

**General Terms and Conditions of Sale and Delivery of IKUKAST GmbH**  
(As of April 2025)

**§ 1 General Scope**

- (1) These General Terms and Conditions of Sale and Delivery ('GSC') apply to all our business relationships with our customers ('Buyers'). The GSC only apply if the Buyer is an entrepreneur (§ 14 of the German Civil Code ('BGB')), a legal entity under public law or a special fund under public law.
- (2) The GSC shall apply in particular to contracts for the sale and delivery of movable items ('Goods'), regardless of whether we have manufactured the Goods ourselves or purchased them from suppliers. Unless otherwise agreed, the version of the GTC that is valid at the time of the Buyer's order or, in any case, the version last provided to the Buyer in text form shall also apply as a framework agreement for similar future contracts without us having to refer to them again in each individual case.
- (3) Our GSC shall apply exclusively. Any of the Buyer's general terms and conditions of business or purchase that differ from, conflict with or supplement these GSC shall only become part of the contract if and to the extent that we have expressly agreed to them in writing. This requirement of consent shall apply in all cases, in particular even if the Buyer refers to its general terms and conditions in the context of the order and we do not expressly object to this.
- (4) Individual agreements (e.g. framework supply agreements, quality assurance agreements, including ancillary agreements, supplements and amendments) and information in our order confirmation take precedence over the GSC. In case of doubt, trade clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of the conclusion of the contract.
- (5) Legally relevant declarations and notifications of the Buyer with regard to the contract (e.g. setting of deadlines, reminders, declaration of withdrawal) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements and further evidence, in particular in case of doubt as to the legitimacy of the declaring party, shall remain unaffected.
- (6) In the case of commission business, these Terms and Conditions of Sale and Delivery shall not apply with regard to the contract concluded between the buyer and the manufacturer/supplier, but rather exclusively the terms and conditions of sale and delivery of the respective manufacturer/supplier shall apply, unless we have agreed otherwise in writing.
- (7) References to the applicability of statutory provisions are for the purposes of clarification only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly modified or expressly excluded in these Terms and Conditions of Sale and Delivery.

**§ 2 Conclusion of Contract**

- (1) Our offers are subject to change and non-binding. This also applies if we have provided the buyer with catalogues, technical documentation (e.g. drawings, plans, calculations, samples, illustrations, references to DIN standards), other product descriptions or documents – including in electronic form – to which we reserve ownership and copyrights. These may only be made accessible to third parties with our prior written consent. If the order is not placed, they must be returned to us immediately at our request.
- (2) When manufacturing unusual items that differ from our usual product range, we reserve the right to make changes to the design and shape that are reasonable for the buyer. In this context, changes are deemed reasonable in particular if they constitute favourable deviations from the performance owed in favour of the buyer or if the deviations are minor and do not impair the buyer's objective interests.
- (3) The buyer's order of the goods shall be deemed a binding offer of contract. Unless otherwise stated in the order, we are entitled to accept this offer of contract within two weeks of its receipt by us.
- (4) The acceptance can be declared in writing (e.g. by means of an order confirmation) or by delivery of the goods to the buyer.

### **§ 3 Delivery period and default in delivery**

- (1) The delivery period shall be agreed individually or stated by us when we accept the order. Adherence to the delivery period requires that all commercial and technical questions have been clarified and that the buyer has fulfilled all obligations incumbent upon him, such as providing material samples or documents to be procured by him or making a down payment. If this is not the case, the delivery time shall be extended accordingly. This does not apply if we are responsible for the delay.
- (2) The delivery period shall be deemed to have been observed if the delivery item has left the factory by the time of its expiry or readiness for dispatch has been notified.
- (3) If we are unable to meet binding delivery deadlines for reasons beyond our control (e.g. due to non-availability of the service), we shall inform the buyer of this immediately and at the same time notify him of the expected new delivery period. If the service is also not available within the new delivery period, we are entitled to withdraw from the contract in whole or in part; we will immediately refund any consideration already provided by the buyer. In particular, the non-availability of the service in this sense shall be deemed to be the non-timely delivery by our supplier if we have concluded a congruent hedging transaction, if neither we nor our supplier is at fault or if we are not obliged to procure in individual cases.
- (4) The occurrence of our default in delivery shall otherwise be governed by the statutory provisions; in any case, however, a reminder from the buyer setting a reasonable deadline is required. If we are in default of delivery, the buyer may demand liquidated damages for the loss caused by the default. The flat-rate compensation shall be 0.5% of the net price (delivery value) for each full calendar week of delay, but not more than 5% of the delivery value of the goods delivered late. 18 We reserve the right to prove that the buyer has not incurred any damage at all or only a significantly lower damage than the above flat rate.
- (5) We reserve the right to make a partial delivery if this appears advantageous for a speedy settlement and the partial delivery is not unreasonable for the buyer as an exception.
- (6) The rights of the buyer in accordance with § 10 of these Terms and our legal rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), remain unaffected.

