



## General Terms and Conditions of Business (AGB)

### INCOTEC GMBH

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- A. Applicability of these General Terms and Conditions
- B. Conditions of Purchase and Terms of Engagement
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### A. Applicability of these General Terms and Conditions

#### A.1

These terms and conditions apply to all business relations between **INCOTEC** and its contractual partners. The conditions still apply even if explicit reference is not made to them with respect to individual transactions or if the contractual partner is a contractor as defined in §14 of the German Civil Code (BGB), a public entity or a special fund under public law.

These terms and conditions define contractual partners as partners who carry out business with **INCOTEC** as a provider and/or customer.

#### A.2

These terms and conditions are exclusive and always applicable. Differing, conflicting or supplementary general terms and conditions from the contractual partner only become valid and part of the contract if **INCOTEC** expressly agrees to them in writing.

Individual agreements made with the contractual partner (including side agreements, additions and changes) always have priority over these general terms and conditions. Subject to evidence to the contrary, a written contract or written confirmation from **INCOTEC** determines the content of such agreements.

#### A.3

References to applicable legislation are only provided for clarity's sake. As a result, legislation continues to apply even if such a reference is not made, unless it is directly modified or expressly excluded in these terms and conditions.

#### A.4

These terms and conditions are a translation from the German original. In instances of doubt, the German version will take precedence.

#### A.5

The only applicable law is German law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) and other uniform laws.

## B. Conditions of Purchase and Terms of Engagement

### B.1

The conditions of purchase and terms of engagement published by **INCOTEC** are the only ones that are applicable for purchases and orders made by **INCOTEC**.

### B.2

All orders and purchases made by **INCOTEC** are transacted based on these conditions and terms. If an issue is not covered by these, then relevant legislation exclusively regulates it to the extent that the conditions and terms do not.

### B.3

**INCOTEC** pays invoices, subject to later audit,

- within 14 days of invoice receipt and with a 3% discount deducted, or
- within 30 days and without a deduction.

### B.4

If goods delivered by the contractual partner arrive early, the invoice is processed based on the contractually agreed delivery date with **INCOTEC**. The same date will act as the invoice receipt date.

### B.5

If goods or services are defective or the contractual partner breaches contract with a partial delivery, they will be considered received and their invoice processed based on the date of the defect being rectified. The same date will act as the invoice receipt date.

### B.6

The contractual partner must provide **INCOTEC** with the guarantees and compensation to the extent and for the duration required by law.

### B.7

The place of performance and payment for both contractual parties is the registered address of **INCOTEC**.

### B.8

The place of jurisdiction for all conflict arising from or in conjunction with the contractual relationship between the contractual partner and **INCOTEC** is Bielefeld.

**INCOTEC** is, in the above described situation, also entitled to bring legal action against the contractual partner at the latter's registered location.

### B.9

The only applicable law is German law, to the exclusion of international uniform laws and the UN Convention on Contracts for the International Sale of Goods (CISG) in particular.

## C. General Conditions of Service

### C.0 Object of Contract

The business activity carried out by **INCOTEC** spans various areas connected to project-related hardware and software development, from analysing requirement profiles to constructing and developing special hardware and software solutions, and preparing and seeing through serial production for customers.

**INCOTEC** performs its services and deliveries based exclusively on these general conditions of service.

## **C.1 Order Confirmation/Contract**

### **C.1.01**

The written order confirmation from **INCOTEC** and, where applicable, the specifications provided by **INCOTEC** determine the content of the associated contract. Oral agreements made at the time of contract conclusion with **INCOTEC** employees unauthorised to represent the company require written confirmation from **INCOTEC** in order to have legal effect.

### **C.1.02**

Specifications concerning **INCOTEC** products or services can only be attributed to **INCOTEC** when this information comes from **INCOTEC** or is made on explicit behalf of **INCOTEC**, is expressly authorised by **INCOTEC** or released publicly, with **INCOTEC** knowing or very likely knowing this information and not distancing itself from it after being given reasonable notice.

Authorised dealers and customers of **INCOTEC** acting as resellers do not count as accomplices of **INCOTEC** in the sense of German Civil Code (BGB) §434 paragraph 1. Specifications can always be corrected in a manner acceptable for BGB §434 paragraph 1 through **INCOTEC**'s website at [www.incotec.world](http://www.incotec.world).

### **C.1.03**

Specifications attributable to **INCOTEC** and containing quantifiable values must be read with a tolerance of  $\pm 2\%$ .

However, exceeding such tolerances does not automatically lead to the onset of a defect.

### **C.1.04**

The customer must supply **INCOTEC** with all information and documents required or useful for carrying out the order.

