

# General Terms and Conditions of Trade

(Date: July, 14<sup>th</sup> 2020)

## 1. General

1.1. The following terms and conditions shall apply to all agreements that Incus GmbH, concludes with the customer as a contractor. The business conditions of Incus GmbH are applied exclusively, even if the purchaser has his own General Business Conditions. Any delivery, service or offer by Incus GmbH is subject exclusively to its own Business Conditions.

## 2. Offers and Conclusion of Contract

2.1. Cost estimates and offers will be made according to the best of Incus GmbH's expertise. Obvious errors, misprints, miscalculations and clerical errors are not binding for Incus GmbH and do not entitle the customer to raise any claims for damages.

2.2. All our offers are not binding. The costs for making a cost estimate, in case they arise, shall be passed on to the client.

2.3. Cost estimates and offers are not binding. Our written order confirmations are the contractual basis and determine the scope of the delivery. This also applies in case the client requested the submitting of a concrete offer. Orders placed by the client are binding for the client and will be accepted by Incus GmbH based upon the submission of the order confirmation.

2.4. The information concerning Incus GmbH's products and services that are given in catalogues, price lists, leaflets, company information material, brochures, advertisements at exhibition stands, circular letters, promotional mailings and other forms of media are not binding unless

explicitly stated otherwise in written form within the scope of a contract.

2.5. Subsidiary agreements and changes require a written confirmation by Incus GmbH.

2.6. Product design, technical data as well as performance features shall be subject to change for the purpose of technological progress.

2.7. The technical and commercial documents created by Incus GmbH shall be his intellectual property. These documents shall not be relayed to any third party.

## 3. Terms of Delivery, Date of Delivery and Passing of Title and Risk

3.1. Delivery (shipping, loading, unloading as well as carriage) is effected in any case at the client's risk and expense. Even in the event of partial or prescheduled delivery the risk shall pass on to the client. This also applies if Incus GmbH assumes the delivery (also when using own vehicles) or the assembly.

3.2. Incus GmbH shall have the right to choose the mode of shipment and means of transportation.

3.3. Partial deliveries are possible.

3.4. If the client wishes an urgent execution of the order (before the agreed delivery date) all resulting additional costs will be fully charged to the client.

3.5. At the request of the client, Incus GmbH will procure insurance against theft and against damages due to fire, water, shipping, breakage and other insurable risks at the client's expenses.

3.6. Immediately - or within **14 days** the latest - upon receipt of the goods, the client has to inform Incus GmbH and carrier in writing of the defects due to transportation. Any claims made at a later date will not be accepted by Incus GmbH.

3.7. Storage arrangements and storage costs that arise due to reasons that are in the client's sphere of

responsibility will be fully charged to the client.

3.8. Any stated delivery or service times and dates are not binding unless stipulated specifically in an order confirmation or a single contract (in written form compulsory).

3.9. Shall there be any amendments or modifications to the contract after placement of the order the time of delivery or service shall be extended for an adequate period of time.

3.10. Unless otherwise agreed the delivery time starts the earliest with the latest of the following mentioned times:

- a) date of order confirmation
- b) date of the client's fulfilment of all technical, commercial and other preconditions
- c) date on which Incus GmbH receives the agreed down payment or any security

3.11. Any unforeseen or unintentional obstacles to delivery such as Act of God, business disruptions, power supply problems, drop out of a difficult-to replace supplier, strike, obstacles in transportation, delays caused by customs clearance and force majeure, shall entitle Incus GmbH to defer delivery for the duration of the obstacle. This applies in any case, irrelevant if these circumstances occur at Incus GmbH's or his supplier's or sub-contractor's side.

3.12. In the event of late delivery exceeding **30 days** the client is entitled to withdraw from the contract in writing after setting a new deadline of **a minimum of 90 days**. Furthermore, Incus GmbH is allowed to withdraw from the contract in case of an impossible execution of the delivery due to Act of God, work conflicts or other obstacles that can not be averted by Incus GmbH such as transport disruption or termination of production. In both cases Incus GmbH is obliged to a mere interest-free

reimbursement of the received down-payments.

