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# Terms and Conditions of Sale, Delivery and Service

Version 1/2023

## 1. FUNDAMENTALS AND SCOPE

1.1. These Terms and Conditions of Sale, Delivery and Service (hereinafter referred to as "Terms and Conditions") shall apply to all contracts for the manufacture, sale and delivery of goods as well as for the provision of development services and all services to be provided by IKA-Werke GmbH & Co. KG with registered office in Staufen, Germany (hereinafter referred to as "IKA-Werke"), unless expressly agreed otherwise. These Terms and Conditions shall also apply to all future contracts, even in those cases in which they are not separately agreed.

1.2. Any other terms and conditions by the purchaser shall only be binding for IKA-Werke if IKA-Werke has expressly agreed to their being valid in writing in the individual case. In such a case, they shall only apply to the transaction for which they have been agreed, and shall have neither ab initio effect nor apply to subsequent transactions. An objection by IKA-Werke shall not be required in individual cases. Under no circumstances shall the conduct of IKA-Werke be deemed as consent to such terms and conditions of the purchaser; this refers, in particular, to any acts of contract performance, silence or the unconditional transmission of an order confirmation.

1.3. These Terms and Conditions shall only apply to companies within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law and special funds under public law.

## 2. CONTRACT CONCLUSION

2.1. Quotations of IKA-Werke shall be subject to change unless otherwise agreed in writing.

2.2. Any documents that are part of the quotation, such as illustrations, brochures, drawings, weights and dimensions, shall only be approximate and shall not constitute a representation of a particular quality. The only exception to this

provision shall be if such information has been expressly described in writing as binding vis-à-vis the purchaser. IKA-Werke reserves the property rights and intellectual property rights for quotations, drawings and other documents, which may not be made available to third parties.

2.3. Orders shall only be binding for us once we have confirmed them in writing or fulfilled them by sending the goods or providing the service.

## 3. PRICES/PAYMENT

3.1. Unless otherwise agreed, prices shall be ex works, excluding packaging and insurance. Prices shall be exclusive of the applicable value added tax.

3.2. All prices shall be based on the premises existing at the time of the quotation. If deliveries or services are provided later than four months after conclusion of the contract, and if, in the meantime, there has been a significant change in circumstances that have a bearing on costs (e.g., increase in raw material, material, labor, customs or transport costs, change in technical requirements), IKA-Werke shall be entitled to increase prices appropriately. In this context, a significant change shall be deemed to be a cost increase of at least 5% compared to the time of the quotation or the most recent price adjustment.

3.3. Unless otherwise agreed, all payments shall be made in euros without deduction within 30 days of the invoice date.

3.4. The purchaser shall not be entitled to withhold payment or to set off counterclaims unless such counterclaims have been adjudicated res judicata, have been recognized, are undisputed or if there has been a notification of defect which is obviously justified. This limitation of the purchaser's rights shall not apply to claims for damages to which the purchaser is entitled, insofar as these result from the contract on which IKA-Werke has based its claim to remuneration.



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- 3.5. Insofar as payment discounts are granted, this shall be subject to compliance with the terms of payment. IKA-Werke shall be entitled to offset payment discounts against claims from future deliveries.

#### 4. DELIVERY

- 4.1. Partial deliveries shall be permissible insofar as they are reasonable for the purchaser.
- 4.2. Unless otherwise agreed in individual cases, deliveries shall be made ex works (INCOTERMS 2020).
- 4.3. In case of a delayed acceptance of work, IKA-Werke shall be entitled to charge the purchaser storage fees in the amount of 0.5% for each completed month, but not exceeding a total of 5% of the gross price. The parties reserve the right to provide proof of higher or lower storage costs. The same applies if the collection or shipment of the goods is delayed at the purchaser's request. IKA-Werke reserves the right to claim other additional costs on top of the storage fee.

