

**1. General**

**1.1** All deliveries and other services (assembly, commissioning, repairs, maintenance, services, consulting services, etc.) provided by us, INNEX Wärmetauscher GmbH, Dormagen, shall be based exclusively on these Terms and Conditions; we shall not recognize any conflicting terms and conditions of business or purchase of the Customer unless we have expressly agreed to their validity in writing. Our Terms and Conditions shall apply even if we carry out the delivery to the Customer without reservation knowing that the Customer's terms and conditions are contrary to or deviate from our Terms and Conditions.

**1.2** We reserve all property rights and copyrights to illustrations, drawings and other documents (hereinafter referred to as documents) without restriction; they may not be made accessible to third parties unless we have given our express written consent. Documents pertaining to offers must be returned to us without delay if no order has been placed and we request their return. Sentences 1 and 2 shall apply mutatis mutandis to documents of the Customer; these may, however, be made accessible to such third parties to whom we have permissibly assigned deliveries or other services.

**1.3** We are entitled to use other companies to fulfill our obligations. For the performance of other services, we shall be entitled towards the Customer to have the services performed by us signed off, in particular to have the corresponding time sheets signed off; the forms required for this purpose shall be provided by us.

**1.4** Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions or the Contract itself. This shall not apply if adherence to the Contract would represent an unreasonable hardship for one of the contracting parties.

**1.5** Insofar as these General Terms and Conditions stipulate compliance with the written form, this shall also be deemed complied with in the case of transmission by fax or e-mail.

**2. Content of the Contract/Conclusion of the Contract**

**2.1** Pre-contractual communications made by us, such as offers, cost estimates and descriptions, shall not be binding unless otherwise agreed in writing.

**2.2** The documents belonging to the offer such as drawings, illustrations, technical data, references to standards as well as statements in advertising material shall not be deemed to be quality specifications, property warranties or guarantees unless they are expressly designated as such in writing.

**2.3** Catalogue and brochure information, leaflets, application notes and other information shall not form part of the Contract unless otherwise agreed in writing.

**2.4** Orders shall only be binding for us if we have confirmed them in writing or delivered them within two weeks after receipt. The Customer shall be bound to its order for this period.

**3. Prices/Terms of Payment**

**3.1** Unless otherwise stated in our order confirmation, our sales prices shall apply ex works (Incoterms 2020, Dormagen) at the place specified in our offer or acceptance; if no place of destination is specified in our offer/acceptance, "ex works" shall be our registered office. Our sales prices are exclusive of packaging; this will be invoiced separately. The same shall apply to other ancillary services.

**3.2** Prices for other services shall be calculated according to the agreed fixed price or, in the absence of such an agreement, according to time and effort in accordance with our service rates applicable at the time of performance of the service plus ancillary costs (travel costs, spare parts, etc.).

**3.3** The services rendered for the purpose of submitting a cost estimate may be charged to the Customer if no contract is concluded. Clause 3.2 shall apply.

**3.4** The respective agreed terms of payment shall apply to all payments. Unless a separate agreement has been made, all invoices are due immediately and payable strictly net cash within 14 days of the invoice date.

**3.5** All payments made to us shall be transferred free of charge to a bank account designated by us. Unconditional crediting to the account shall be decisive for the timeliness of the payment.

**3.6** Statutory value added tax is not included in our prices; it will be stated separately in the invoice at the statutory rate on the date of invoicing.

**3.7** The presentation of bills of exchange requires our consent; their expenses and costs as well as the risk for timely presentation and protesting shall be fully borne by the Customer.

**3.8** In the event of default of payment by the Customer, we shall charge interest in the amount of the standard bank interest rate, at least 9 percentage points above the respective base interest rate of the ECB, subject to the assertion of further damages.

**3.9** In the event of default of payment and reasonable doubt as to the solvency or creditworthiness of the Customer, we shall be entitled - without prejudice to our other rights under Section 321 of the German Civil Code (defense of insecurity) - to demand securities or advance payments for outstanding deliveries or other services, to retain the outstanding services or deliveries and/or to make all claims arising from the business relationship immediately due and payable.

**3.11** Only undisputed or legally established claims shall entitle the Customer to set-off or retention.

**4. Retention of Title**

**4.1** Until full payment of our claims arising from the business relationship with the Customer, the goods sold shall remain our property. The Customer is revocably authorized to dispose of the purchased goods in the ordinary course of business.

**4.2** The retention of title shall also extend to the products created by processing, mixing or combining our goods at their full value, whereby no obligation on our part shall be created thereby. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of these processed goods.

