



## General Terms and Conditions of Processing and Delivery (GTC) of IMO Oberflächentechnik GmbH

Exclusive use is for business transactions with companies within the meaning of the law, Section 310 Para. 1 in connection with Section 14 of the German Civil Code (BGB)  
Status November 2021

### § 1 Scope of applicability

1. For offers, services and deliveries by IMO Oberflächentechnik GmbH (hereafter IMO) these terms and conditions of processing and delivery (GTC) shall apply exclusively in addition to the individual contractual agreements. IMO shall not accept any other terms and conditions – even in the case of fully rendered services or accepted payments – unless IMO has expressly approved their applicability in writing. The acceptance of services at the latest shall be considered the customer's expressed agreement with these GTCs.
2. If these GTCs form a legal part of contracts with the customer, they shall apply in case of a continuing business relation between IMO and the customer, including all future contracts, without the need for renewed inclusion until a new applicable version of IMO GTCs.

### § 2 Consultation, suitability, documents

1. Every form of advice offered by IMO, verbal or in writing, is based upon its experience.
2. Information stated by IMO in leaflets, catalogues and technical documentation, e. g. concerning the suitability and use of IMO services, shall be non-binding unless expressly indicated as binding by IMO in an offer or an order confirmation. They will not exempt the customer from the responsibility of carrying out his own examinations or tests, or from the compliance with legal or official regulations, particularly when using items processed by IMO.
3. IMO reserves ownership and copyrights for all illustrations, drawings, calculations and other (technical) documentation made available by IMO. None of the documents, in whole or in part, may be made accessible to third parties or used for a purpose other than that for which they were made available to the customer, unless written permission has been given.

### § 3 Conclusion of contract

1. Offers made by IMO shall be non-binding, unless IMO specifies otherwise in writing. If the customer accepts a binding offer from IMO, and such acceptance contains deviations from the offer, these deviations shall be considered agreed only with the expressed written confirmation of IMO.
2. As a basic principle, it is the order placed by the customer that constitutes an offer, which is routinely accepted in a written confirmation (order confirmation) by IMO.
3. The acceptance of an order by IMO can occur within 10 working days after receipt of an order, unless a longer period of acceptance has been planned. The order confirmation by IMO shall determine the scope of services. Insofar as IMO does not issue an order confirmation, services rendered by IMO shall be considered as order confirmation.
4. Orders should always be placed in writing; orders placed over the phone and data transmission via e-mail will be carried out at the risk of the customer.
5. The order placed by the customer shall contain all relevant information required by IMO for goods (hereinafter "objects of performance"), to be made available to IMO for processing - especially for coating work - such as item description, number of items, dimensions, material, material number and/or material composition, possible preparatory treatments and regulations relating to the treatment or coating of surfaces, treatment or coating specifications, thermal treatment, standards and individual values for objects of performance. This shall include information on treatment regulations and requirements for the storage of objects of performance.
6. Any changes in information according to Section 4 must be communicated to IMO in a timely manner.
7. IMO shall be entitled to seek any additional information from the customer that may be required for the proper treatment and coating of the objects of performance.

### § 4 Changes to services

1. Services offered by IMO are listed at the bottom of the offer or order confirmation by IMO. In the case of there being no offer or order confirmation from IMO, the scope of services shall result from the service performed by IMO.
2. In case of missing or faulty information provided by the customer, IMO reserves the right to suitably change the service content. Resulting disadvantages, in particular cost and damage, shall be born by the customer.
3. Necessary changes to the IMO services will be permitted, as long as they are reasonable for the customer.
4. IMO reserves the right to assign the treatment of the object of performance to a different company without charging additional costs, if
  - this company is suitable in individual cases;
  - it has become impossible to render services in the intended company, due to unforeseen circumstances;
  - this is necessary due to other reasons that are reasonable for the customer.

### § 5 Reject and Loss Rates

For technical reasons, it is unavoidable that a varying proportion of rejects or workpiece loss occurs for parts that are provided by IMO. Detected rejects are discarded by IMO.

