

# General Terms & Conditions of Imhof Harchrom GmbH (Current as of: 01.01.2020)



## 1. General provisions

- 1.01 The following Terms & Conditions apply only to entrepreneurial transactions and form the basis of all our quotations, orders, deliveries and services.
- 1.02 Where declarations and certifications issued to the user, within the context of these General Terms & Conditions, require the "written" form ("in writing"), this means print form (email, letters, fax etc.) as defined under Sec. 126 b German Civil Code (BGB), which does not require a signature.
- 1.03 Other Terms & Conditions are only recognised insofar as they are in compliance with our own or are individually and explicitly approved by us for individual deliveries or services or have been subsequently accepted by us.

## 2. Quotations

- 2.01 All quotations are considered to be subject to availability. The contract does not come into force until we have issued a written confirmation of order, if such a confirmation is issued, and the extent of the contract is restricted to the content of that confirmation of order. Individual agreements remain unaffected.
- 2.02 Any price estimates communicated do not constitute quotations and will only form the basis of a contractual agreement if confirmed. Our quotations are deemed to remain valid for a maximum of four months or until an order is placed, whichever is the sooner.
- 2.03 Quotations and their appendices may not be made available to Third Parties without our prior written consent.

## 3. Prices and terms & conditions of payment

- 3.01 Our prices are deemed to be net prices in euros ex works and do not incorporate any cash discounts or other special pricing arrangements and do not include packaging, freight and insurance. VAT is to be added at the current rate. The granting of cash discounts requires an explicit agreement between the parties to the agreement. Prices apply exclusively to parts that are designed and manufactured as "capable" parts. Any additionally required jobs such as removing paint, oil, grease, tar, old metal coatings and subsequent provision of openings in hollow parts, the creation of inspection reports etc., are invoiced in addition at the rates agreed with the customer or, if no such agreement exists, at equitable rates compliant with Sec. 315 of the German Civil Code.
- 3.02 Where, after conclusion of a contract for delivery, but before the actual delivery is effected, our costs, e.g. for raw materials, power, ancillary materials, wages or transport, increase by a considerable amount, i.e. more than 5%, we reserve the right to adjust the price of the goods and services supplied appropriately by a reasonable amount even where prices had been quoted. This shall only apply after a period of four months has passed since conclusion of the contract. If a mutually acceptable agreement can be reached, we or the customer will be entitled to withdraw from the contract. If the cost factors defined above should be reduced, the customer is entitled to apply the above clause accordingly to its advantage to achieve an appropriate reduction in the price, where the customer is entitled to withdraw from the contract if no suitable mutually acceptable agreement can be reached.
- 3.03 Unless otherwise explicitly agreed, payments are due on supply of the goods or services and payable within 8 days of receipt of our invoice net and with no deductions for cash discounts. In the event of default of payment, we reserve the right to charge interest on the outstanding amounts at a rate of nine percentage points above the current base rate (Sections 286, 288(2) German Civil Code (BGB)) without prejudice to further legal steps.
- 3.04 A customer is only entitled to offset its claims against unpaid amounts if its claims are legally enforceable as the result of a Court judgement or because we have expressly accepted them.

