

General terms and conditions of purchase of Immergut GmbH & Co. KG, Kampstraße 8, 27404 Elsdorf, Germany

Section 1. General provisions

Section 1.1. Unless expressly agreed otherwise, only these general terms and conditions of purchase shall apply to all orders made with the company Immergut GmbH & Co. KG – hereinafter Immergut. We hereby expressly object to any general terms and conditions of the supplier in its general terms and conditions or order confirmation. Unconditional acceptance of order confirmations or deliveries does not mean recognition of such conditions. Changes or supplements to these general terms and conditions of purchase shall only be binding if they have been counter-confirmed by us in writing.

Section 1.2. The supplier recognises their exclusive validity for all further orders with the first delivery subject to these general terms and conditions of purchase.

Section 1.3. Orders and requests are binding if they are made in writing and are not objected to within 48 hours.

Section 1.4. Immergut has an immediate cancellation option without observing any notice period to the end of the month for all contracts. The law shall apply in the event that the aforementioned provision is ineffective.

Section 2. Delivery and shipping

Section 2.1. Delivery shall be made in accordance with the order or the subsequent instructions of Immergut on the agreed dates. These must be carefully observed. They may not be exceeded without our express consent. Excess or short deliveries as well as partial or advance deliveries require our consent.

Section 2.2. In the event of incorrect delivery (e.g. erroneous delivery notes, missing delivery documents, etc.) or delivery of damaged goods, we reserve the right to charge the supplier a flat fee of EUR 300 per occurrence for administrative expenses.

Section 2.3. The supplier must comply with any shipping instructions issued by Immergut and the forwarding agent or carrier. Immergut's order and item numbers are stated in all shipping documents, letters and invoices. A delivery note must be enclosed with each delivery. In the case of raw materials, the batch number and the use-by date of the goods must also be stated on the delivery documents.

Section 2.4. Shipping is carried out at the expense and risk of the supplier. Unless otherwise agreed, all deliveries shall be carriage free, including packaging. The transport risk, including all insurance, shall be borne by the supplier.

Section 3. Delivery deadlines, delivery dates

Section 3.1. Delivery periods or dates stated in orders are binding and are understood as intended for arrival at the place of fulfilment. The supplier shall be in default immediately if the agreed delivery date is not adhered to. The supplier is obliged to inform Immergut immediately in writing, stating the reasons for the expected duration of the delay, if it becomes aware that the delivery deadline cannot be met.

Section 3.2. Immergut has the right to refuse acceptance of goods that are not delivered on the delivery date specified in the order and to return them at the expense and risk of the principal or to store them with third parties.

Section 3.3. If the supplier is in default, Immergut may (except in the case of force majeure) insist on subsequent fulfilment and demand compensation for the damage incurred without setting a grace period. Alternatively, it shall be entitled to waive subsequent fulfilment and claim damages for non-fulfilment or to obtain the corresponding delivery from a third party at the supplier's expense or to withdraw from the contract.

Section 3.4. If the supplier is in default and Immergut incurs production downtime costs due to non-compliance with the delivery date, we reserve the right to charge the supplier EUR 900 per hour of downtime. Payment of the downtime costs shall not release the supplier from its contractual obligations. Immergut expressly reserves the right to claim damages.

Section 4. Quality and acceptance

Section 4.1. The Supplier guarantees that the goods comply with the agreed and approved specifications. When raw materials are delivered, a certificate of analysis must be provided to Immergut at the latest upon delivery.

Section 4.2. Immergut reserves the right to inspect the goods immediately upon receipt for obvious and visible defects and only to accept them having done so. In the event of a complaint, the supplier may be charged inspection and replacement delivery costs. For all types of defects, the notice period shall be 14 days from the date on which they are detected. The supplier waives the objection of late notification of hidden defects during the warranty period.

Section 4.3. The values determined during the incoming goods inspection are binding for the dimensions, weights and quantities of a delivery.

Section 4.4. In the event of an agreed contractual penalty for delayed delivery, the claim to a contractual penalty shall remain unchanged even if it is not expressly asserted upon acceptance of the delivery. Further claims shall also remain unchanged without any special reservation upon acceptance.