### **§ 4 Delivery, Transfer of Risk, Acceptance, Default in Acceptance**

- (1) Delivery is ex warehouse, which is also the place of performance for the delivery and any subsequent performance. Unless otherwise agreed, the place of performance is our place of business. At the request and expense of the buyer, the goods will be shipped to a different destination (sale to destination according to buyer's instructions). Unless otherwise agreed, we are entitled to determine the type of shipment (in particular the transport company, shipping route and packaging) ourselves.
- (2) In the case of call-off orders, we grant the buyer a period of six months for acceptance, unless otherwise agreed.
- (3) The risk of accidental loss and accidental deterioration of the goods passes to the buyer at the latest when the goods are handed over. In the case of mail order purchases, however, the risk of accidental loss and accidental deterioration of the goods, as well as the risk of delay, shall pass to the buyer upon delivery of the goods to the carrier, freight forwarder or other person or institution designated to carry out the shipment. If the buyer is in default of acceptance, the transfer shall be deemed to have taken place.
- (4) If a consignment arrives in a damaged condition, the buyer shall, in order to secure his claims, have the damage recorded in writing by the carrier without delay.
- (5) If the buyer delays acceptance, fails to fulfil an obligation to co-operate or if our delivery is delayed for other reasons for which the buyer is responsible, we shall be entitled to demand compensation for the resulting damages, including additional expenses (e.g. storage costs). For this, we charge a flat-rate compensation in the amount of 1% of the value of the goods per calendar day, starting with the delivery period or - in the absence of a delivery period - with the notification that the goods are ready for dispatch. The right to prove greater damage and our statutory claims (in particular compensation for additional expenses, reasonable compensation, termination) shall remain unaffected; however, the lump sum shall be set off against further monetary claims. The Buyer shall be entitled to prove that we have not incurred any damage at all or only significantly less damage than the above lump sum.

## **§ 5 Prices and terms of payment**

(1) Unless otherwise agreed in individual cases and subject to the further provisions in this § 5, our current prices at the time of the conclusion of the contract shall apply. They are ex warehouse and exclusive of statutory value added tax.

(2) All prices stated in our offer or the contract were calculated on the basis of the applicable purchase, material and raw material prices at the time of its preparation or conclusion. These are therefore part of the basis of the transaction. Since in special exceptional cases there may be material bottlenecks and thus significantly longer delivery times and/or serious price changes for these raw materials and semi-finished products, it cannot be ruled out that this basis of calculation may change significantly and unpredictably for us by the time of delivery. If the previously agreed net price rises or falls by more than 3%, which we will prove on request, this is to be taken into account in the pricing process by way of a fair, partnership-based settlement, if necessary, offsetting it against other rising or falling cost factors. Each contractual partner therefore has the right to demand from the other that prices be renegotiated within a reasonable period of time, taking into account the interests of both parties in good faith. In the event of the failure of these negotiations, we shall be entitled to set a price that reflects the changes and whose appropriateness can be verified in court upon request, in accordance with the statutory provisions for the determination of performance by the creditor (§§ 315, 316 BGB).

(3) In the case of sale to destination (§ 4 para. 1), the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. Any customs duties, fees, taxes and other public charges shall be borne by the Buyer.

(4) The place of performance for payments shall be our place of business.

(5) The purchase price shall be payable within the agreed payment period. If no such period has been agreed separately, the payment period shall be 30 days. However, we are entitled at any time, even in the context of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We will declare a corresponding reservation at the latest with the order confirmation; § 321 BGB remains unaffected.

(6) In the case of tool requirements, 50% of the tool cost share is to be paid immediately upon placing the order without discount, and the remaining amount after acceptance of the outturn samples.

(7) The buyer shall be in default upon expiry of the above payment period. If the buyer is in default of payment, we shall be entitled to claim default interest at the statutory rate, which is currently 9 percentage points above the base interest rate, as well as an additional flat-rate default fee of € 40. We expressly reserve the right to claim further damages. Our claim for commercial interest after the due date (§ 353 of the German Commercial Code ('HGB')) remains unaffected in relation to merchants.

(8) Insofar as we have granted a right to a discount, this shall lapse upon the occurrence of the condition subsequent that another invoice that was due earlier under the business relationship is not paid within the payment period after the discount commitment for an invoice.

(9) Bills of exchange or cheques shall only be accepted on account of performance. The Buyer shall bear bank charges and bill of exchange costs.