The order confirmation describes and places obligations on the customer which the latter must meet. Upon contract commencement, the customer will name suitable employees who can fulfil these information obligations.

### **C.1.05**

If specifications are created and shown to the customer to be checked and approved, they specify the binding scope of services for both parties. If the processes to be carried out by **INCOTEC** affect legal and/or operational regulations, the customer is responsible for checking the correctness of the proposed processes.

### **C.1.06**

When carrying out extensive planning activity, e.g. planning for a large system, the customer is strongly urged to appoint a system designer at its own expense to work closely with **INCOTEC** and assist with and supervise the realisation/feasibility of the systems and system parts designed by **INCOTEC** in the customer's operations.

### **C.1.07**

Subject to other regulations, it is also the customer's responsibility to arrange the transport and installation of the devices manufactured by **INCOTEC** or its contractor, also at the customer's expense.

### **C.1.08**

**INCOTEC** advises that the draft designs contained in the contract and the systems developed from them cannot always be used by the average user without special training, even with complete, detailed documentation, owing to the complexity of the designs and systems and customer-specific demands. For this reason, **INCOTEC** offers relevant training sessions in return for separate remuneration.

## **C.2 Intellectual Property Rights**

### **C.2.01**

The analyses, concepts, draft designs, models, plans, production documents and related property created by **INCOTEC** remains the intellectual property of **INCOTEC**, even if the customer has provided compensation for the work.

**INCOTEC** allows the customer usage rights for this intellectual property, which the customer can make use of for an unlimited period of time, albeit only for the production of the products included in the agreed project.

### **C.2.02**

This also includes **INCOTEC**'s own previously registered protection rights required for the production of the products included in the project concerned.

### **C.2.03**

**INCOTEC** will not use the findings and intellectual property rights gained in cooperation with the customer for producing products that are in competition with products which are part of an agreed project with the customer.

### **C.2.04**

**INCOTEC** is entitled to affix its own company and brand markings. The customer is not permitted to remove such markings affixed by **INCOTEC**.

### **C.2.05**

The customer is obliged to ensure that **INCOTEC** can make legal use of the templates, designs, plans, text, trademarks and related items which the customer provides.

### **C.2.06**

**INCOTEC** has exclusive copyright over the control software and any other software delivered with the systems.

Only simple usage rights over the software are granted to the customer and on condition that the software is used exclusively for operating the individual system described in the contract.

### **C.2.07**

Any reproduction or deviating use of the software or the usage rights granted to the customer by **INCOTEC** in C.2.01 is unlawful.

The customer is particularly unauthorised to make or provide to third parties copies of the designs/manufacturing plans, documentation and related information which have been provided to the customer, unless **INCOTEC** has provided its express written permission.

The rights to produce backups per the German Copyright Act (UrhG) §69d par. 2 and to observe, inspect and test the program per UrhG §69d par. 3 remain unaffected by this.

#### **C.2.08**

Decompilation/disassembly of the software is forbidden.

However, if the customer can request the disclosure of interface information per UrhG §69e, **INCOTEC** will disclose information on the software's interfaces upon such request. If **INCOTEC** does not comply with this request within an appropriate period of time, the customer is permitted to decompile/disassemble the software parts necessary for the interface analysis in order to complete this analysis. Four weeks is considered an appropriate period of time.

#### **C.2.09**

The customer can only forward or provide designs, production documents, software, documentation or copies thereof to third parties upon completely relinquishing all of its usage options.

The customer is not allowed to forward the usage rights described in C.2.01.

### **C.3 Place of Performance/Acceptance/Transport/Risk Assumption**

#### **C.3.01**

The place of performance for the services provided by **INCOTEC** and the services to be provided by the customer is **INCOTEC's** production location.

#### **C.3.02**

The customer must provide **INCOTEC** with written confirmation of service provision after a service is provided.

#### **C.3.03**

If a test run has been agreed to in order to confirm a service's provision, the customer must give **INCOTEC** confirmation of the service's provision after a successful, orderly test run.

#### **C.3.04**

If partial deliveries have been agreed to, numbers **C.3.02** and **C.3.03** apply to the partial services in corresponding measure.

#### **C.3.05**

The contractual object or agreed part thereof is always considered accepted when:

- the customer uses it for production, or
- the customer or a third party performs actions upon the contractual object, or

- the customer does not provide **INCOTEC** with written confirmation of (partial) service provision within 10 days of being requested to do so, or the customer does not provide an opportunity to carry out the appropriate acceptance tests if test runs have been agreed.

