



General Terms and Conditions of Purchase

I. Scope of application of the General Terms and Conditions of Purchase

1. These General Terms and Conditions of Purchase apply to all contacts with commercial suppliers of the company IMA Schelling Deutschland GmbH (hereinafter referred to as "**IMA SCHELLING**") pertaining mainly to the **delivery of goods and/or software** to IMA SCHELLING. Additional duties adopted by the supplier shall not affect the validity of these General Terms and Conditions.
2. Conflicting or deviating **Supplier Terms of Business** 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 supplier's performance. Neither is IMA SCHELLING deemed to accept the Supplier Terms of Business when they deviate from statutory provisions, irrespective of the contents of these General Terms and Conditions of Purchase.

II. Conclusion of the contract

1. The supplier is obliged to give written **notice to IMA SCHELLING prior to the conclusion of the contract** if special safety instructions have to be observed in handling the goods, if the goods to be delivered are not fit without restrictions for the purpose made known to the supplier or for the purpose provided in the contract or if a risk to health, safety or the environment or a risk of atypical damages or unusual amounts of loss is associated with the goods to be delivered of which the supplier is or ought to have been aware. The same applies if statements about the goods to be delivered made by the supplier or by third parties in adverts, brochures or other public announcements in as well as outside of Germany or Austria cannot be complied with in each and every respect.
2. Supplier offers have to be made in writing. If the supplier's offer deviates from the enquiry or purchase order placed by IMA SCHELLING, the supplier will highlight the **differences**. The pictures and drawings as well as quantity, dimension and weight specifications that belong to the contract are binding.
3. The contract shall come into force only after IMA SCHELLING receives a copy of the purchase order signed by the supplier with legally binding effect (hereinafter referred to as "**Purchase Order Confirmation**") within five (5) calendar days starting from the date of the written purchase order (hereinafter referred to as "**Purchase Order**"). Any deviations from the Purchase Order placed by IMA SCHELLING shall not be deemed accepted by IMA SCHELLING unless and until five (5) calendar days without IMA SCHELLING objecting to them have elapsed since it received the Purchase Order Confirmation. The actual taking delivery of goods, the payment of such goods or other conduct by IMA SCHELLING or silence shall not give reasons for the supplier to rely on the conclusion of the contract. In any case, IMA SCHELLING can place the Purchase Order until a period of **fourteen (14) calendar days** has elapsed since IMA SCHELLING received the supplier's offer, as long as the period stated in the supplier's offer is greater than or equal to 14 days. IMA SCHELLING can reject the Purchase Order at any time until it receives the Purchase Order Confirmation.
4. The Purchase Order sets out all the **terms of the contract** even if it deviates from the declarations made by the supplier in any way whatsoever, especially with reference to the exclusive application of these General Terms and Conditions of Purchase.
5. Any restriction of IMA SCHELLING's legal rights or of the rights granted by these General Purchase

Conditions, in particular any limitation to or exclusion of warranty rights, guarantees or assurances by the supplier concerning the goods or the performance of the contract requires IMA SCHELLING's express and **written confirmation** in any case.

6. Other order confirmations submitted by the supplier in addition to the Purchase Order Confirmation in accordance with clause II.-3., are of **no effect** without any objection by IMA SCHELLING being necessary. Neither the actual taking delivery of the goods, the payment of such goods or any other conduct by IMA SCHELLING nor silence shall give rise to any confidence by the supplier in the relevance of other order confirmations.

7. IMA SCHELLING's **employees** or agents are not authorized to dispense with the requirement of the timely receipt of the Purchase Order Confirmation by IMA SCHELLING laid down in paragraph II.-3. or to make promises which differ from its content.

8. Against reimbursement of the supplier's proven and reasonable expenses caused thereby, IMA SCHELLING is entitled to **change** the requirements for the goods to be delivered or the contents of the Purchase Order at any time or to **cancel** part of the already concluded contract. In case of a partial cancellation, the supplier shall furthermore be reimbursed for the part of its profit that is proven to be lost due to such cancellation.