(10) The Buyer shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed. In the event of defects in the delivery, the Buyer's counterclaims, in particular in accordance with § 7 para. 5 cl. 2 of these GSC, shall remain unaffected.

(11) If it becomes apparent after the conclusion of the contract (e.g. by filing for insolvency proceedings) that our claim to the purchase price is at risk due to the Buyer's inability to pay, we shall be entitled to withdraw from the contract in accordance with the statutory provisions for refusal of performance and – if necessary after setting a deadline. The statutory provisions regarding the dispensability of setting a deadline shall remain unaffected.

## **§ 6 Packaging, Return Shipment**

(1) We shall only take back transport packaging if we are obliged to do so by law or on the basis of a law. We shall also only bear the costs of the return shipment if we are obliged to do so by law or on the basis of a law.

(2) The buyer must always return packaging that is expressly provided only on loan and send it back to us immediately, carriage paid.

#### **§ 7 Condition of the goods/samples/technical advice/uses**

(1) Unless otherwise agreed, the condition of the goods is exclusively defined by our product specification. Insofar as we distribute products of other manufacturers, the respective manufacturer's product specification shall apply. Notwithstanding the foregoing, the goods supplied by us are not normally suitable for the following applications, unless expressly stated otherwise: (a) for implants intended to remain in human body for more than 29 days; (b) for weapons (including chemical weapons as defined by the Chemical Weapons Convention, land mines and land mine components, and any kind of explosive device); (c) devices or components used in connection with human reproduction; (d) general purpose resins in medical or health applications.

(2) The samples we provide, as well as our technical and chemical information, serve only to provide a general description of the goods. They do not constitute a guarantee of quality or durability. Goods-specific performance data, such as dimensions or weight, are only binding if we have agreed to them or confirmed them.

(3) Insofar as we provide information on technical applications or act in an advisory capacity and this information or advice is not part of the contractually agreed scope of services we are obliged to provide, this shall be done free of charge and to the exclusion of any liability, except in cases of intent. It does not release the buyer from checking each individual delivery for suitability for the intended use before processing. The buyer is solely responsible for the application, use and processing of the goods supplied by us and for compliance with the applicable safety regulations.

#### **§ 8 Retention of title**

(1) We retain title to the goods sold until all our current and future claims arising from the purchase contract and an ongoing business relationship (secured claims) have been paid in full.

(2) If payment of the purchase price debt by cheque/bill of exchange has been agreed with the buyer, the reservation also extends to the redemption of the bill of exchange accepted by us by the customer and does not expire with the provisional crediting of the cheque received.

(3) The goods subject to retention of title may not be pledged to third parties or assigned as security before full payment of the secured claims. The buyer must notify us immediately in writing if an application is made to open insolvency proceedings or if third parties access the goods belonging to us (e.g. seizures). If the third party is unable to reimburse us for the judicial or extra-judicial costs incurred by us in this connection, the buyer shall be liable for these costs.

(4) The buyer shall be obliged to store the reserved goods at his expense with the due care of a prudent businessman and to insure them against the usual storage risks. He hereby assigns to us his claims under the insurance contracts. We accept the assignment.

(5) If the buyer acts in breach of contract, in particular if the buyer fails to pay the due purchase price, we are entitled to withdraw from the contract in accordance with the statutory provisions and/or to demand the return of the goods on the basis of the retention of title and the withdrawal. If the buyer does not pay the due purchase price, we may only assert these rights if we have previously set the buyer a reasonable deadline for payment without success or if setting such a deadline is dispensable according to legal regulations.

(6) Until further notice in accordance with (c) below, the buyer is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following additional provisions shall apply:

(a) The retention of title extends to the full value of the products resulting from the processing, mixing or combining of our goods, whereby we are considered the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, the ownership rights of the third parties remain in effect, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. Otherwise, the same shall apply to the resulting product as to the goods delivered under retention of title.

(b) The buyer hereby assigns to us, as security, all claims against third parties arising from the resale of the goods or products, either in total or in the amount of our co-ownership share, if any, in accordance

with the preceding paragraph. We accept the assignment. The obligations of the buyer set forth in § 8 (3) of these Terms of Sale and Delivery shall also apply with regard to the assigned claims.

- (c) The buyer remains authorised to collect the claim alongside us. We undertake not to collect the claim as long as the buyer meets his payment obligations to us, there is no deficiency in his ability to pay and we do not assert the reservation of title by exercising a right in accordance with § 8 (5) of these Terms and Conditions of Sale and Delivery. In the event of any of the above-mentioned defaults in performance on the part of the buyer, we may demand that the buyer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and notifies the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the buyer's authorisation to resell and process the goods subject to retention of title.
- (d) If the value of the securities exceeds the sum of our claim by more than 10%, we will release securities at our discretion at the buyer's request.

