

INMATEC GaseTechnologie GmbH & Co. KG

General Terms and Conditions

1. Scope of application

1.1 These General Terms and Conditions apply exclusively to all legal relations between INMATEC and our contract partners. We disallow the general terms and conditions of the contract partner; these are only a part of the contract, if we agree to this expressly **in writing**. The present General Terms and Conditions also apply when INMATEC executes services without reservation, but with knowledge of conflicting terms and conditions of the contract partner or of terms and conditions of the contract partner that deviate from these General Terms and Conditions.

1.2 The present General Terms and Conditions also apply to future business, that is to say all business between INMATEC and the contract partner, even if this has not been expressly agreed.

1.3 All INMATEC goods and services are made exclusively in accordance with these General Terms and Conditions, unless there has been a previous stipulation in writing.

2. Bids – conclusion of contract

2.1 INMATEC bids are always non-binding; written and oral orders, other agreements as well as additional oral agreements and confirmations are only valid and binding through written confirmation by INMATEC. In the event of an immediate delivery, the order confirmation can be replaced by consignment of the goods.

2.2 Mutual rights and duties result exclusively from the concluded, written contract.

2.3 INMATEC goods and services are fundamentally based on the prices in effect at the time of the placement of the order. Only when the time period agreed on between order placement and delivery is more than four months is INMATEC entitled to charge the contract partner the prices in effect at the time of the delivery of the service. Changes to the valid legal sales tax (currently 19%) are always passed on. In this respect, a stipulated purchase price is considered to be the net purchase price, on which the legal sales tax is calculated.

2.4 The stipulated prices are ex works Herrsching, unless something else has been separately stipulated in writing. Delivery costs, cartage, etc., are usually charged to the contract partner.

2.5 If INMATEC grants the contract partner special regulations in this agreement, these only apply when the contract partner fulfills the obligations concerning it in an orderly manner, in particular, timely and in the full amount. Non-fulfillment, even in sections, entitles INMATEC to immediate revocation of the special agreement.

3. Delivery – transfer of risk

3.1 The delivery of the goods is made ex works Herrsching. INMATEC is entitled to partial deliveries, transport route and means are at the discretion of INMATEC. The contract partner bears the transport costs including a valid hazardous material allowance; the same applies to toll fees, any import sales tax in third countries, etc.

3.2 The contract partner bears costs for transport insurance.

3.3 Upon shipment, the risk is transferred with the transfer of the goods to the carrier or miscellaneous conveyor to the contract partner.

4. Delivery time

4.1 Delivery periods and deadlines are essentially non-binding; the beginning of the delivery period indicated by INMATEC requires the clarification of all technical questions. Compliance with the obligation to deliver by INMATEC further assumes the timely and proper fulfillment of the obligations of the contract partner.

4.2 INMATEC is liable according to valid legal provisions, when

- as a result of a delay in delivery, which is the fault of INMATEC, the customer is entitled to claim that there is no interest in further contract fulfillment,
- the requirements of Section 323 II No. 2 of the German Civil Code or Section 376 of the German Commercial Code exist,
- if the delay in delivery is based on an intentional or grossly negligent violation of this agreement by INMATEC, whereby blame can be assigned to representatives or INMATEC agents. If the delay in delivery is not based on an intentional violation of the contract, the liability for damage is limited to foreseeable, typically occurring damages.
- Insofar as the delay in delivery is based on a culpable violation of an essential contractual obligation, liability for damage is limited to foreseeable and typically occurring damages; consequential damages are not considered in the calculation of damage.

4.3 If INMATEC is in default in delivery, then the contract partner after an appropriate grace period of at least four weeks can state that it refuses acceptance of the service after expiration of the period. If INMATEC does not deliver within the grace period set, the contract partner is entitled to withdraw from the contract.

4.4 In the event of force majeure, INMATEC is entitled to shift the delivery by the duration of the obstruction. If the end of the obstruction is not foreseeable, INMATEC is entitled to withdraw from the contract completely or partially without further obligation. War, natural catastrophes, strikes, lock-outs, in particular, or similarly serious events are considered to be force majeure. The same applies to extraordinary traffic and road conditions.

5. Place of fulfillment

The place of fulfillment for all INMATEC goods and services is Herrsching. However, this does not apply if there is any deviation from these terms and conditions in writing.

6. Warranty:

6.1 If the contract partner intends to claim defect damages, then it is required according to Section 377 of the German Commercial Code that it has met its obligations with regard to examination and notification of defect. With any complaint, INMATEC is entitled to the right to inspect and examine the goods that have been rejected. The aforementioned rights to damages can only be claimed, when the goods were used exclusively and applied in accordance with operating conditions established in the operating instructions, information and provisions.