## 4. Delivery

- 4.01 Unless otherwise agreed, the delivery period begins on receipt of the confirmation of order; however, if the materials to be supplied by the customer are received later, delivery is prolonged accordingly.
- 4.02 If delivery should be postponed due to unforeseen circumstances affecting our production processes, those of our sub-suppliers or subcontractors, such as in the event of force majeure, strikes, shortages of raw materials, interruptions to production or power outages, the customer is entitled to withdraw from the contract after it has granted us a reasonable extension period. Sec. 323(2) of the German Civil Code remains unaffected. If, as a result of the above mentioned circumstances, we are unable to supply the agreed delivery, the customer shall release us from our obligation to supply, if, as a result of the above mentioned circumstances, we can no longer be reasonably expected to deliver, we reserve the right to refuse delivery. The customer is not entitled to claim for damages where the circumstances were beyond our control.
- 4.03 If, despite written reminders, the customer fails to provide the required materials or fails in some other way in its duty to assist, we reserve the right to withdraw from the contract after granting an extension period of 14 days and to claim damages in lieu of performance.
- 4.04 Part delivery is expressly permitted where this can be considered reasonable for the customer in individual cases. This is considered reasonable where the contractor's interest in the change is greater than or at least equal to the customer's interest in the agreed rendering of services not being changed.
- 4.05 Deliveries are ex works excluding packaging.
- 4.06 Risk as it applies to products processed by us on behalf of the customer is deemed to pass to the customer when these products leave our factory premises, however at the latest when they are handed to the forwarding agent or driver. The contractor is only liable in the event of transit damage if intent or gross negligence can be proved. This does not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded. Our liability for simple or minor negligence is excluded unless this involves the infringement of obligations under the contract within the context of decisions by the German Federal Supreme Court. Obligations under the contract are deemed to be those whose fulfillment is an essential feature of contract performance and our adherence to those obligations a matter on which the customer can depend. This does not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded.
- 4.07 If the materials to be processed by us are collected by us at the request of the customer, transit risk remains with the customer. The customer is free to insure against such risks. With regard to the liability of the contractor for transit damage, we refer explicitly to Point 4.06, provisions 2 and 3.
- 4.08 The above terms and conditions are deemed to apply even when carriage paid deliveries have been agreed.
- 4.09 If the goods are ready for shipping but dispatch or acceptance is delayed for reasons beyond our control, risk is transferred to the customer on notification that the goods are ready for shipping.
- 4.10 The route, type of packaging and method of transport are at our discretion but without guarantee that the method selected will be the fastest and/or cheapest. The customer's preferences will be taken into account as far as practicable. Where we also act as the forwarder, our deliveries are additionally subject to the General Terms & Conditions of German Freight Forwarders.
- 4.11 Goods notified as ready for shipping must be called up by the customer without delay but at the latest after expiry of a reasonable response period. If no call-up occurs, we are entitled to store the goods at our fair discretion and at the customer's cost and risk and to invoice the goods as delivered ex works.
- 4.12 If shipping or delivery is delayed at the request of the customer, we retain the right to charge storage fees amounting to 1% of the invoice amount for each month or part thereof after expiry of one month after notification that the goods are ready for shipping. The total amount of storage fees charged shall not exceed 5% of the invoice amount unless we are able to demonstrate that higher charges were, in fact, incurred. The customer is entitled to demonstrate that no storage costs at all were incurred or that these were considerably lower than the above flat rate.
- 4.13 No liability is accepted for any waiting time provided this remains reasonable and does not exceed a week unless collection and delivery dates have been confirmed by us as binding.
- 4.14 Insurance policies against transit damage are only taken out at the express request and at the expense of the customer.
- 4.15 If processed workpieces are returned to us for reasons beyond our control, the customer shall bear the risk up to the point of receipt by us.
- 4.16 Surface treated workpieces are only packed the way the raw materials were packed, and inasmuch as the customer has requested return packaging and the packaging materials are reusable. Where packaging is requested after surface treatment in addition, this will be charged additionally and any returned packaging materials will not be accepted.

