the ineffective regulation. The same shall apply in the event of a gap or loophole in these GTC.

## **B. Special section**

Terms of business that apply in addition to the general section to assembly and commissioning of new machines, and to servicing, maintenance, repair or assembly services, including advice, training, changes to machines (jointly hereafter "Assembly").

### **§16 Special provisions for assembly and repairs**

#### **(1) General**

- (a) The information we provide concerning commencement and duration of assembly shall only be approximate and non-binding.
- (b) The assembly period shall be deemed to have been fulfilled if the assembly has finished by the time of its expiry and the machine is ready for adoption by the customer.

(c) We shall be entitled to demand compensation if it was only possible to perform part of the assembly, or it could not be performed at all for reasons that cannot be ascribed to us. The customer may request that the assembly work be repeated if and insofar as this is reasonable for us, especially having regard to our other contractual obligations. Further remuneration based on the respective current applicable charging rates must be paid to us for the repeat assembly.

(d) The guidance in the assembly and operating instructions for the respective products on which the work is carried out shall also be binding.

## **(2) Pre-acceptance**

If pre-acceptance at our works before delivery of the goods has been agreed, a standard procedure defined by us will be carried out to prove the functionality or completeness. A record of this, to be signed by both parties, shall be drawn up. The customer shall provide us with materials and anything else required for pre-acceptance in good time before pre-acceptance.

## **(3) Lodgment**

We are answerable for lodging the goods (= bringing the goods from the means of transport to the place of set-up) only if this is expressly due contractually. If we have agreed lodgment, we owe the following services and for the duration of lodgment we shall bear the risk, limited by the following customer cooperation obligations:

The customer shall assist us with lodgment free of charge and ensure:

- that the set-up site is free from obstacles,
- that the distance for transportation does not exceed a reasonable length,
- that the transportation route is level, uninterrupted, and free of interference contours,
- that suitable, safe transport and lifting equipment, including expert operators, is available at the agreed time.

## **(4) Installation**

(a) We are answerable for installing the goods only if this has been expressly agreed. If we have agreed installation, the parties owe each other the following services and cooperation:

(b) Installation of the goods at the final installation site shall be performed by one of our service engineers or a service provider instructed by us. All requirements to be met by the customer can be found in the installation and operating conditions and our installation plan, which we provide to the customer before delivery, and must be met by the customer as required and on schedule. To ensure a speedy, smooth process, the customer must make auxiliary personnel that have received suitable safety training, suitably safe lifting and transportation methods as the case arises, and personal protective equipment available free of charge to the service engineer responsible for assembly.

(c) The following shall apply to products that routinely fulfill all the requirements of the ninth Ordinance to the German Product Safety Act (ProdSV) only after installation: Depending on the product, the test operation phase shall take place after installation. Depending on the type of machine, test operation includes installation, alignment, setup and measurement, up to proof that the machine functions. The final step is usually construction of the protective grids and proof that safety devices are functioning. Up to that point we, as the manufacturer (or the manufacturer's representative/authorized agent), have the power of disposal over the machine, even if the machine is already on the customer's site.

(d) Commissioning, including functional testing by our service engineer as part of a standard procedure defined by us, shall take place after test operation. If the machine is an "incomplete machine" within the terms of the machine regulation (ninth Ordinance to the German Product Safety Act (ProdSV)), we will only perform the functional testing; we will not perform commissioning.

## **(5) Acceptance, proof of hours and work**

(a) Each one of our service engineers writes an assembly report, showing the hours of work, travel time, waiting time for which the engineer is not responsible, preparation, and processing time. The form will be submitted to the customer for checking and then signed by both parties and sent to the customer by email.

(b) The customer shall be obliged to check our work and to advise on possible complaints before the work is completed.

(c) The customer cannot refuse acceptance of the assembly or repair work if it concerns a negligible defect, which we have already stated that we will rectify. The parties shall stipulate the period for rectifying the defect.

(d) Further acceptance regulations and warranty for defects shall be governed by the general section of these GTC.

## **(6) Instruction**

If separately agreed, the customer shall – at the same time – receive thorough on-site instruction on how to operate the goods, for a maximum period of one day.

## **(7) Training**

The customer shall bear travel and accommodation costs (those of the instructor for on-site training). The customer's entitlement to the performance of training that has been expressly agreed shall lapse if this is not conducted within 12 months of delivery of the goods. If, after the confirmed training date, we remove the product for which the customer has ordered training from the product range, without the customer having claimed the training, then the customer's entitlement to training shall convert to an entitlement to equivalent training on another item in the current product range.

## **(8) Customer's cooperation**

(a) The customer shall take the special measures necessary to protect people and property at the assembly site. The customer shall also inform our assembly or project manager of special safety regulations that exist if these are significant for the assembly personnel. The customer shall notify us of the assembly personnel's violations of such safety regulations.