### **§ 9 Claims for defects; notices of defects**

- (1) The statutory provisions shall apply to the rights of the buyer in the event of material defects and defects of title (including wrong and short delivery), unless otherwise specified below. In all cases, the statutory provisions on the purchase of consumer goods (§§ 474 ff. BGB) and the rights of the buyer under separately issued guarantees, in particular on the part of the manufacturer, shall remain unaffected.
- (2) The basis for our liability for defects is, above all, the agreement made regarding the nature and intended use of the goods. If the nature has not been agreed, the question of whether a defect is present or not is to be judged according to the statutory regulation (§ 434 para. 2, 3 and 4 BGB).
- (3) We shall not be liable for defects of which the buyer was aware at the time of the conclusion of the contract or was not aware due to gross negligence (§ 442 BGB). Furthermore, the buyer's claims for defects presuppose that he has fulfilled his statutory inspection and notification obligations (§§ 377, 381 HGB). In the case of materials and other goods intended for installation or other further processing, an inspection must always be carried out immediately prior to processing. If a defect becomes apparent during the inspection or later, we must be notified of this in text form without undue delay. If the buyer fails to carry out the proper inspection or to provide notification of defects, our liability for the unreported defect is excluded. This obligation of the buyer applies to each individual partial quantity in the case of partial deliveries.
- (4) If the delivered item is defective, we may initially choose whether we provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected.
- (5) We are entitled to make the subsequent performance owed dependent on the buyer paying the purchase price due. However, the buyer is entitled to withhold a reasonable portion of the purchase price in proportion to the defect.
- (6) The buyer must give us the time and opportunity necessary to provide the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the buyer shall return the defective item to us in accordance with the statutory provisions. The subsequent performance shall not include the removal, dismantling or uninstallation of the defective item or the installation, mounting or installation of a defect-free item if we were not originally obliged to provide these services; the buyer's claims for reimbursement of corresponding costs ('removal and installation costs') shall remain unaffected.
- (7) If a defect is actually present, we shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs, as well as any dismantling and installation costs, in accordance with the statutory provisions. Otherwise, we may demand that the buyer reimburse us for the costs incurred as a result of the unjustified request to remedy the defect if the buyer knew or should have realised that there was no defect.
- (8) Unless expressly stated otherwise in writing by us, persons authorised by us to inspect the goods for defects are not authorised to recognise defects at our expense.
- (9) Claims of the buyer for reimbursement of expenses in accordance with § 445a para. 1 BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 474 BGB) or a consumer



contract for the provision of digital products (§§ 445c cl. 2, 327 para. 5, 327u BGB). Claims of the buyer for damages or reimbursement of wasted expenditure (§ 284 BGB) shall only exist, even in the case of defective goods, in accordance with the following §§ 10 and 11 of these GSCs.

#### **§ 10 Other liability**

(1) Unless otherwise provided for in these GSCs, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.

(2) We shall be liable for damages – regardless of the legal grounds – in the context of fault-based liability in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. diligence in our own affairs; insignificant breach of duty), only

a) for damages resulting from injury to life, limb or health,

b) for damages resulting from the breach of a material contractual obligation (an obligation whose fulfilment is essential to the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

(3) The limitations of liability resulting from paragraph 2 in the event of breaches of duty by persons (including in their favour) whose fault we are responsible for according to legal regulations. They do not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the buyer under the Product Liability Act.

(4) The buyer can only withdraw or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. An unrestricted right of termination on the part of the buyer (in particular in accordance with §§ 650, 648 BGB) is excluded. Otherwise, the statutory requirements and legal consequences shall apply.

#### **§ 11 Limitation**

(1) Notwithstanding § 438 para. no. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the limitation period shall begin with acceptance.

(2) § 11 para. 1 of these Terms and Conditions of Sale shall not apply if special statutory provisions on the statute of limitations apply (in particular § 438 para. 1 nos. 1 and 2, para. 3, §§ 444, 445b BGB).

(3) The above limitation periods of the law governing sales shall also apply to contractual and non-contractual claims for damages by the buyer that are based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the buyer in accordance with § 10 para. 1 and 2 of these GSCs and in accordance with the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

#### **§ 12 Applicable law, place of jurisdiction, partial invalidity**

(1) These GSC and all legal relationships between us and the buyer shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of international private law and the UN Sales Convention.

(2) If the seller is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – and international – place of jurisdiction for all disputes arising from the contractual relationship is our registered office. The same applies if the seller is an entrepreneur within the meaning of § 14 BGB. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GSC or a prior individual agreement or at the seller's general place of jurisdiction. Overriding statutory provisions, in particular on exclusive jurisdiction, remain unaffected.