

General Terms and Conditions for inno-tech Verpackungsmaschinen GmbH (Status: 30.04.2020)

§ 1 Scope

These General Terms and Conditions (hereinafter: GT&Cs) shall apply if the contracting party (hereinafter: “customer”) is an “entrepreneur” within the meaning of § 14 BGB (German Civil Code), a legal entity under public law or a special fund under public law.

These GT&Cs shall apply to all services and deliveries of inno-tech Verpackungsmaschinen GmbH (hereinafter: “inno-tech”) - in particular to the sale and/or delivery of movable goods within the meaning of §§ 650, 433 BGB (“delivery item”).

These GT&Cs shall apply exclusively. The contracting parties shall agree that any GT&Cs of the customer (e.g. conditions of purchase) shall not become part of the contract. The GT&Cs of the customer shall not apply even if inno-tech does not separately object to their validity. Differing or contradictory GT&Cs of the customer shall therefore only apply if they have been accepted by inno-tech in written form.

In addition, these GT&Cs shall apply to all future transactions, insofar as they are of the same nature.

§ 2 Foreign transactions; contract language

These GT&Cs shall also apply for foreign transactions.

The contract language is German. The German language version shall be authoritative for the content and interpretation of the contractual agreements.

Unless otherwise agreed, inno-tech will always set up the delivery item in accordance with the provisions applicable in the Federal Republic of Germany. If the products are used abroad, the customer shall be obliged to check the conformity of the products with the relevant legal systems and standards (in particular with regard to occupational health and safety as well as environmental and noise protection) himself and to make any necessary adjustments. If the contracting parties agree on a facility in accordance with the respectively applicable provisions of a country other than the Federal Republic of Germany, the customer shall provide inno-tech with the respectively applicable provisions in the German language free of charge.

§ 3 Delivery period, delay in delivery

Unless otherwise agreed, the information on delivery time shall be non-binding.

If inno-tech should be unable to comply with binding delivery periods for reasons for which inno-tech is not responsible (e.g. non-availability of performance), inno-tech will inform the customer thereof without delay and at the same time notify the customer of the expected new delivery period. If the performance still cannot be provided within the new delivery period, inno-tech shall be entitled to withdraw from the contract in whole or in part; any counter-performance already provided by the customer will be reimbursed by inno-tech immediately. The non-availability of performance in this sense also includes, in particular, the non-timely delivery by suppliers to inno-tech, if inno-tech has concluded a congruent hedging transaction, neither inno-tech nor the supplier is at fault nor shall inno-tech be obliged to procure the goods in individual cases.

§ 4 Prices; terms of payment; payments on account

The prices stated in the order confirmation shall apply. These are understood ex works, excluding public charges such as taxes, customs duties, fees, as well as delivery costs, packaging, insurance and other ancillary costs.

If the customer should demand the use of components other than those usually used by inno-tech for the propulsion or control of the delivery item, inno-tech shall reserve the right to charge an additional fee.

Unless otherwise agreed, invoices shall be due for payment immediately upon receipt without any deductions.

Invoices issued shall be deemed to be factually and mathematically correct if they are not objected to in text form within the agreed payment period - if this is shorter than 30 days, then within 30 days.

Unless otherwise agreed, inno-tech shall be entitled to demand appropriate advance payments on a weekly or monthly basis in accordance with the value of the partial performances rendered in relation to the total performance owed. This shall apply in particular to (installation) services rendered if the provision of services has been interrupted by inno-tech at the customer's instigation for a not inconsiderable period of time.

The withholding of payments as well as the offsetting of counterclaims of the customer that are disputed by inno-tech and not legally established shall not be permitted.

Unless otherwise agreed, inno-tech shall be entitled, beyond existing legal rights of retention, to refuse to provide services (e.g. service assignments) and deliveries (e.g. spare parts) of any kind if there are outstanding payment claims against the customer and no payment has been received within 10 days after the 3rd reminder.

§ 5 Transfer of risk; acceptance

In principle, the risk of accidental loss and accidental deterioration shall pass to the customer upon delivery of the delivery item.

If the goods are dispatched at the request of the customer, the risk of accidental loss and accidental deterioration of the goods shall pass to the customer at the time of dispatch. This shall also apply if partial deliveries are made or if inno-tech has assumed additional services, e.g. the shipping costs or the delivery and installation of the delivery item.

If, however, acceptance is to take place, this shall be decisive for the transfer of risk. Acceptance must be carried out immediately on the acceptance date, alternatively immediately after notification by inno-tech that the goods are ready for acceptance. Acceptance cannot be refused due to insignificant defects. If the customer does not refuse acceptance, stating at least one defect, within 2 weeks of completion, the service shall be deemed accepted.