Section 5. Prices and payment conditions

Section 5.1. The price stated in the order is binding. Fixed prices apply until otherwise agreed. Prices are carriage free, including packaging.

Section 5.2. Invoices shall be issued immediately after dispatch of the goods, stating the order number and item number. Value added tax must be shown separately. Invoices must be sent by the supplier by email as a PDF document to the following email address: eingangsrechnungen@immergut.de.

Section 5.3 Payment shall be made subject to proper delivery and accurate prices and calculations. If a defect under warranty is detected, Immergut shall be entitled to withhold payment until the warranty obligation has been fulfilled.

Section 5.4. Invoices must be paid within 14 days minus a 3% discount, within 30 days net cash from the date of invoice, unless otherwise agreed.

Section 6. Offsetting and assignment

Section 6.1. The supplier shall only be entitled to set off undisputed or legally established claims.

Section 6.2. The assignment of claims against Immergut is only effective with Immergut's written consent.

Section 7. Warranty

Section 7.1. The supplier's warranty obligation is based on the statutory provisions unless otherwise specified below. The supplier shall indemnify Immergut at first request against all claims from third parties that are made due to defects, violations of third-party property rights or product damage in proportion to its contribution. The supplier guarantees the existence of appropriate product liability insurance.

Section 7.2. The warranty period shall be at least 12 months from delivery at the place of fulfilment. If the statutory warranty period is longer, this shall apply.

Section 7.3. In the event of defective delivery, the supplier shall, at Immergut's discretion, provide a replacement free of charge, grant a price reduction in accordance with the statutory provisions on price reduction or remedy the defect free of charge. In urgent cases, Immergut shall be authorised – after consultation with the supplier – to remedy the defects itself or have them remedied by a third party at the supplier's expense or to obtain a replacement elsewhere. The same shall apply if the supplier is in default with the fulfilment of its warranty obligation. If, according to the statistical audit procedure specified in the order, the maximum permissible percentage of defects is exceeded, Immergut shall be entitled to assert claims for defects with regard to the entire delivery or to inspect the entire delivery at the expense of the principle after prior consultation with the supplier.

Section 7.4. The supplier shall be liable for replacement deliveries and subsequent improvement work to the same extent as for the original delivery item; in other words, also for transport, travel and labour costs, without limitation. The warranty period for replacement deliveries begins at the earliest on the day the replacement delivery arrives.

Section 7.5. The supplier is obliged to reimburse reasonable costs for any product recall based on product liability law. Immergut will shall give the supplier a statement as soon as possible beforehand.

Section 8. Information and data

Drawings, designs, samples, manufacturing instructions, internal company data, tools, equipment, etc., which we have provided to the supplier to submit an offer or for the execution of an order, shall remain our property. They may not be used for other purposes, reproduced or made accessible to third parties and must be stored with the diligence of a prudent businessman.

The supplier must provide any documents, such as specifications, certificates, food clearance declarations, etc. to Immergut via the online portal "ecratum" and keep them up to date accordingly. Any access data shall be made available to the supplier at the beginning of the business relationship.

Section 9. Third-party property rights

The supplier shall ensure that the rights of third parties do not conflict with the intended use of the purchased goods, in particular that third-party property rights are not violated. However, if claims are asserted against Immergut due to a possible violation of third-party rights, such as copyrights, patents and other property rights, the supplier shall indemnify Immergut from this and from any related service.

Section 10. Data privacy

The supplier declares its revocable consent to the processing of any personal data provided in accordance with the statutory provisions.

Section 11. Severability clause

If individual provisions of these general terms and conditions are or become invalid, the remaining provisions shall remain effective.

Section 12. Place of performance/place of jurisdiction/legal status

Section 12.1. The place of fulfilment for deliveries is Schlüchtern.

Section 12.2. German law shall apply exclusively.

Section 12.3. The place of jurisdiction is the registered office of Immergut, 36381 Schlüchtern.

Section 13. Deviating agreements

Agreements that deviate from the content in these general terms and conditions of purchase are only valid if they are recognised by us in writing.

Last updated: April 2019