



# Selling and Delivery Terms of IPSEN INTERNATIONAL GMBH KLEVE

For all deliveries and services of Ipsen International GmbH (hereinafter referred to as "IPSEN"), the following Selling and Delivery Terms apply. Other terms and oral agreements are only valid if they have been confirmed in writing by IPSEN.

## Article 1

### Offers and Conclusion of Contracts

- (1) Contracts are only concluded by an offer of the Customer or a written order confirmation of IPSEN.
- (2) For the scope and the details of the delivery contract the written offer – if accepted by Customer – or the written acceptance or written order confirmation of IPSEN is decisive. Any alterations, additions or oral agreements are only binding upon written acknowledgement by IPSEN. Prices in offers are only valid for duration of three months, a later acceptance requires written acceptance by IPSEN.
- (3) The information supplied in printed leaflets, offers and confirmations of orders, such as descriptions, illustrations, drawings, measurements and weights are based on careful ascertainment but represent approximations only; unless it is explicitly stated, they should not be taken as binding.
- (4) Surpluses or shortages in weight, falling within the limits customary in the trade, do not entitle the Customer to raise objections or demand reductions. Deliveries of +/- 10 % in quantity are covered by the purchase price and do not entitle to any claim for compensation.
- (5) Packaging of delivery occurs according to the usage of trade taking into account the necessary way of transportation.
- (6) In regards to quotations, drawings or other documents IPSEN reserves title and intellectual property rights; it is prohibited to pass these on to any third party. The same applies to information which is designated as "confidential".
- (7) IPSEN reserves the right to change or to modify the scope of delivery if these are improvements and are acceptable for the Customer.

## Article 2

### Prices

- (1) Unless otherwise agreed the prices are quoted ex-factory and exclude packing, loading costs, transportation and insurance. Statutory VAT is to be added.
- (2) Should the prices of the material required for manufacturing or the related costs like wages, foreign currency risks or money procurement costs of the scope of delivery change during the delivery and assembly, IPSEN reserves the right to change prices.

## Article 3

### Payment terms

- (1) IPSEN terms of payment are net; payments should be made within 14 calendar days in EURO to IPSEN's cash office.
- (2) Unless otherwise agreed payment is to be made as follows:  
40% of the contract amount upon conclusion of the contract,  
30% of the contract amount 90 days prior to shipment,  
20% of the contract amount after function test respectively pre acceptance at IPSEN's factory,  
10% of the contract amount after start-up of the equipment, but not later than 60 days after notice of readiness for dispatch.  
Deliveries of spare parts with services:  
40 % of the contract amount upon conclusion of the contract,  
50 % of the contract amount prior to shipment,  
10 % of the contract amount after signing of the acceptance protocol or setting in motion of the equipment.  
Deliveries of spare parts without services:  
40 % of the contract amount upon conclusion of the contract,  
60 % of the contract amount prior to shipment.
- (3) The contractual amount has on request and entire discretion of IPSEN to be secured by a letter of credit in foreign business (international business). IPSEN decides upon the value or choice of the securing institution. All costs related to the letter of credit are charged to the Customer. The letter of credit extinguishes only after full payment. The term of the letter of credit shall be calculated in accordance with the time required for delivery and acceptance. If the initial term of the letter of credit does not cover

the delivery period including the time required for acceptance and if the letter of credit expires before this date, the Customer shall be obliged to extend the letter of credit by 180 days 3 months before the expiry date of the letter of credit and to notify IPSEN of the extension. This shall apply accordingly to further extensions. If the customer culpably fails to effect an extension or culpably fails to notify IPSEN of an effected extension or culpably fails to effect acceptance or culpably fails to notify IPSEN of its readiness for acceptance, IPSEN shall be entitled to satisfy its contractual claims directly from the letter of credit.

(4) If further credit is granted or if payment is delayed, IPSEN shall charge interest for the period of the delay, either at the rate of 1 % of the order amount per month as interest costs plus € 50.00 handling fee or at the rate of the statutory bank interest and charges for outstanding business loans, but in any case 9 % above the base rate of the Deutsche Bundesbank. In case the payment date is not adhered to, IPSEN reserves the right to suspend delivery or to demand further securities or to change the payment terms.

(5) The Customer may not withhold or offset payments unless these are uncontested or subject to a legally binding Court decision.

(6) The acceptance of bills of exchange and checks occurs only in lieu of payment, the costs are borne by the Customer. Bills and checks can only be perceived as payment if honored.

(7) Costs of installing and assembly are payable immediately on receipt of the invoice.

## Article 4

### Delivery time

(1) The delivery time commences upon dispatch of the order confirmation, but not before the procurement of documents of the Customer like approvals, releases and the necessary prepayment.

(2) Readiness for delivery is announced to the Customer. The delivery time may be extended for a reasonable period if and insofar the Customer did not fulfil his payment obligations, in particular did not affect agreed payments. In case of culpable postponement of delivery by the Customer, IPSEN is entitled to claim damages as interest rates in the amount of 1% of the order value per month. The Customer is entitled to provide evidence for a lesser damage.

(3) Unforeseeable events, over which IPSEN or sub-suppliers have no control, in particular industrial actions, strikes or lock out, diseases prolong the delivery date. The same also applies if the approval of authorities or other parties for the execution of the order or the specifications of the Customer are not received in time. IPSEN shall inform the Customer as soon as possible about the beginning and end of such unforeseeable events.

(4) Compensation for damages in lieu of performance and reimbursement of expenses shall not be granted by IPSEN except in the cases specified in Article 7, para. 8 a) – g).

(5) Delivery in instalments is permitted.

## Article 5

### Dispatch and Risk of Loss

(1) Dispatch occurs for the account and upon risk of the Customer.