#### **C.3.06**

If **INCOTEC** is responsible for transporting goods to the customer, **INCOTEC** reserves the right to select the shipping method unless a specific shipping method has been expressly stipulated.

If the goods leave **INCOTEC's** production facility or warehouse in the latter scenario, the customer assumes all risk. Shipping insurance is only provided on customer request and at its expense.

Liability for the goods is then transferred to the customer when they are handed over to the carrier, when they are declared ready for shipment or when they are provided on the agreed delivery date.

#### **C.4 Delivery Time**

Delivery **time** is the general term for delivery **periods** and delivery **dates**.

Delivery **periods** refer to the period of time in which a delivery or service must occur.

Delivery **dates** refer to the point in time – e.g. specific day, calendar week or similar – at which a delivery or service must occur.

#### **C.4.01**

Any agreed delivery **periods** are considered Ex Works, unless otherwise expressly agreed. Such delivery **periods** begin at the time indicated in the order confirmation, however not before the documents, approvals, requests and shipping addresses to be provided by the customer have been submitted, all order details have been clarified, and the customer has made all agreed prepayments or provided all agreed securities.

If a delivery **period** has been agreed to, it is extended correspondingly if the customer is in arrears supplying the documents, approvals, shipping addresses, prepayments or securities which it must provide. The same applies if a delivery **date** has been agreed to.

Delivery **dates** or **times** are also extended correspondingly when the requirements for **INCOTEC** providing its agreed services have not been met in time, whether by the customer itself or a third party.

#### **C.4.02**

If the customer requests modifications to the order after the order confirmation, the delivery **period** only begins with **INCOTEC's** confirmation of the modification. Any agreed delivery **date** is postponed correspondingly.

#### **C.4.03**

The delivery **period** is postponed by an appropriate length of time if there are unpredicted hindrances which **INCOTEC** cannot prevent despite reasonable care in the given circumstances, e.g. partial or total failure of subcontractors for which **INCOTEC** is not responsible.

#### **C.4.04**

In instances where standard components cannot be sourced for repairs, work under warranty, additional deliveries and related situations due to the affected system being custom-made as per



agreement or because special components have been installed, the applicable allowable delivery **time** for **INCOTEC** is extended by the time necessary to acquire the relevant components based on a punctual order.

#### **C.4.05**

A written reminder notice from the customer is always required for an **INCOTEC** delivery to be considered delayed.

#### **C.5 Partial Deliveries/Oversupply and Shortfalls**

Partial deliveries from **INCOTEC** are permitted when at a scale reasonable for the customer.

When **INCOTEC** makes use of its right to make a partial delivery, the customer cannot withhold payment for goods already delivered or services already provided for this reason.

#### **C.6 Prices**

##### **C.6.01**

Prices as well as costs are subject to the applicable value-added tax.

##### **C.6.02**

**INCOTEC**'s hourly rates, premiums and similar apply for all regular travel, waiting and working times based on the respective standard weekly hours. Travel hours are charged without overtime premiums. On the other hand, hours for vehicular travel are considered regular working hours with overtime premiums.

**INCOTEC** charges room and board in Germany for every day of travel and work. If assembly work or another service to the customer is continued after a weekend, **INCOTEC** can choose to charge for room and board or travel costs, unless otherwise expressly arranged. Bank holiday premiums and room and board are also charged on local bank holidays.

Travel costs are billed as per the following:

- Flights: economy class
- Train trips: 1st class
- Local transport: taxi and baggage carrier if necessary

Company vehicle: mileage allowance based on **INCOTEC**'s applicable cost rates

##### **C.6.04**

Travel hours and expenses for the return trip can only be entered on a work certificate or timesheet after journey completion.

##### **C.6.05**

The **INCOTEC** cost rates described in **C.6.02** are based on the respective wage, salary and working time regulations. In the event those regulations are altered, **INCOTEC** reserves the right to amend the cost rates accordingly. The current applicable cost rates can be given to the customer if desired.

##### **C.6.06**

If assembly, commissioning, maintenance, repair work or any other service is delayed for reasons beyond **INCOTEC**'s control, the customer must bear all costs arising from that, particularly waiting times and

additional travel costs and expenses incurred by employees and subcontractors engaged by **INCOTEC** through the delay.

##### **C.6.07**

The consequence mentioned in **C.6.06** only takes effect if the customer is responsible for the causes of the delay.

##### **C.6.08**

If packaging costs accrue, the customer is charged for them.

Furthermore, **INCOTEC** packages according to existing regulations and acts based on Packaging Ordinance (VerpackVO) §4.