9. Contract **amendments** and/or supplements must be confirmed in writing by IMA SCHELLING.

III. Obligations of the supplier

1. The supplier shall fulfil all duties imposed by the contract and these General Terms and Conditions of Purchase as well as ancillary all duties imposed on the supplier pursuant to the ICC rules on the application of the **DDP Incoterms® 2020** clause and pursuant to statutory provisions in due time, in particular the duty to **deliver the goods** stated on the Purchase Order and to supply the required processing and operating instructions. The supplier has responsibility towards IMA SCHELLING for fulfilling the duties associated with **placing the goods on the market**. The supplier has to honour warranties and assurances it has given, even if they are not explicitly confirmed by IMA SCHELLING. Without the express written consent of IMA SCHELLING in each individual case, the supplier must not subcontract the duties to perform for IMA SCHELLING to sub-suppliers or other third parties if this subcontracting can result in legal consequences for the contractual relationship with IMA SCHELLING.

2. Irrespective of other information duties, the supplier shall **inform** IMA SCHELLING in writing and in a reasonable time before forthcoming delivery and is obliged to **examine** the goods as close in time as possible prior to their handing-over to IMA SCHELLING to the same extent as IMA SCHELLING is obliged to check incoming goods after taking delivery. In any event and irrespective of any obligation of examination on taking de-livery incumbent upon IMA SCHELLING, the supplier is obliged to examine the goods in respect of the supplier's compliance with the quantity owed, the type and packaging of the supplied goods and their freedom from relatively easily detectable material defects and legal defects.

3. The **transport** and custody of the goods up to the taking over by IMA SCHELLING is the sole responsibility of the supplier; in particular, the supplier has responsibility towards IMA SCHELLING for suitable packaging of the goods for transportation, secure loading of the goods and transport of the goods by suitable means of transport.

4. The supplier shall fulfil its duties in time, in particular offload and hand over the goods at the delivery address stated on the Purchase Order and, where no such address has been indicated, to IMA SCHELLING at its branch in Lübbecke, Germany (hereinafter each referred to as the "**Delivery Address**"). Only IMA SCHELLING staff designated through notices in the goods receipt area is entitled to take delivery of the goods.

5. Subject to promises providing for more, the supplier is obliged to supply to IMA SCHELLING only newly produced goods of the agreed kind, quantity, **quality** and **packaging** – and equipped with all necessary

and agreed **identifications** and labels – that meet the provisions and standards applicable to goods placed on the market in Germany and complying with the state of the art in science and technology. The supplier shall particularly ensure that the goods are not subject to deviations that might adversely affect their normal use or their economic value in Germany or the intended use made known to the supplier, and is furthermore obliged to supply goods of rather above average quality and nature within the framework of **commercial tolerances**. If the goods require **further specification**, the supplier shall ask IMA SCHELLING in writing and in time to exercise its right of determination. The supplier is not entitled to make **partial deliveries** or to invoice them separately.

6. The supplier guarantees that the goods are free from **rights or claims of third parties** at the time of delivery, in particular those based on title, industrial property or any other intellectual property, which might hinder the unrestricted use of the goods by IMA SCHELLING.

7. A **delivery note** must accompany every shipment of goods, stating the IMA SCHELLING Purchase Order number and the custom tariff number for each type of goods. **Invoices**, delivery notes and shipping documents must correspond with the details stated on the Purchase Order placed by IMA SCHELLING, comply with all legal requirements and shall be separately forwarded to IMA SCHELLING by post and additionally by electronic means. Invoices must clearly state the Purchase Order number and the date of the Purchase Order placed by IMA SCHELLING as well as the supplier's tax number and the name of IMA SCHELLING's employee in charge of the respective transaction. Partial deliveries or final instalment deliveries agreed upon shall be identified as such in the delivery note and in the invoice.

8. **Strict compliance with agreed dates or fulfilment periods** shall be a fundamental obligation of the supplier. The supplier can only claim missing technical specifications which have not been supplied by IMA SCHELLING in due time or insufficient cooperation from IMA SCHELLING if it has requested IMA SCHELLING to do so in writing and in a reasonable time in advance and if such cooperation duties actually exist; in this process, the supplier should provide a clear indication of IMA SCHELLING's cooperation duties. Without prejudice to any other claim that IMA SCHELLING may have against the supplier, any delay in delivery shall be communicated in writing to IMA SCHELLING immediately after discovery thereof; in this process, the new delivery date, which is a fixed date according to § 376 German Commercial Code, shall be stated. In case deliveries do not take place in due time, IMA SCHELLING's claims to performance remain valid without any special notice becoming necessary. The supplier is only entitled to perform its obligations outside the agreed dates and fulfilment periods insofar as IMA SCHELLING has agreed thereto in writing in each individual case.

