

# General Terms of Sale, Delivery and Payment of INTERPART GmbH & Co. KG

## As of 10.10.2015

### § 1 Scope of Application

A contract is only entered into based on the general terms of sale, delivery and payment of INTERPART GmbH & Co. KG. Any contrary conditions of the purchaser or conditions that deviate from the sales conditions shall not be accepted unless INTERPART GmbH & Co. KG has expressly consented to them. The sales conditions of INTERPART GmbH & Co. KG shall also apply if the delivery to the purchaser is performed without complaint in spite of knowing of the contrary or deviating purchasing conditions of the purchaser. The general terms of sale, delivery and payment of INTERPART GmbH & Co. KG shall apply to future transactions with the purchaser even if they are not expressly referred to in future conclusions of contracts.

### § 2 Conclusion of a Contract and Content of the Contract

1. The sales offers of INTERPART GmbH & Co. KG shall be subject to confirmation. The purchaser shall be bound to his order for a period of 4 weeks. The contract shall be entered into by the order confirmation placed by INTERPART GmbH & Co. KG within this period or by any delivery directly performed after the order. Order confirmation by web-based message and/or telex shall satisfy written form. Oral agreements or oral changes or supplements of orders shall require express written confirmation by INTERPART GmbH & Co. KG to be legally valid. INTERPART GmbH & Co. KG shall have the right to report any deviation from the order that is reasonable for the purchaser with confirmation of the order. These deviations shall be binding upon both parties unless the purchaser objects to their content in writing within 12 days of dispatch of the order confirmation. In case of such objection, INTERPART GmbH & Co. KG shall have the right to declare rescission of the contract within another period of 12 days by sending the corresponding written declaration under exclusion of damages claims.

2. Rescheduling in the scope of an effectively entered-into order shall only be permitted by mutual consent.

3. INTERPART GmbH & Co. KG shall have the right to declare complete or partial rescission of the contract immediately,

- if the effects of force majeure (natural disaster, unrest, war, authority measures, transport impairment, strikes, lock-out, operational impairment) sustainably impair performance of the contract;
- if INTERPART GmbH & Co. KG is not supplied by its suppliers without being at fault for this;
- if an application for opening of insolvency proceedings regarding the purchaser's assets or corresponding proceedings under local law is filed.

### § 3 Place of Performance

1. The place of performance shall be the seat of INTERPART GmbH & Co. KG. The delivery and shipping of the goods shall be from the delivery storage at the purchaser's costs. This shall also include transport insurance, which shall be taken out by INTERPART GmbH & Co. KG at the purchaser's expense. INTERPART GmbH & Co. KG shall have the right to disclose any other site to the purchaser as the agreed site of performance (delivery site). When choosing a foreign place of performance, the applicable law and jurisdiction shall still be according to the rule in §§ 14 and 15.

2. INTERPART GmbH & Co. KG shall have the right to make partial deliveries and to invoice them separately.

3. The goods shall be packed professionally by INTERPART GmbH & Co. KG at the purchaser's expense.

4. Deliveries abroad shall additionally be subject to the rules of the Incoterms as amended from time to time (EXW).

### § 4 Delivery Time

1. Compliance with agreed deadlines for deliveries shall require timely receipt of all documents to be delivered by the purchaser, required permits and releases, and specifically plans, and complaints with the agreed payment conditions by the purchaser. If these prerequisites are not met in time, the periods shall extend appropriately unless INTERPART GmbH & Co. KG is at fault for the delay.

2. Timeliness of the delivery shall be according to the day on which the goods are transferred to the charged transport company. If acceptance does not take place in time due to the purchaser's fault, INTERPART GmbH & Co. KG shall, at its discretion, have the right to either demand immediate payment of the purchasing price (arrears invoice) after setting a grace period of 10 days, or to declare rescission of the contract and to demand damages for non-performance.

3. Agreed delivery periods shall extend appropriately in case of force majeure, labour dispute measures and other operational impairment without fault, or in case of delay of the delivery of essential input material, if the duration of the impairment exceeds one week. The delivery period shall be extended by the term of the impairment, but by no more than 5 weeks plus the subsequent delivery period. INTERPART GmbH & Co. KG shall be obliged to inform the purchaser of the reason for the impairment without delay as soon as it is evident that the agreed delivery periods cannot be complied with. In case of impairment of more than 5 weeks, there is a mutual right of rescission. The purchaser's rescission rights must be announced in writing at least 2 weeks before execution.

