

GENERAL TERMS AND CONDITIONS OF SALE IMCD ITALIA SPA

(version 01/07/2011)

Article 1 General

- 1.1 Unless expressly agreed otherwise in writing, these Terms and Conditions shall apply to every legal relationship between IMCD Italia SpA, further referred to as "IMCD", and the Purchaser. Departures from these Terms and Conditions must be expressly agreed in writing.
- 1.2 The term "Purchaser" shall be understood in these Terms and Conditions to mean every legal or natural person which (or who) concludes or wishes to conclude an Agreement with IMCD. The term "Agreement" shall also be understood to include every legal act for the preparation or performance of the Agreement. The term "products" shall be understood to mean all goods which are the subject of an Agreement.
- 1.3 The applicability of general terms and conditions used by the Purchaser is expressly ruled out.
- 1.4 The Italian text of these Terms and Conditions shall always be final and shall prevail over all translations in the event of a conflict.

Article 2 Offers and Agreements

- 2.1 All offers from IMCD shall be without obligation. All offers shall furthermore be revocable, regardless of whether they contain a period for acceptance.
- 2.2 All verbal supplements, promises or changes shall be binding only if they have been made by authorised people at IMCD.
- 2.3 Samples and models shown or provided shall serve as indications only, without the products having to comply with those samples and models. Minor variations in stated size, weight, number, colour and the suchlike shall not be considered to be defects. Commercial practice shall determine whether variations are minor.
- 2.4 IMCD shall be entitled at all times, before starting or continuing its performance, to require security from the Purchaser for the fulfilment of both its payment and other obligations. The security shall be provided in the manner stipulated by IMCD.
- 2.5 If the Purchaser has not provided security within 14 days of a request to that effect, in the manner stipulated by IMCD, all amounts owed by the Purchaser to IMCD shall be due and payable in full and immediately, without prior notice of default being required.

Article 3 Delivery

- 3.1 The delivery period stated by IMCD shall not be a deadline. The mere expiry of the delivery period shall not constitute a breach of contract. IMCD shall comply with the delivery period as far as possible. Exceeding the delivery period shall not give the Purchaser any right to compensation.
- 3.2 If a delivery period has not been expressly agreed upon, a reasonable delivery period shall apply, beginning from the time that the Agreement is formed.
- 3.3 IMCD shall have the right at all times to deliver in consignments, and shall always be entitled to invoice for such partial performances separately.
- 3.4 Delivery shall take place in accordance with the definitions of the latest version of Incoterms. In the event of a conflict between these Terms and Conditions and the Incoterms, the Terms and Conditions shall prevail.
- 3.5 If the Purchaser does not take up or demand, as the case may be, the products delivered, or does not do so in time and/or properly, it shall be in default without notice of default being required, and IMCD shall in any case be entitled to invoice for the agreed price. IMCD shall then also be entitled, without prejudice to its other rights under the law, to store the products at the Purchaser's expense and risk; all costs arising therefrom, including increases in duties, levies, premiums and the suchlike, shall be payable by the Purchaser.
- 3.6 If a situation provided for in Article 3.5 arises, and, despite being given a reasonable time by IMCD, the Purchaser still fails later to take up the products or fails to do so in time and/or properly, IMCD shall be released from all its obligations.

Article 4 Prices

- 4.1 Unless agreed otherwise in writing, all prices shall be ex-works. All prices shall be exclusive of VAT, the costs of transporting and/or dispatching the products, other costs incurred in connection with delivery, government levies and/or taxes payable.
- 4.2 IMCD shall be entitled at all times to change its prices, on condition that prices already agreed may be changed only if the cost-determining factors on which the prices are based have changed since the Agreement was concluded and prior to delivery.

Article 5 Transport insurance

- 5.1 The insurance costs shall be payable by IMCD only if provided for by the definitions of an Incoterm declared applicable. In that case, however, IMCD shall not be obliged to do any more with regard to the insurance to be taken out, than to take out insurance up to values equivalent to the net invoice sum.
- 5.2 The insurance to be taken out shall insure against normal business risk only, and therefore not against exceptional risks and/or acts of war. The liability of IMCD shall not, in any case, extend beyond the cover provided by the insurance. If IMCD should nonetheless be liable beyond the cover provided by such insurance, the provisions of Article 8 of these Terms and Conditions shall be fully applicable.
- 5.3 In the event of damage or loss in transit, IMCD shall submit a claim to the insurer. After IMCD has received the payment from the insurer, it shall pay it to the Purchaser.