1. Based on experience, IMO's regulations regarding the reject rates in their latest version shall apply. Insofar as the reject quantities and material losses due to the processes remain within the quantities listed therein, IMO shall not compensate for damages caused by such rejects or loss.
  - a) In the case of single parts for drum and rack plating, the *IMO Single-Part Reject Regulation* shall apply.
  - b) In the case of reel-to-reel materials (stamped strips and solid strips), the *IMO Strip Reject Rate Regulation* shall apply.
2. Insofar as the actual reject and loss rate exceeds those stated in the IMO Reject Rate Regulations, occurring for technical reasons or agreed separately, IMO shall render compensation to the customer for the portion exceeding the rate according to Section 15 of these GTCs, amounting to compensation for the production costs incurred by the customer for damaged parts. In order to lessen the administration expenses, invoicing is carried out each quarter on a product-by-product basis.
3. The compensation for losses provided by IMO under item 2 is limited to the order value amount agreed between IMO and the customer, yet not exceeding a maximum of €5,000. Any further claims of the customer against IMO for reasons of reject or loss caused are excluded.
4. Likewise, IMO shall not replace rejects or losses caused by force majeure, such as a power failure not caused by IMO.
5. In order to prevent further utilisation of rejected goods, IMO shall be entitled to scrap such goods at its own expense and to set off the revenues from the scrap against such expenses.
6. Within the scope determined in Section 12, para. 1 of these GTCs, the inspection of incoming goods by the customer must particularly include examination of drum-plated goods and bulk material for warpage.
7. The quantity and/or weight documented on the batch labels and in the delivery documents may deviate by  $\pm 1\%$  of the actual amount due to the process. IMO shall not provide any compensation for deviations within this tolerance.

### § 6 Delivery period and deadlines, cost of storage

1. Delivery periods begin upon receipt of our order confirmation by the customer, although not until all details of the order have been clarified, including the receipt of all documents and authorizations from the customer; delivery dates shall apply accordingly. The tacit consent of delivery date demands of the customer is excluded. The same applies to the deadline of order confirmations. Changes made to the subject of the contract after its conclusion by the customer, and which we have accepted, shall render the agreed delivery date invalid, and the delivery period shall begin anew.
2. The start of the delivery period requires full clarification of all important circumstances related to the rendering of services. Compliance with obligations to perform services on the part of IMO particularly necessitates that the customer's obligations are fulfilled properly and in a timely manner. Otherwise, the period shall be extended appropriately by IMO. The delivery periods stated by us will be approximate, unless there is a binding agreement on the delivery date. Delivery period and delivery date will be determined by exercising due care in congruent covering transactions, subject to correct and punctual delivery of required basic materials to us (at least 4 weeks prior to the start of production) and subject to unforeseeable production disturbances.
3. In the case of a delay in dispatch or delivery by more than one month, at the request of the customer, after notification of goods ready for shipping, IMO shall be entitled to charge storage costs amounting to 0.5% of the service price per month or fraction thereof, yet not exceeding 5%. The contractual parties may prove that higher or, as the case may be, lower storage costs have been incurred. IMO shall be entitled in such a case to free choice of a different suitable place of storage, as well as to have the objects of performance insured, invariably at the expense and risk of the customer.

### § 7 Default in delivery

1. IMO shall be liable according to legal provisions, insofar as the contract that forms the basis concerns a transaction at a fixed date according to Section 286 Para. 2 No. 4 German Civil Code or Section 376 German Commercial Code or, insofar as the customer is entitled to claim that his interest in further performance of the contract has ceased, due to a delay in performance caused by IMO. In accordance with legal provisions, IMO shall additionally be liable, insofar as the default in delivery resulted from a breach of contract, due to intent or gross negligence on the part of IMO. Faults on the part of representatives or subcontractors of IMO will be attributed to IMO. Unless the default in delivery is

not the result of a deliberate breach of contract for which IMO is responsible, liability for damages shall be limited to foreseeable, typically occurring damage. This limit shall also apply, insofar as the delay of delivery was caused by a culpable, unintentional breach of important contractual obligations by IMO.