### § 5 Subsequent Delivery Period and Default Damage

1. After the expiration of the agreed delivery period, a subsequent delivery period of 12 days shall commence without further declaration. After the end of this subsequent delivery period, the purchaser shall have the right to set a written grace period of 4 weeks to INTERPART GmbH & Co. KG. After the end of this period, the purchaser shall have the right to declare rescission of the contract if he has threatened this when setting the grace period. If such declaration is missing when setting the grace period, INTERPART GmbH & Co. KG shall be free from the obligation to deliver after the end of this period if the purchaser does not make any statements on this within the subsequent delivery period or insists on performance of the contract.

2. No fixed transactions are made.

3. For any damage claims by the purchaser in case of default of delivery, which includes claims for reimbursement of expenses pursuant to § 284 German Civil Code, INTERPART GmbH & Co. KG shall only be liable if the delivery default has been caused wilfully or grossly negligently. This limitation of liability shall not apply in case of violations of life, body or health,

violation of legally binding representations and in case of malicious conduct and gross fault. Apart from this, claims for compensation in case of violation of essential contractual obligations shall be limited to the foreseeable damage typical for the contract; in case of slight negligence, they shall be limited to 50% of the foreseeable damage, unless INTERPART GmbH & Co. KG was informed of the possibility of damage beyond this when the order was placed.

### § 6 Acceptance Obligations

If the purchaser does not accept the goods, has already announced refusal of acceptance before delivery or returns delivered goods without authorisation, or if INTERPART GmbH & Co. KG has the right not to deliver pursuant to § 11, INTERPART GmbH & Co. KG shall have the right to demand that the purchaser perform the contract within a period of 12 days. The purchaser shall bear any costs for storage, insurance and other protection measures resulting from delayed acceptance. INTERPART GmbH & Co. KG shall have the right to charge a flat-rate of 0.5 % of the order value per week of delay for these costs, but no more than 5 % of the order value. After the end of this period, INTERPART GmbH & Co. KG shall have the right to dispose of the goods otherwise and to charge a flat rate of 33% of the agreed purchasing price for the damage arising to it, or, according to its choice, claim the verifiably actually incurred reduced revenue. The purchaser shall have the right to prove that the actually incurred damage was lower.

### § 7 Examination for Defects

1. The purchaser shall be obliged to examine the goods without delay after receipt and to report any defects – including delivery of goods deviating from the order – within an exclusion period of 7 days after receipt of goods. Transport damage shall be subject to the conditions of the freight transaction and the ADSp and CMR. In case of concealed defects, the period shall run from the time of discovery. Field service employees of INTERPART GmbH & Co. KG shall not have the right to accept reports of complaints. After the end of the period, complaints – also via the recourse of § 478 German Civil Code – shall be excluded. The same shall apply if delivered goods have been changed by the purchaser.

### § 8 Liability for Defects

1. Claims for defects of material shall only apply in case of non-essential defects. Commercial or small, technically unavoidable deviations of quality, sizes or weights, shall not be deemed a defect. Public statements, offers or advertising of the manufacturer shall not be deemed agreements on properties.

2. If the purchaser has documented that he has met his obligations pursuant to § 377 German Commercial Code, INTERPART GmbH & Co. KG shall, at its discretion, improve or make a replacement delivery in case of justified complaints. INTERPART GmbH & Co. KG shall have the right to subsequent performance within a period of 2 months of rescission of the defective purchase object. The warranty rights of the Purchaser shall be forfeited if he does not provide the goods to INTERPART GmbH & Co. KG after a complaint for defect within a period of 10 days in spite of express demand. If subsequent performance fails, the purchaser shall have the right to either declare rescission of the contract or to reduce the purchasing price, but only limited to the goods subject to complaint.

3. Complaints for defects shall not apply in case of natural wear of the purchase object or damage that results after passing of the risk due to defective or negligent treatment, excessive stress, unsuitable operating equipment or due to special outer influences that are not assumed according to the contract. If the purchaser or third parties perform any unprofessional changes or repairs, these and the resulting consequences also shall not be subject to claims for defects of material. The following further facts shall lead to exclusion of warranty and liability claims:

- Non-intended use of the purchase object
- Improper installation, commissioning and operation or servicing of the purchase object
- Non-observance of the notes in the operating instructions in terms of transport, storage, installation, commissioning, operation, servicing
- Independent structural changes
- Effects from force majeure

If it turns out that a complaint for defects was unjustified, the Purchaser shall reimburse the resulting expenses (transport costs, examination costs, etc.).

