

General terms and conditions of Inotec GmbH

Valid from April 2021

§ 1

General, scope

I. All offers, deliveries and other services provided by INOTEC GmbH — including in the future — are exclusively subject to these general terms and conditions.

Terms and conditions of the customer that deviate from or are not included in our terms and conditions are not recognised unless INOTEC GmbH has explicitly agreed to their validity in writing. Counter-confirmations by the customer with reference to their terms and conditions of business or purchase are hereby rejected.

II. INOTEC GmbH's general terms and conditions of leasing apply to leasing services we provide.

§ 2

Product descriptions, application-related information, subject to change

I. Machine descriptions in brochures, technical data sheets, etc. do not constitute quality guarantees. Application-related information and recommendations that INOTEC GmbH issues verbally and in writing to support the customer or processor are based on our current level of knowledge. They are non-binding and do not establish any contractual rights nor any secondary obligations from the purchase contract, unless explicitly agreed otherwise.

II. We reserve the right to make design and material changes, provided that normal use of the delivery item or use required under the contract is not significantly or adversely affected and the change is reasonable for the customer.

§ 3

Delivery period, assembly deadline

I. Agreed delivery periods start on conclusion of the contract, but not before the customer has provided the necessary documents and approvals and has fully clarified all of the details regarding the requested execution and all technical questions. Compliance with the delivery period always requires the customer to meet its contractual obligations.

II. In the event of force majeure and any unforeseeable obstacles which were unknown on conclusion of the contract, where we are not responsible for such obstacles, the delivery period shall be extended appropriately — including within a delay — insofar as it is proven that such obstacles impacted the provision of the service owed.

This also applies if these circumstances apply to sub-suppliers. We shall notify the customer of the start and end dates of such obstacles as early as possible. If the obstacle lasts for more than three months or if it is determined that this will last for more than three months, both we and the customer may withdraw from the contract.

III. If we have agreed the time of delivery, assembly or installation with the customer, the customer is obliged to take all precautions at their place of work to be able to carry out their planned work. In particular, the customer is obliged to provide electrical connections, compressed air connections and adequate lighting at the place of work.

If the customer is responsible for the fact that we are unable to complete the planned work, are unable to complete it in full, or are unable to complete it within a reasonable period of time, the customer is obliged to compensate us for any damages incurred, and is particularly obliged to reimburse use for any additional costs incurred as a result of additional journeys and wasted working hours additionally required from our employees.

The assembly deadline is met if assembly has been carried out for acceptance by the customer by the deadline. If a test is stipulated by the contract, the deadline is met if assembly has been carried out for execution by the deadline. If there are any delays as a result of force majeure or circumstances for which the customer is responsible, the assembly deadline shall be extended to a reasonable extent.

IV. If the customer has demonstrably suffered damage as a result of a delay by INOTEC GmbH as an assembly company, they are entitled to demand compensation for the delay. In the case of simple negligence on the part of INOTEC GmbH, this is a fixed amount totalling 0.5% for each full week of the delay, but this amount shall not exceed 5% of the value of the part of the total delivery that cannot be used on time or in line with the contract as a result of delayed assembly.

§ 4

Transportation, transfer of risk, packaging, partial deliveries

I. Unless otherwise agreed, INOTEC GmbH shall deliver goods carriage forward and uninsured to the named destination at the risk of the recipient. If there are any damages in transit, the damage must be confirmed by the carrier before the goods are accepted. If carriage paid delivery is owed, this only applies to shipping and transportation standard in the industry. Additional costs, e.g. for express freight requested by the customer, shall be borne by the customer.

II. Unless otherwise agreed, risk for shipping transactions transfers to the customer as soon as the delivery has been handed over to the person providing transportation. If dispatch is not possible for reasons for which INOTEC GmbH is not to blame, risk transfers to the customer upon notification that the goods are ready for dispatch. If the customer collects the goods, risk transfers when the goods are handed over.

III. Unless explicitly agreed otherwise, INOTEC GmbH shall provide deliveries without packaging.

IV. INOTEC GmbH is entitled to partial delivery and partial performance to a reasonable extent.

§ 5

Prices and payment, returns

I. Unless otherwise agreed, prices do not include packaging, transportation, insurance, unloading, installation, assembly and commissioning, namely for delivery ex works or from the delivery warehouse, and are exclusive of statutory VAT at the respective rate. The prices quoted are only valid for the respective individual order. Assembly is billed based on time spent, unless a fixed rate has been explicitly agreed.