3.13. Small justifiable changes are accepted by the client in advance.

#### 4. Prices

4.1. All prices are exclusive VAT and do not include any costs for delivery, assembly or installation. These services will be provided upon request for separate payment. In case of settlement the statutory VAT will be added to these prices.

4.2. The prices are quoted in Euros.

4.3. If an order is placed without any prior offer or services are made that are not explicitly included in the order, Incus GmbH has the right to claim the remuneration that is in accordance with the price list or the remuneration usually paid.

4.4. Incus GmbH reserves the right to reasonably increase the prices in line with any cost increases, especially as a result of changes in raw material prices, wage costs or exchange rates occurring after conclusion of the contract. In that case Incus GmbH is entitled to demand remuneration higher than agreed upon or the purchase price.

4.5. The client has to dispose of salvage according to environmental and technical standards.

4.6. Payment will be adjusted and the monetary value will be guaranteed according to the changes of the Consumer Price Index 2005 (VPI 2005), based on the month of the conclusion of the contract.

4.7. Daily allowances, expenses for travel and accommodation will be charged separately. Travel times equal/are regarded as working times.

#### 5. Payment

5.1. Invoicing takes place promptly. Unless the client objects to the invoice within **14 days** the invoice is considered accepted by the client.

5.2. For orders over € 100,000.-- one third of the invoiced amount is payable at the conclusion of the contract, one third on vesting date and the rest upon completion, in each case immediately after invoicing.

5.3. Any deduction has to be explicitly approved in written form.

5.4. Invoices under the amount of € 100,000.-- shall be payable within 14 days after invoicing without any deductions and shall be paid free of charges.

5.5. In case of orders that consist of several units Incus GmbH is entitled to claim payment after delivery of every single unit or provision of every single service.

5.6. The client is not entitled to hold back payments due to incomplete delivery, guarantee or warranty claims as well as defect claims. The client shall only have the right to offset against counterclaims or against maintained claims for price reductions if the claims have been finally and absolutely established at law, are undisputed and have been recognized by Incus GmbH.

5.7. If the client falls into arrears with payment we are, with the time of default on, entitled to charge interest at a rate of 12 % p.a. In addition, the defaulting client should bear any dunning charges, collecting charges, storage costs, and any judicial and extrajudicial lawyer's fees.

5.8. If the client falls into arrears with payment arising from the contractual relationship or with any other payment obligations, Incus GmbH has, without prejudice to other rights, the right to stop any performance until payment has been made and/or to extend the time for delivery. In this case Incus GmbH is also entitled to make the entire remaining debt, arising from this or other contractual relations, due and to collect any possibly delivered objects without relieving the client of his duty to pay. This is also applicable for partial

payment, even if the work is not executed in separate sections.

5.9. Should the client's financial circumstances change for the worse, Incus GmbH is entitled to make the entire remuneration or purchase price due as well as to execute the order only upon prepayment.

#### 6. Digital invoicing

6.1. The client agrees to receive digital invoices from Incus GmbH that have been issued with safe electronic signature.

#### 7. Reservation of Title

7.1. Until complete payment of all claims (any interests and costs included) the delivered goods, machines and accessory parts remain in Incus GmbH's property. Within this period of time the client has to ensure the proper maintenance (service and repair) at his own expense. The client is strictly not entitled to pledge or assign the goods as security before properly fulfilling all his payment obligations.

7.2. If the client acts in violation of this contract, Incus GmbH is entitled to take back the delivered goods. In that case, the client shall be obliged to hand these over to Incus GmbH. All costs arising from taking back the delivered goods bears the client.

7.3. A resale of the goods/machines is only permitted provided that the client announces on time the buyer's name and detailed business address and that we agree to the resale. In case of our approval the client has to assign to us all claims (= the purchase price) arising out of the resale and we are entitled to inform the third party about this assignment. In case of numerous claims on our part, the client's payments will be primarily attributed to those claims that are not (any more) subject to reservation of title or to any other securities.

7.4. Parts and their final construction plans, drafts, sketches, offers and other documentation as well as software, provided or partially developed by Incus GmbH, are the intellectual property of Incus GmbH.