#### **C.7. Payment Terms**

##### **C.7.01**

Unless otherwise expressly arranged, payment for services provided by **INCOTEC** during any given month is due on the 1st of the following month. This also applies if the services provided by **INCOTEC** for the customer stretch over several months. Examples of such services include special advisory services, training and similar activities.

##### **C.7.02**

Payment for work on software configurations and modifications performed by **INCOTEC** within a given month as part of a project lasting several months is, unless otherwise agreed, due on the 1st of the following month.

##### **C.7.03**

The following applies in addition to C.7.01 and C.7.02: payments are due immediately, unless otherwise arranged.

##### **C.7.04**

The deadline for payments owed to **INCOTEC** is 10 days after the invoice date. If this date is missed, the debtor is considered to have defaulted on payment.

##### **C.7.06**

The conditions of the VAT Act (UStG) apply to down payments.

##### **C.7.07**

The place of performance for payments is the registered business location for **INCOTEC**.

##### **C.7.08**

The customer can only offset claims which are uncontested or legally established.

##### **C.7.09**

The customer does not have a right of retention except in situations described by **C.7.08**.

The rights described in BGB §320 continue to apply if and for as long as **INCOTEC** has not met its warranty obligations.

##### **C.7.10**

If, after conclusion of the contract (or if a declaration of intent is still required from the customer after the last declaration of intent from **INCOTEC** directed at the contract's conclusion) the customer experiences a significant deterioration of its financial position, **INCOTEC**

can choose to demand prepayment or security for all services and deliveries still to be carried out from contracts in the same legal relationship (BGB §273). If the customer cannot satisfy this requirement, **INCOTEC** can withdraw from the aforementioned contracts or demand compensation instead of service provision after setting a deadline, amounting to 25% of the order total not carried out and with no special proof required, unless the customer can demonstrate that lesser damages have been incurred.

**INCOTEC** can demand compensation for damages exceeding 25% only if exceptionally high damages are present as an isolated instance, with the 25% rate being factored into this claim.

## **C.8 Examination and Notification Obligation**

### **C.8.01**

Deliveries from **INCOTEC**, including sketches, implementation plans, project proposals etc., must be immediately checked by the customer for serviceability and correctness upon delivery. The customer must also seek advice from the third-party system planner described in C.1.06.

### **C.8.02**

Visible defects must be reported in writing to **INCOTEC** with a detailed explanation of the specific complaints, at the latest 14 days after delivery to the goods' destination. When goods are delivered directly to third parties, the allowable reporting deadline is extended to 21 days.

### **C.8.03**

The customer must also report hidden defects in this form without delay, 14 days after discovery at the latest.

## **C.9 Customer Claims for Defects (Warranty)**

*Warranty*, for the purposes of these terms and conditions, means: an option to claim for unsatisfactory performance owing to the delivery of a defective object or production of defective work.

### **C.9.01**

The special legal provisions for the final delivery of an object to a consumer (supplier regress per BGB §§478, 479) remain unaffected by the limitation of liability in C.9.

### **C.9.02**

If the customer does not fulfil the inspection and notification obligations listed in **C.8**, **INCOTEC** cannot be held liable for the unreported defect(s).

### **C.9.03**

The general limitation period for claims on material and legal defects is **12 months** from the date of delivery or, if an acceptance test has been agreed to, from acceptance.

The special legal provisions on limitation periods, in particular BGB §438 par. 1 no. 1 and 2 (keyword: "buildings"), par. 3, §§444 & 479, remain unaffected by this.

### **C.9.04**

The general limitation period of 12 months also applies for contractual and non-contractual claims for compensation based on a defect in the object or work.

This shortening of the limitation period however does not apply:

- if the cause of the damages stems from intentional or gross negligence by **INCOTEC** or its representatives or agents;
- when the damages consist of injury to life, body and health;
- in the event of a delay (if a fixed delivery date has been set);
- if a defect is fraudulently concealed;
- if **INCOTEC** assumes a warranty and/or procurement/production risk as described in BGB §276;
- in cases of compulsory legal liability, through the Product Liability Act (ProdHaftG) in particular.

There is no reverse onus of proof to the customer's disadvantage associated with the above-mentioned provisions.

### **C.9.05**

If work or replacement deliveries carried out by **INCOTEC** extend or interrupt the warranty expiration, any such extension or interruption applies only to the functional unit affected by the replacement delivery or repair work.

### **C.9.06**

In the instance that the customer has a right to supplementary performance from **INCOTEC**, the latter initially decides whether that performance comes in the form of fixing the defect (repair work) or delivery of a defect-free object (replacement delivery). The right to refuse this supplementary performance in accordance with legal requirements remains unaffected.

