

General Terms & Conditions

Governing imc Meßsysteme GmbH Deliveries and Services to Customers

As of: 2015-09-01

§ 1 General / Scope

- (1) These terms and conditions apply to all contracts concluded with imc Meßsysteme GmbH (hereinafter referred to as “imc”), which involve deliveries and services of imc (hereinafter referred to as “Products”) to customers. These terms and conditions are also applicable to all future contracts regarding imc’s deliveries and services to customers, even if not expressly agreed.
- (2) As far as the Products include software developed by imc, the “Terms and Conditions Governing the Use of imc Meßsysteme GmbH Software” and the terms and conditions of a separately concluded written agreement also apply, where appropriate.
- (3) Deviating, conflicting or supplementary general terms and conditions of the customer – even with knowledge thereof – are not considered part of the agreement, unless such is expressly approved in writing. As far as the customer’s general terms and conditions fail to coincide with these terms and conditions, the customer is obliged to notify imc expressly and in writing before conclusion of the contract that the general terms and conditions of imc are not acceptable. Should it fail to do so, the customer waives the right to assert its contradicting terms and conditions.
- (4) All imc’s offers and services are addressed exclusively to merchants acting within the scope of their business in accordance with the German Commercial Code (*Handelsgesetzbuch*, “HGB”), to corporate bodies organized under public law (*juristische Personen des öffentlichen Rechts*) or to special assets under public law (*öffentlich-rechtliche Sondervermögen*).

§ 2 Conclusion of the Contract

- (1) Unless otherwise expressly agreed, offers issued by imc are non-binding.
- (2) The specifications and the quality of the Products are based on the technical data sheets stated in the offer. With regard to the quality of the software developed by imc, the description in the product documentation and/or the description in any separately concluded written agreement are applicable. The technical data sheets and the descriptions of the software do not comprise warranties, nor do they guarantee characteristics; they are also not required to correspond with the latest state of technology. Other information and images included in offers, brochures, ads, catalogs or other informational materials from imc present only approximate values and are also not required to correspond with the latest state of technology; thus, they do establish an agreement on quality or a warranty, and are not relevant for the contractual condition of the Products.
- (3) The contract (hereinafter also referred to as "Order") comes into effect only when imc confirms the order in writing to the customer; this may also be issued electronically (email). Contract conclusions become binding upon the customer's unconditional acceptance of imc's offer within the deadline stated in the offer and furthermore, only when imc confirms the order.
- (4) In the event that the customer orders Products from imc without receiving a prior offer, the customer thus declares its legally binding intent to purchase the ordered Products. imc is entitled to accept the contractual offer underlying the order within two weeks after receipt by imc. The acceptance may be declared in writing or by means of delivering the Products to the customer.

§ 3 Retention of Title

- (1) The following agreed retention of title serves as security for all currently existing and future claims of imc against the customer arising from the existing supply relationship between the parties (including payment balance requests based on a current account restricted to this supply relationship).
- (2) The Products delivered by imc to the customer remain the property of imc until complete payment of all secured claims. The Products, as well as replacement items subject to retention of title as per these terms and conditions regarding retention of title, are hereinafter referred to as Retained Products. The customer stores the Retained Products at no cost to imc.

- (3) In the event that imc asserts retention of title, the customer's right to further use of the Retained Products is cancelled. Any repossession of the Retained Products by imc is conducted as a precautionary measure. By no means does this constitute a withdrawal from the contract, even if partial payments were permitted. imc is then also entitled to sell or auction the items without restriction. Further claims for damages, in particular for loss of profit, remain unaffected.
- (4) The customer is entitled to process and sell the Retained Products until imc asserts retention of title within the scope of ordinary and proper business transactions. Security assignments, transfer of rights of use for security purposes and seizure are prohibited.
- (5) If the Retained Products are processed by the customer, it is thus agreed that the processing is performed in the name of and for the account of imc as manufacturer and imc as direct owner or – if processing is conducted with material from multiple owners or the value of the processed item is higher than the value of the Retained Products – joint ownership (co-ownership) of the newly created item is acquired in proportion of the value of the Retained Products to the newly created item. In case no such acquisition of ownership on the part of imc takes place, the customer hereby transfers to imc its future ownership or – in accordance with the above stipulated proportional relationship – joint ownership to the newly created item for security purposes. If the Retained Products are combined or permanently mixed with another item to form a new individual item and are then an integral part of the other item, and provided that imc owns the integral part, imc transfers to the customer proportional joint ownership of the new individual item according to the proportional relationship stipulated in sentence 1.
- (6) In the case of resale of the Retained Products, the customer hereby assigns to imc for security purposes all claims against the purchaser arising from the resale; if imc holds joint ownership of the Retained Products, the claim is assigned proportionate to the share of joint ownership. This also applies to other claims, which replace the Retained Products or otherwise arise related to the Retained Products, such as insurance claims or claims resulting from an unlawful act regarding loss or destruction. imc authorizes the customer on a revocable basis to collect on claims transferred to imc in its own name. Only in the case of an Enforcement Event may imc revoke the authorization to collect.
- (7) Should third parties gain access to the Retained Products, particularly by means of seizure, the customer is obliged to inform the third party of imc's ownership and to immediately inform imc so that imc may enforce its ownership rights. Pro-