2. Moreover, in the case of default of delivery, IMO shall be liable to pay a maximum of 0.5 % of the purchase price per every completed week of delay, for the part of the service that could not be put to appropriate use due to the delay.
3. The customer shall be obliged to inform IMO upon request, within an appropriate time period, as to whether he will withdraw from the contract due to the delay, or whether he continues to insist on the service.
4. IMO shall be entitled to demand compensation for damages, including additional expenses, if there is a default of acceptance by the customer, or if the customer is responsible for breaching other obligations to cooperate. We reserve the right to assert further claims. If the customer fails to meet a deadline or period set by IMO for collecting his property, IMO shall be entitled to charge appropriate storage fees, starting from this deadline or from the expiration of the set period.

#### § 8 Force majeure

Considerable, unforeseeable, as well as production disturbances, default or failure of delivery for which IMO cannot be held responsible, as well as production disturbances due to lack of energy, raw material or manpower; due to strikes, lockouts, difficulties in procuring means of transportation, traffic disturbances, by order of the authorities or force majeure occurring at the premises of IMO or the customer, shall extend the delivery period of IMO for the duration of these aforementioned obstructions to performance. This shall also apply in cases where IMO had already been in default of rendering services at the time these circumstances occurred. IMO shall inform the customer immediately, within a week at the latest, about the start and end of such obstructions.

The customer and IMO shall both be entitled to withdraw from the contract, in regard to the affected scope of service, should there be a delay in delivery or service of more than six weeks.

#### § 9 Price and payment conditions, invoicing

1. Any prices or order confirmations quoted by IMO are to be construed as payment due for total services rendered by IMO and may include either payment due for total services rendered only or payment due for services rendered plus the applicable amount of precious metals costs. If prices are quoted both as payment due for total services and the applicable amount for precious metals costs, such precious metal costs shall, in particular, relate to processing costs, separated precious metals and process-based precious metal costs. Payment due for total services rendered includes precious metal costs and processing costs.

In the case of solid strips, the payment for total services rendered (that is, processing costs plus precious metal costs) is calculated on the basis of the coated material weight.

2. Insofar as there is no other agreement, IMO prices are valid "ex works", not including applicable VAT, as well as costs for customs, freight, packing and transit insurance. IMO only insures goods to be shipped at the request of the customer.
3. IMO reserves the right to change prices accordingly, should costs decrease or increase after conclusion of contract, particularly if this is due to collective agreements, changes in prices for materials or manufacturing costs. IMO shall provide the customer with proof of this upon request.
4. Additional expenses listed in the order confirmation that were incurred in rendering services, due to circumstances caused by the customer, will be calculated separately. IMO particularly reserves the right of price changes or the invoicing of additional services, if
  - changes arise for coating material or the processing of goods, due to details and documents submitted by the customer that turned out to be different from the actual conditions or that were incomplete,
  - type and scope of services contained in the order confirmation were changed at the request of the customer. IMO shall inform the customer about increased costs before beginning the processing, should the necessity for additional services arise before beginning the processing or coating (e.g. special preparatory treatments or special mountings).
5. IMO shall be entitled to ask for an appropriate partial or prepayment, if this is required for a practical reason. There will be no interest payment for this. If payment of the service price is deferred, instalments are granted or the period of payment is exceeded, the customer will be charged 2 % p. a. above the prevailing base interest rate plus VAT, without the need for a payment reminder, in accordance with Section 247 German Civil Code.

6. IMO will issue invoices electronically. To that end the customer must provide IMO in advance with a binding email address that can be accessed at any time. Receipt of the invoice must be confirmed at once. This can be done by means of a read confirmation. If no confirmation is given, the date of sending by IMO will be deemed the date of receipt by the client.

Invoices shall be due immediately upon receipt by the customer and shall be paid by the customer within the time periods indicated on the invoice.

Discounts and rebates shall only be granted based on special agreements. Discounts for payments of new invoices will be excluded, if payment for older invoices has not yet been made.

7. IMO expressly reserves the right to accept bills of exchange or cheques. Bills of exchange and cheques will be subject to agreement by IMO, will be accepted only for payments and shall not be considered paid until unconditionally credited to our account. Incidental expenses and costs are to be borne by the customer, and they shall become payable with immediate effect. The maximum term of a bill of exchange will be limited to 90 days after the invoice date.

