

Terms and Conditions

§ 1 Application of the Terms and Conditions

(1)
These general business terms and conditions apply to all sales, deliveries and other performance including consulting and training services provided by Ineltek GmbH (referred to as the user below). They also apply to all future business relationships pursuant to Section 305 (3) of the German Civil Code (BGB) in the latest version even if this is not expressly agreed upon separately. These terms and conditions are deemed to have been accepted no later than with the receipt of the goods or services.

(2)
The general business terms and conditions of the customer only apply insofar as they have been expressly accepted by the user. This written form requirement can only be waived by written agreement. If the user fails to expressly object to the general business terms and conditions of the customer, this does not constitute acceptance of said general business terms and conditions.

(3)
All agreements between the seller and the buyer for the purpose of executing the contract must be documented in writing in the contract.

(4)
These business terms and conditions do not apply in regards to consumers pursuant to Section 474 of the German Civil Code (BGB) in the latest version insofar as they restrict the legal provisions of Section 433-435, 437, 439-443 and 474-479 of the German Civil Code (BGB) in the latest version. This does not apply to claims for compensation. In such cases, the applicable legal regulations take the place of the business terms and conditions.

§ 2 Offers

(1)
The offers of the seller are subject to change without notice and non-binding until a written order confirmation is issued, unless anything to the contrary is expressly specified in the offer. After an offer is issued by the user, a contract is only concluded upon written confirmation by the user. Changes to a binding specification of goods or services also only become effective upon written confirmation by the user. The user reserves the right to minor deviations from the offer for technical reasons, provided they do not impair the contractual purpose, even after confirming the order.

(2)
Prices only apply if the entire order is placed and executed. In case of color illustrations, deviations are possible.

(3)
Drawings, illustrations, dimensions, weights or other performance specifications are only binding if this is expressly agreed upon in writing.

(4)
Assurances, subsidiary agreements, amendments and addendums in regards to the goods and services of the user must be confirmed in writing by the user in order to be effective.

(5)
The employees of the user are not authorized to enter into verbal subsidiary agreements or make verbal assurances that go beyond the content of the written contract.

(6)
Verbal information, product descriptions, performance specifications etc. do not constitute assurances.

Information describing products in brochures or similar documents is not binding.

§ 3 Obligations of the Customer

(1)
The customer is required to provide the user with all documentation and information required for the performance of the contract, completely and in a timely manner. If the customer fails to provide the required information, the user will issue a written request and establish a commensurate period of grace. After the end of this period of grace, the user has the right to withdraw from the contract. The user is entitled to compensation for goods and services already delivered.

(2)
If the user is obligated to work in the facilities of the customer or in facilities to be provided by the customer, the customer is obligated to ensure that the employees of the user have access and that all conditions for the performance of the contract are established. Should the customer fail to meet this obligation, the customer is required to compensate the user for the resulting additional costs. The obligation to cooperate is a principal obligation of the customer.

§ 4 Prices and Payment Terms and Conditions

(1)
Prices and compensation for performance by the user as well as incidental costs, if any, are based on the price list of the user applicable when the contract is concluded or on an expressly deviating written offer by the user. Unless anything to the contrary is specified in the offer, all prices are net in EUR at the registered office of the user without shipping costs, packaging, insurance, duties, import sales taxes or other incidental services.

(2)
Unless otherwise specified, the user agrees to be bound by prices contained in its offers for 30 days from the offer date. Otherwise the prices in the order confirmation issued by the user, plus VAT as required by law, are binding. Additional goods and services are billed separately.

(3)
If only part of the agreed quantity is purchased within the agreed period of time for release orders or standard orders, the user has the right to either charge the applicable price for the lot size for the quantity delivered or to deliver and charge for the quantity not yet requested, at the discretion of the user.

(4)
Insofar as the seller is willing to deliver the goods to other locations, the buyer bears the cost of transportation, packaging and insurance.

(5)
Separate terms and conditions apply to orders from abroad. These are based on weight, shipping method, the destination country and the applicable provisions for duties and import sales taxes. Unless anything to the contrary is specified in the offer, all prices are net in EUR at the registered office of the user without shipping costs, packaging, insurance, duties, import sales taxes or other incidental services.

(6)
If a delivery period of four months or longer calculated from the date the contract is concluded is agreed upon, the user reserves the right to increase its prices due to an increase in its own purchase prices and / or wages and production costs. In case of such an increase, the user will identify the factors leading to the price increase on the invoice.

(7)
The preceding provision does not apply in case of contracts for the performance of a continuing obligation.