#### 5. DELIVERY TIME / FORCE MAJEURE / DELAYED DELIVERY

- 5.1. Delivery dates and deadlines shall only be binding if they have been confirmed as binding by IKA-Werke in writing. The start of the agreed delivery period shall be subject to the clarification of all technical questions, the timely receipt of all documents to be provided by the purchaser, such as drawings, plans, releases, specifications, the receipt of any agreed partial payments or advance payments and other collaborative acts to be performed by the purchaser.
- 5.2. In cases of force majeure, the agreed delivery periods shall be extended appropriately. The definition of force majeure shall be an external event caused by elementary forces of nature or by the actions of third parties, which is unforeseeable according to human insight and experience, cannot be prevented or rendered harmless by economically acceptable means by the utmost care reasonably to be

expected in the circumstances, and cannot be accepted because of its frequency. This also includes any disruptions of operations through no fault of IKA-Werke, such as strikes, lockouts or delays in delivery for which IKA-Werke is not responsible.

#### 6. GOODS ORDERED ON CALL

Goods ordered on call shall be accepted without particular agreement within a reasonable period of time, but no later than within 12 months from the date of the order confirmation. If the order is not accepted in time, IKA-Werke may store the goods ready for dispatch at the purchaser's risk and invoice them as delivered, charging all costs incurred, or dispatch them without request.

#### 7. TRANSFER OF RISK AND RECEIPT

- 7.1. The risk shall pass to the purchaser upon notification that the goods are ready for dispatch, but no later than the start of loading the delivery parts at the site.
- 7.2. If no specific instructions for shipment have been included in the order, the goods shall be shipped at our best discretion without prejudice at the least expensive mode of transportation.
- 7.3. In the best interest of the purchaser, IKA-Werke shall insure shipments of goods against theft, damages caused by breakage, transport, fire and water as well as other insurable risks at the purchaser's expense as a matter of principle. Shipping insurance of the type mentioned herein shall only be waived at the purchaser's express request. Unless otherwise agreed, IKA-Werke shall charge 0.5% of the value of the goods for shipping insurance or 2% for easily breakable accessories. Transport damage shall be reported to IKA-Werke within 8 days, enclosing a record of the statement of the facts by the relevant shipping agency; this shall be a precondition for recognition of the damage. Similarly, incomplete shipments shall be reported to IKA-Werke within 8 days; this shall be a precondition for reco-



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gnition of the incomplete shipment. Shipments intended for export shall only be insured at the express instruction of the purchaser and at the purchaser's expense.

- 7.4. If the shipment is delayed or does not take place due to circumstances for which the purchaser is responsible, the risk shall pass to the purchaser from the date on which the shipment is ready for dispatch; however, IKA-Werke shall be obliged to effect the insurances requested by the purchaser at the latter's request and expense

## 8. RETENTION OF TITLE

- 8.1. IKA-Werke shall retain title to the contractual item until all claims of IKA-Werke against the purchaser arising from the business relationship, including future claims, also from contracts concluded at the same time or later, have been settled.
- 8.2. The purchaser shall be entitled to sell, process, combine or install or uninstall the contractual item in the ordinary course of business (goods subject to retention of title), but not to pledge it or assign it as security. In case of deterioration of the purchaser's financial circumstances, IKA-Werke shall be entitled to prohibit the sale, the processing, the combination or the installation or uninstallation of the unpaid goods.
- 8.3. Resale shall only be permitted on condition that the purchaser (reseller) makes the reservation that ownership shall not pass to his customer until the latter has fully met his payment obligations in respect of the goods subject to retention of title. The purchaser hereby assigns to IKA-Werke all claims resulting from the resale or from the mounting or installation up to the amount of the claim of IKA-Werke.
- 8.4. The purchaser shall be authorized to collect assigned claims. The authorization to collect shall expire in the event of a delay in payment or in the event of a significant deterioration in the purchaser's financial circumstances. In such

cases, IKA-Werke shall be entitled to inform the customers of the assignment and to collect the claims itself. In order to assert the assigned claims, the purchaser shall provide the necessary information and permit the verification of this information. In particular, he shall have to hand over to IKA-Werke upon request a detailed list of the claims arisen, including the names and addresses of his customers, amount of the individual claims, invoice date etc. and to allow access to his business premises for inspection.