8. Excluding Sections 366 and 367 German Civil Code, and despite differing provisions of the customer, IMO shall determine which claims are settled by the payment of the customer. The customer waives the right to determine the use of his payments.

9. Default of payment shall entitle IMO to demand interest on arrears amounting to 9 % p.a. above the prevailing base rate of interest in accordance with Section 247 German Civil Code plus VAT, and to withhold any further services until the settlement of all overdue invoices. The interest shall be immediately due for payment. Both IMO and the customer reserve the right to furnish proof for lower or higher damage.

10. Failure to pay invoices, or other circumstances that indicate a major deterioration in the financial situation of the customer after the conclusion of contract, shall entitle IMO to demand immediate payment of outstanding debts that are based on the same legal relationship.

If there are doubts concerning the solvency or creditworthiness of the customer, IMO shall be entitled to demand payment in advance or suitable security guarantee for the service to be performed for the customer.

If the customer is not prepared to make payment in advance or to provide the appropriate security, IMO shall be entitled to withdraw from these contracts, after setting a reasonable extended deadline, and to demand compensation for non-fulfilment.

11. The customer shall only be entitled to set off accounts against claims from IMO, if the counterclaim is recognised, undisputed or legally enforceable. The assignment of claims against IMO shall require the consent of IMO.

12. The customer shall only have rights of retention if the counterclaim is based on the same contract and is recognised, undisputed, ready for a decision or legally enforceable or, when IMO seriously violates contractual obligations, despite a written reminder, and does not offer appropriate security. If there is no doubt about the defectiveness of a service provided by IMO, the customer shall have the right of retention only to the extent that the retained amount is in a reasonable proportion to the defects and anticipated costs for the correction of the defects.

13. Payment deadlines shall also remain effective if the delivery is delayed without the fault of IMO.

#### § 10 Precious Metal Prices, Surcharges, Precious Metal Account

1. Precious metal prices are calculated according to the opening price of the London Gold Fix ([www.allgemeine-gold.de](http://www.allgemeine-gold.de)) prevailing on the delivery note date plus a mark-up of 2.5%.

2. The charge weights of precious metals stated in the offers and invoices always include a process-related, unavoidable precious metal loss / reduction.

3. Any precious metal orders performed via a precious metal account for Gold (Au), for Silver (Ag) and Palladium (Pd) incur a 5 % surcharge on the precious metal content stated in the offer.

4. For the initial setup of a precious metal account, IMO charges a one-time fee of 250.00 EUR per precious metal type.

#### § 11 Import of Primary Materials from Third Countries

1. If the primary material to be supplied by the Customer or its sub-supplier (material provided for processing at IMO) originates from a third (non-EU) country, the Customer shall ensure that these products have been released for free circulation prior to their delivery to IMO and have the status of Community products. The Customer shall submit to IMO all documents of the customs procedure which demonstrate that the products are freely available.

2. The import duties and other costs incurred in the release for free circulation shall be borne by the Customer.

3. If the Customer is obliged to initially import its products to be processed by IMO to the European Community as non-Community products so that they leave the Community customs territory again as compensating products after the processing works executed by IMO, IMO shall be notified in advance. If the Customer is exempted from the import duties in this context, the respective exemption certificate from the customs authority shall be submitted to IMO. If the products are released for free circulation by initially levying the import duties, these import duties incurred and any other costs shall be borne by the Customer.

4. If any import duties are claimed from IMO, such duties shall be passed on and invoiced to the Customer in the course of processing the order.

5. IMO will not accept any responsibility for the customs treatment of the products.

#### § 12 Place of performance, acceptance, collection, passage of risk, dispatch, packaging

1. The place of performance for the ordered services is the factory of IMO. Unless agreed otherwise, the customer shall be expected to collect the goods from there, after receiving notice that the goods are ready for collection.