II. If contracts have an agreed delivery period of more than two months, both contracting parties may request a change in the agreed price if costs decrease or increase after the contract is concluded and the contracting parties cannot avoid this, particularly if such decreases or increases are caused by collective bargaining agreements or changes in the cost of materials. The price change must be limited to the amount required to compensate for the cost decrease or increase. A party is entitled to a similar price adjustment if delays arise for which the other party is responsible and these result in an actual delivery period of more than two months.

III. Unless otherwise agreed (e.g. when the invoice is sent), payments are to be made immediately on delivery of the goods. Payment is only considered to have been made when INOTEC GmbH has the amount at its disposal.

Granting a payment term once or several times only applies to the invoice amount referred to and not to other receivables (e.g. receivables from other or future deliveries).

IV. If the customer defaults on payment, INOTEC GmbH may demand statutory default interest as a minimum.

V. Offsetting payments or retaining payments where such retention equates to offsetting is only permitted if the customer has legal claims that are recognised by INOTEC GmbH, are not disputed, are pending judgement or have been established by law.

VI. Despite any of the customer's provisions to the contrary, INOTEC GmbH is entitled to initially offset payments against their older debts and will notify the customer about the type of offsetting that has taken place. If costs and interest have already been incurred, INOTEC GmbH is entitled to offset the payment against the costs first, then against the interest and finally against the main receivable.

VII. If the customer defaults on acceptance of the delivery items or on payment, INOTEC GmbH may withdraw from the contract and/or may demand compensation instead of performance after a reasonable grace period passes to no avail, where such a grace period is required by law and is set by INOTEC GmbH. If a compensation claim for damages is asserted, INOTEC GmbH may demand compensation at the amount of 15% of the purchase price, without being required to provide evidence to compensate for lost profit. The contracting parties are free to provide evidence of higher or significantly lower actual damage.

VIII. If we take back goods after consultation without any legal obligation, a credit note will be issued that totals a maximum of the value of the goods. With respect to the expenses incurred (loss of value, testing, cleaning, freight, packaging, administrative expenses, etc.), we reserve the right to deduct the working hours spent at current billing rates and/or a percentage of the value of the goods from the credit note, and with respect to machine returns, we reserve the right to carry out a leasing calculation using current leasing rates.

§ 6

Retention of title, extended retention of title

I. INOTEC GmbH retains title to the delivered goods until all receivables from the concluded contract, including all accessory claims (e.g. exchange costs, financing costs, interest) have been met in full. If several items are delivered for a total price, ownership of all items remains reserved until full payment has been made.

If a current account agreement has been made with the customer, retention of title exists until the recognised current account balance has been paid in full.

If cheques or bills of exchange are accepted, fulfilment only occurs when the cheque or bill of exchange has been cashed and INOTEC GmbH has the amount at its disposal without any recourse risks.

II. The customer is obliged to treat the goods subject to retention of title with care and to immediately notify INOTEC GmbH in the event of seizure, confiscation, damage or loss. Any breach of this obligation gives INOTEC GmbH the right to withdraw from the contract. The customer shall bear all of the costs that have to be paid, particularly in the context of third-party action against seizure being lifted and, if necessary, for the replacement of the delivery items, unless they can be recovered from third parties.

III. If the customer defaults in payment with respect to a not inconsiderable portion of its obligations, INOTEC GmbH is entitled to temporarily take back the goods subject to retention of title. Exercising the right of withdrawal does not constitute a withdrawal from the contract, unless INOTEC GmbH has explicitly declared withdrawal. The customer shall bear any costs that arise from the exercise of the right of withdrawal (in particular for transportation and storage) if INOTEC GmbH threatened withdrawal within a reasonable period of time. INOTEC GmbH is entitled to dispose of the goods subject to retention of title that have been taken back and to offset its claims with the proceeds, provided that INOTEC GmbH has previously threatened to dispose of them. In the threat, INOTEC GmbH must have set the customer a reasonable deadline to meet their obligations.

IV. The customer hereby assigns to INOTEC GmbH the purchase price, wages or other receivables (including the recognised balance from a current account agreement or, in the event of insolvency on the part of the customer's business partner, the 'causal balance' available) at the amount of the invoice value for the goods subject to retention of title (inclusive of VAT) from the onward sale or further processing of the goods subject to retention of title, or which arise because of another legal reason (insurance, tort, loss of ownership caused by connecting the delivery item to a property); INOTEC GmbH hereby accepts the assignment. INOTEC GmbH irrevocably authorises the customer to collect receivables assigned to INOTEC GmbH for the account of INOTEC GmbH in their own name. This collection authorisation can only be revoked if the customer does not properly meet their payment obligations. In such a case and at the request of INOTEC GmbH, the customer must provide information on the assigned receivables which is required for collection, in addition to making corresponding documents available and notifying the debtor of the assignment. The assignment of receivables under sentence 1 serves to secure all receivables — including in the future — from the business relationship with the customer.