(b) The customer shall be obliged to render technical assistance at its expense, in particular to:

- provide the number of suitable auxiliary personnel necessary for assembly and for the requisite time; the auxiliary personnel must follow the assembly manager's instructions,
- provide an interpreter if the service engineer deems it necessary,
- undertake all the work to be carried out by the customer (e.g., foundation for the goods),
- provide the necessary devices and heavy tools (e.g., lifting gear, compressors) and the requisite consumables and materials,
- provide heating, lighting systems, compressed air, current and water, including the necessary connections,
- provide the necessary dry and lockable rooms to store the assembly personnel's tools,
- protect the assembly site and materials from any kind of harmful influence,



- provide suitable, secure rooms for the assembly personnel to stay and work (with heating, lighting, washing, and sanitary facilities) and first aid requisites,
- provide the materials and undertake all other actions necessary to facilitate adjustment of the goods, and to carry out a functional test agreed in the contract,
- attain the necessary, customary standards of hygiene.

(c) The customer's cooperation must ensure that assembly can commence without delay immediately after the assembly personnel arrive and that it can be carried out without delay up to the point of acceptance by the customer.

(d) The assembly personnel must have free access to the machine for the duration of the assembly project. The machine shall not be available for production during this time. At its expense, the customer shall assist the assembly personnel with carrying out the assembly.

(e) If the customer does not fulfill its duty to cooperate, after notification we shall be entitled, but not obliged, to perform the actions incumbent upon the customer in the customer's stead and at its expense. Our remaining statutory rights and claims shall remain unaffected.

### **(9) Impediments to performance**

(a) The customer must immediately remedy unforeseen impediments or technical faults. The customer shall pay separately at the rates applicable at the time of delivery for additional performance required beyond that for which we are answerable, or waiting times that we cannot otherwise utilize. The customer shall reimburse additional costs for the third parties instructed by us. This shall not apply if the additional performance, waiting times or additional expenses are based on circumstances which can be attributed to us or the third party instructed by us.

(b) If rendering of the performance is delayed for reasons that cannot be ascribed to us or the third party instructed by us, we can specify an appropriate period for the customer to remove the impediment. After the period has expired without success, we may refuse performance; the customer may not invoke non-performance. We may demand payment of the agreed remuneration, minus the expenses saved and the income from any further use of our own labor.

### **(10) Remuneration and payment**

(a) Unless a flat-rate fee has been expressly agreed, assembly will be charged on the basis of time required. The charging rates applying at the time of performance will be provided at the time of assignment.

(b) The travel time required, including the make-ready and wrap-up time, will be charged as working time for assemblies. Waiting time shall also be charged as working time.

(c) The percentages provided for in the charging rates shall be invoiced for overtime and work on Sundays and public holidays. Our service engineers shall not be obliged to perform overtime or to work on non-working Saturdays, Sundays or public holidays. Nevertheless, after our permission has been sought, if they deem it necessary they shall be given the opportunity to work beyond the normal working time, but within the statutory framework. In this case the customer shall be obliged to take any measures that are necessary to extend the working time and to obtain all the requisite official permits.

(d) The assembly costs will be billed after assembly has ended.

### **(11) Assembly and travel costs**

(a) If a flat-rate fee has been agreed as remuneration for assembly, the additional costs due to a delay or interruption

to assembly that cannot be ascribed to us are not included and will be invoiced additionally to the customer.

(b) We will invoice the assembly personnel's travel expenses (including the cost of transporting and insuring their personal luggage and the tools, work permits, visas, and social insurance registrations that they carry with them and that are dispatched) at cost. The travel expenses also include the costs for any contractually guaranteed travel home to families, as the case arises. Travel expenses also include:

- Car travel at the applicable charging rate,
- Hire car, fuel, tolls upon provision of a receipt,
- Train journeys and flights at cost.

(c) We reserve the right to choose the method of transport, the accommodation, and the method of charging at cost or as a flat-rate fee and having regard to cost efficiency and reasonableness.

### **§17 Special provisions for return of spare and wear parts**

(1) We shall not be obliged to take back spare or wear parts. If we voluntarily take back spare or wear parts, we shall charge a restocking fee on all returns according to the service price list. It is a requirement for return of spare or wear parts that they are unused new parts and that they meet the three-month deadline for goods that have been dispatched. Sundry groups of goods are, however, generally exempt from return. These include

small parts such as screws, etc. and parts that have been bought in, developed or manufactured to order. We will deduct the restocking fee from the credit. The restocking fee will not be deducted in the following cases: if the product is still sealed, there is a warranty claim, we sent the shipment incorrectly or consigned excess, or it is a return we planned.

(2) The returns must be registered on ZIMBA.depot <https://zimba-depot.imaschelling.com/repairReturnForm> via our website. Return is possible only on the basis of a complete, truthful return slip. Unsolicited returns or those without a return slip shall be sent back to the customer at the customer's expense.

(3) A minimum order value according to the quotation shall apply to deliveries of wear and spare parts.