### **C.9.07**

Liability is not assumed for damages for which **INCOTEC** is not responsible. These include, for example, damages incurred for the following reasons: inappropriate or improper use, incorrect assembly or commissioning by the customer or a third party, natural wear, incorrect or negligent treatment, inappropriate equipment or replacement materials, defective building work, unsuitable work surface or chemical, electromagnetic, electrochemical or electrical interference, as long as blame cannot be attributed to **INCOTEC**.

### **C.9.08**

**INCOTEC** moreover does not assume any liability for components provided by the customer. The customer alone is responsible for the suitability and procurement of such components, unless otherwise expressly arranged.

### **C.9.09**

If the customer does not observe the operation and maintenance instructions and consequently causes damages, **INCOTEC** is released of its liability and warranty obligations. **INCOTEC's** liability in cases described in C.10.02 remains unaffected by this.

### **C.9.10**

If the customer does not observe the operation and maintenance instructions, it is assumed that any arising damage comes as a result of that. In this case, the customer carries the burden of proof for the contrary.

#### **C.9.11**

**INCOTEC** is permitted to make supplementary performance (e.g. for a repair) dependent on the customer paying the due purchase price. The customer is however permitted to retain a part of the purchase price in proportion to the defect.

#### **C.9.12**

Work on objects delivered by **INCOTEC** or other services provided by **INCOTEC** are only considered work for defect rectification or repair:

- if the defect is expressly recognised by **INCOTEC**, or
- notice(s) of defect(s) has/have been demonstrated, and
- if these demonstrated notice(s) of defect(s) is/are justified.

If these requirements are not met, work of this nature is considered a special service.

#### **C.9.13**

**INCOTEC** furthermore performs repair work or replacement deliveries as special services if the performance does not occur as part of express recognition of a legal obligation.

#### **C.9.14**

The required expenses for assessing and performing supplementary work, particularly transport, travel, work and material costs (not: disassembly and assembly costs) are borne by **INCOTEC** if a defect is present. Otherwise, **INCOTEC** can demand repayment of costs arising from an unjustified defect rectification demand (assessment and transport costs in particular), unless the customer was unable to recognise that the defect did not exist.

In the event that the systems delivered by **INCOTEC** are installed or operated by the customer somewhere other than its main office, although the relevant contract was concluded based on premises or a main office in Germany, the customer must carry the additional costs arising from the fact that any warranty actions performed by **INCOTEC** have their own transport, travel and other expenses which extend beyond the borders of Germany.

#### **C.9.15**

**INCOTEC** advises that data (including programs and the like) can be lost for many reasons and that restoring data is often not possible or only with disproportionate effort.

It is the customer's obligation to always professionally back up its entire database in a way that ensures a complete backup every 24 hours and availability in this form for at least one month.

If data loss occurs for which **INCOTEC** is responsible, **INCOTEC's** duty of replacement is limited to restoring the customer to the position it would have based on its fulfilment of its data backup obligation. **INCOTEC's** liability in cases described in C.10.02 remains unaffected by this.

#### **C.9.16**

If **INCOTEC** carries out remote maintenance or provides other services via electronic data interchange, **INCOTEC** does not assume liability for data loss or fraud occurring during data transmission which

is not caused by **INCOTEC**. **INCOTEC** advises, as is known, that data integrity is endangered during data transmission particularly by line faults and faulty EDI end devices. If a case of data corruption or loss appears for which **INCOTEC** is responsible, **INCOTEC** will carry out the work again free of charge, if the customer – provided that customer data is affected – provides the corresponding backed up data. Further claims from the customer are excluded. **INCOTEC's** liability in cases described in C.10.02 remains unaffected by this.

#### **C.9.17**

To carry out repair work and replacement deliveries due under warranty, the customer must give **INCOTEC** the required time and opportunity. The customer only has the right to rectify the defect itself or through a third party and demand compensation for the required costs from **INCOTEC** in urgent cases where operational security and disproportionately large damages are at stake, and **INCOTEC** has been informed either immediately or, if possible, beforehand, or where **INCOTEC** is late in rectifying a defect.

#### **C.9.18**

If an error occurs in the supplementary rectification work or a reasonable deadline set by the customer for such work expires without success (BGB §323 par. 1 or §281 par. 1), is not required by law (BGB §323 par. 2 or §281 par. 2), can be refused by **INCOTEC** per BGB §439 par. 3 or is unreasonable for the customer, the customer can withdraw from the contract. There is, however, no right to withdraw if the defect is negligible.

#### **C.9.19**

The customer is only permitted the right to reduce the payable purchase price amount if **INCOTEC** agrees to it.