4. There shall be no warranty claims for wear parts.

5. Claims for reimbursement of expenses of the purchaser due to expenses required for subsequent performance, specifically transport distances, labour and material costs, shall be excluded where the expenses have arisen or been increased because the object has been taken to another location than the place of handover, unless this transport corresponds to the contractual use. Improvement may also be performed by the purchaser in coordination with INTERPART GmbH & Co. KG. If the purchaser has delivered the goods on to a third party, an agreement on possible additional costs must be reached first.

6. If the delivered object has already been installed, INTERPART GmbH & Co. KG shall not be obliged to assume installation and removal costs even in case of justified complaints for defects.

7. The warranty period shall be 1 year for new goods, from the passing of risk. This period shall be an expiration period and shall also apply to the assertion of damage not arising to the object of the delivery itself, but not to any claims from tort or if INTERPART GmbH & Co. KG is accused of malice. Used and regenerated purchase objects shall only be subject to warranty if this has been individually agreed; otherwise, it shall be excluded.

8. If the purchaser has not met his payment obligations from the defective delivery towards INTERPART GmbH & Co. KG,

- INTERPART GmbH & Co. KG shall have the right to refuse subsequent performance;

### § 9 Limitation of Liability

1. Any claims of the purchaser exceeding the claims granted in § 8 shall be excluded, no matter the legal reason - including tort. INTERPART GmbH & Co. KG shall not be liable for any damage that has not arisen to the delivered object directly, or for lost profit or other asset damage of the purchaser.

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2. Where liability of INTERPART GmbH & Co. KG is excluded or limited, this shall also apply to the personal liability of a statutory representative, employee, worker, colleague, representative and servant of INTERPART GmbH & Co. KG.

3. The liability release purs. to items 1 and 2 shall not apply in case of violation of life, body or health, if damage has been caused wilfully or grossly negligently, if INTERPART GmbH & Co. KG has assumed any guarantee for the properties of the goods or represented the property and if INTERPART GmbH & Co. KG is at fault for malicious conduct. It shall also not apply to any claims purs. to §§ 1, 4 Product Liability Act. Where INTERPART GmbH & Co. KG has negligently violated any main obligation or essential contractual obligation, the compensation obligations shall be limited to the foreseeable damage typical for the contract; in case of slight negligence, it shall be limited to 50 % of the foreseeable damage. Item 2 shall apply in this case as well.

**§ 10 Payment**

1. The purchaser shall be obliged to disclose his VAT ID at conclusion of the contract.
2. The invoice shall be issued on the day of delivery or provision of the goods. Invoices shall be due and payable at once.
3. Where INTERPART GmbH & Co. KG indicates prices in foreign currencies, these shall not be influenced by changes to the official conversion rate between Euro and foreign currencies. The payment shall be made in the foreign currency at the amount invoiced. Bills of exchange or cheques are only accepted in lieu of performance.
4. In case of payments by cheque, the date of cashing in of the cheque, in case of money transfer the day of crediting to the account of GmbH & Co. KG shall be relevant.
5. Payments shall always be set off against the oldest due claim plus any default interest incurred for it.
6. The statutory VAT shall not be included in the prices of INTERPART GmbH & Co. KG. It shall be indicated separately in the invoice at the statutory amount on the day of invoicing.
7. For foreign transactions, the purchasing price shall be settled by advance payment before delivery/provision of the goods - in case of drop shipments by the supplier.

**§ 11 Payment Default**

1. In case of default of payment, INTERPART GmbH & Co. KG shall have the right to charge default interest at 9 percentage points above the base interest rate or a verifiable higher default damage.
2. In case of default of payment by exceeding the payment target, INTERPART GmbH & Co. KG shall be due the following further rights:
  - a) INTERPART GmbH & Co. KG shall have the right to refuse further deliveries from current contracts. Delivery periods for current contracts not met yet shall be interrupted without requiring separate notification retroactively to the time from default of payment and until complete payment.
  - b) INTERPART GmbH & Co. KG shall have the right to demand immediate payment before delivery of the goods for any pending deliveries from any current contracts in replacement of the payment target.
  - c) INTERPART GmbH & Co. KG may execute the rights (collateral by retention of title) agreed on in § 13 and/or declare full or partial rescission of all present contracts.
3. INTERPART GmbH & Co. KG shall have the same rights if any essential deterioration of the purchaser's asset situation occurs (e.g. other cessation of payments, insolvency application, forced execution measures, cheque or bill of exchange protests, discontinuation of business).
4. In case of default of payment, the purchaser shall bear the costs and fees arising for INTERPART GmbH & Co. KG. In addition to this, the purchaser shall compensate for all costs that INTERPART GmbH & Co. KG incurs from charging a German or foreign lawyer, including a correspondence lawyer.