7.5. Incus GmbH has to approve explicitly the usage, in particular the dissemination, the copying, the disposal, including partial copying, adaptation or application.

7.6. Furthermore, the client commits to a non-disclosure-agreement of any knowledge obtained from this business relation.

## 8. The Client's Duties

8.1. The client does have the duty to make sure the maintenance workers of Incus GmbH can start working immediately on arrival.

8.2. The client is liable to make sure all necessary technical preconditions for the produced good or object of purchase are given. Furthermore all technical facilities such as supply lines, wiring, net works and the like have to be in technical proper and ready-to-use condition as well as compatible with the goods or objects of purchase that shall be produced by Incus GmbH. Incus GmbH is entitled but not obliged to check these facilities against separate remuneration.

8.3. The order is placed irrespective of any necessary official authorizations and permissions which the client would have to obtain.

## 9. Warranty

9.1. Incus GmbH shall provide warranty according to the statutory provisions of §§922ff ABGB (Austrian General Civil Code) for all products distributed to the client.

9.2. Incus GmbH is liable for apparent defects existing at delivery.

9.3. In case of justified notification of defects of the delivered goods the client is entitled to claim only amendment or replacement of the

good for the time being unless the amendment or replacement is impossible or involves excessive expenses for Incus GmbH in comparison with other remedies. Whether this is the case, it is also based upon the value of the defect-free good, the severity of the defect and the inconveniences for the receiver/client caused by other remedies. Incus GmbH is obliged to amend or replace the defective goods in reasonable time after receiving them from the client.

9.4. If the defect can not be repaired at the place of installation or at the client's facilities the defective part or device has to be sent to Incus GmbH according to Incus GmbH's instructions and at the client's expense and risk.

9.5. If the amendment or exchange are impossible or involve excessive expenses for Incus GmbH the client may demand a reduction of the price or, unless this is not an insignificant defect, a replacement of the defective good. The same applies if Incus GmbH refuses the amendment or replacement or conducts them not within a reasonable time, if these remedies would cause severe inconveniences for the client and would be unacceptable for the client.

9.6. Wear parts and accessories (such as data carrier, etc.) as well as repair by unauthorized third parties are excluded from the guarantee. If the objects of the agreement are used with devices and/or programs of third parties, the client is only liable for faulty functioning or deficiencies in services if these defects would have also occurred without such use.

9.7. The elimination of a defect stated by the client does not result in the acknowledgement of the defect.

9.8. If defect claims by the client are unjustified, the costs for the determination or elimination of the defect have to be paid by the client.

9.9. Transportation and travel costs for the elimination of the defect have to be paid by the client. The client has to provide free labour, energy and room if requested by Incus GmbH.

## 10. Liabilities and Compensations for Damages

10.1. Incus GmbH is liable only for damages caused intentionally or caused through gross negligence. The liability for slight negligence is excluded.

10.2. Incus GmbH is in no case liable for the usability of the delivered goods, as long as the goods are free from any defect.

10.3. Devices and facilities offer the security that can be expected by the user, when the user – also because of his own skills and experiences – complies with all regulations for authorization, instruction manuals and other regulations regarding the use of devices and facilities such as instruction manual – particularly with regard to compulsory inspections and recommended maintenance – and other given instructions from the supplier or third parties such as the manufacturer, importer and the like. This is not valid for damages caused intentionally, gross negligence, or personal damage.

10.4. Incus GmbH is not liable for indirect or consequential damages, loss of profit, financial loss, damages caused by business interruptions, data loss and loss of interest as well as damages caused by third party claims against the client.

10.5. In any case, a possible liability of Incus GmbH shall be limited to the amount of the contractually owed remuneration or purchase price of the respective order. Incus GmbH will only adopt contracts with this limitation of liability. Incus GmbH is expressly not liable for any damages exceeding this limited liability. If the total damage exceeds the maximum limit the claims

for compensation of the individual injured party will be reduced proportionally.

10.6. Recognized defects in the goods or plant have to be notified by the client **without any delay** to Incus GmbH. Customer claims must be asserted in any case **within 6 months** otherwise these claims will forfeit.