vided that the third party is not able to reimburse imc for court fees or out-of-court expenses in this context, the customer is liable to imc for such.

- (8) Upon request and at its own discretion, imc undertakes to release the Retained Products subject to retention of title as well as the items or claims replacing the Retained Products, as far as their value exceeds the amount of the secured claims by more than fifty percent (50%).

§ 4 Execution of the Contract, Delivery, Transfer of Risk

- (1) All services provided by imc are performed exclusively in accordance with the content of the order confirmation or the offer submitted by imc as well as these terms and conditions. In the event of inconsistencies between the content of these contractual bases, the content of the order confirmation or the offer submitted by imc has precedence, followed by the provisions of these terms and conditions.
- (2) imc is entitled to modify the delivered item and its services to an extent considered reasonable for the customer, in particular as far as the scope of application and confirmed functionality are not impaired.
- (3) imc is permitted to use in part or in full appropriate third parties (subcontractors) to fulfill services according to this agreement.
- (4) All delivery and service dates apply subject to correct and timely delivery by suppliers.
- (5) For the purpose of delivery by means of electronic software delivery (ESD), imc provides the customer with the option of downloading the purchased program package from imc's server.
- (6) Unless otherwise expressly agreed, any delivery deadlines and dates included in the offer or in the order confirmation are approximations and thus non-binding estimations made by imc; in particular, they are not fixed deadlines. As far as the execution of the delivery requires customer participation or preparation, the delivery deadline begins upon conclusion of these activities. Furthermore, the delivery deadline begins upon dispatch of the order confirmation by imc.
- (7) Unless otherwise expressly agreed, delivery and transport is ex works pursuant to Incoterms 2012 at the customer's expense.

- (8) Should the delivery of Products be delayed for reasons not attributable to imc, the risk is transferred to the customer upon notification of readiness for shipment or delivery.
- (9) Insurance policies for all types of damages are taken out at the express request and expense of the customer. In order to maintain transportation insurance protection, the customer is obliged to inspect the Products for damages incurred during transportation immediately after receipt. Obvious damages to the Products or the packaging are to be confirmed on the consignment note by the freight carrier or its assistants in performance. The transportation carrier and imc are to be notified of concealed damages within seven (7) days.
- (10) The customer carries the risk of accidental loss. The customer is obliged to handle imc's Products with care and to take out insurance of sufficient amount. The claims against the insurance company are considered transferred until all claims of imc have been paid in full.
- (11) imc is entitled to partial delivery (delayed provision of individual batches of the agreed number of Products), unless the partial performance is so marginal in scope in relation to the contractually agreed upon services that – based on reasons that are to be factually and objectively assessed – the customer has no interest in such. Partial deliveries are billed by means of partial invoices (if necessary, also taking into consideration any damages to the customer caused by default (*Verzug*) in connection with the liability provisions of these general terms and conditions). Short-term limitations according to the above section are not considered to be partial performance justifying reduction of payment or default.
- (12) Events of force majeure or other unforeseeable events (such as changes to official permits and in the legal situation, disruption in business operations, labor disputes, difficulties involving the procurement of materials) which are beyond the intent and control of imc, – also as far as such events affect suppliers – result in the extension of any agreed delivery or performance period by the corresponding necessary and appropriate period of time required to eliminate the obstacles. Such events only justify termination or withdrawal from the respective Order if a further delay becomes unreasonable for the customer; a further delay is generally defined as unreasonable after six (6) weeks of the start of the disruption. imc is not liable for any resulting damages.
- (13) imc accepts returned packaging in accordance with the applicable obligations stipulated in the German Packaging Ordinance (*Verpackungsverordnung*). Un-