If there is a delay in shipment or acceptance of the delivery item for reasons for which inno-tech is not responsible, the risk shall pass to the customer on the day of notification of readiness for shipment or acceptance. inno-tech shall be obliged, at the request and expense of the customer, to effect the insurance requested by the customer.

§ 6 Delays in the acceptance of the performance

If there is a delay in dispatch or acceptance of the delivery item after inno-tech has notified the customer that the delivery item is ready for dispatch or acceptance, for reasons for which inno-tech is not responsible, the customer shall be obliged to reimburse inno-tech for additional expenses for the storage and maintenance of the item owed.

§ 7 Packaging performance of packaging machines; original sample

Insofar as the delivery item is a packaging machine, inno-tech can only indicate the precise packaging performance of the machine after having examined the binding original samples. Information provided in advance of the test shall thus always be non-binding.

The customer shall provide inno-tech with the original samples with a description of properties in accordance with their requirements free of charge and carriage paid for consumption. Inno-tech shall not be liable for the accidental loss of the remaining original samples in the event of their return.

The packaging machines supplied by inno-tech will perform their services, taking into account the agreed tolerance, exclusively by using the agreed original material (packaging material, filling material).

inno-tech shall not be liable for damage caused by the customer using packaging materials other than the binding original samples.

§ 8 Property rights

The customer shall assume sole responsibility for plans, documents, drawings, samples and the like, insofar as they are to be provided by him. In particular, he shall be responsible for ensuring that the documents submitted by him or their execution do not infringe the property rights of third parties.

Vis-à-vis the customer, inno-tech shall not be obliged to check whether the submission of offers based on design drawings sent in by the customer would infringe the industrial property rights of third parties.

If third parties nevertheless assert claims directly against inno-tech due to alleged or actual infringements of industrial property rights, which are related to the objects to be provided by the customer pursuant to para. 1, the customer shall be obliged to indemnify inno-tech.

§ 9 Warranty; inspection and complaint obligations; additional costs for supplementary performance work

With regard to the rights of the customer in the event of material defects and defects of title, the customer shall be entitled to the statutory rights vis-à-vis inno-tech in accordance with the following provisions.

The customer shall only be entitled to warranty claims if he has complied with his statutory obligations to inspect and notify of defects (§ 381, § 377 of the German Commercial Code, the "HGB").

In the event of a justified and timely notice of defect, the customer shall be entitled during the warranty period to supplementary performance within a reasonable period of time; with regard to the type of remedy - rectification of the defect or delivery of a defect-free item - inno-tech shall have the right to choose.

If repair work is to be carried out on delivery items which have already been taken by the customer to a place other than the contractual place of performance, the customer shall bear the additional costs arising from the repair work at this location, which is not the place of performance. This shall apply in particular to the additional costs for the provision of fitters and assistants for rectification of defects. Sentences 1 and 2 shall not apply if the transfer to a place other than the place of performance is in line with the intended use of the delivery item.

Should no defect actually be found, inno-tech may demand that the customer reimburse inno-tech for the costs (e.g. testing and transport costs) arising from the unjustified demand for the rectification of defects.

If the supplementary performance fails or if further attempts at supplementary performance are unreasonable for the customer, the customer shall be entitled to a reduction of the purchase price or to withdraw from the contract.

Warranty claims shall not be admissible if they are exclusively due to an intervention by the customer in the software of the delivery item.

In all other respects, the claims made by the customer for damages and compensation for futile expenditure, even in the event of defects, shall only be valid in accordance with § 11 of these GT&Cs and shall otherwise be deemed inadmissible.

§ 10 Limitation period

The limitation period for claims for defects shall generally be 2 years from the transfer of risk.

Notwithstanding para. 1, claims for defects shall also become time-barred if the delivery item has been in operation for more than 6000 hours after delivery or acceptance - in no instance, however, shall claims for defects become time-barred before a period of one year has elapsed after transfer of risk. Decisive for the number of operating hours shall be the logging of operating hours stored in the software of the delivery item.

Paras. 1 and 2 shall not apply insofar as the law prescribes longer minimum limitation periods (e.g. §§ 438 para. 1 no. 2 BGB) as well as in cases of injury to life, body or health, in the case of a wilful or grossly negligent breach of duty by inno-tech, in the case of claims for damages under the German Product Liability Act ("Produkthaftungsgesetz") and in the case of fraudulent concealment of a defect. In this respect, the statutory limitation periods apply.

§ 11 Limitation of liability

Unless otherwise stated in these GT&Cs including the following provisions, inno-tech shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

inno-tech shall be liable for damages - irrespective of the legal grounds - within the scope of liability for culpability, both in cases of intent and gross negligence.