#### **C.9.20**

**Customer claims for damages or compensation for wasted expenditure are also excluded for defects according to C.10.01 and are only permissible in the cases described in C.10.02.**

### **C.10 Other Liability**

#### **C.10.01**

**Unless otherwise specified in these general terms and conditions and subject to C.10.02 below, recognition of customer compensation and reimbursement claims against INCOTEC is excluded, no matter the legal grounds. This also applies for compensation claims under tort law (e.g. BGB §823).**

**If liability is excluded or limited, this also applies to the personal liability of INCOTEC's employees, representatives and agents.**

#### **C.10.02**

The limitation of liability as described in C.10.01 above does not apply:

- if the cause of the damages stems from intentional or gross negligence by **INCOTEC** or its representatives or agents;
- if there is a violation of essential contractual obligations, in which case the compensation is limited to foreseeable damage typical for the contract. Essential contractual obligations are obligations that protect the contractual partner's essential legal positions, which must be granted to the contractual partner in terms of the contract's contents and purpose; other essential contractual

obligations are those which must be fulfilled before the orderly execution of the contract is even possible and which the customer regularly had and can have confidence in their being fulfilled;

- when the damages consist of injury to life, body and health;
- in the event of a delay (if a fixed delivery date has been set);
- if a defect is fraudulently concealed;
- if **INCOTEC** assumes a warranty and/or procurement/production risk as described in BGB §276;
- in cases of compulsory legal liability, through the Product Liability Act (ProdHaftG) in particular.

There is no reverse onus of proof to the customer's disadvantage associated with the above-mentioned provisions.

#### **C.10.03**

A breach of obligation not based on a defect is only grounds for the customer's withdrawal from or termination of the contract if **INCOTEC** is responsible for the breach of obligation.

**The customer does not have the right to freely terminate the contract (as described in BGB §§651, 649).** The legal requirements and consequences also apply.

### **C.11 Orders with Stand-by Delivery**

#### **C.11.01**

If the customer of a contract with stand-by delivery does not make a delivery request within 4 weeks of an agreed partial order deadline, **INCOTEC** is entitled to demand payment.

#### **C.11.02**

The same applies for orders with stand-by delivery without any specially agreed partial delivery date if 4 months pass since receipt of **INCOTEC's** notice of being ready to deliver and no delivery is requested.

### **C.12 Storage/Acceptance Delays**

#### **C.12.01**

**INCOTEC** is also not required to insure goods needing storage.

#### **C.12.02**

If acceptance is delayed, **INCOTEC** is entitled to store the goods at a commercial storage unit at the customer's risk and expense.

This also applies if shipping is delayed at the customer's request for more than 2 weeks beyond the communicated date of readiness for delivery.

#### **C.12.03**

If the customer does not accept the ordered goods despite a deadline being set, **INCOTEC** is entitled to demand 25% of the agreed price as compensation, without needing to demonstrate proof of the actual damages incurred, unless the customer provides evidence of damages of a lesser value.

### **C.13 Retention of title**

#### **C.13.01**

The title to all goods delivered by **INCOTEC** remains with **INCOTEC**.

#### **C.13.02**

This reservation in addition to the following extension applies until all claims from the business relationship with the customer have been paid and until the complete release from all contingent liabilities which **INCOTEC** has incurred in the customer's interest and which exist in conjunction with the delivery.

#### **C.13.03**

It is not permitted to give delivered objects as security.

#### **C.13.04**

**INCOTEC** is entitled to reclaim its reserved goods if there is an important cause to do so, particularly when payment is delayed, factoring in the proceeds from utilisation. This reclaim does not represent withdrawal from the contract.

#### **C.13.05**

If the goods taken back by **INCOTEC** can be re-sold elsewhere in the usual course of business, the customer owes 10% of the goods' invoice value as reclaim costs with no further proof required. If re-sale in the usual course of business is not possible, the customer owes an additional 30% of the goods' invoice value for value loss, with no further proof required. The customer however maintains the right to furnish proof of a lower percentage value.

#### **C.13.06**

**INCOTEC** reserves the right to enforce other, more extensive damages.

#### **C.13.07**

The processing of goods delivered by **INCOTEC** always takes place on behalf of **INCOTEC**, with the result that the goods remain the property of **INCOTEC** in any state of processing, even as finished goods, to the exclusion of the consequences in BGB §950. If the reserved goods are processed with other delivered objects excluded from the legal consequences in BGB §950, **INCOTEC** at the least acquires co-ownership of the new object proportional with the **INCOTEC** goods' invoice value and the invoice value of the other objects processed.