less notified of another acceptance/collection site, the customer may return packaging to imc's premises during regular business hours after issuing timely prior notification. Unless the customer is notified of another acceptance/collection site, packaging may also be returned to imc at the time of delivery. Packaging is only taken back immediately after delivery of the Products; with regard to subsequent deliveries, only after timely prior notification and provision. The customer bears the transportation costs for the used packaging. If the stated acceptance/collection site is located further away than imc's premises, the customer bears only the transportation costs which would have been incurred for the distance to imc's premises. The returned packaging must be clean, free of foreign substances and sorted according to packaging types. imc is otherwise entitled to charge the customer for the additional costs incurred during disposal.

§ 5 Special Provisions for Third-party Software

- (1) Should the customer obtain another manufacturer's software ("Third-party Software") via imc, the customer is obliged to comply with the license provisions and provisions governing rights of use of the third party, which are to be provided by imc, when using such software. With the order of Third-party Software, the customer confirms acceptance of the scope of services and the license provisions of the Third-party Software.
- (2) The delivery of Third-party Software is conducted according to the third party's license provisions and provisions governing rights of use. Until each due fee is paid in full, the customer is entitled to use the Third-party Software solely on a revocable basis; the customer receives the irrevocable right of use to copyrighted services of such third party for an unlimited period of time, particularly with regard to Third-party Software, only upon full payment of the agreed fee. If the provision of the Third-party Software is based on a continuing obligation, in deviation from the provisions set out in the above sentence the customer is only granted a revocable right to use Third-party Software for the period between the due date and full payment of the usage fee. If the customer is in default with regard to the payment of fees, imc is entitled to revoke the right of use to Third-party Software for the duration of the default. Further rights of imc based on payment default by the customer remain unaffected.
- (3) In the case of a defect in product performance or in title regarding Third-party Software or other damages caused by Third-party Software, the parties agree to the following: (i) imc transfers to the customer all rights held by imc against the third party in such case. The customer hereby accepts such transfer. (ii) In such

case, the customer will first assert all claims against the third party to the full extent and enforce all assigned rights against the third party (also in court proceedings). (iii) Only thereafter and as far as the assertion of claims against the third party is unsuccessful (e.g. due to insolvency or an inability to locate), the customer is entitled to assert claims against imc according to the provisions of these terms and conditions regarding warranty (liability for defects) and liability.

- (4) If the customer obtains software which is qualified as public domain, freeware or as shareware and which was not developed by imc, imc assumes no warranty or liability, unless imc fraudulently conceals the existence of a defect. The customer is to observe the respective right holder's license provisions and provisions governing the right of use to such software.
- (5) The customer indemnifies and holds harmless imc from and against claims based on infringements of its obligations pursuant to this § 5 to the full extent as well as claims arising therefrom by third parties.

§ 6 Special Provisions regarding Software Developed by imc (imc Software)

- (1) With regard to software developed by imc ("imc Software", e.g. standard software, software created or adjusted specifically for the Customer, which is recorded on the machine-decodable data carriers such as data files, databases and database material, updates, upgrades, releases, etc., including corresponding documentation, information and materials), the scope of services is defined in the product documentation as well as separately in the contract by means of a service description, if applicable.
- (2) In deviation from the agreed Software version defined at the conclusion of the contract, the newest version of imc Software as of the delivery date may be delivered, provided that the field of application and the confirmed functionality of the Software is not restricted.
- (3) imc Software is provided to the customer as an executable object program on machine-decodable data carriers. The Software's product documentation is supplied to the customer either in print or also on a machine-decodable data carriers.
- (4) The customer informs itself about the significant functional features of imc Software and is responsible for ensuring that imc Software corresponds with its ideas, wishes and requirements. In case of doubt, the customer is to consult imc employees or expert third parties before conclusion of the contract. Upon re-

quest, imc provides the customer with information about the technical fields of application and operating conditions of imc Software.

- (5) With regard to the transfer of rights of use to imc Software, the “Terms and Conditions Governing the Use of imc Meßsysteme GmbH Software” apply, as well as the provisions of a separately concluded written agreement, if applicable.