(8)
In case of an increase in procurement costs or other costs relevant to the purchase price, the user reserves the right to implement corresponding price increases

§ 5 Performance of the Contract

(1)
Delivery dates or deadlines are not binding unless they have been expressly established as binding in writing. Agreed delivery dates are deemed to have been met insofar as the goods were consigned to the shipper by the agreed delivery date. Upon request, the user will notify the customer when the goods are ready to ship. Should the processing times, delivery dates or deadlines deviate significantly, the user will notify the customer of the deviation promptly.

(2)
The user is not liable for delivery and performance delays caused by force majeure or by events that significantly impair the ability of the user to perform or make performance impossible – not just temporarily – even in case of binding dates and deadlines. In particular, said events include energy shortages, transport disruptions, strikes, lock-outs, official directives etc., even if they affect suppliers of the user or their suppliers. In case of such events, the user is authorized to postpone delivery and / or performance for the duration of the impediment plus a commensurate lead time or to withdraw from the contract in whole or in part insofar as performance is incomplete. This also applies if the unforeseen events identified above occur even after delivery and / or performance has already been delayed. In this case, a period of grace that may have been established by the customer is also extended for the duration of the unforeseen event. The user will promptly inform the customer about the occurrence of such a delay. If the delivery date is extended or the user is relieved of its obligations, the customer cannot derive claims for compensation from the same.

(3)
The customer can only withdraw from the contract upon establishing a commensurate period of grace for the user in writing after the end of the extended deadline. Withdrawal must be communicated in writing if the user fails to perform within the period of grace. Claims for compensation by the customer are subject to Section 10 of these terms and conditions.

(4)
The user has the right to partial deliveries and partial performance insofar as this constitutes self-contained segments of the object of the contract that are usable by the customer.

(5)
Subsequent requests for changes or addendums to the goods or services by the customer extend the delivery date by a commensurate period of time.

(6)
Meeting the delivery and performance obligations of the user can only be assured if the customer meets its obligations properly and in a timely manner. If the customer is in arrears with payments for previous performance, the user has the right to withhold performance without being obligated to provide compensation for any damage that may result.

(7)
In case of default of acceptance by the customer, the user

has the right to demand compensation for damages incurred by the user; upon default of acceptance, the risk of accidental impairment or accidental destruction is passed to the buyer.

(8)
If the supplier of the user ultimately fails to deliver, notwithstanding diligent selection, the user is relieved of its obligation to perform provided the user notifies the customer of the failure to deliver and, insofar as this is allowable, offers the assignment of claims against its supplier to the customer. In the selection of suppliers, the user is not liable for slightly negligent selection.

§ 6 Payment

(1)
The agreed delivery and payment terms and conditions apply. In principle, deliveries to new customers are COD only. The user reserves the right to require immediate payment for deliveries in exceptional cases.

(2)
Unless otherwise agreed upon, the invoices of the user are due and payable net within 14 days from the invoice date without discounts or other deductions. Checks and drafts are only accepted as an undertaking to pay in any case. The user has the right to charge all incurred collection costs to the user. Invoices for the same are due upon receipt. The user is not obligated to accept checks or drafts.

(3)
Payments of the customer are first applied to incurred additional costs, interest and then to the oldest debt. The user has the right to demand prepayment or the posting of security and / or to demand immediate payment of all claims arising from the business relationship if the customer's creditworthiness is significantly impaired or the customer is in arrears with payment. This does not apply if the customer is in arrears with the payment of receivables that are immaterial compared to the order volume of the respective customer.

(4)
In case of delayed payment by the customer, the user has the right to charge interest at the rate of 5 percentage points above the respective prime rate of the European Central Bank. If the customer is an entrepreneur pursuant to Section 14 of the German Civil Code (BGB), the interest rate increases to 8 percentage points. The right to assert a higher claim for actual damages caused by default is reserved.

(5)
In case of a counter claim, the customer only has the right of retention or setoff if the counter claim is undisputed or legally established.

§ 7 Passing of Risk

(1)
Commercially available packaging customary in the trade is used. Special packaging and replacement packaging are billed at incurred cost.

(2)
Unless the order confirmation indicates otherwise, delivery "ex works" is agreed upon. Insofar as the goods are delivered on the premises of the user, the risk of damage or the loss of goods is passed to the customer when the user informs the customer that the goods are ready for pickup.

(3)
In case of sale by delivery to a place other than the place of performance, the risk is passed to the customer as soon

as the shipment has been consigned to the shipper, its agent or another person appointed by the user or has left the warehouse of the user for the purpose of shipment. If shipment is delayed by the customer's request, the risk is passed to the customer when he or she is notified that the goods are ready for shipment. If the customer is a consumer pursuant to Section 13 of the German Civil Code (BGB), the risk is only passed to the customer upon acceptance of the goods even in case of sale by delivery to a place other than the place of performance.

(4)
In case default of acceptance on the part of the customer, the risk is passed to the customer when the user offers the transfer of the goods to the customer.