- 8.5. If the goods subject to retention of title are combined or mixed by the purchaser to form a new item, this shall be done on behalf of IKA-Werke without any obligation on the part of IKA-Werke. The purchaser shall not acquire ownership of the new item pursuant to Sections 947 et seq. of the German Civil Code (BGB). If items are combined or mixed with items not owned by IKA-Werke, IKA-Werke shall acquire co-ownership of the new item, the value of which shall correspond to the proportion of the invoice value of the goods subject to retention of title in relation to the total value of the item.
- 8.6. The purchaser agrees to immediately notify IKA-Werke in case of cessation of payments, a significant deterioration of his financial circumstances, or in case of seizures. Attaching creditors shall be named, stating the address. The purchaser shall bear all costs incurred in order to reverse the seizure of the goods by attaching creditors and to recover the goods.
- 8.7. If the purchaser is in delay of payment with a considerable partial amount, stops payments or if the purchaser's financial circumstances deteriorate substantially, in particular if an application for opening insolvency proceedings against the purchaser's assets is filed, IKA-Werke shall be entitled to request the return of the goods subject to retention of title. The claim for return shall constitute a withdrawal from the contract. In such cases, setting a deadline for performance shall not be necessary. We reserve the right to claim damages even in the event of withdrawal.



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- 8.8. The purchaser shall store the goods subject to retention of title for IKA-Werke free of charge; he shall not be entitled to a warehouse keeper's lien. He undertakes to insure the goods against usual risks such as fire, vandalism, theft, water and against transport damage for an appropriate amount. He hereby assigns his claims for damages against third parties of the aforementioned kind in the amount of the invoice value of the goods to IKA-Werke.

## 9. WARRANTY

- 9.1. In the event of defects that are merely insignificant, the purchaser shall not be entitled to claim damages in lieu of the entire performance and shall not have the right to withdraw from the contract.
- 9.2. The purchaser shall inspect the delivered goods promptly and notify us in writing of any visible defects, shortages or quality deviations promptly, and no later than within seven days upon receipt of the goods. Any not recognizable defects shall be reported promptly upon discovery, and no later than seven days upon discovery. Any periods for claims shall equally apply in the case of direct deliveries to third parties named by the purchaser; the purchaser shall ensure that in such cases, too, complaints are made by the aforementioned point in time. Insofar as customers of the purchaser give notice of defects to the purchaser, the purchaser shall immediately forward such notice of defects to IKA-Werke. If the purchaser intends to install, attach or further process the goods delivered by IKA-Werke, he shall inspect the goods for defects before installation or attachment or further processing. If he fails to do so, he shall be guilty of gross negligence pursuant to Sections 439 (3), 442 (1) sentence 2 German Civil Code (BGB). In such a case, the purchaser shall only be entitled to warranty claims if the defect in question was fraudulently concealed, or a guarantee for the quality of the goods was assumed. If the purchaser discovers any defects in the goods, he undertakes not to sell, process, install or mount the goods until an agreement has been reached on the settlement of

the warranty claim or until evidence has been conserved in or out of court. The purchaser undertakes to make the goods that are subject to complaint available to IKA-Werke for the purpose of examination and to establish whether a warranty case exists. If he culpably refuses to do so, any warranty claims shall lapse.

- 9.3. If the end customer is not a consumer, the purchaser shall, if his customer asserts warranty rights, notwithstanding the provisions of Section 445 a (2) of the German Civil Code (BGB), set a reasonable period for supplementary performance before he may present claims to the other rights described in Section 437 of the German Civil Code (BGB) instead of supplementary performance (right of second tender). In those cases in which IKA-Werke has the right of second tender, IKA-Werke shall be entitled and obligated, at its discretion, to repair or redeliver free of charge up to three times within a reasonable period of time (supplementary performance), provided that the defect occurs within the limitation period and is notified promptly once it has become apparent, and provided that the cause of the defect already existed at the time of the transfer of risk. The purchaser shall have the obligation to provide evidence. If the supplementary performance fails, the purchaser may withdraw from the contract or reduce the remuneration without prejudice to any claims for damages pursuant to Section 10.
- 9.4. If the purchaser has installed defective goods in accordance with their nature and intended use, or has attached them to another object, the following shall apply:
- a) The purchaser shall grant IKA-Werke the option to remove the defective goods and to install or attach the repaired or newly delivered goods. This shall not apply in cases in which the purchaser's customer rejects this option – which the customer shall prove to IKA-Werke – or if the purchaser's customer is a consumer.
  - b) To the extent to which IKA-Werke is obliged to bear the costs for the removal and installation according to Section 439 (3) of the German Civil Code (BGB), IKA-Werke shall only owe the costs for the removal and in-