## 5. Complaints concerning defective work

- 5.01 The disclaimers given in these General Terms & Conditions shall not apply to liability for damages resulting from injury to life and limb or health generally caused by, at least, negligent breach of duty by us or willful or negligent breach of duty by one of the officers of the company or its agents. We offer warranty for our services in accordance with the following provisions to the benefit of our customer as the direct client. It is not permitted to assign claims for defective workmanship to Third Parties, except where customer interests in the ability to assign those claims outweigh our interests in not assigning them.
- 5.02 We provide surface treatments of a high quality standard in terms of both materials and workmanship in keeping with the state of the art and applicable DIN standards or other appropriate standards (i.e. EN or ISO standards) where these apply. Due to the nature of electrochemical and chemical processes and due to quality differences in the raw materials, some deviations in the final product compared with the sample which formed the basis of the order are unavoidable.
- 5.03 Any workpieces surface-treated by us but exhibiting defective results will be reworked by us at no charge.
- 5.04 The Buyer's claims due to defective workmanship are subject to the statute of limitations one year after commencement of the limitation period; this period is deemed to be extended by an additional time period to accommodate the time typically required in such cases to detect the defects in the goods subject of the complaint. The period defined above shall not apply in cases to which Sec. 438(1) no. 2 and Sec. 634a(1) no. 2 German Civil Code (BGB) apply. On receipt, the products supplied must be inspected without delay, where this is feasible in the course of proper commercial practice, to ensure conformity. Self-evident defects must be reported to us immediately in writing. The obligation to inspect incoming products remains unaffected even if first-off specimens have been supplied. Where defects are not immediately detectable, the same applies with effect from the moment at which the defect is discovered.
- 5.05 If complaints are not received within the allotted time or not in the proper manner, the delivery is considered to have been accepted as defined in the German Commercial Code.
- 5.06 Workpieces provided to us for processing must be delivered with a delivery note or a full written list showing quantities and the total weight. Details of gross weight, however important they may be to the customer, are non-binding on us. Any missing parts will only be replaced by us if the delivery was documented by a delivery note signed by us or if delivery to us can otherwise be proven and if risk had been transferred to us. For small and mass produced components, we accept no liability for rejects and volume shortfalls of up to 3% of the quantity delivered unless caused by gross negligence or intent on the part of this company, its representatives or agents, or unless otherwise agreed.
- 5.07 In the event that remedial performance is unsuccessful or if we refuse to provide a replacement delivery or reworked goods or if remedial performance is considered by the customer to be unacceptable, that party is granted the right, at its discretion, to either reduce the purchase price or remuneration or withdraw from the contract and claim damages as defined at Point 5.08. Remedial performance is considered to have failed if, after the second unsuccessful attempt, there is no different result in particular in regard to the nature of the goods or the defect or other circumstances.
- 5.08 Within the context of the contractual right to claim for defects, the contractor is only liable in the event of criminal damage or gross negligence both for itself and its employees and agents unless otherwise defined below, except in the event of death, injury or damage to health. Our liability for simple or minor negligence is excluded unless this involves the infringement of obligations under the contract within the context of decisions by the German Federal Supreme Court. Obligations under the contract are deemed to be those whose fulfillment is an essential

feature of contract performance and our adherence to those obligations a matter on which the customer can depend. Where the above disclaimer cannot be applied due to infringement of obligations under the contract, the contractor is only liable to the extent that the damage was foreseeable at the time the contract was concluded and typical as a result of the infringement of substantial contractual obligations. No further claims by the customer will be entertained. The above restrictions and exclusions of liability do not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded. The contractor's liability under product liability legislation remains unaffected. Liquidated damages will not be entertained.