**4.3** Claims against third parties arising from the resale shall here and now be assigned to us by the Customer in total or in the amount of our possible co-ownership share (cf. § 4.2) by way of security. We accept this assignment. The Customer shall be authorized to collect these claims for our account until revocation or cessation of its payments to us. This authorization shall end, without the need for revocation, upon the filing of an insolvency petition against the assets of the Customer. The Customer shall also not be authorized to assign these claims for the purpose of collecting the claims by way of factoring, unless the factor is simultaneously obligated to effect the counter-performance in the amount of our share of the claim directly to us for as long as we still have claims against the Customer.

**4.4** The Customer is obliged to treat the goods with care; in particular, it is obliged to insure them adequately at replacement value against fire, water and theft damage at its own expense. Insofar as maintenance and inspection work is required, the Customer shall carry out such work in good time at its own expense.

**4.5** Access by third parties, e.g. through seizure, to the goods and claims belonging to us must be immediately notified to us by the Customer in text form.

**4.6** The goods and the claims replacing them may neither be pledged to third parties nor assigned or transferred by way of security before full payment of our claims.

**4.7** We undertake to release the securities to which we are entitled at the request of the Customer to the extent that the value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released shall be incumbent upon us.

**5. Delivery/Performance**

**5.1** Delivery and performance deadlines shall only be binding if they have been expressly confirmed by us as such.

**5.2** Delivery and performance deadlines shall commence as of the date of order confirmation. Unless otherwise agreed, the delivery deadlines shall be deemed to have been complied with if the Customer has received notification that the delivery item is ready for dispatch at the agreed time or within the agreed period; in the case of other services, if the other service is commenced within said period.

**5.3** Compliance with delivery and performance deadlines shall be subject to the clarification of all technical issues, in particular the timely receipt of all documents to be provided by the Customer, any required approvals and releases, as well as compliance with the agreed terms of payment and other obligations of the Customer. If the aforementioned prerequisites are not met, the deadlines shall be extended accordingly; this shall not apply if we are responsible for the delay.

**5.4** If we are prevented from delivering or performing on time due to official orders or measures, force majeure, mobilization, war, riot, strike, lockout or a pandemic, or due to incorrect or untimely delivery by suppliers or due to the occurrence of unforeseen obstacles beyond our control or that of our suppliers, a reasonable extension of the deadline shall apply.

**5.5** If the obstacles to delivery or performance listed under 5.4 last for an unreasonably long time, both contracting parties shall be entitled to withdraw from the Contract. The Customer shall only be entitled to withdraw from the Contract after the fruitless expiry of a reasonable grace period, unless a fixed-date transaction under commercial law has been agreed in writing. The Customer shall not be entitled to any other claims.

**5.6** If the delivery or performance deadline is exceeded for reasons for which we are responsible, the Customer shall be entitled to withdraw from the Contract after expiry of a reasonable grace period. Claims for damages shall be governed by the provisions of § 11.

**5.7** If the Customer causes a delay in the delivery or the shipment of the delivery items or in the performance of other services, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Further claims or rights shall remain reserved.

**5.8** In the event of default of payment by the Customer, we shall be entitled to assert a right of retention to further deliveries or other services.

**5.9** We are entitled to make partial deliveries if

- the partial delivery is usable for the Customer within the scope of the contractual purpose,

- the delivery of the remaining goods is ensured and the Customer does not incur any significant additional expenses or additional costs as a result (unless we declare our willingness to bear the costs)

**6. Obligation to Cooperate**

If we perform other services at a location other than our registered office or if our other services are dependent on preparatory work by the Customer or a company commissioned by the Customer, the Customer shall, at its own expense, perform or arrange for the performance of all preparatory works/acts of cooperation necessary for the performance of the work in such a timely manner that no hindrance on our part is to be expected upon commencement of or during the performance of the other services. In particular, the Customer shall provide us with all necessary documents (permits, plans, etc.) without being requested to do so prior to the execution of the work. In addition, the Customer shall be obliged to provide the necessary commodities, protective devices and, if applicable, tools and to communicate essential information.

**7. Transfer of Risk**

**7.1** Unless otherwise agreed between us, the transfer of risk shall be "ex works Dormagen" (Incoterms 2020). In deviation from this, the risk of accidental loss and accidental deterioration of the delivery item shall pass to the Customer as soon as the Customer has received notification that the delivery item is ready for shipment at the agreed time or within the agreed period.

**7.2** If the delivery item is shipped at the request of the Customer at a later date than the agreed delivery date, the risk of accidental loss and accidental deterioration shall pass to the Customer as of the originally agreed delivery date.

**7.3** Unless a separate agreement has been made, the risk of loss and accidental deterioration of other services shall pass to the Customer as a whole and also for independent partial sections as of notification of completion. In the event of an agreement on a trial operation, the risk shall pass to the Customer upon completion of the successful trial operation, but no later than 14 days after receipt of the notification of readiness for a trial operation.