stallation or the mounting of identical goods which are in line with market standards and for which IKA-Werke has received supporting receipts from the purchaser. The purchaser's right to advance payment for removal and installation costs or for the mounting of identical goods shall be excluded, unless the purchaser's customer is a consumer who demands advance payment from the purchaser.

9.5. Claims for defects shall become statute-barred after one year. This shall not apply where the law provides for longer periods, in the case of Section 438 (1) no. 2 BGB (buildings and items for buildings), Section 438 (3) BGB (fraudulent concealment), Section 445 a and b BGB (right of recourse), Section 478 BGB (right of recourse) and Section 634 a (1) no. 2 BGB (construction defects). Furthermore, this shall not apply in case of injury to life, limb or health, in case of intentional or grossly negligent breach of duty or culpable breach of a material contractual obligation within the meaning of Section 10.2. by IKA-Werke or its vicarious agents, in case of fraudulent concealment of a defect, in case of assumption of a guarantee or where IKA-Werke is liable according to the provisions of the German Product Liability Act. The statutory provisions on suspension of the period expiry, suspension and recommencement of time limits shall remain unaffected.

9.6. Section 10 shall apply to claims for damages due to defects. The purchaser shall not be entitled to any warranty claims beyond the claims stipulated in Section 8 in conjunction with Section 10.

9.7. If a notification of defect by the purchaser is culpably unjustified, IKA-Werke shall be entitled to demand compensation from the purchaser for its expenses incurred and other damages.

## 10. DAMAGES

10.1. Claims for damages by the purchaser, irrespective of the legal grounds, in particular due to the breach of duties arising from the contractual obligation and from tort, shall be excluded.

10.2. The disclaimer according to Section 10.1 shall not apply where IKA-Werke is legally obligated to assume liability, in particular

- for its own intentional or grossly negligent failure to comply with its obligations and intentional or grossly negligent breach of duty by legal representatives or vicarious agents,
- for the violation of essential contractual obligations, whereby contractual obligations are essential insofar as their fulfillment is made possible by the proper execution of the contract in the first place and on whose compliance the purchaser may regularly rely,
- if, in the event of a breach of other obligations within the meaning of Section 241 (2) BGB (duties of consideration), the purchaser can no longer be reasonably expected to accept the performance of IKA-Werke,
- in the event of injury to life, limb or health, including by legal representatives or vicarious agents, under the Product Liability Act or any other mandatory statutory liability.

10.3. In case of liability due to the violation of essential contractual obligations as well as initial impossibility for which IKA-Werke is responsible and in case of mandatory liability for defects of title, IKA-Werke shall only be liable for the contractually anticipated and foreseeable average damage, provided that only slight negligence is involved. This does not apply in cases in which there is also injury to life, limb or health or in cases of product liability.

10.4. Apart from cases of injury to life, limb or health, of intent, gross negligence or product liability as well as other mandatory statutory liability provisions, the liability of IKA-Werke shall be limited collectively to the scope of coverage of the business liability insurance of IKA-Werke, provided that coverage to the extent customary in the industry exists.



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10.5. The above disclaimers or limitations of liability shall equally apply to the executive and non-executive employees as well as – in case of liability – for the vicarious agents of IKA-Werke.

10.6. The purchaser's claims for damages may only be asserted within a preclusive period of one year from the commencement of the statutory limitation period. Claims for damages due to material defects (Section 9) shall become statute-barred in accordance with Section 9.5.

The above preclusive period and the shortening of the limitation period shall not apply if IKA-Werke is liable due to intent or gross negligence or due to injury to life, limb or health, according to the Product Liability Act or according to any other mandatory statutory liability.