10.7. Claims for compensation in terms of § 12 Product Liability Law are excluded unless the entitled claimant can prove that the default is due to gross negligence on our part.

## 11. Withdrawal from Contract

11.1. If Incus GmbH is unable to execute delivery/service due to reasons that are not economically viable for Incus GmbH or Incus GmbH defaults and does not comply with the legal or contractual obligations, Incus GmbH is entitled to withdraw from the contract. Consequently, the client has to compensate for all inconveniences and lost profit resulting from this.

11.2. In case of withdrawal from the contract at the client's default, Incus GmbH has the right to opt for either liquidated damages of 15 % of the gross invoiced amount or reimbursement of damages actually incurred.

11.3. If the client falls into arrears with the payment Incus GmbH is released from all further delivery commitments.

11.4. If the client, without authorization, withdraws from the contract or demands cancellation of the contract Incus GmbH has the right to choose between insisting on fulfilment of the contract or Incus GmbH can agree to the cancellation of the contract. In the latter case Incus must, according to the choice made by Incus GmbH, pay a liquidated damage of 15 % of the gross invoiced amount or the damage actually incurred.

## 12. Software

12.1. If software units or computer programs come with the object of service or purchase we grant the non-transferable and non-exclusive right to use these by observing the contractual conditions and documents (e.g. instruction manual, ...) at the agreed place of installation.

12.2. Without prior written agreement of Incus GmbH the client is not entitled to reproduce and modify the software as well as make it accessible to third parties or use it in other ways than explicitly agreed upon. Otherwise, the client will lose all his claims. This applies in particular to the Source Code.

12.3. A warranty for the software only applies if this software corresponds with the specifications stipulated upon conclusion of contract, provided that the software was installed according to the installation requirements and the relevant usage conditions. Incus GmbH is not liable for the proper procurement, the flawless and uninterrupted functioning of the software. The occurrence of mistakes can not be excluded.

## 13. Goods supplied by the client

13.1. Incus GmbH can charge 20 % of the value for equipment and other materials which are supplied by the client.

13.2. Both equipment and materials supplied by the client are not due to warranty.

The client takes full responsibility for the construction and the functionality of the equipment and materials provided by him. Incus GmbH has no obligation to verify the client's documents, specifications and records and no warn obligation.

## 14. Data Protection and Changed Contact Details

14.1. The client consents to Incus GmbH storing and processing automatically personal data involved in the completion of the contract.

14.2. The client agrees explicitly to the use of his data exclusively for creditor protection by the AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsankunft Kubicke KG and Kreditschutzverband von 1870 (KSV).

14.3. The client is obliged to inform Incus GmbH of any change of address as long as the contractual legal transaction is not fully fulfilled by each party. If the client fails to inform Incus GmbH all declarations shall be deemed to be delivered if they were sent to the last announced address.

## 15. Final Clause

15.1. The client confirms that he had the possibility to take notice of the content of the General Terms and Conditions of Trade before conclusion of contract and that he agrees on the content.

15.2. Terms of purchasing or other general terms and conditions of trade from the client are not valid and herewith Incus GmbH explicitly disagrees with them. Incus GmbH states explicitly to conclude this contract on the basis of his General Terms and Conditions of Trade. If, as an exception, both parties agree in written form to use the client's General Terms and Condition of Trade, these conditions only apply as far as they do not collide with these General Terms and Condition of Trade. Provisions that are not colliding in these General Terms and Condition of Trade shall apply.

15.3. Any changes or amendments to these General Terms and Conditions of Trade shall be in written form in order to be legally binding. It shall be noted that no subsidiary agreements do exist.

15.4. Should one of the existing provisions of these General Business Conditions be unenforceable, the legal validity of the other provisions shall remain unaffected. In this case, the unenforceable provision shall be replaced by another legally enforceable provision as close as possible to the original provision.

15.5. This contract is subject to Austrian law excluding the United Nations Convention on Contracts for the International Sale of Goods.

15.6. The exclusive jurisdiction for all legal disputes between Incus GmbH and its distribution partner is the company domicile of Incus GmbH (Vienna, Austria).

15.7. In case of discrepancies the terms and conditions of the German version apply.