§ 7 Assignment of imc Employees and Third Parties on the Customer’s Premises

- (1) With regard to imc employees as well as employees of subcontractors (hereinafter referred to jointly as “Employees”), imc undertakes before performance of services at the customer’s premises to impose the obligation to adhere to the applicable regulations for the prevention of accidents and safety instructions, which will be provided by the customer in writing before assignment, if necessary, and to follow the instructions of the customer’s authorized personnel which are issued on company property in connection with the safety and security provisions.
- (2) With regard to all imc Employees assigned to work at the customer’s premises, imc retains the unrestricted right to instruct and manage with regard to the relationship with the customer. imc particularly has the right to
 - make decisions regarding the selection and number of assigned employees
 - determine working hours and any overtime
 - grant vacation and leisure time
 - conduct work inspections and monitor the proper performance of operations

§ 8 Customer’s Duty to Co-operate

- (1) The customer must make every effort at its own costs to make it possible for imc to provide its services without difficulty and to refrain from any actions that could make performance more difficult or impossible. Additional agreements regarding type, scope, dates and other details regarding the customer’s duty to co-operate and to provide services are concluded in each Order.
- (2) The customer’s general duty to co-operate includes the following duties:

- a) The customer will make available to imc the documentation and information in its possession that is required by imc to perform services immediately and at no charge.
 - b) The customer authorizes imc employees to access the customer's buildings and premises and grants them access to the customer's IT systems, as far as such is necessary for performing services. Further information in this context is regulated in each Order.
 - c) The customer provides for the appropriate security of its own data, materials and programs. imc informs the customer if pending work or other services performed by imc could lead to a loss of data, so that the customer can ensure that it has up-to-date and sufficient data security in place.
 - d) If the customer becomes aware that the documents or information provided by imc are incorrect, incomplete, or not clear, the customer is to notify imc of such immediately.
 - e) The customer has informed itself about the significant functional features of imc's deliveries and services and is responsible for ensuring that these correspond with its expectations, wishes and needs.
- (3) In the event that the duty to co-operate or to provide services is not fulfilled pursuant to the contract, imc will attempt to ensure that the deliveries are made on time without being obligated to do so. imc is entitled to charge for the resulting additional expenses in addition to the agreed fee (particularly in cases involving a maximum or fixed price agreement). Furthermore, in such case agreed deadlines or dates for services are postponed for a period of time which is necessary and appropriate in order to eliminate the consequences of the improper fulfillment of the contractual duty to co-operate or provide services.

§ 9 Acceptance

The mere delivery of devices or standard programs does not constitute acceptance. As far as imc performs individualized programming or other works services as per the Order, or imc sets up, connects or installs devices with standard software at the customer's site, or the parties expressly agree to acceptance for other services, the following provisions apply:

- (1) After set up and connection of the devices as well as installation of the standard software, readiness for acceptance is determined by means of a trial run. The

proper functioning of individual software is also determined by means of a trial run. As far as the services to be accepted correspond with the contractual agreements, the customer immediately confirms acceptance on the respective acceptance protocol, unless a significant defect exists. Any defects are to be recorded and specified in the acceptance protocol. Acceptance declared to the manufacturer or the supplier also applies to imc.

- (2) For insignificant defects, the provisions set out in these general terms and conditions regarding liability for defects ("Warranty") apply. Should the customer refuse acceptance based on the existence of a significant defect, imc is entitled to remedy or replace, and then newly declare readiness for acceptance; thereafter, the provisions as stipulated in the above Paragraph (1) are to be followed.
- (3) Should the customer not declare acceptance within two (2) weeks after readiness for acceptance is determined by imc, and if the customer has not issued in the meantime any complaint regarding significant defects, the service is deemed accepted. Acceptance also takes place if the customer uses the service without declaring to imc that use is significantly impaired.
- (4) If the parties have agreed to milestones or similar projects phases, in particular a schedule, the customer is obliged to assess the result of each phase immediately and to issue approval for imc's further work – within two (2) weeks at the latest. The approval also constitutes partial acceptance. The risk of any errors is transferred to the customer upon declaration of approval, as far as this does not involve errors which arose or which were first able to be identified in the context of services provided after issuance of approval.