10.7. A change in the burden of proof to the detriment of the purchaser shall not be associated with the provisions in this Section 10.

## 11. TAKE-BACK AND DISPOSAL

11.1. Upon the purchaser's request and at his own expense, IKA-Werke shall take back the delivered goods after discontinuance of use and dispose of them in accordance with statutory provisions.

11.2. Claims for assumption of, or exemption from, the costs of disposal by the purchaser shall expire two years after the final discontinuance of the use of the delivered goods. The limitation period shall not be counted until receipt by IKA-Werke of a written notification by the purchaser of the discontinuance of use and of the purchaser's request to have the delivered goods disposed of by IKA-Werke at the purchaser's expense.

## 12. SPECIAL TERMS AND CONDITIONS FOR THE PROVISION OF SOFTWARE (FIRMWARE)

12.1. If IKA-Werke provides the purchaser with software ("firmware") as part of a contractual item, the purchaser shall receive a non-exclusive right to use such software. The purchaser may only use the firmware within the scope of its intended use and exclusively together with the device on which the firmware has been installed, use it or pass it on to third parties. The use of the firmware in combination with another device or on several devices shall require the prior written consent of IKA-Werke.

12.2. The purchaser shall not be entitled to edit, redesign, reverse engineer, translate, extract parts or combine the software with other programs. The statutory mandatory rights of the purchaser under Sections 69 (d), 69 (e) of the German Copyright Act (UrhG) shall remain unaffected. The purchaser may neither change nor remove the manufacturer's information and property right notices in connection with the firmware – in particular copyright notices.

12.3. The firmware shall be provided to the purchaser exclusively as a machine-readable code; there shall be no claim to the provision of the source code. Since the firmware is not an application software, user documentation is not required and is not usually supplied by IKA-Werke.

12.4. Where the firmware contains open source software, the open source license conditions applicable to the software, which IKA-Werke shall make available to the purchaser upon request, shall apply to the provision and use of the firmware over and above the conditions of this Section 12.

12.5. The firmware represents intellectual property of IKA-Werke and shall be subject to confidentiality. The purchaser will therefore only allow third parties access to the firmware after having obtained express written consent from IKA-Werke.



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12.6. The provision of the firmware shall not include any obligation for IKA-Werke to provide maintenance or service related to the firmware. These require a separate agreement. Defects in the firmware shall be remedied by IKA-Werke within the scope of the warranty in accordance with Section 9; this may also take the form of the provision of an update. If IKA provides the purchaser with an update of the firmware without a defect and without incurring a fee for this, e.g., within the scope of a service case related to the delivered device, such an update shall not be subject to the warranty obligations of IKA-Werke; any legally mandatory claims of the purchaser shall remain unaffected.

### 13. NO-RUSSIA-CLAUSE

- 13.1. The Importer/Purchaser shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
- 13.2. The Importer/Purchaser shall undertake its best efforts to ensure that the purpose of paragraph (13.1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.
- 13.3. The Importer/Purchaser shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (13.1).
- 13.4. Any violation of paragraphs (13.1), (13.2) or (13.3) shall constitute a material breach of an essential element of this Agreement, and the Exporter/Seller shall be entitled to seek appropriate remedies.

13.5. The Importer/Purchaser shall immediately inform the Exporter/Seller about any problems in applying paragraphs (13.1), (13.2) or (13.3), including any relevant activities by third parties that could frustrate the purpose of paragraph (13.1). The Importer/Purchaser shall make available to the Exporter/Seller information concerning compliance with the obligations under paragraph (13.1), (13.2) and (13.3) within two weeks of the simple request of such information.

### 14. JURISDICTION AND APPLICABLE LAW

- 14.1. The place of jurisdiction for all disputes arising from the contract shall be the registered office of IKA®-Werke GmbH & Co. KG. However, IKA-Werke reserves the right to assert its rights by court action at the purchaser's place of business instead.
- 14.2. These Terms and Conditions as well as all contracts concerning deliveries and services by IKA-Werke shall be subject to German substantive law as well as German procedural law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.