6.2 Insofar as there is defect in the item sold caused by INMATEC, INMATEC can opt for correction of the faults or for replacement. In the event of correction of faults, INMATEC is obligated to bear all expenses accruing for the removal of the cause of the defect, in particular transport, road, work and material costs. This only applies when no mandatory legal provisions apply; Section 634 a para. 1 No. 2 of the German Civil Code remains unaffected.

6.3 The warranty period is 6 months from transfer of risk, unless mandatory legal regulations lead to another period

6.4 If the correction of faults or replacement fails, then the contract person is entitled to withdraw from the contract.

6.5 The warranty period presented above is a limitation period, insofar as this is legally permissible.

7. Liability

7.1 INMATEC is liable only in accordance with legal provisions, insofar as the contract partner claims compensation. The claims are based on intent or gross negligence and also apply to representatives and agents. Otherwise, liability for damage is limited to foreseeable, typically occurring damages. The liability for damage is excluded for the rest. In particular, INMATEC is not liable for damages that did not originate with the delivery item itself (so-called consequential damages).

7.2 The mandatory provisions of the German Product Liability Act as well as for the delivery of guarantees, Sections 443, 444 of the German Civil Code, remain unaffected.

7.3 We are not liable, in particular, for indirect, collateral or consequential damages (e.g., financial losses of all sorts, loss of profit, unrealized savings).

7.4 Ongoing liability to compensation as executed above is excluded without consideration of the legal nature of the claims asserted. Exceptions to this are claims for damages due to actions in tort, claims from injury to life, body or health as well as claims for reason of impossibility.

7.5 Claims for damages become time-barred within a year from the legal beginning of the limitation period, unless there is intent or gross negligence on the part of INMATEC or mandatory legal provisions lead to another period. Sections 479, 634 a para. 1 No. 2 of the German Civil Code remain unaffected.

8. Title retention

8.1 All goods delivered by INMATEC remain the property of INMATEC, this applies in particular to gases and gas containers delivered or any systems, system components, even when these are meant for processing.

8.2 INMATEC reserves the right to ownership of the delivered goods until all claims due INMATEC from the business connection with the contract partner are paid, including any costs and interest. With a running account – open account – the reserved ownership is considered as security for the outstanding balance claim.

8.3 Resale of the retained goods delivered requires the prior written consent of INMATEC. The contract partner assigns all claims from a resale, including any securities, in the amount of purchase price claims to INMATEC. In the event that retained goods together with other goods that do not belong to INMATEC are sold, the claim from the resale in the amount of the invoice value of the retained goods is assigned to INMATEC.

8.4 The execution of the title retention as well as any seizure of the goods by INMATEC is only considered to be a cancellation of a contract, when this is expressly stated in writing.

8.5 The contract partner must not pawn the goods delivered by INMATEC or assign them as collateral to a third party, insofar as they have been delivered under title retention. The contract partner is obligated to hold off and immediately report all access to and encroachments on ownership of INMATEC as well as on objects, which have been relinquished to the contract partner by INMATEC. Insofar as the third party concerned is not in the position to reimburse INMATEC for the court costs of any lawsuit or costs outside of court in accordance with Section 771 of the Code for Civil Procedure, the contract partner is liable for the loss.

8.6 INMATEC is entitled to take back the retained goods and to sell them elsewhere, when there is a delay in payment, suspension of payments, settlement petition or application for insolvency by the contract partner or a creditor notwithstanding all further rights. The proceeds less all costs and expenses involved with the sale – which INMATEC charges at a flat rate of 10% of the sales proceeds – is credited to the contract partner's total obligation.

9. Payments – payment terms – exclusion of setoff

9.1 Invoice amounts stated on INMATEC invoices are due immediately and without deductions, unless otherwise agreed. Payment terms are stipulated individually. Checks and drafts are only accepted on account of performance.

9.2 Payments of the contract partner are always offset against the oldest, open claims of the business relationship, notwithstanding the designation of another use by the contract partner.

9.3 Offset with disputed and non-legally established counterclaims as well as rights of retention based on such asserted claims are not permitted.

9.4 The contract partner is also in default without warning by INMATEC, when the open invoice amount at the stipulation of payment terms is not received when the payment term expires; the relevant date is the date of the credit to the business accounts of INMATEC and not the payment date.

9.5 All payments must be made in Euros, unless another currency is stipulated separately and in writing.

9.6 The applicable legal German sales tax is designated separately on invoices and is also due for payment within the set terms.