(2) Upon leave of our factory, the risk of loss for the delivery goods is transferred to the Customer, even if they are shipped post-paid F.O.B. or F.O.R even if IPSEN had agreed to take over additional costs like costs for delivery.

(3) Should the delivery be delayed due to fault of the Customer, the risk is to be transferred to him as from the day the goods were ready for dispatch.

(4) Insurance against damage in transit will be provided at specific request of the Customer and at his expense. The Customer is obliged to insure the goods himself without being specifically requested to do so by IPSEN.

(5) Transportation equipment (wooden supports, racks etc.) as well as packing material are charged at net costs. IPSEN takes back no such material.

(6) The unloading is the responsibility of the Customer.



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(7) Any irregularities arising out of the transportation are to be reported to IPSEN in writing on receipt of the goods with undue delay.

### Article 6 Acceptance

- (1) In case of culpable postponement of the delivery by the Customer, IPSEN is entitled to claim damages for storage costs in the amount of 1% of the order value per month. The Customer is entitled to provide evidence for a lesser damage.
- (2) Acceptance is documented both by Customer and IPSEN in writing.
- (3) In case the Customer does not cooperate in regards to acceptance within ten (10) working days after written notification of the readiness for acceptance, acceptance is deemed as having taken place.
- (4) The Customer is not entitled to use the goods for production purposes prior to acceptance. Any production which takes place is deemed as approval of the goods and acceptance.
- (5) Minor defects which do not impair the performance of the goods cannot justify a refusal of acceptance. Defects are to be documented in the protocol.

### Article 7 Liability for Defective Goods and Compensation

- (1) Defects are to be reported to IPSEN in writing within two weeks.
- (2) A prerequisite of IPSEN's liability is faulty construction or defective workmanship. In regards to defective material IPSEN can only be held liable to the extent that the defect was recognisable when exercising professional care.
- (3) In regards to damages due to wear and tear, no liability is assumed. The same applies to faulty or careless treatment, excessive use, application apart from designated use and unsuitable means of operation.
- (4) In regards to modifications deemed necessary to IPSEN as well as for the delivery of spare parts, Customer has to grant to IPSEN the necessary time and opportunity free of charge and furthermore to avail the necessary resources upon request.
- (5) Irrespective of a contractual or legal obligation IPSEN cannot be held liable for changes, rectifications or maintenance of the goods. In such cases the responsibility for the CE conformity of the goods shifts to the Customer.
- (6) IPSEN equally assumes no liability or warranty for assemblies or acceptance of any third party unless there is a mandatory contractual or legal obligation.
- (7) Warranty is rendered by rectification or replacement of defective parts within the sole discretion of IPSEN. During the warranty period the Customer is obliged to store all diagrams of the gauge or other instruments and to avail these to IPSEN. In case a notified defect turns out not to be justified, IPSEN may charge the related costs to the Customer.
- (8) Compensation claims of any nature, for indirect or consequential damages, especially for loss of profits are hereby excluded. This does not apply:
  - a) in case of an intentional or grossly negligent breach of duty,
  - b) in the event of a breach of material contractual obligations, whereby a material contractual obligation is defined as one whose fulfilment characterises the contract and on which the Customer may rely,
  - c) in the case of injury to life, body or health,
  - d) in the event of default, if a fixed delivery date has been agreed,
  - e) in the case of the assumption of a guarantee for the quality or the existence of a performance success,
  - f) in the case of assumption of the procurement risk,
  - g) insofar as liability exists according to the product liability law and/or according to any other mandatory legal liability.In the aforementioned cases, however, IPSEN shall only be liable for damage typical of the contract and reasonably foreseeable at the time of conclusion of the contract.  
Compensation for damages incurred shall be limited to a maximum liability of one (1) million EURO.

(9) Unless otherwise agreed, all warranty claims of the Customer are time-barred twelve (12) months after transfer of risk in accordance with Article 5.

### Article 8 Retention of title

- (1) IPSEN retains title to the goods delivered until all payments for delivery have been received.
- (2) The Customer may neither pledge the goods nor assign them as collateral. If the goods are pledged or seized or other restrictions are imposed up on them by third parties, IPSEN must be informed without undue delay.
- (3) If goods delivered are combined that they constitute a new commodity, it is agreed that the Customer will transfer a proportionate part of the title of the new commodity to IPSEN in the meaning of Article 947 paragraph 1 of the German Civil Code and will keep the unit in custody on IPSEN's behalf.
- (4) Insofar as special formal requirements or other regulations are linked to the effectiveness of the retention of title in the Customer's country, the Customer must ensure that they are fulfilled.

### Article 9 Returns and Withdrawal

Goods or spare parts may not be returned without explicit approval of IPSEN and only in accordance with given transportation instructions. IPSEN reserves the right to charge the Customer for the cost of returning the goods. Unless otherwise agreed, the Customer is not entitled to withdraw from the contract. In the event of withdrawal by the Customer, the latter shall reimburse IPSEN for the actual costs incurred to date and the loss of profit.

### Article 10 Place of Delivery, Jurisdiction, Applicable Law, Data Protection

- (1) The place of delivery and payment is Kleve, Niederrhein.
- (2) Legal disputes are settled exclusively at the competent courts in Kleve, Niederrhein.
- (3) German law applies under exclusion of the UN Sales of Goods (CISG).
- (4) The data of Customer shall be stored and used for the processing of the project or order and also for further marketing purposes (naming as reference). The following data shall be stored: E-mail address, telephone and telefax number, first name, surname, address and tax number. The data shall be stored until revocation and shall be automatically deleted after 10 years, unless different legal retention periods apply. The Customer can get at any times information under [datenschutz@ipsen.de](mailto:datenschutz@ipsen.de) in regards to the data and can request return, deletion or correction.

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