**§ 12 Set-Off and Retention**

The purchaser shall only be allowed to set off against undisputed or finally determined counter-claims. The same shall apply to any right of retention if the purchaser is a merchant. If this is not the case, a right of retention can only be asserted if the counter-claim is due to the same contractual relationship.

**§ 13 Collateral by Retention of Title**

1. Title in the goods is retained by INTERPART GmbH & Co. KG until complete payment of all claims from delivery of goods from the entire business relationship, including secondary claims, damages claims and cashing in of cheques and bills of exchange. The retention of title shall also be retained if individual claims are included in a current account and the balance is drawn and accepted.
2. The purchaser shall perform any change or processing for INTERPART GmbH & Co. KG without any obligation arising from this for INTERPART GmbH & Co. KG. For processing, use and mixing of the goods subject to retention of title with any other goods that do not belong to INTERPART GmbH & Co. KG, INTERPART GmbH & Co. KG shall be due shared title in the new object at the ratio of the factor value to the other processed goods at the time of processing, use or mixture. If the purchaser acquires sole title in the new object, the contracting parties agree that the purchaser grants INTERPART GmbH & Co. KG a shared title in the new object at the ratio of the factor value of the processed, connected or mixed goods subject to retention of title and that he will keep this free of charge for INTERPART GmbH & Co. KG.
3. The purchaser shall have the right to sell the goods on in his proper course of business. However, he hereby assigns the claims with all secondary rights from further sale of the goods subject to retention of title to INTERPART GmbH & Co. KG. INTERPART GmbH & Co. KG accepts this assignment. The purchaser shall remain entitled to collect the assigned claims.
4. The purchaser shall not be entitled to use the goods subject to retention of title in the scope of global assignments to financing institutes or similar facilities or to otherwise pledge

or provide them as collateral. In case of attachment or other third-party access, the purchaser shall inform INTERPART GmbH & Co. KG in writing without delay to enable it to assert its rights purs. to § 771 ZPO. Where the third parties are unable to reimburse INTERPART GmbH & Co. KG for the court or out-of-court costs of an action purs. to § 771 ZPO, the purchaser shall be liable for the resulting damage.

5. In case of questionable conduct of the purchaser, especially in case of default of payment, INTERPART GmbH & Co. KG shall have the right to declare rescission of the contract and to take back the purchase object. The purchaser hereby consents to this. INTERPART GmbH & Co. KG shall have the right to dispose of the purchase object after its return, and the resulting damage may be claimed purs. to the rules of § 6.

6. If the value of the collateral of INTERPART GmbH & Co. KG exceeds the actual claims by more than 20%, INTERPART GmbH & Co. KG shall release collateral exceeding the amount at its discretion upon the purchaser's request.

**§ 14 Applicable Law**

1. Any legal transactions shall be subject to the laws of the Federal Republic of Germany. The provisions of the consistent international UN purchasing law on movable objects shall be expressly excluded.
2. Where goods are exported, INTERPART GmbH & Co. KG shall be responsible for compliance with the relevant German provisions. Observation and execution of the relevant foreign-trade provisions (e.g. import licenses, foreign exchange transfer approvals, etc.) and other laws applicable outside of the Federal Republic of Germany, including those of the destination country, shall be subject to the purchaser's scope of responsibility.

**§ 15 Place of Jurisdiction**

If the purchaser is a merchant, the court locally relevant for the seat of INTERPART GmbH & Co. KG (district court (Amtsgericht) Neuwied - regional court (Landgericht) Koblenz), shall also be agreed as place of jurisdiction for claims from bills of exchange and cheques. INTERPART GmbH & Co. KG shall, however, have the right to raise an action against the purchaser at his corporate seat as well.

**§ 16 Partial Invalidity and Side Agreements**

1. Where individual provisions of this contract are wholly or partially invalid or lose their validity at a later time, this shall not affect the validity of the remaining provisions. This shall also apply if it turns out that there is a gap in the contract. The invalid or impractical provisions shall be replaced or the gap shall be filled by such provision that comes as close as possible to the invalid or impractical provision under economic consideration in the scope of what is legally permissible or, in case of a gap, under consideration of what the contracting parties would have wanted according to the purpose of the contract, if they had thought of this item at conclusion of the contract or at later inclusion of a provision.
2. Side agreements with persons whose representation rights for INTERPART GmbH & Co. KG are not evident from the commercial register shall be invalid unless expressly confirmed by INTERPART GmbH & Co. KG in writing.
3. Oral side agreements are not valid.