2. The customer is obligated to accept the goods as soon as it receives notification from IMO that the ordered services have been completed. If the customer does not accept the goods within 2 weeks after notification, the acceptance shall

be considered as performed, insofar as he was expressly notified about this acceptance by default. This shall also apply when the customer refuses acceptance without being entitled to do so.

**3.** Insofar as collection was agreed, the risk of destruction, loss or damage to the goods shall pass to the customer as soon as the goods are ready for collection, provided that the customer was notified. When dispatch has been agreed, risk shall pass to the customer with the dispatch of goods or when handed over to the assigned transport company. If the customer is in acceptance or payment default, risk shall pass to the aforementioned at the commencement of default.

**4.** IMO shall be entitled, but not obligated, to dispatch and insure deliveries on behalf of and for account of the customer. There will be no changes to the provisions mentioned above, particularly to the place of performance and the passage of risk, if IMO accepts the obligation to ship goods. The type and route of shipping shall be selected by IMO. Additional cost due to differing wishes of the customer shall be born by the customer.

**5.** Returnable containers for shipping are to be returned empty and carriage paid within 30 days of receipt of the goods. Any loss or damage to returnable packaging, as long as it was not returned to IMO, shall be borne by the customer, if such loss or damage was his fault. Returnable packages must not be used for other purposes or as a receptacle for other objects. They are only intended for the transport of the delivered goods. Labels must not be removed.

**6.** Unless agreed otherwise, IMO shall determine the type and extent of the packaging. The selection of packaging is made according to best judgement and by taking the necessary care. Disposable packaging shall become the property of the customer and will not be taken back by IMO; IMO shall instead designate a third party to recycle the packaging according to packaging regulations.

**7.** In case of damage or loss of goods during transport, an inventory must be taken immediately and IMO must be notified. Customer claims for possible shipping damage against the transport company must be asserted immediately.

**8.** Partial services shall be permitted, unless these would result in a disadvantage to the customer.

### § 13 Delivery of goods, incoming quality control by IMO

**1.** When delivering the objects to be processed, the customer must provide all details required for the identification of his items and for their treatment to prevent damage. This particularly includes the number of items, designation and value of the goods, price of a single item and total value, gross and net weight, type of shipping for delivery and the desired type of transportation for return delivery, if transport has been agreed. In addition, details required for processing and coating, particularly detailed treatment regulations must be enclosed with the goods, insofar as this was not already carried out in the order or order confirmation.

**2.** If collection of the goods by IMO was contractually agreed, the details above must be enclosed with the packed goods prepared for transport.

**3.** IMO shall not be liable for damages caused by incorrect labels or identification of the goods.

**4.** IMO shall examine the delivered goods for externally visible damage. IMO shall not be obligated to carry out additional checks. The customer shall be notified about the detected defects within 10 working days.

**5.** The customer shall be liable for all damages, including loss of profit, suffered by IMO caused by the provision of material that is unsuitable for processing.

### § 14 Incoming goods inspection, notice of defects, storage

**1.** Section 377 German Commercial Code shall apply accordingly to services rendered by IMO. In the case of claims related to defects, it shall be assumed that the customer has examined the provided parts for damages upon receipt, in accordance with Section 377 German Commercial Code Civil, and that after detecting these has reported the defects immediately to IMO in writing by stating the specific details of the respective defect. The burden of proof for a hidden defect shall lie with the customer.

**2.** In case of complaints, the customer shall have to arrange for an immediate opportunity that allows us to inspect defective goods. At our request, the defective goods, or a sample of same, must be made available to us at our expense within one week of notification of the defect. We reserve the right to charge the customer for freight and handling costs, as well as for examination expenses, in the event that the complaints turn out to be unjustified.

**3.** The customer shall test – if required by processing a sample – whether the delivered goods are suitable for the intended purpose.

**4.** Prior to dispatch, IMO shall, if feasible, examine the processed goods. If the customer demands further examinations, these will require special agreements and will have to be paid by the customer.