In the case of simple negligence, inno-tech shall be liable in accordance with statutory provisions as follows:

- for damages resulting from injury to life, body or health,
- for damages resulting from the breach of an essential contractual obligation (i.e. an obligation which must be fulfilled in order to enable the proper performance of the contract in the first place and on whose compliance the contractual partner regularly relies and may rely upon); in this case, however, any liability on the part of inno-tech shall be limited to the compensation of the foreseeable, typically occurring damage.
- in all other cases, not for damage that has not occurred to the goods themselves, in particular not for loss of profit or other financial losses incurred by the customer.

The limitations of liability resulting from § 12 para. 2 of these GT&Cs shall also apply to breaches of duty by or in favour of persons whose fault inno-tech is responsible for according to the statutory provisions. However, they shall not apply insofar as inno-tech has provided a warranty for the quality of the goods and for claims made by the customer under the German Product Liability Act.

The aforementioned provisions shall apply accordingly to claims made by the customer for compensation of futile expenses.

§ 12 Retention of title

In order to secure the payment claim against the customer, inno-tech shall retain title to the delivery item (reserved goods) until receipt of all payments from the respective contract.

The customer shall be obliged to treat the reserved goods with care and to insure them at his own expense against fire, water, breakage and theft to the amount of the replacement value of the delivery item.

The customer shall be entitled to resell the reserved goods in the ordinary course of business.

In the event of resale of the reserved goods, the customer hereby transfers the resulting claim against the acquiring party to inno-tech by way of security - in the case of co-ownership of the seller of the reserved goods proportionately to the co-ownership share. The same shall apply to other claims that take the place of the reserved goods or otherwise arise with regard to the reserved goods, such as insurance claims or claims in tort in the event of loss or destruction. inno-tech shall authorise the customer to collect the claims assigned to inno-tech in his own name, subject to revocation.

Inno-tech will only revoke this direct debit authorisation in the event that a claim is made.

Should any third party lay claim to the goods subject to retention of title, in particular by way of lien, the customer shall immediately inform the third party of inno-tech's ownership and notify inno-tech thereof in order to enable inno-tech to enforce its ownership rights. If the third party is not able to reimburse inno-tech for the judicial or extrajudicial costs incurred in this matter, the customer shall be liable for such costs.

If the customer is in default of payment, inno-tech shall have the right to withdraw from the supply contract and to demand that the customer surrender the reserved goods.

§ 13 Software

In the event that software is included in the scope of delivery, the customer shall be granted a non-exclusive right of use to this software including its documentation by inno-tech. The right of use shall be limited to the delivery item for which the software is intended. Unless otherwise agreed, use of the software on more than one system shall be prohibited.

The customer may only modify, copy, revise, translate or convert the software included in the scope of delivery from the object code to the source code as permitted under the statutory provisions (§§ 68a et seq. of the German Copyright Act "UrhG"). The customer shall not be permitted to remove or change any details from the manufacturer - in particular copyright notices.

Other rights to the software included in the delivery shall remain with inno-tech or the software provider supplying inno-tech. The granting of sublicenses shall not be permitted.

§ 14 Deterioration of the customer's assets

Insofar as inno-tech is obliged to make advance performance under a mutual contract, inno-tech may refuse the performance incumbent upon it until the customer makes the counter-performance or provides security for it, if, after the conclusion of the contract, inno-tech should become aware of circumstances which indicate that the counter-performance is endangered by the customer's inability to perform (e.g. substantial deterioration of the customer's assets).

If the customer does not effect counter-performance or provide security within a reasonable period of time set by inno-tech, inno-tech may withdraw from the contract by declaring withdrawal or giving notice of termination. This shall also apply if inno-tech has already rendered the service in whole or in part.

§ 15 Force majeure and the like

Serious events, such as, in particular, force majeure, labour disputes, riots, war or terrorist conflicts, which have unforeseeable consequences for the performance of services, shall release the contracting parties from their performance obligations for the duration of the disturbance and to the extent of their effect, even if they are in default. An automatic termination of the contract shall not be entailed thereby. The contracting parties shall be obliged to notify each other of any such obstacle and to adapt their obligations to the changed circumstances in good faith.

§ 16 Applicable law; place of jurisdiction

The law of the Federal Republic of Germany shall apply exclusively, with the exception of the uniform UN Convention on Contracts for the International Sale of Goods (CISG).

If the buyer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the court having jurisdiction over the registered office of inno-tech. inno-tech shall, however, be entitled to initiate legal proceedings at the location of the customer's registered office. Priority statutory provisions, in particular exclusive responsibilities, shall remain unaffected.