- 5.09 Defects in a partial delivery do not entitle the customer to withdraw from the contract unless the defect is so considerable that the customer has no interest in accepting further part deliveries.
- 5.10 The warranty applies only to use of the product under normal business and climatic conditions within the Federal Republic of Germany. If the goods are intended for use in particular conditions of which we were not made aware in advance and, as a result, these particular conditions were not an integral part of the contractual agreement, we cannot provide a warranty for those conditions. No claims will be entertained for defects which have been subject to attempted repair by a Third Party where the contractor has not been granted a reasonable opportunity to remedy the defect and the attempted repair has rendered proper reworking by this company difficult or impossible.
- 5.11 Where product characteristics regarding visual appearance, layer thickness, corrosion resistance and coefficients of friction are warranted, the warranty is subject to the condition that the goods remain in the state returned by us, i.e. not installed. Warranted characteristics are subject to the condition that the products are properly handled by the contractual party, in particular by appropriate transport, storage, sorting and packaging processes. Where a contractual party intends to make a claim based on warranted characteristics, it must be able to prove that the products were handled appropriately.
- 5.12 The materials to be processed must be free of crust, scale, sand, carbon deposits, burned-in grease, welding slag, graphite, paint. If any of these is insufficient, we reserve the right to refuse to process the materials or withdraw from the contract. If the customer nevertheless insists that we process the materials or if the materials supplied are, for technological reasons not immediately apparent to us, not suited to surface treatment, we cannot accept any warranty for dimensional accuracy, adhesive strength, colour fastness and the ability of the surface treatment to prevent corrosion, where subsequent defects are due to the unsuitability of the material and not gross negligence or intent on our part or that of our representatives or agents. In addition, no warranty for adhesive strength will be given if, after the surface treatment, the material has been shaped, even if electroplated samples have been successfully shaped without the electroplating layer flaking and the customer insists on the treatment despite being notified of the risk of the electroplating layer flaking.
- 5.13 If the material which is intended to be subject to surface treatment, or a suitable sample of that material, is not made available to us for a sufficiently long period for testing purposes as defined by us with reference to Sec. 315 German Civil Code (BGB), i.e. at least for six weeks, we cannot accept any liability for corrosion damage unless caused by intent or gross negligence by us, our representatives or agents. If, in individual cases, a customer insists on a particular delivery date which does not permit us to perform short-term tests or other chemical and/or physical analyses or to generate test or inspection certificates and if the customer insists, despite appropriate notification by us, that we perform the surface treatment without such tests or other chemical and/or physical analyses and without generating test or inspection certificates, we refuse to accept any liability for damage occurring as a result of a lack of testing by us except in cases of intent and gross negligence.
- 5.14 Hollow components are only electrochemically treated on the outer surface unless, in specific circumstances, treatment of the inner spaces has been agreed. Corrosion occurring immediately on the untreated surfaces does not provide grounds for complaint. Surface treated materials are susceptible to condensation and friction corrosion. They have to be packaged, stored and transported in the correct manner.
- 5.15 The customer must define minimum coating thickness at an agreed measuring point and must ensure that no damage to the surface can occur as a result of chemical or physical influence. We only accept liability for weather-related damage and damage occurring from residues of the treatment process which exude at a later time from laminations and other inaccessible hollow chambers in cases of intent and gross negligence by us, our representatives or agents. If the customer considers hydrogen embrittlement relief to be necessary, we will be pleased to perform the operation if specifically requested to do so and with no liability except in cases of intent and gross negligence. The above restrictions and exclusions of liability do not apply in the event of the failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded.