§ 10 Prices and Payment Terms

- (1) All prices are ex works, net amounts and do not include transportation and transportation insurance, other taxes, customs duties, fees and applicable value added tax.
- (2) Payments are to be made in euro within thirty (30) days after receipt of the invoice without deduction and at no cost to imc. In the event that payment deadlines are exceeded, without prejudice to other rights, imc is entitled to charge interest for default in the statutory amount. imc's right to assert a higher claim for damages remains unaffected.
- (3) The customer is entitled to exercise rights to offset or withhold payment only to the extent that its counterclaims have been declared legally binding, are uncon-

tested or are recognized by imc. Furthermore, the customer is entitled to exercise a right to withhold only to the extent that its counterclaim is based on the same contractual relationship.

- (4) If the customer is in default with regard to payments, imc is entitled to withhold the delivery of other orders placed by the customer. As far as the overdue amounts are paid, imc is entitled to stipulate a new delivery deadline under consideration of its other delivery obligations at its own discretion.

§ 11 Liability for Material Defects (“Warranty”)

- (1) imc warrants that the delivered item corresponds with the agreed technical data sheets. With regard to the delivery of imc Software, imc warrants that the Software corresponds with the description in the product documentation and the description in a separately concluded written agreement, if applicable.
- (2) The customer immediately inspects the delivered item to ensure contractual compliance as well as any forwarded preliminary and interim results. In particular, the customer thoroughly tests the delivered item to ensure that it is free of defect and that it is usable in specific situations before initiating operational usage. This also applies to delivered items, which are received in the framework of the warranty, or maintenance and service. The customer must issue notification in writing without undue delay, providing a description of the symptoms experienced. The customer is particularly obliged to issue notification in writing after detection of obvious defects within a ten (10) day deadline, which commences upon receipt of the delivered item; otherwise, the assertion of the warranty claim is excluded. The timely dispatch of the complaint regarding a defect suffices to comply with the deadline. The customer also informs imc after expiration of the warranty period without undue delay, if third parties assert claims based on the infringement of protective rights by the delivered item.
- (3) If a defect exists, imc shall remedy the defect (e.g. by means of elimination of error or work-arounds) or supply the item free of defect (“Supplementary Performance”, *Nacherfüllung*) at its own choice. In the event that it has been determined in a legally binding manner that an object delivered by imc has infringed third-party protective rights, at its own discretion imc will either obtain the required right of use for the customer at its own expense or modify the services in a manner that prevents the infringement of protective rights, yet continues to correspond with the contractual arrangements. The details regarding Supplementary

Performance are also based on the provisions of a maintenance and service contract concluded between the parties, if applicable. imc is entitled to refuse Supplementary Performance if such is only possible at unreasonable cost. In the case of supply of an item free of defect, imc carries the cost for such action, particularly transportation costs, insofar as costs do not increase because the defect free item must be provided to a location other than the contractually agreed upon location. Should imc provide an item free of defect for the purpose of Supplementary Performance, the customer must return the originally delivered item.

- (4) Should imc be unwilling or not able to provide Supplementary Performance, or should imc delay such beyond a reasonable period of time based on reasons caused by imc, or if the Supplementary Performance fails for any other reason, the customer is entitled as set out under the law to assert its rights to withdraw or reduce payment or claim damages. Supplementary Performance is deemed failed when three (3) attempts have been made without success.
- (5) Further claims by the customer beyond the rights to Supplementary Performance, to withdraw or terminate the contract and to reduce payment, in particular claims for damages including lost profit or other pecuniary damages, exist only within the scope of the liability provisions of these general terms and conditions.
- (6) The warranty period for the Products consists of two (2) years, which begins with the standard statutory limitation period. With regard to imc Software, the warranty period consists of one (1) year, which begins with the standard statutory limitation period. The above does not apply to claims based on the German Product Liability Act (*Produkthaftungsgesetz*, "ProdHaftG") as well as to damages to life, body or health and to intentional or grossly negligent breaches of duty that expire within the standard limitation period.
- (7) Guarantees in the legal sense or assurances regarding specific characteristics of the delivered item are only deemed issued by imc, if they are expressly designated as such in imc's order confirmation.
- (8) imc has no obligations if a defect is attributable to the fault of the customer. This particularly includes – unless not the cause –
 - improper use, servicing, repair or modification not performed by imc, or
 - the use of Software delivered by imc on inappropriate hardware according to the product description and product documentation, or

- the incorrect installation by the customer or a third party, improper operating conditions as well as atmospheric or static discharge, natural wear and tear, modified operating system components, interfaces and parameters, use of inappropriate organizational materials and data carriers, or
- where the delivered item was created pursuant to the customer's specifications, in particular drawings provided by the customer, and the defect is based on these specifications,
- as well as defects which are attributable to the transportation of the delivered item.