#### **C.13.08**

The customer hereby assigns in advance to **INCOTEC** all claims arising from the further sale, processing, assembly and other exploitation of our goods. If, in the products sold, processed or installed by the customer, there are objects that do not belong to the customer and for which other suppliers also have reservation of title with sales clause and advance claim assignment, **INCOTEC's** co-ownership share is assigned equivalent to the fraction of the claim, otherwise in its full amount.

#### **C.13.09**

The collection authority remaining to the customer despite assignment expires through revocation permitted at any time.

#### **C.13.10**

If the value of the securities due to **INCOTEC** exceed **INCOTEC's** claim against the customer by 50% for goods deliveries, and 20% for other



services, **INCOTEC** is required to release its own choice of securities in corresponding measure at the customer's request.

#### **C.14. Product Tests**

##### **C.14.01**

If the customer sends products sourced from **INCOTEC** to **INCOTEC** with the order to test the despatched goods and, if a fault is found that is covered under **INCOTEC**'s warranty to repair or replace the goods free of charge at own choice of **INCOTEC**, then the provisions below in C.14 apply in addition to the usual General Terms and Conditions of **INCOTEC**.

##### **C.14.02**

Goods despatched carriage forward to **INCOTEC** are not accepted.

##### **C.14.03**

All products sent to **INCOTEC** for testing as described in C.14.01 must have an accompanying RMA label completely and correctly filled out by the customer, similar to the one **INCOTEC** provides on its website as a download ([www.inoctec.world/rma](http://www.inoctec.world/rma)). A specific description of the fault in particular is also required.

**INCOTEC** has the right to send back products that are not accompanied by a completely and correctly filled out RMA label as well as products not sourced from **INCOTEC**, and to return them untested and at the customer's expense.

##### **C.14.04**

The customer must pack the goods securely. Damages arising from insufficient packaging are incurred at the latter's expense.

##### **C.14.05**

**INCOTEC** charges the customer a flat fee of €100.00 plus VAT for the fault analysis. The customer assumes transport costs. The flat analysis fee and transport costs are not due if a fault covered by **INCOTEC**'s warranty is found. In the event that the customer signs a repair or replacement agreement, the flat fee is credited.

#### **C.15 Place of Performance**

##### **C.15.01**

The place of performance for the services and deliveries to be provided by **INCOTEC** is always **INCOTEC**'s production or storage facility. This also applies if **INCOTEC** takes over transport itself.

##### **C.15.02**

The place of performance for all services to be provided by the customer is the registered office of **INCOTEC**.

#### **C.16 Headings and Definition**

##### **C.16.01**

All headings in the **INCOTEC** terms and conditions serve only to facilitate easier reading and do not play a role in the meaning and construction of the individual regulations.

##### **C.16.02**

Written declarations of intent and knowledge, for the purposes of the **INCOTEC** terms and conditions, include declarations that are transmitted in textual form (i.e. via fax or email).

#### **C.17 Place of Jurisdiction and Substantive Law**

##### **C.17.01**

The place of jurisdiction for all conflict arising from or in conjunction with the contractual relationship between the customer and **INCOTEC** is Bielefeld.

**INCOTEC** is, in the above described situation, also entitled to bring legal action against the customer at the latter's registered location.

##### **C.17.02**

The only applicable law is German law, to the exclusion of international uniform laws and the UN Convention on Contracts for the International Sale of Goods (CISG) in particular.

The requirements for and effects of the reservation of title as described in **C.13** are subject to the law of the object's respective storage location if the choice of German law at the location is inadmissible or invalid.

##### **C.18 Final Provision**

If a provision in these terms and conditions or a provision incorporated at a later date is or becomes wholly or partially ineffective, inadmissible or impracticable, or should an omission become apparent in these terms and conditions or its additions, this will not affect the effectiveness of the remaining provisions. BGB §306 par. 2 & 3 remain unaffected by this.

#### **D. Special Conditions of Usage for Log-In Area**

Usage of the log-in area as well as the range of services provided there by **INCOTEC** is directed exclusively towards contractors in the sense of §14 of the German Civil Code (BGB) and not to consumers in the sense of §13 BGB, i.e. natural persons concluding the contract for purposes that cannot be attributed predominantly to their commercial or self-employment.

##### **D.0.**

**INCOTEC** makes certain information and software, where applicable with documentation, available for download or perusal on the **INCOTEC** website. **INCOTEC** is authorised to cease the operation of the **INCOTEC** website at any time, either in part or in whole. Due to the nature of the Internet and computer systems, **INCOTEC** does not assume any liability for the uninterrupted availability of the **INCOTEC** website.