§ 17 Final provisions; data protection

Insofar as inno-tech processes personal data - in particular within the scope of pre-contractual measures or for the fulfilment of contractual obligations - the data processing shall be carried out in compliance with data protection regulations. The customer shall be responsible for ensuring that the information provided by inno-tech for data processing in accordance with Art. 12-14 GDPR is made available to all persons affected within his company.

Should individual provisions of the contract including this provision be wholly or partially invalid or should the contract contain a loophole, the validity of the remaining provisions shall remain unaffected. In place of the ineffective clause, the parties shall agree on another, effective provision which usually comes as close as possible to the economic purpose of the ineffective clause.

ADDITIONAL CONTRACTUAL CONDITIONS FOR INSTALLATION/SERVICES

The following general terms and conditions shall additionally apply to installation/services provided by inno-tech.

§ 18 Prices

The installation/services shall generally be invoiced on the basis of time and other expenditure at the rates for installation/services applicable at inno-tech at the time the order is placed. If they are not supplied, inno-tech will gladly send them to the customer free of charge upon request.

The materials required for the installation/service will be invoiced in accordance with the actual quantity required at the prices valid at inno-tech when the installation/service is performed.

Service prices shall not be eligible for discounts.

§ 19 Travel expenses

For the journey to and return from/to the inno-tech location, travel expenses will be charged based on inno-tech's rates for installation/services. In the instance of installation/services lasting several days at the customer's premises, the expenses incurred for travel expenses or mileage allowance for journeys between the accommodation and the construction site will be charged. If overtime results from the duration of travel times and working hours, it will be charged with the corresponding surcharge.

The calculation of distance and route times shall be based on the Internet route planner Google Maps, taking the fastest route into consideration.

If public transport is used, the calculation shall be based on actual expenditure plus all surcharges and fees.

§ 20 Working hours

The normal working hours of inno-tech fitters are from Monday to Friday between 08:00 and 16:45 (40 hours per week excluding rest breaks) and include working hours, travel and waiting hours.

Additional work/overtime hours can be agreed in accordance with the statutory regulations. However, it should not normally exceed 10 hours a day or 50 hours a week.

The customer shall be responsible for obtaining any necessary official approvals from the relevant supervisory authority. In this regard, inno-tech will refer to the German Working Hours Act (ArbZG).

For assignments outside the normal working hours, surcharges will be made on top of the regular hourly rate, resulting from inno-tech's charge rates for installation/services.

§ 21 Proof of performance

At the request of inno-tech's fitters, the customer shall document the services rendered on the activity reports at least once a week, but at the latest after completion of the installation/services.

Performance records signed by the customer are generally incontestable bases for invoicing.

§ 22 Customer obligation to provide

The customer shall provide the machines, systems and spare parts at the agreed time and within the agreed period of time, free of production and clean, for the execution of the work. At the end of the work, the customer shall, upon request by inno-tech and at his own expense, provide operating personnel, fillings, packaging material, peripheral machines etc. in sufficient quantity and quality for test purposes.

§ 23 Duration of the installation/service

Unless otherwise agreed, the information on the duration of the installation/services shall always be non-binding.

If a binding duration of the installation/service has been agreed upon with inno-tech and if this duration is extended for reasons for which inno-tech is not responsible (e.g. industrial action), inno-tech will immediately inform the customer thereof and at the same time notify the customer of an appropriate extension of the installation/service duration. If the performance still cannot be rendered within the new assembly/service period, inno-tech shall be entitled to withdraw from the contract in whole or in part; any counter-performance already provided by the customer will be reimbursed by inno-tech immediately. The customer shall bear the costs incurred by the delay.

§ 24 Completion of the installation/service; acceptance of the installation service

After completion of the installation/service, the customer must check its execution. This shall be demonstrated by a service protocol or a service report. The customer is requested to countersign the service protocol or service report, the acceptance of the installation work as well as waiting times for which inno-tech is not responsible. In all other respects, § 5 para. 3 of these GT&Cs shall apply.

§ 25 Warranty for defects

The customer must immediately notify inno-tech in text form of any defects concerning the installation/service.

In principle, the customer shall grant inno-tech the opportunity for supplementary performance - at inno-tech's request including during the daily normal working hours of inno-tech's fitters (see § 21 para. 1).

The right to self-remedy (§ 634 No. 2 of the German Civil Code ("BGB") in conjunction with § 637 of the BGB) shall be inadmissible for installation services.

§ 26 No power of representation for fitters

The fitters of inno-tech shall not be authorised to make legally binding declarations. The customer service department of inno-tech shall be exclusively responsible for managing the contract.