**7.4** If the other services or the trial operation are interrupted, delayed or discontinued for reasons for which we are not responsible, the risk of accidental loss and accidental deterioration of the other services already provided shall pass to the Customer upon receipt of the notification of the hindrance.

**8. Acceptance**

**8.1** Acceptance shall only take place within the scope of other services if this has been agreed in writing. If acceptance has been agreed, we shall be obliged to notify readiness for acceptance.

**8.2** If no agreement has been made on the exact time of acceptance, acceptance shall be carried out immediately after performance of the service and, in the case of larger projects, within a period of 7 days after receipt of the notification of readiness for acceptance.

**8.3** Acceptance may not be refused due to such defects by which functionality is not or

only insignificantly impaired.

**8.4** If acceptance does not take place within a period of 14 days after receipt of the notification of readiness for acceptance for reasons for which we are not responsible, acceptance shall be deemed to have taken place upon expiry of this period.

**8.5** Acceptance shall also be deemed to have occurred if the Customer has put the relevant item to use before expiry of the period specified in § 8.4.

**8.6** If acceptance has been agreed, the transfer of risk shall, in deviation from § 7.3, occur upon acceptance.

**8.7** The costs of acceptance shall be borne by the Customer.

**8.8** A completion certificate issued by an expert in accordance with the statutory provisions shall be deemed equivalent to acceptance.

## 9. Liability for Material Defects

**9.1** All information on the suitability, processing and application of our products, technical advice and other information are given to the best of our knowledge; they do not exempt the Customer from carrying out its own tests and trials or from employing or commissioning qualified personnel. We shall only be liable for any special use or filling of our products if we have been informed of this in writing in advance and if we have confirmed it. The manual delivered on a storage medium will not be updated.

**9.2** The rights arising from the Customer's liability for material defects shall require that the Customer has duly complied with its obligations to inspect the goods and to give notice of defects pursuant to Section 377 of the German Commercial Code (HGB).

**9.3** Our obligation within the scope of liability for material defects shall be limited to rectification or replacement delivery (subsequent performance) at our discretion.

**9.4** Claims of the Customer for expenses incurred for the purpose of subsequent performance, in particular transport, labor and material costs, shall be excluded to the extent that the expenses are increased because the delivery item has been taken to a place other than the Customer's registered office. In all other respects, the Customer's claim for reimbursement of the costs of removal of the defective part and installation of the repaired part shall be limited to 10% of the net purchase price, but not more than € 100,000, unless we have assumed a guarantee for the quality of the defective part or fraudulently concealed the defect.

**9.5** The Customer may only demand compensation for the loss of production in preparation for or during the period of rectification or subsequent performance under the prerequisites of § 11.

**9.6** The Customer shall grant us the time and opportunity reasonably required for subsequent performance. If subsequent performance has failed twice, the Customer shall be entitled to the statutory rights arising from liability for material defects, damages only under the conditions of these Terms and Conditions.

**9.7** Liability for material defects shall not apply in particular to defects caused after the transfer of risk by the Customer or a third party commissioned by the Customer as a result of faulty transport, improper storage, unsuitable foundation soil, improper installation, faulty assembly, incorrect use, incorrect connection, faulty or improper operation, or as a result of excessive stress and unforeseen operating conditions, in particular, but not limited to, uncontrollable natural events (e.g. earthquakes, storms) or chemical or electrical influences or as a result of normal wear and tear. Furthermore, any liability for material defects in the event of deterioration or loss of the goods delivered by us after the transfer of risk shall be excluded, unless the material defect causing the deterioration or loss already existed at the time of transfer of risk.

**9.8** Claims arising from liability for material defects shall also be forfeited if operating, installation or maintenance instructions are not followed, changes or modifications are made to the delivery item or unapproved spare parts or consumables are used.

**9.9** Goods subject to complaint may only be returned with our express consent. In this case, the Customer shall use professional and transport-safe packaging.

**9.10** The parts replaced in fulfillment of the obligation arising from the liability for material defects shall become our property upon removal.

**9.11** We shall be liable for rectifications or replacement deliveries to the same extent as for the original delivery item, namely until the expiry of the limitation period for material defects applicable to the original delivery or service item.

**9.12** For new delivery items and other services, the limitation period for material defects shall be twelve months, calculated from delivery, insofar as acceptance has been agreed, from acceptance. This shall not apply to claims for damages arising from injury to life, limb or health or intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents.

**9.13** We shall deliver used goods to the exclusion of any liability for material defects. This shall not apply to claims for damages arising from injury to life, limb or health or intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents.

**9.14** If within the scope of subsequent performance or rectification it turns out that there is no material defect, the Customer shall reimburse us for all expenses that we have incurred to rectify the defect.