9. Agreed **penalties** and/or liquidated damages shall be paid in addition to the agreed performance, shall not exclude the claim for further damages and can be claimed by IMA SCHELLING even it accepts the delivery without reservation.

10. The supplier will only be entitled to offset its claims or withhold payment against counterclaims if its counterclaims are legally established or undisputed.

11. The supplier is not entitled to assign its contractual receivables against IMA SCHELLING to third parties or to have such receivables collected by third parties. This does not apply to legally established or undisputed receivables.

12. The supplier shall comply with all legal requirements pertaining to the packaging of the goods and applicable at the Delivery Address (e.g. packaging regulations) and – as far as possible – use environmental-friendly packaging material. Furthermore, the supplier is committed to collect packaging materials – particularly as far as they are subject to particular **legal provisions on waste disposal** or for which disposal is necessary and not ensured otherwise – at its own cost from the Delivery Address and reuse, recycle or dispose of it.

IV. Obligations of IMA SCHELLING

1. IMA SCHELLING is obliged to **pay** the agreed **purchase price**. After the invoice has been checked, the

payment is made – at IMA SCHELLING's choice – via bank transfer or via cheque.

2. The claim for payment of the purchase price to the supplier **arises** after all goods and documents have been handed over to IMA SCHELLING completely and in accordance with the contract and after any other performance obligations in the contract have been fulfilled. Unless explicitly otherwise agreed upon, payment will be based on receipt of a proper invoice and effected within 14 days from receipt of invoice, with 3 % discount, or within 60 days after receipt of invoice, net cash, provided that the goods and services have been delivered based on the invoice submitted. In no case shall the payment period commence before submission of a proper invoice.

3. The prices stated on the Purchase Order are fixed prices. With the payment of the price, IMA SCHELLING **settles** all debts related to the performance of the supplier including any associated cost (i.e., amongst other things, taxes and charges) as well as the costs of packaging, transport and insurance or any other supplier's performance obligations. Any increase in the price agreed upon at the conclusion of the contract – irrespective of the legal ground – is excluded.

4. IMA SCHELLING is entitled to exercise any right of retention and offsetting as well as the right of defence of non-performance of the contract. In particular, IMA SCHELLING is entitled to withhold payments as long as IMA SCHELLING can raise claims against the supplier due to incomplete or poor performance.

5. IMA SCHELLING is **not obliged to perform a service** not stated on the Purchase Order or in these General Terms and Conditions of Purchase.

6. The **taking over** of the goods by IMA SCHELLING is **subject to** the condition that the goods are free from defects in every respect according to the terms of the contract, these General Terms and Conditions of Purchase and the applicable statutory provisions.

V. Material defects and legal defects

1. Further to legally defined material defects, any deviation from the agreed amount, quality or fitness for a purpose or any deviation from declarations made in adverts or made towards IMA SCHELLING by the supplier or any deviation from statutory provisions, in particular any statutory provisions in product law, as well as any deviation from descriptions or identifications by the supplier constitute a **material defect** according to § 434 German Civil Code unless a differing term is set out in the written purchase order by IMA SCHELLING or unless the supplier proves that IMA SCHELLING was well aware of the material defect at the conclusion of the contract and agreed to accept the defective goods. The same applies when claims in favour of a third party based on product liability law arise due to the goods. The existence of **legal defects** is judged in consideration of the provisions set forth in clause III.-6. as well as according to § 435 German Civil Code; the basis of the judgement is the time of delivery.

2. A confirmation to IMA SCHELLING by the supplier concerning the properties or fitness of the goods desired by IMA SCHELLING constitutes an unconditional and unrestricted **guarantee** of the supplier within the meaning of the law unless the supplier has declared in writing vis-à-vis IMA SCHELLING that it cannot give such a guarantee. The same applies to references made by the supplier to generally accepted standards or quality marks or to similar declarations by the supplier indicating that the goods have certain properties and/or are fit for a particular purpose. In case of subsequent transactions involving the same goods, the confirmations, references or other declarations by the supplier continue to apply without any particular mention being necessary.