Article 6 Transport equipment and packaging

- 6.1 Unless otherwise agreed, returnable packaging provided by IMCD shall remain the property of IMCD at all times and must be returned to IMCD in perfect condition after use. If the returnable packaging is not returned in perfect condition, IMCD shall no longer be obliged to take back the returnable packaging, and the deposit charged shall not be returned either. Furthermore, the deposit shall not be returned if returnable packaging provided by IMCD is returned after it has been used by the Purchaser for more than two years. Only if the returnable packaging concerns IBCs, rent shall be charged from 30 days after delivery, in addition to the deposit. This rent shall be charged after the IBCs have been returned. IMCD shall have the right to deduct rent from the deposit.
- 6.2 The loading or filling of transport equipment and/or packaging made available by the Purchaser shall take place at the Purchaser's expense and risk. If IMCD should nonetheless be liable, the provisions of Article 8 of these Terms and Conditions shall then be fully applicable.
- 6.3 IMCD shall have the right to refuse to load equipment and/or fill packaging if it does not fulfil the requirements which may be reasonably set in connection with safety.
- 6.4 In the case referred to in Article 6.3, IMCD shall not be liable for any costs arising from a possible delay. Costs shall also be understood to include the costs referred to in Article 3.5.

Article 7 Returns, complaints and guarantee

- 7.1 Without prior written consent on its part, IMCD shall not be obliged to accept returns from the Purchaser. If products are returned without the prior written consent of IMCD, their dispatch and storage after their return shall be at the Purchaser's expense and risk.
- 7.2 The risk in returned products shall continue to be borne by the Purchaser until IMCD has accepted the return and the returned products in writing, to which acceptance IMCD may attach conditions.
- 7.3 The Purchaser shall itself be responsible for checking, or having someone check, the conformity of products during their delivery. Complaints must be made in writing within 14 days of receipt of the products delivered, stating the reasons for the complaint and if possible, accompanied by proof, failing which the Purchaser shall be deemed to have accepted the quantity and quality of the products.
- 7.4 Complaints about products which have already been treated and/or processed in any way after delivery shall not be accepted.
- 7.5 If a complaint is submitted in time and in accordance with these Terms and Conditions, and IMCD is reasonably of the opinion that it has been sufficiently demonstrated that the products are not suitable for their intended use, IMCD shall be free to choose either to deliver what is lacking so that the products are then suitable for the intended use or to redeliver the products found to be unsound free of charge, or to grant a discount on the price. By performing in one of the stated ways, IMCD shall have discharged its guarantee obligation fully and shall not be obliged to pay any further compensation. Replaced products shall become the property of IMCD.
- 7.6 The guarantee on products delivered by third parties may never extend beyond the guarantee that is provided to IMCD by the manufacturer or importer of those products.
- 7.7 Any claim under this Article shall in any case lapse once three months have passed since receipt of the products delivered.

Article 8 Liability

- 8.1 IMCD shall be liable only for direct damage resulting from an intentional act or wilful recklessness – proven by the Purchaser – on the part of IMCD and/or its managerial staff forming part of the board of directors or management, during the fulfilment of the obligations arising from the Agreement concluded between IMCD and the Purchaser.
- 8.2 IMCD shall never be liable for:
 - indirect loss of any kind, including consequential loss and/or
 - non-material loss suffered by the Purchaser or by a third party as a result of IMCD, or a person for whom it is liable under the law, failing in the performance of the Agreement.
- 8.3 The Purchaser shall in any case be liable for damage – of whatever nature and in whatever form – which arises after the products delivered by IMCD have been treated and/or processed.
- 8.4 The liability of IMCD shall be limited at all times per event, with a series of connected events counting as one event, to the amount that is paid out under IMCD's business liability insurance policy in the case concerned.
- 8.5 The Purchaser must compensate IMCD for, and indemnify it against, all third-party claims, for whatever reason, in connection with compensation for damage, costs, interest and/or losses which arise from products delivered by IMCD. If IMCD should nonetheless be held liable, the provisions in the previous Article paragraphs shall be fully applicable. IMCD shall then have a right of recourse against the Purchaser for the entire amount paid by it in connection with compensation and costs.
- 8.6 The provisions of this Article shall also apply in favour of all legal or natural persons used by IMCD to perform the Agreement.
- 8.7 Any claim for damages shall in any case lapse once three months have passed since receipt of the products delivered.