**5.** IMO shall only bear costs, such as inspection, validation and testing costs (if applicable also more than once) of the customer or third parties if:

- IMO has previously agreed to these tests in writing and approved the costs.
- the expenses are exclusively used to separate good parts from bad parts
- the share of destructive testing applies to only a few parts (max. 5 pieces) of a production batch
- these tests are customary in the industry, i.e. they are NOT equivalent to basic scientific research.
- their total costs do not exceed the net sum of 3,000.00 euros.

**6.** The customer is obligated to store the provided goods properly, in accordance with customary conditions (especially temperature: 15-20°C, max. humidity

40%). In the case of surfaces containing silver, an additional sulphur-free packaging is required.

### § 15 Quality, warranty

**1.** The quality of our services meets the customary requirements of the surface refinement industry. If there are special quality requirements, such as resistance to heat or atmospheric corrosion, these shall have to be indicated in writing as early as possible, but at the latest when placing the order. Particularly for all forms of dimensional stability, we shall grant warranty only if exact details were written in the order.

**2.** IMO shall grant warranty for all defects existing at the time when risk passes to the customer, unless the defect is due to a circumstance for which the customer is responsible. IMO shall not grant any warranty for a defect, if proof of proper performance by IMO can be furnished.

**3.** Details in descriptions of services or service specifications, unless such data has been identified as describing the nature of goods as defined under sections 633 and 434 German Civil Code, shall not represent an assurance or guarantee for the quality of services, or that such service will retain a certain quality for a certain period of time. As a general rule, IMO does not grant any assurances or guarantees and, in a special case, these will have to be agreed separately in writing.

**4.** Insofar as faulty services are concerned, IMO shall always be given the opportunity of subsequent fulfilment in the form of reworking within a reasonable period of time. If reworking proves impossible for technical reasons, or if it is the fault of IMO that it is not performed within the set period of time, or should it fail, i. e. at least two attempts to remedy defects have failed, or should reworking be unacceptable to the customer, the latter shall be entitled to withdraw from the contract or to reduce the price. In the case of multiple service contracts, only partial withdrawal in regard to the faulty partial service can be taken into consideration, unless adherence to the contract in its entirety has become unreasonable.

**5.** Claims made by the customer for expenses arising for the purpose of reworking, in particular transport costs, travelling expenses, work and material costs shall be excluded, insofar as expenses have resulted from the object of performance was subsequently taken to a site that was different than the location of the customer, unless this transfer corresponds to its intended purpose.

**6.** No claims for defects by the customer shall be accepted, if the customer or a third party has made improper changes to the services performed by IMO, without seeking prior written consent from IMO, in particular to the coating, or if the object of performance was used or processed further by the customer, despite awareness of the defect. In addition, the following claims for defects shall not be accepted:

- minor deviations from the agreed quality or minor impairment of usability;
- any discrepancies or damages resulting from missing, incorrect, incomplete or vague details provided by the customer when placing the order, or in the treatment regulations that were classified as useless by IMO before the order was placed;
- damages resulting from an unsuitable quality of the provided goods, such as defects in the material, deviations in dimensions, surface treatments, processing residues or other foreign matter, production defects, improper thermal treatment, rust stains, non-soluble residues, soldered joints etc. This shall only apply, however, to the extent that the unsuitability of the objects of performance for processing, particularly for coating, was not obvious to IMO when the order was placed or when the goods were provided;
- the appearance of stains and other faults, due to increase of contrast applied in the processing procedure, that were not visible before processing;
- reduction of anticorrosion property in stainless steels caused by the processing;
- as well as corrosion of a multi-coat work piece in an electrolytic environment. However, this shall only apply insofar as the customer has not informed IMO in writing prior to the conclusion of contract about the electrolytic environment of the job site for the objects of performance to be coated.
- in the case of improper storage as defined under section 14, para. 6.

**7.** Insofar as claims for defects are made regarding processed parts subject to wear, no claims shall be accepted for normal wear and tear. If there is reason for doubt, it is the responsibility of the customer to furnish proof that no normal wear and tear is evident.

**8.** The customer shall only be entitled to legal claims for indemnification insofar as the customer has not entered into an agreement with his purchaser that goes beyond the legal claims for compensation for defects and damages.

**9.** On the basis of given technical circumstances, the guarantee for the usability of the coatings, even if properly stored as defined in section 14, para. 6, is granted only for a maximum period of 6 months.