3. With the exception of apparent material defects, the **duty to examine** the goods only arises when the goods are processed or used by IMA SCHELLING, however at the latest six (6) months after the goods have been delivered to IMA SCHELLING. The duty to examine exists only in respect of typical deviations of a factual kind in type, quantity, quality and packaging of the goods delivered and is sufficiently fulfilled when IMA SCHELLING's usual methods of examination are applied and the examination is limited to spot checks. In case of delivery in instalments or partial deliveries, the examination of individual deliveries

suffices. The consultation of external experts is not required. Irrespective of any statutory regulations on placing the goods on the market, IMA SCHELLING is not obliged towards the supplier to examine the goods in respect of compliance with legal regulations or legal defects. If the supplier delivers late, the duty to examine is considered to be void insofar as a reasonable time for examination is no longer available as a consequence of the late delivery.

4. IMA SCHELLING shall give notice of apparent material defects within five (5) working days after delivery of the goods to IMA SCHELLING. Notice of material defects found during the examination shall be given within five (10) working days after the completion of the examination. **Notice** of material defects not discovered during the examination **shall be given** within fifteen (15) working days after the material defect and the supplier's responsibility for such defect are finally determined and at the latest until the expiration of the limitation period. There is no obligation of IMA SCHELLING to give notice of a material defect the supplier knew or must have known about. Apart from that, notice shall be given to the supplier or to the agent who works for the supplier. The notice shall describe the material defect in general terms; more detailed information on the type of material defect or on the extent to which the goods are affected is not required. If required, the supplier has to ask IMA SCHELLING in writing for further details of the type of material defect or for the extent to which the goods are affected. Notice of legal defects may be given without adhering to any time limit.

5. Without prejudice to further contractual or statutory rights, IMA SCHELLING is entitled in accordance with these General Terms and Conditions of Purchase to exercise the rights provided in clause V.-6. if, at the **moment** when the notice period stipulated in section V.-4. commences, the goods are defective pursuant to these General Terms and Conditions of Purchase, unless the defect was caused after the delivery of the goods to IMA SCHELLING and is attributable to IMA SCHELLING's sphere of responsibility. Any further legal claims of IMA SCHELLING against the supplier, e.g. pursuant to § 478 and § 479 of the German Civil Code (BGB) as well as claims arising from guarantees given to IMA SCHELLING or from other assurances of the supplier remain unaffected.

6. In the event that IMA SCHELLING receives a shipment of defective goods in accordance with these General Terms and Conditions of Purchase, IMA SCHELLING will be entitled to exercise all **rights** granted by law. Moreover, IMA SCHELLING can withhold payment of the purchase price up to an amount equal to three times the amount of the touch-up cost until subsequent performance is rendered properly. Excess quantities delivered may be returned completely or partially by IMA SCHELLING without a notice of non-conformity being necessary. Moreover, the stipulations in VI.-1. on the rescission of the contract and in VI.-2- on claims for damages also apply to the delivery of defective goods. The supplier shall collect any goods made available to it within ten (10) calendar days from IMA SCHELLING's premises. The **return of goods** shall be at the supplier's risk and cost. In case of non-apparent defects, without prejudice to any other claims and irrespective of a fault by the supplier, IMA SCHELLING is entitled to claim reimbursement for any **expenses** incurred by IMA SCHELLING during the time between the delivery of the goods and the elimination of the defect including corresponding indirect costs and to claim indemnification of the expenses incurred by IMA SCHELLING for compensating its customers or third parties insofar as the expenses are the consequence of any material defects or legal defects according to these General Terms and Conditions of Purchase. This shall not apply insofar as IMA SCHELLING knew the defect when it entered into the contractual obligations.

7. If the supplier does not fulfil its duty of subsequent performance – either by eliminating the defect (touch-up) or by delivering goods free from defects (replacement delivery) – within a reasonable period of time fixed by IMA SCHELLING, then IMA SCHELLING shall be entitled to remove such defects itself and to claim reimbursement for the expenses incurred for this purpose and/or to claim an advance payment. If the subsequent performance by the supplier fails or if it is unacceptable for IMA SCHELLING (for example, because of urgency, jeopardization of operational safety or threat of disproportionate damage), there is no need to fix a time limit; IMA SCHELLING will immediately, if possible in advance, notify the supplier of any such circumstances.