10. Delay in payment

10.1 If the due date is not met, default interest is calculated in accordance with Section 268 para. 2 of the German Civil Code. The assertion of additional damage caused by delay is not affected by this.

10.2 If the contract partner is in default of payment or if circumstances are known to INMATEC, which cast doubt on the creditworthiness of the contract partner, then INMATEC is entitled, to call in open claims immediately, even when they are deferred, given as security or issued as bills of exchange. Without prejudice to further rights, INMATEC is entitled to execute outstanding deliveries only when payment is made in advance. INMATEC is entitled to claim securities for orders or to withdraw from the contract after an appropriate grace period, to request compensation, etc. INMATEC, in particular, reserves the right to cancel agreements without notice when applications were filed for the opening of the insolvency proceeding, whether by the contract partner or a third party, on the assets of the contract person.

11. Prohibition of assignment

Our contract partner is not entitled to transfer rights or to assign claims from the underlying agreement to third parties.

12. Insurance

12.1 Objects, systems or system components delivered by INMATEC, which have been transferred to the contract partner for use or under title retention or for further processing / resale, are to be insured by the contract partner against damage and loss at reinstatement value. The contract partner must prove the existence of insurance protection at the request of INMATEC.

12.2 The obligation for insurance expires with complete payment of the purchase price and expiration of any warranty periods.

13. Written form – additional agreements

13.1 or amendments to an agreement, to which these terms and conditions are attached, must be in writing. The same applies to declarations of the contract partners after conclusion of the contract. Additional agreements are invalid, unless they are confirmed by INMATEC in writing.

13.2 Any existing original signed document is considered to be written form within the scope of the agreement between INMATEC and the contract partner, including orders / correspondence per fax, insofar as a proper signature of a person authorized to represent is present; the exception to this are e-mails, unless they contain an officially acknowledged signature.

13.3 Employees, sales representatives or staff of INMATEC are not entitled to deviate from the content of the concluded agreement or to amend the contents of the contract through oral or written consent

or confirmation. This does not apply to consent or confirmation, which is given by committees of INMATEC or their authorized signatories, insofar as these are authorized to do so.

13.4 Guarantees may only be given by the committees or authorized signatories of INMATEC. Insofar as employees, who are not authorized signatories, make any promises, these are invalid.

14. Legal succession

Rights and duties from agreements concluded between INMATEC and its contract partners and miscellaneous legal relationships devolve upon the respective legal successors of the contract partners. The contract partner is obligated to communicate any change, in particular in its company name or legal form, without being asked. The contract partner is liable for any disadvantages that accrue to INMATEC from a deferred or delayed notification.

15. Deliveries

Insofar as the contract partners of INMATEC are not German companies, deliveries of official documents, for example, lawsuits, appeals etc. are made via the respective embassy of the country in Germany, in which the company is based. The delivery is considered to be effected, when ten days have elapsed since the transfer of the relevant documents. Any periods begin to run from then on.

16. Data protection

Contract partner data is saved exclusively for business purposes within the scope of the valid Federal Data Protection Act. The data is deleted at the request of the contract partner after development of the underlying agreement.

17. Applicable law

German law applies exclusively to all legal relations between INMATEC and our contract partners. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.

18. Jurisdiction

Jurisdiction is, at the option of INMATEC, either the local court responsible for Herrsching, the regional court for commercial causes, insofar as the legal requirements are met or the registered office of the contract partner, insofar as a registered trader or a legal entity under public law is involved.

19. Severability clause

19.1 Insofar as the aforementioned General Terms and Conditions contain no regulation, the legal provisions of German law apply, in particular the German Civil Code, the German Commercial Code as well as the relevant supplementary laws.

19.2 If provisions of these conditions should be or become invalid or if a loophole should be found in the conditions, then the validity of the rest of the provisions is not affected by this. The invalid

provision shall be constructed in such a way that it approximates the economically stipulated result of the invalid clause in a legal manner. If the parties cannot agree on this, then the law applies.

20. Arbitration clause

20.1 Insofar as the contract partner of INMATEC is a contract partner from the countries of the former Eastern Bloc, in particular the former Soviet Union or the Commonwealth of Independent States, therefore Russia in particular, disputes from or in conjunction with the present contract should be conclusively decided according to the rules of arbitration of the International Chamber of Commerce by one or more arbitrators named in accordance with the rules of arbitration.

20.2 Munich is stipulated as the place of arbitration, the number of arbitrators who should be qualified lawyers, is limited to three and the language of court is German.



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