(5)
Shipments are uninsured unless the customer insures the shipment against transportation damage at its own expense.

(6)
If performance as specified in the contract is not possible by the agreed deadline for reasons within the control of the customer, the risk is passed to the customer when the customer is informed that the goods are ready for shipment. Possible warehousing costs are borne by the customer.

§ 8 Refusal of Acceptance

In case of refusal of acceptance of the shipment without prior written cancellation of the order, the user has the right to bill for a portion of costs:

- In case of a contract of sale, in the amount of EUR 200.00
- In case of a contract of work and labor, the incurred refurbishment costs.

§ 9 Retention of Title

(1)
Not with standing delivery, the passing of risk or other provisions of these delivery terms and conditions, deliveries by the user are subject to the retention of title. The passing of title only takes place once all claims against the customer, including future claims, based on any legal foundation (draft, check, assignment, guarantee, compensation etc.) have been settled. The user has the right to demand the return of the goods, sell the goods to third parties or otherwise dispose of them as long as the purchase price has not been paid in full.

(2)
In case of contracts with customers concluded in pursuing their business activities or independent professional activities as well as contracts with a legal person under public law or special fund under public law, title to the delivered goods is retained by the user until all claims arising from the business relationship with the customer have been settled in full. This also applies if some or all invoices of the user have been added to an open account and the balance has been drawn and confirmed. In the relationship to said customer, a request for surrender does not constitute withdrawal from the contract.

(3)
Prior to the passing of title, pledging or transfer by way of security of the delivered goods is prohibited. Reselling the goods is only permitted in the course of ordinary business activities. In case of resale, the customer assigns its claim against the buyer for the purchase price to the user now and in advance in the amount of the original purchase price. The user hereby accepts this assignment. The customer is authorized to collect the claim on behalf of the user until said authorization is revoked or until the customer fails to remit payment to the user. If the goods

subject to retention of title are resold in conjunction with goods or items owned by third parties, the claim against the buyer in the amount of the purchase price agreed between the user and the customer is deemed to have been assigned to the user. If goods subject to retention of title are pledged, the customer is obligated to notify the user promptly and to also promptly notify the lien or of the retention of title.

(4)
The retention of title also extends to products that result from processing, mixing or combining the goods of the user. Modifying or processing the goods always takes place in the name and on behalf of the user, but without obligating the user. If the retention of title by third parties remains in effect upon processing, mixing or combining the goods of the user with the goods of third parties, the user acquires joint ownership in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the remaining processed goods at the time of processing. If the goods of the user are combined with other components that, in proportion to the goods of the user, constitute the principal component, the customer grants joint ownership in the new items to the user insofar as the customer is the owner. The resulting proprietary rights are deemed to constitute goods subject to retention of title pursuant to these sale and delivery terms and conditions.

§ 10 Warranty

(1)
The user warrants that the goods have the agreed characteristics upon the passing of risk or, insofar as the characteristics have not been agreed upon, are suitable for their intended use pursuant to the terms of the contract. If the intended use is not specified, the user warrants that the delivered goods are suitable for their normally intended use and exhibit characteristics that are commonly accepted for goods of the same type and that the customer can expect according to the type of goods.

(2)
If the delivered goods do not conform to this warranty upon the passing of risk, the customer can initially demand the rectification of defects or the delivery of goods that are free of defects at the discretion of the user. Should the user fail to meet this obligation within a commensurate period of grace, the customer can withdraw from the contract or reduce the purchase price at the customer's discretion. The customer is not entitled to compensation for wasted expenditures.

(3)
Claims for defects cannot be asserted in case of minor deviations from the agreed characteristics, minor impairment of usability, natural wear or damage incurred after the passing of risk as a result of improper or careless treatment, excessive strain, unsuitable supplies or specific outside influences that are not intended pursuant to the contract or software errors that cannot be reproduced. If modifications or maintenance tasks are carried out improperly by the customer or third parties, claims for defects cannot be asserted for the same or for the resulting consequences.

(4)
The period of limitation for warranty claims is one year from the delivery of the goods.

(5)
If the customer is a consumer pursuant to Section 13 of the German Civil Code (BGB), Sections 10.2 and 10.3 apply with the following changes:

- The type of supplementary performance is chosen by the customer
- The period of limitation for warranty claims is two years

(6)

If the customer is a merchant, meeting the requirement to make a complaint in respect of a defect immediately on receipt of the goods pursuant to Section 377 of the German Commercial Code (HGB) is a prerequisite for the customer's warranty claims.

(7)

If repair services provided by the user prove to be defective, the customer can initially only demand supplementary performance consisting of the rectification of defects or the creation of a new item at the discretion of the user.

(8)

Should the user fail to meet this obligation within a commensurate period of time, the customer has the right to rectify the defect itself and to demand compensation for the essential incurred costs, to withdraw from the contract or to demand an abatement.