8. The **limitation periods** pursuant to § 438 of the German Civil Code start to run with the taking over of the goods by IMA SCHELLING at the Delivery Address und after complete performance of all of the supplier's primary obligations. The limitation period for claims for material defects shall amount to three (3)

years and, for legal defects, ten (10) years, unless law provides for longer limitation periods respectively. In no case shall the limitation period end before the expiration of six (6) months after notice of the defect has been given provided that notice of defect has been given within the limitation period. Whilst the supplier is investigating the existence of a material defect or legal defect or is trying to eliminate the defects, the running of the limitation period is inhibited at least until the supplier gives IMA SCHELLING a final written notification, unless law provides for a longer period of inhibition. In the event of replacement delivery or repair of defects, the warranty period for replaced and subsequently repaired parts will start anew, unless IMA SCHELLING had to assume, based on the behaviour of the supplier, that the supplier did not feel obliged to take such action but only carried out the replacement delivery or repair of defects as a gesture of goodwill or for similar reasons.

VI. Rescission of the contract and claims for damages

1. Unless otherwise agreed upon in these General Terms and Conditions of Purchase or on the respective Purchase Order, the **supplier** is entitled to withdraw from the contract in compliance with all applicable legal requirements. Without prejudicing its other legal rights, **IMA SCHELLING** is entitled to withdraw from the contract in whole or in part if the supplier objects to the application of these General Terms and Conditions of Purchase, if insolvency proceedings relating to the assets of the supplier are applied for, if the supplier without providing a reason justifiable in law does not meet fundamental obligations towards IMA SCHELLING, if IMA SCHELLING has rights pertaining to the delivery of defective goods according to these General Terms and Conditions of Purchase, if the supplier has failed to comply with other obligations and an additional reasonable period of time for performance set by IMA SCHELLING has expired to no avail or if IMA SCHELLING is not able to fulfil its obligations by means which are reasonable in relation to the agreed counter-performance and in relation to its own interests and that of the supplier as far as ascertainable and legitimate at the time of the conclusion of the contract.

2. Without prejudicing other claims including claims of an extra-contractual nature, IMA SCHELLING will be entitled to **indemnification** from the supplier for any expenses incurred as a result of any kind of contract violation without any restriction pursuant to legal requirements. The taking of delivery of the goods or the payment of the purchase price without any reservation shall not result in a waiver of the right to damages.

3. If the supplier is **behind schedule**, IMA SCHELLING is entitled to claim a contractual penalty; this shall be equivalent to 1% of the net price for each full calendar week of delay but shall not exceed a total of 5% of the net price of the goods delivered too late. IMA SCHELLING is entitled to claim the contractual penalty in addition to performance and as a minimum amount of indemnification owed by the supplier pursuant to legal requirements; any further claims for damages will not be affected. If IMA SCHELLING accepts the goods or services delivered too late, the contractual penalty will be claimed at the latest with the final payment.

VII. Force majeure

1. Force majeure, plant malfunctions beyond the reasonable control of the plant operating company, riots, measures taken by authorities and other unavoidable events, such as pandemics, exempt IMA SCHELLING from the obligation of accepting ordered goods and/or services in time during the force majeure event. In such a case, IMA SCHELLING and the supplier have to provide each other with the required and reasonable information and to temporarily adapt their obligations in good faith to the changed conditions, in particular to the market requirements which may have changed. During such events as well as two weeks after the end of the events and notwithstanding other rights, IMA SCHELLING is entitled to withdraw from the contract in whole or in part if adaptation is not an appropriate measure for reacting to the changed conditions.

2. The stipulations set forth in the paragraph VII.-1 shall also apply in the case of labour disputes.

VIII. Other provisions

1. Upon delivery, the goods as well as all related papers and documents become the unrestricted property of IMA SCHELLING. If a **reservation of title** in favour of the supplier has been agreed upon, this has only the effect of a simple reservation of title; regardless of the reservation of title, IMA SCHELLING is entitled to utilise the goods without restrictions and at any time, in particular to sell them as well as to transfer the property in the goods to third parties even if such utilisation by IMA SCHELLING has the consequence of destroying the reservation of title.