##### **D.1.**

Some pages on the **INCOTEC** website may be password-protected. In the interest of business security, access to these pages is only possible for registered users. A claim to be registered by **INCOTEC** cannot be raised. **INCOTEC** expressly reserves the right to require registration for web pages that previously were freely accessible. **INCOTEC** is authorised to revoke access authorisation at any time by blocking login data and without naming reasons, particularly if the user provides false information when registering, breaches these terms and conditions when using login data, does not offer due diligence with the login data, breaks the applicable law when accessing or using the **INCOTEC** website or does not use the **INCOTEC** website for a long period of time.

**D.2.**

If registration is required, the user must supply truthful details when registering and notify **INCOTEC** of any later changes without delay (if required: online). The user ensures that the emails sent to his/her specified email address are received by him/her.

**D.3.**

After registering successfully, the user receives a user name and password (also referred to below as "user data"). When first accessing the website, the user changes the password supplied by **INCOTEC** to one known only by him/her. The user data makes it possible for the user to see or change his/her data or where relevant to revoke or add to his/her given permission for having such data processed.

**D.4.**

The user ensures that third parties cannot access the user data and is liable for all orders and other activities made using the user data. The password-protected area must be exited after every session. If the user gains knowledge of third parties misusing the user data, he/she must immediately inform **INCOTEC** in writing, where possible also in advance through a simple email.

**D.5.**

After receiving notice as described in D.4., **INCOTEC** blocks access to the password-protected area for that user data. Access can only be unblocked after **INCOTEC** receives a separate request from the user or if he/she re-registers.

**D.6.**

The user can make a written request to have his/her registration deleted at any time, as long as its deletion does not pose a problem for the processing of ongoing contractual relationships. In this event, **INCOTEC** deletes all user data and all other saved personal data related to the user as soon as it is no longer needed.

**D.7.**

Usage of the information, software and documentation provided on the **INCOTEC** website is subject to these terms and conditions or, for updates of information, software or documentation, the applicable licence conditions agreed earlier with **INCOTEC**. Separately agreed licence conditions take priority over these terms and conditions.

**D.8.**

**INCOTEC** grants the user a non-exclusive and non-transferable right to use the information, software and documentation held on the **INCOTEC** website to the extent agreed or, if not agreed, in line with the purpose of **INCOTEC** providing and leaving information, software and documentation on its website.

**D.9.**

Information, software and documentation cannot be sold, rented or in any other way given to third parties at any time. Unless obligatory legal regulations allow otherwise, the user cannot change, decompile or reverse engineer software or documentation, and he/she cannot disseminate parts of it. The user can make a backup copy of the software if it is necessary to provide security for future use based on these terms and conditions of usage.

**D.10.**

The information, software and documentation are protected by copyright laws as well as international copyright agreements and other laws and agreements on intellectual property. The user must observe these copyrights and especially must not remove alphanumeric identifiers, branding or copyright notices from the information, software, documentation or copies thereof.

**D.11.**

§§69a et seq. of the Copyright Act remain otherwise unaffected.

**D.12.**

Provided that information, software and documentation is given to the user without charge, liability cannot be assumed by **INCOTEC** for any material or legal deficiencies, in particular for its correctness, accuracy, freedom from third parties' property or copyrights, completeness and/or usability – except in cases of intent or guile.

**D.13.**

The information on the **INCOTEC** website can contain specifications or general descriptions of technical possibilities for products, which, depending on the situation may not always be accurate (e.g. because of product changes). The desired performance specifications for products must thus be agreed on at the time of purchase.

**D.14.**

**INCOTEC** and/or its subsidiaries operate and are responsible for the individual pages on the **INCOTEC** website. The pages reflect the requirements of the respective country where the company responsible is based. **INCOTEC** does not assume any responsibility for information, software and/or documentation being viewed or downloaded from the **INCOTEC** website in places outside of the relevant country. If users from places outside of the relevant country access the **INCOTEC** website, they themselves are exclusively responsible for following the applicable regulations coming from the respective country's law. Access to information, software and/or documentation on the **INCOTEC** website from countries where access is unlawful is not permitted. In this case, and in case the user wishes to enter a business relationship with **INCOTEC**, the user should take up contact with **INCOTEC** representatives in his/her country.

**D.15.**

**INCOTEC** website in the sense of these Special Conditions of Usage refers to all web pages which **INCOTEC** and/or its subsidiaries operate and are responsible for.

**D.16.**

In addition, **INCOTEC**'s General Terms and Conditions of Business described in section C also apply to usage of the log-in area on the **INCOTEC** website and for the services provided there.