## 6. Restrictions on liability beyond liability for defects

- 6.01 In the event of damage not covered by Point 5.08, the liability of the contractor is restricted as defined at Point 5.08 – except in the event of damage arising from injury to life and limb or health generally. These restrictions on liability do not apply in the event of failure of the parties to notify each other of any salient points affecting the contract before the contract was concluded. Liquidated damages will not be entertained.
- 6.02 Goods delivered to us and the containers or transport systems provided are not insured under our insurance contracts until delivery. There is no insurance cover in this respect. Where required, this must be done independently by the customer by taking out an external insurance policy.
7. Security interest
- 7.01 The products processed by us are subject to a contractor's lien in accordance with German law. Independently of this, the customer agrees to transfer a right of retention to us in the objects delivered to us for surface treatment which is to ensure our right to payment under the order placed with us. This contractual right of retention is also deemed to apply to outstanding payments from previous orders, unless the parties have agreed otherwise, provided the subject matter of those previous orders bears some logical inherent relation to the current order. If the surface treated products are returned to the customer before full payment has been made, the customer hereby agrees that we are to retain a property right in that proportion of the value of those products delivered which corresponds to the amount of the outstanding payment as collateral for our claim to payment and that the customer is to hold and keep the products on our behalf in lieu of a transfer of title. The same is to apply by analogy to the accessory interests of the customer for objects handed to us for surface treatment which have been supplied to the customer by a Third Party who has reserved title in those items. We reserve the right to negate the retention of title. The rights of the customer to regain title from a Third Party to whom the customer had assigned title in the items provided to us for the purpose of surface treatment are hereby assigned to us. We hereby accept this assignment.
- 7.02 The customer is not entitled to mortgage or assign any items in which we have the right to retain title or which are in our possession by way of collateral. However, the customer is entitled to sell the items or process them in the way of normal business unless it has already assigned to a Third Party claims against its contractual party. If the goods in which we have collateral are joined by the customer to form an integral part of a new mobile object, this is done on our behalf and to our benefit but without any liability accruing to us. We hereby grant the customer joint ownership of the new item to an extent which is proportionate to the new value of the property less the value of our service. The customer agrees to hold the property in trust for us with all the due care and attention of a commercial relationship and free of charge.
- 7.03 If goods in which we have a collateral interest have become an integral part of a mobile object due to the action of the customer and if the customer has thereby gained full or partial title in that object, the customer hereby assigns to us joint ownership of the object to an extent which is proportionate to the value of our claims against it while agreeing at the same time to hold and keep the new object on our behalf and at no charge to us.
- 7.04 In the event that the item processed by us and in which we retain a collateral interest or the new object made from that item is sold, the customer undertakes to inform the purchaser that we retain a collateral interest in the item.
- 7.05 To assure our claim to outstanding payments now and in the future, the customer hereby assigns us all rights from the resale or further processing of the objects in which we have collateral interest with all ancillary rights to the value of the object. We hereby accept this assignment.
- 7.06 The customer is hereby empowered to collect from Third Parties any claims on our behalf resulting from the resale or further processing of the object. At our request, the customer undertakes to demonstrate these claims individually and to disclose to third party purchasers the fact of the assignment while requiring them to pay to us any amounts up to the value of our claims. We are also entitled at all times to notify the purchaser of the existence of the assignment and to collect the amounts outstanding. However, we undertake not to require the customer to collect the outstanding amounts or disclose the existence of the assignment, and not to collect the outstanding amounts ourselves or make the existence of the assignment known as long as the customer meets its obligations to us to pay in the proper manner.
- 7.07 The customer is required to notify us without delay of any distraint order by a Third Party affecting our collateral rights.
- 7.08 The customer undertakes to insure the products in which we have a collateral interest to a sufficient extent wherever possible against fire and theft, and to assign any claims against the insurance company and / or perpetrator of the damage to us at our request.
- 7.09 At the customer's request, we undertake to release collateral provided in accordance with the above provisions to the extent that the value of the goods delivered under retention of title exceeds the value of the receivables by more than 10 per cent.
- 7.10 In the event that Third Parties should make a claim to the items in which we have a collateral interest, the customer hereby undertakes to make all the necessary documents available to us immediately and to reimburse us for all costs of intervention provided the intervention is successful and final enforcement of the Third Parties as the party liable to pay the costs of the action have remained unsuccessful.
- 7.11 In the event of a deferment of debt, all our claims, including those from other contractual agreements, are immediately due as soon as the customer culpably falls in arrears regarding other liabilities owed to us of a more than minor nature, ceases to make payments, becomes insolvent or if bankruptcy proceedings are initiated against it or if such proceedings are closed due to lack of assets. In such cases, we reserve the right to refuse to supply outstanding deliveries and services and to grant the customer a reasonable grace period in which it may make partial payments for partial deliveries or provide collateral. After the grace period has expired, we reserve the right to withdraw from the contract.

## 8. Place of performance and Court of jurisdiction

- 8.01 Where the commissioning party is a businessman, legal entity under public-law or special fund under public law, the Court of jurisdiction for both parties is the registered office of the contractor. The place of performance is our registered office unless it is a matter of warranty claims or claims in connection with the rescinding of a contract.
- 8.02 The laws of the Federal Republic of Germany are deemed to apply and all foreign jurisdictions and the provisions of the UN commercial codes and international civil law are hereby excluded. The German version of the contract is considered binding.

## 9. Employees

Contractual partners (customers) are not permitted to "poach" our employees objectionable where this is in violation of competition legislation, if this would amount to a violation of Sec. 4(4) of the German Fair Trade Practices Act (UWG). Our contractual partner shall bear the onus of proof in demonstrating that no reprehensible circumstances exist from the point of view of competition legislation, in particular, but not limited to, Sec. 4(4) Fair Trade Practices Act (UWG). Where the contractual partner is not able to do so, it shall pay us reasonable contractual damages which we shall define in accordance with Sec. 315 German Civil Code (BGB). The contractual partner is, however, entitled to apply to the Courts to have the reasonableness of the contractual damages verified. The contractual penalty shall amount to at least half the monthly net salary of the poached employee for every month until the end of termination with normal period of notice by the employee.

## 10. Severability

If any of the above clauses should be or become ineffective or unenforceable in part or in whole, the remaining clauses and the contract as a whole are considered to be unaffected.