§ 11 Reservation of Self-Supply

If the user has ordered goods or materials from a supplier at the time the written order confirmation is issued and if said order is intended for the subsequent delivery to and / or processing for the customer, the user has the right to withdraw from the contract if delivery to the user fails to take place properly or at all. This right of withdrawal does not apply if the user is at fault in regards to the selection of the supplier.

§ 12 Contractor's Lien

(1)

For its claims arising from the contract, the user holds a lien on the movable objects of the customer produced or repaired by the user, if the user has obtained possession of these moveable objects during production or for the purpose of working on them.

(2)

If the customer provides the user with an object acquired subject to the retention of title, the contractor's lien applies to the customer's expectant right of ownership.

(3)

If the object provided to the user does not belong to the customer, the user has a claim for the purchase price or compensation against the customer which is payable upon acceptance. Should the customer fail to pay, the user has the right of retention pursuant to Section 273 of the German Civil Code (BGB). The user can assert claims arising from Section 994 ff of the German Civil Code (BGB) against the owner.

§ 13 Liability

Ineltek can be liable for negligence or fraud or fraudulent misrepresentation by its legal representatives, employees and agents.

Ineltek can be liable for breach of contract or supply of defective product.

Incidentally, the liability of Ineltek, regardless of the legal reason (including, e.g. impossibility, default of contract, positive breach, warranty, tort) are excluded.

Subject to the above:

Ineltek shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of or damage

of goodwill, loss of use of corruption of software, data or information, or any indirect or consequential loss arising under or in connection with the contract

The total liability of Ineltek to the Buyer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed € 40,000 for violation of contractual duty or 2 times the delivery value for slight negligence.

In the event of Force Majeure, Ineltek will not be liable for any loss or damage whatsoever or be deemed to be in breach of contract.

§ 14 Repairs

No liability is assumed for repairs if there is no associated report of defects.

§ 15 Identification of Goods, Proprietary Rights

(1)

Modifying the goods of the user, applying any type of special marking that could be interpreted as identifying the goods as originating from the customer or a third party, or applying any type of special marking that could create the impression that the goods are special products, is not allowable.

(2)

The user assumes no liability for the possible violation of the proprietary rights of third parties resulting from the use of the goods being sold.

(3)

In case of goods produced according to customer specifications, the user assumes no liability for the possible violation of third-party proprietary rights; this also applies if the user was involved in development or has developed the goods based on customer specifications.

§ 16 Distance Selling Contracts

(1)

If the user is a consumer pursuant to Section 13 of the German Civil Code (BGB) and a contract for the delivery of goods is concluded through the exclusive use of means of telecommunication, i.e. means of communication that can be used to negotiate or conclude a contract without the simultaneous physical presence of the parties to the contract, the following also applies:

The customer can revoke its declaration of intent regarding the conclusion of a contract with the user within two weeks. Revocation must be declared in text form or by returning the goods; no reasons need to be specified. In case of the delivery of goods, the revocation period does not begin before the day the goods are received by the recipient. Timely dispatch is sufficient in order to meet this deadline. The declaration of revocation must be submitted to INELTEK GmbH.

§ 17 Resale/Export/Export Control

All goods delivered by the user are intended to remain in the destination country agreed upon with the customer. The customer obligates itself to observe that re-exporting these goods is subject to the foreign trade laws of the Federal Republic of Germany and / or the destination country and the country of origin of the product if applicable, and may therefore be subject to approval. The customer is obligated to obtain information about the applicable foreign trade laws on a case by case basis, and to apply for and obtain the required approvals directly where applicable.

§ 18 Applicable Law, Place of Fulfilment, Jurisdiction

(1)

The customer is only permitted to transfer the rights and obligations arising from the contract to third parties with the prior written consent of the user.

(2)

The laws of the Federal Republic of Germany apply to these business terms and conditions and the entire legal relationship between the user and the customer.

(3)

The place of fulfilment consists of the company premises of the user.

(4)

Insofar as the buyer is a general merchant pursuant to the German Commercial Code (Handelsgesetzbuch), legal person under public law or special fund under public law, the registered office of the user is the sole jurisdiction for all disputes arising from the contractual relationship, directly or indirectly.

§ 19 Severability Clause

Should a provision of these business terms and conditions or a provision of another agreement be or become ineffective, the effectiveness of all other provisions or agreements shall remain unaffected. In case of gaps, ambiguities or amendments, these business terms and conditions shall be fundamentally interpreted to correspond to the intent of the contract as a whole. Should a provision be or become ineffective, it is to be replaced by an effective provision that comes as close as possible to the intent and purpose of the ineffective provision.

Deviations from these terms and conditions must be agreed upon in writing.