2. If the product liability and/or manufacturer's liability of IMA SCHELLING is claimed and if the damage is attributable to a product of the supplier, then the supplier has to exempt IMA SCHELLING from this claim. In cases of fault-based liability, this will however only apply if the supplier is at fault; if the cause of the damage is attributable to the supplier's sphere of responsibility, the supplier must present evidence of not being at fault. In such a case of product liability and/or manufacturer's liability, the supplier shall bear all costs and expenses, including the expenses for any safeguarding of rights or recall action. In any case, the legal regulations shall apply.

3. Unless otherwise agreed upon in writing, the supplier has to conclude a business liability insurance, product liability insurance, product recall insurance and environmental liability insurance, with a coverage of at least € 5 million for each event of personal or material damage. Furthermore, the supplier has to maintain property damage coverage of at least € 1 million.

4. Without prejudice to IMA SCHELLING's more far-reaching claims, the supplier shall furnish the due particulars and technical documentation in written form to IMA SCHELLING and give IMA SCHELLING unlimited security or compensation on first demand and waiving all further conditions or other defences, in particular waiving the compliance with any duty of examination, duty to give notice, duty of supervision or recall or the duty of prior taking of administrative or legal proceedings as well as waiving any defence of limitation in if, as a consequence of an **administrative order**, IMA SCHELLING is threatened with and/or suffers detriment, administrative fines or any other detriment and if these are based on provisions of product law the observance of which is within the supplier's sphere of obligation according to the provisions of these General Terms and Conditions of Purchase and/or the other contractual and/or legal obligations. The same applies if IMA SCHELLING is obliged on the basis of applicable statutory provisions to recall goods that have been delivered by the supplier or that contain parts delivered by the supplier as far as their causation for the **recall of the goods** cannot be excluded.

5. **Data** about the supplier that is received in conjunction with the business relationship will be **processed** by IMA SCHELLING in accordance with the Data Protection Act.

6. In relation to pictures, drawings, calculations and other **documents** as well as software that have been made available by IMA SCHELLING in hard copy form or electronic form, IMA SCHELLING reserves all proprietary rights, copyrights, other industrial property rights as well as know-how rights. Such documents shall be treated confidentially towards third parties and may only be used to execute IMA SCHELLING's purchase order.

7. A message considered to be **in writing** requires neither a personal signature nor an electronic signature. Notifications via email or fax as well as other text messages are considered to be in writing without any requirement to mark the end of the message.

IX. General principles of the contract

1. The Delivery Address can be determined from the paragraph III.-4. of these General Terms and Conditions of Purchase. The **place of payment and place of fulfilment** for all other obligations arising from the legal relationship between IMA SCHELLING and the supplier is Lübbecke, Germany. This provision will also apply where the supplier performs work for IMA SCHELLING at another place or where payment is to be made against the handing-over of the goods or documents or where performance

already rendered is to be restituted by either side. The agreement on other clauses of the Incoterms or other delivery clauses merely involve a variation of the provisions relating to transportation and transportation costs and do not change the provisions laid down in this paragraph.

2. The contractual and extra-contractual legal relationship with the supplier shall be **exclusively** governed by **German law**. Where commercial terms are used, in case of doubt, the Incoterms® 2020 of the International Chamber of Commerce apply taking into account the provisions stipulated in these General Terms and Conditions of Purchase. Deviations from the governing law shall only arise from the individual agreements made between IMA SCHELLING and the supplier and from these General Terms and Conditions of Purchase.

3. For all contractual and extra-contractual disputes resulting from or in the context of contracts to which these General Terms and Conditions of Purchase are intended to apply, the **exclusive jurisdiction of the courts with competence for Lübbecke** is agreed. This competence excludes, in particular, any other competence legally provided for because of a personal or material context. However, IMA SCHELLING is also entitled to bring an action before the state courts of the supplier's place of business or before any competent national court according to domestic or foreign law.

4. If individual provisions of these General Terms and Conditions of Purchase are or become ineffective, the remaining provisions shall nevertheless remain effective. The parties agree that the unenforceable provision will be replaced as soon as possible with an enforceable provision that comes closest to the economic intention underlying the unenforceable provision.