§ 7

Notice of defects, rights in the event of material defects

I. If a contract is established with a consumer (§13 of the Civil Code [Bürgerliches Gesetzbuch, BGB]), the statutory provisions that entered into force on 01/01/2002 shall apply.

II. If the purchase is a commercial transaction for both parties, the customer must provide immediate notice of any defects in writing, provided that this is in line with the normal course of business. Notice of hidden defects, however, must only be given after they are discovered; otherwise the goods are considered to be accepted.

III. Insofar as the delivery item and/or the associated assembly service is defective, the customer can either request that the defect is remedied (repair) or that an item free of defects is delivered (replacement delivery) as supplementary performance, at INOTEC GmbH's discretion, for a period of 12 months from transfer of risk. If we are not prepared or are unable to carry out the repair/replacement delivery, particularly if this is delayed beyond a reasonable period for reasons for which we are responsible, or if the repair/replacement delivery fails in any other way, and if further attempts at supplementary performance are unreasonable for the customer, they shall be entitled to withdraw from the contract or to reduce the purchase price, at their discretion. If there is a negligible defect, the customer may only withdraw from the contract with our consent.

IV. No claims for material defects arise in the event of unsuitable or improper use or treatment of the goods, incorrect assembly or commissioning by the customer or third parties, natural wear and tear (especially for wearing parts), unsuitable equipment or operating conditions, inadequate maintenance, etc.

V. If the defective goods are third-party products, we are entitled to assign our claims for material defects against our sub-suppliers to the customer and

to refer them to their (judicial) claim. A claim can only be made against us if claims against our sub-suppliers are not enforceable despite the (judicial) claim being made on time, or if the claim is unreasonable in the individual case.

§ 8

Limitation of liability

I. INOTEC GmbH shall be liable for intent and gross negligence.

II. INOTEC GmbH shall only be liable for simple negligence if essential contractual obligations (cardinal obligations) have been breached, except in the case of injury to life, limb or health. Liability is limited to foreseeable damage typical for the contract.

III. Liability for indirect and unforeseeable damage, loss of production and use, loss of profits, loss of savings and financial losses due to claims by third parties is excluded in the case of simple negligence, except in the case of injury to life, limb or health.

IV. Further liability that goes beyond this contract is excluded, regardless of the legal nature of the asserted claim. However, the above limitations or exclusions of liability shall not apply to no-fault liability that is mandatory by law (e.g. in accordance with the Product Liability Act [Produkthaftungsgesetz]).

V. Insofar as liability under points II and III is excluded or limited, this shall also apply to the personal liability of INOTEC GmbH's employees, workers, representatives, bodies and vicarious agents.

§ 9

Fixed compensation for damages

I. If the buyer cancels the order before execution, INOTEC GmbH is entitled to demand 15% of the total order amount as compensation.

II. INOTEC GmbH's right to claim higher damage amounts remains unaffected.

§ 10

Documents, demonstration equipment, property rights

We shall retain title and copyrights to drawings, drafts, cost estimates and other documents provided by us, particularly samples and demonstration equipment. Documents and items may not be reproduced or made accessible to third parties without our explicit, specified consent.

§ 11

Place of jurisdiction, applicable law

I. The law of the Federal Republic of Germany applies to these general terms and conditions and the entire legal relationship between INOTEC GmbH and the customer, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

II. If the customer is a merchant within the meaning of the Commercial Code (Handelsgesetzbuch), a legal entity under public law or a special fund under public law, the place of jurisdiction for all rights and obligations of the parties to the contract from any transaction — including those involving bills of exchange and cheque disputes — is Waldshut-Tiengen (Federal Republic of Germany). The same shall apply if the customer does not have a general place of jurisdiction in Germany, has moved their domicile or usual place of residence outside of Germany after concluding the contract, or their place of residence or usual place of residence is not known at the time when the action is filed. However, we are also entitled to sue the customer at their general place of jurisdiction.

INOTEC GmbH

Daimlerstraße 9-11
D-79761 Waldshut-Tiengen

Managing Director:
Manfred Schmidt
Jörg Tetling
Commercial Register:
Freiburg District Court HRB 621 131