Article 9 Force majeure (non-attributable non-performance)

- 9.1 In the event that, due to force majeure, IMCD is prevented from performing the Agreement, or performance becomes more costly, IMCD shall have the right to suspend the Agreement for the duration of the force majeure situation, or to dissolve the Agreement in full or in part, without IMCD being obliged to pay any compensation.
- 9.2 The term "force majeure" shall be understood to mean any circumstance, both foreseen and unforeseen, as a result of which the Purchaser can no longer reasonably require performance of the Agreement. Such circumstances shall in any case be understood to include strike, excessive staff sickness, interruptions in production, transport problems, fire and other business disruptions, import, export and transportation bans, late or defective delivery by IMCD's suppliers, and other events beyond the control of IMCD, such as flood, storm, natural and/or nuclear disasters, war and/or threat of war, but also changes in legislation and/or government measures. In addition, IMCD may always rely upon force majeure in the case of unsuitability of products and/or persons used by IMCD to perform the Agreement.
- 9.3 If IMCD suspends performance of the Agreement in accordance with the provisions of paragraph one of this Article, the Purchaser must, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or the security required in accordance with Article 2.4 of these Terms and Conditions up to the new delivery date.

Article 10 Payment

- 10.1 Unless agreed otherwise in writing, payment must be made within 14 days of invoicing, without discount and/or setoff, in the currency specified by IMCD and in the manner stated by IMCD.
- 10.2 If payment in full is not made within the period stated, the Purchaser shall be in default by operation of law and shall be liable to pay interest at the rate of 10% per annum on the amount outstanding. If the statutory interest is more than 10%, the Purchaser shall be liable to pay the statutory interest.
- 10.3 Judicial and extrajudicial costs shall be payable by the Purchaser. The extrajudicial costs shall amount to 15% of the outstanding amount, with a minimum of EUR 125.
- 10.4 Without prejudice to the provisions of Article 7.3, complaints about invoicing may only be made within the payment term. Complaints must be submitted in writing. The submission of a complaint shall not suspend the Purchaser's payment obligation.
- 10.5 Payments shall be deducted firstly from judicial costs, extrajudicial collection costs and interest payable, and then from the outstanding principal sums, starting with the most outstanding principal sums, regardless of any instructions to the contrary from the Purchaser.

Article 11 Dissolution

- 11.1 In the event of non-payment or incomplete or late payment of an amount due and payable, failure to fulfil any other obligation arising from an Agreement, or failure to do so fully and/or in time, suspension of payment, a moratorium or application for such, bankruptcy or petition for such, or the Purchaser being placed under guardianship, dying or its business being wound up, IMCD shall have the right, without notice of default and without judicial intervention, to suspend performance of the Agreement or to dissolve the Agreement in full or in part, and to claim back, as its property, any products delivered but not yet paid for in full, offset against any sums already paid, without prejudice to its right to compensation. If one of the situations described in the previous sentence arises, all amounts owed by the Purchaser to IMCD shall be due and payable in full and immediately, without prior notice of default being required.
- 11.2 If, in accordance with the provisions of paragraph one of this Article, IMCD suspends performance of the Agreement, the Purchaser must, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or security required in accordance with Article 2.4 of these Terms and Conditions up to the new delivery date.

Article 12 Retention of title

- 12.1 IMCD shall remain the owner of all products sold by it until the Purchaser has paid the consideration relating to the products delivered or to be delivered by IMCD pursuant to the Agreement, or relating to the work/services carried out or to be carried out also for the Purchaser pursuant to such Agreement, and until it has paid the amounts owed due to a failure in the performance of such Agreement.
- 12.2 Before payment has been made in full, the Purchaser shall not have the right to pledge the products to third parties fully or partially, or to transfer ownership of the products, other than in accordance with its normal activities or the normal use of the products.
- 12.3 The Purchaser shall keep the products delivered subject to a retention of title with due care and as the recognisable property of IMCD.
- 12.4 If the Purchaser fails in the performance referred to in paragraph one, IMCD shall have the right to take back itself, or have someone else take back, the products which are its property, at the Purchaser's expense, from the place where they are located. The Purchaser hereby authorises IMCD irrevocably, if that situation arises, to enter, or have someone enter, the premises in use by or for the Purchaser.
- 12.5 The Purchaser shall not be permitted to rely upon a right of retention with regard to the costs incurred in connection with the safekeeping pursuant to Article 12.3, or to offset those costs against its performance.
- 12.6 If the Purchaser forms a new product from, or partly from, the products delivered to it by IMCD, this shall be a product which IMCD has had formed for itself. Furthermore, the Purchaser shall keep the product for IMCD, and IMCD shall always remain the owner until all the obligations referred to in paragraph one of this Article have been fulfilled.

Article 13 Applicable law and competent court

Italian law shall apply exclusively to all Agreements and to these Terms and Conditions. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is ruled out. All disputes arising with IMCD shall be submitted for resolution to the district court in Milan.

Article 14 Conversion

If, and insofar as, any stipulation in these General Terms and Conditions cannot be relied upon, that stipulation shall have a significance as similar as possible in terms of contents and purpose, so that the stipulation concerned may be relied upon.