The customer's contributory negligence is to be attributed to the customer.

§ 12 Liability

The following regulations shall apply to the liability of imc as well as liability for imc's employees, assistants in performance, and vicarious agents – irrespective of reason:

- (1) imc's liability for damages is limited as follows:
 - a) In the case of a simple negligent breach of essential obligations (i.e. essential obligations for which imc owes performance and which are significant for the attainment of the contractual objectives or with which imc is obligated to comply and a breach of such compliance could endanger the attainment of the contractual objectives), the liability of imc shall be limited to such losses which would be typically foreseeable at the time of the conclusion of the contract.
 - b) imc shall not be liable for a simple negligent breach of non-essential obligations.
- (2) In cases of initial impossibility, imc shall be liable if the obstacle to performance was known to it or the lack of knowledge is based on gross negligence.
- (3) Unless the damages were intentionally caused, claims for damages against imc shall be subject to a limitation period of one (1) year. The limitation period begins with the start of the statutory period of limitation.
- (4) If claims for damages are raised, they must be asserted in a court of law within six (6) months of imc's written rejection. Assertion at a later date is excluded, un-

less independent proceedings for taking evidence are initiated within the deadline.

- (5) The previous liability exclusions, restrictions, and limitations shall not apply to claims based on the German Product Liability Act as well as compensation for damages to life, body or health and intentional or grossly negligent breaches of duty.

§ 13 Third-party Rights

- (1) The customer is responsible for ensuring that the resources provided by it are not subject to third-party rights (e.g. copyrights, license rights, patent rights or other industrial property rights) that prohibit imc's contractual performance of services and that the resources are legally and contractually compliant; however, imc is not obligated to check the provided resources for any possible legal violations. If imc becomes aware of the apparent unlawfulness of the resources provided by the customer to imc for the purpose of the contractual performance of services, imc will notify the customer of this immediately. In this case, imc is entitled, but not obligated, to reject the resources provided by the customer.
- (2) If a third party asserts a claim against imc based on possible legal infringements related to a resource provided by the customer to imc for the purpose of the contractual performance of services, the customer undertakes to indemnify and hold harmless imc from any liability in this respect and to reimburse imc for the costs incurred related to possible legal infringements. This obligation also includes the duty to indemnify and hold harmless imc against all legal defense costs (e.g. court and attorney fees). The parties must notify one another immediately in writing if claims of this type are asserted against them.

§ 14 Cancellation and Withdrawal from Training Seminars and Events

- (1) The customer will not be charged for training seminars and imc events which are subject to charge for cancellations made up to four weeks before the event begins. In the event that the customer cancels four to two weeks before the training/event begins, 30% of the registration fee will be charged; for cancellations by the customer on short notice, the full registration fee will be charged.
- (2) In the event that the customer does not pay the due registration fee within a reasonable grace period, imc is entitled at its own discretion to withdraw from the order related to the training or event, or to claim compensation for damages based on non-fulfillment.

- (3) Furthermore, based on objectively justifiable reasons imc is entitled to withdraw from the training or event if force majeure or other circumstances, for which imc is not responsible, render impossible the fulfillment of the contract. In such case, the customer will be reimbursed for any registration fee already paid; if applicable, a registration fee which has not yet been collected will not be charged.
- (4) In case imc's withdrawal is justifiable, the customer is not entitled to claim compensation for damages.

§ 15 Access to Online Systems

The customer is obliged to keep confidential its access data (login and password) to all of imc's online systems and to make such inaccessible to third parties. The customer is liable for improper use of its access data.