**9.15** The Customer shall not be entitled to any further claims or claims other than those regulated in this § 9, unless otherwise stipulated in § 11.

## 10. Industrial Property Rights and Copyrights; Defects of Title

**10.1** Unless otherwise agreed in writing, we shall be obliged to provide the delivery free of industrial property rights and copyrights of third parties only in the country of the place of delivery. If the use of the delivery item leads to an infringement of industrial property rights or copyrights of third parties in the country of the place of delivery, we shall, at our own discretion and at our own expense, procure a right of use for the Customer or modify the delivery item in a manner reasonable for the Customer in such a way that the infringement of industrial property rights no longer exists, or replace the delivery item. The limitation period shall correspond to the limitation period for material defects set out in § 9.11.

**10.2** If the subsequent performance described in § 10 (1) is not possible under economically reasonable conditions or within a reasonable period of time, the Customer shall be entitled to the statutory rights of rescission or reduction.

**10.3** Our aforementioned obligations shall only exist insofar as the Customer immediately notifies us in writing of the claims asserted by the third party, supports us to a reasonable extent in defending the asserted claims or enables us to carry out subsequent performance in accordance with § 10.1, does not acknowledge an infringement and all defensive measures and settlement negotiations remain reserved to us.

**10.4** Claims of the Customer based on warranty of title shall be excluded insofar as the Customer is responsible for the infringement of industrial property rights and copyrights of third parties, in particular if such infringement is caused by special specifications of

the Customer, by an application not foreseeable by us or by the fact that the delivery is modified by the Customer without authorization or is used together with products not supplied by us, thereby causing the infringement.

**10.5** The Customer shall not be entitled to any further claims or claims other than those regulated in this § 10, unless otherwise stipulated in § 11.

## 11. Damages

**11.1** Claims for damages on the part of the Customer, irrespective of the legal grounds, in particular for breach of obligations arising from the contractual obligation and from liability in tort, shall be excluded unless otherwise provided for in the following.

**11.2** We shall be liable without limitation for

- damages resulting from injury to life, limb or health caused by a breach of duty for which we are responsible; and/or

- other damages resulting from an intentional or grossly negligent breach of duty on our part; and/or

- violations of the Product Liability Act.

**11.3** The limitation of liability in § 11.1 shall also not apply in the event of a breach of an obligation the fulfillment of which is a prerequisite for the proper execution of the Contract, the breach of which jeopardizes the achievement of the purpose of the Contract and/or whose observance the Customer may rely on. In such a case, we shall also be liable for simple negligence up to the amount of the foreseeable damage. Claims for loss of profit, saved expenses, claims for damages from third parties as well as indirect and consequential damages cannot be demanded in these cases, unless a characteristic feature guaranteed by us is intended to protect the customer against such damages. In the event of a breach of other obligations, we shall not be liable for simple negligence. 11.2 remains unaffected.

**11.4** Any liability for fraudulent concealment of a defect or for breach of a guarantee given by us shall remain unaffected.

**11.5** A breach of duty by us shall be equivalent to a breach of duty by our legal representatives or vicarious agents.

## 12. Extended Lien

**12.1** We shall be entitled to a contractual lien on the objects that have come into our possession on the basis of the order due to claims arising from an order that has a work performance as its contractual basis. **12.2** We shall also be entitled to assert the contractual lien on account of claims arising from work previously performed, other services and deliveries, insofar as they are connected with the ordered item. In the case of other claims, the contractual lien shall only apply insofar as these are undisputed or a legally binding title exists and the Customer is the owner of the ordered item.

## 13. Place of Performance, Jurisdiction and Applicable Law

**13.1** The place of performance for deliveries and other services shall be our respective registered office.

**13.2** If the Customer is a merchant, a legal entity under public law or a special fund under public law, our registered office is hereby agreed as the exclusive place of jurisdiction - unless otherwise stipulated in Section 13.2. However, we shall also be entitled to sue the Customer at the court in whose district the Customer has its registered office.

**13.3** If the Customer has its registered office in a country which is neither a member of the EU nor of EFTA (member states of EFTA are Iceland, Norway, Switzerland and Liechtenstein), § 13.2 shall not apply. Instead, all disputes arising out of or in connection with this Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by three arbitrators appointed in accordance with the above provision. The place of arbitration shall be Düsseldorf / Germany. The applicable substantive law shall be the law of the Federal Republic of Germany, excluding the conflict-of-law provisions of private international law and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG). The language of the arbitration proceedings shall be German.

**13.4** All contracts concluded with us for deliveries and other services shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the conflict-of-law provisions of private international law and the provisions of the UN Convention on Contracts for the International Sale of Goods (CISG).

## 14. Authoritative Version

In case of doubt, the German version of these General Terms and Conditions shall prevail.