§ 16 Confidentiality, Confidential Documents

- (1) The contract partners are obliged to maintain absolute secrecy and keep confidential also after the term of each respective order all business and operational secrets as well as all information, documentation and other information that is expressly designated as confidential or recognizable as such, which is received from the other contract partner in the context of executing the contract (hereinafter referred to as "Confidential Information"). Documents created by the contract partners, which contain Confidential Information from or about the other party, are also to be kept confidential in the same manner. Disclosure to third parties is only permitted provided that a mandatory obligation based on legal regulations exists pertaining to the disclosure of information, in particular to public authorities, as well as to persons; this particularly applies to a contract partner's assistants in performance, for which access to the Confidential Information is necessary in the context of their activities performed to fulfill the contract and which were previously obliged in writing to maintain confidentiality in the same manner. Furthermore, the disclosure of Confidential Information requires prior written consent from the other contract partner.
- (2) The contract partners are obliged to store with due care all documentation, files and other forms of Confidential Information which are received from the other contract partner.
- (3) imc and the customer remain owners of their own business documents as well as owners of existing and future copyrights as well as other industrial property rights to these business documents (in particular, patent, design, utilization and trade-

mark rights, etc.). Legal ownership particularly includes all know-how, resource and development reports, suggestions, ideas, drafts, design, samples, models, concepts, etc.

§ 17 Data Protection and Data Security

- (1) The legal provisions governing data protection and data security are to be observed. The customer is responsible for compliance with the laws and regulations regarding data protection and data security when transmitting data to imc.
- (2) In the event that imc collects, processes or uses personal data in the course of order data processing as instructed by the customer (§ 11 of the German Data Protection Act, "BDSG") for the purpose of fulfilling the contractual services, or if imc conducts the "inspection or maintenance of automated procedures or data processing systems" within the meaning of § 11 Para. 5 BDSG, the contract partners will conclude an "Agreement regarding Order Data Processing" in accordance with § 11 BDSG, which imc will make available to the customer.
- (3) imc will delete personal data provided by the customer upon expiration of the contractual relationship, provided that further storage is not required to fulfill imc's legal obligations (in particular the duty to store) or to provide evidence of the proper fulfillment of the contractual obligations to the customer.
- (4) The customer grants imc permission to include its name or the name of its company in a list of references.

§ 18 Final Provisions

- (1) This contract is subject to the laws of the Federal Republic of Germany excluding the conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
- (2) The Contract Partner may not - subject to the assignment of debt according to § 354a HGB - transfer individual rights of this contract or the contract as a whole to third parties unless imc expressly agrees to such in writing.
- (3) Failure to exercise a contractual right is not a waiver of the respective right, unless the other contract party receives express written notification of this from the right holder.

- (4) The place of performance shall be the registered seat of imc. Unless otherwise agreed in writing in individual cases, this also applies to the place of supplementary performance. Insofar as the Contract Partner is a merchant as defined by the German Commercial Code (*HGB*), a corporate body organized under public law (*juristische Personen des öffentlichen Rechts*), or a special fund under public law (*öffentlich-rechtliches Sondervermögen*), the exclusive place of jurisdiction for all disputes directly or indirectly arising from the contractual relationship is the registered seat of imc. The same applies to persons who have no general place of jurisdiction in Germany, as well as to persons who have moved their place of residence or usual whereabouts abroad since conclusion of the contract, or whose place of residence or usual whereabouts is unknown at the time the action is filed. In addition, imc is entitled to file suit at the statutory venue.
- (5) Oral side-agreements are not valid. Deviating or supplementary conditions as well as modifications of this agreement, including this written requirement clause, are only valid if agreed upon in writing and expressly marked as a modification or supplement.
- (6) These terms and conditions were prepared in English and German; however, the German version is the legally valid and exclusively binding version.
- (7) All disputes arising from or in association with this agreement are to be resolved by an arbitration tribunal under exclusion of the public courts. The arbitration tribunal also rules on the valid interpretation of this arbitration clause. The arbitration tribunal consists of three arbitrators. The arbitrators, which are to be appointed by the parties, must be qualified to hold the office of a judge in the Federal Republic of Germany. The chairman must be an active or retired judge of the Federal Republic of Germany. With regard to appointing the arbitrators, § 1035 of the German Code of Civil Procedure (ZPO) applies. Multiple plaintiffs or defendants may only mutually appoint an arbitrator. The place of the arbitration proceedings is the registered seat of imc. The language of the proceedings is German. In addition, the provisions of the Tenth Book of the ZPO are applicable to the arbitration proceedings. The arbitrators receive customary remuneration as well as compensation for expenses. As soon as the participation of the public courts is necessary, the competent courts at imc's registered seat have jurisdiction.
- (8) If one or more provisions of these terms and conditions is ineffective, the validity of the remaining provisions shall remain unaffected.