In the case of the galvanic, chemical or mechanical treatment of surfaces the surface quality of non-coated areas may be impaired. This applies especially to materials made of copper and copper alloys. Therefore non-coated areas are on principle excluded from our warranty.

### § 16 Warranty of title, industrial property rights

**1.** The liability of IMO in relation to title shall be determined in accordance with section 17 and the provisions below.

**2.** IMO shall not be liable for possible violations of industrial property rights occurring in connection with the application of the objects of performance to be

treated in industrial processes, or their operating conditions, or in connection with their use with other products.

3. Insofar as the combination of a multi-coat object of performance violates industrial property rights, IMO shall only be liable if the violation of industrial property rights was or should have been recognised by IMO, based on the information about the object of performance that was provided by the customer when the contract was concluded.

4. In case of defects of title, IMO shall have the option to:

- either procure the required licences for the violated industrial property rights
- or to redress the violation as it relates to the coated object of performance by supplying an object of performance modified to such an extent that is acceptable for the customer (i. e. with an equally suitable coating).

5. The customer shall be obligated to inform IMO immediately in writing about possible claims made by a third party, and IMO shall reserve the right to any defensive measures and settlement negotiations.

### § 17 Liability

1. In cases of wilful intent or gross negligence by IMO, or their representatives or assistants, the liability shall be in compliance with legal provisions. Apart from that IMO shall be liable according to the product liability law, as well as for fatal injuries and injuries to the body or health of a person, or violation of important contractual duties, i.e. a violation of those obligations which alone make the implementation of the contract possible at all, and upon which the contract partner can regularly expect compliance. Claims for compensation of damages due to slight negligent infringement of material contractual duties shall be restricted to the foreseeable damage typical for the contract. In cases of gross negligence as well, the liability of IMO shall be limited to the foreseeable damage typical for the contract, if none of the special cases described in sentence 2 of paragraph 1 of this section applies.

2. Insofar as IMO is not liable due to wilful intent, gross negligence, culpable violation of material contractual duties or fatal injuries and injuries to the body or health of a person, or is liable according to the product liability law, IMO shall not be liable for damages caused by the object of performance to legally protected interests of the customer, such as other objects, due to loss of profit or other damage to property.

3. The provisions of the previous paragraphs 1 and 2 above shall apply to compensation for damage, in addition to performance and compensation for damage in lieu of performance, regardless of whatever legal reason, particularly due to defects, breach of duties arising from a relationship of debenture or unlawful act. They shall also apply to claims for compensation for futile expenses and liability due to impossibility.

4. Any claims for compensation against IMO shall be limited to the extent of the comprehensive general liability insurance and product liability insurance, aerospace product liability insurance and/or product recall insurance maintained by IMO in each case and for a maximum combined amount of 1,000,000 EUR. The above paragraph shall not apply in the case of mandatory liability by IMO, e.g. in the case of wilful intent, gross negligence, injury of life, body or health, or breach of material obligations hereunder and/or any liability under the German product liability act (*Produkthaftungsgesetz*).

5. The duty of compensation shall also be excluded insofar as the customer has effectively limited his own liability against the purchaser. In this context, the customer will endeavour to agree limitations of liability within the legally permissible scope in favour of IMO.

6. Insofar as the liability of IMO for compensation of damages is excluded or limited, this shall also apply to all claims made by the customer, due to a fault at the conclusion of contract, violation of secondary obligations or claims by the customer under product liability, as well as impossibility. Insofar as the liability of IMO is excluded or limited, this shall also apply to the personal liability of IMO staff, employees, co-workers, representatives, assistants and vicarious agents.

7. Insofar as liability is excluded or limited according to the provisions above, the customer shall be obligated, when first requested, to additionally exempt IMO from claims made by third parties.

### § 18 Processing of prototypes

1. Prototypes provided to us by the customer for processing are solely intended for in-house use.

2. We shall not be liable for property damage and financial losses, unless we are responsible for intentional and gross negligence, or we are liable for the damage under the product liability law or have violated a material contractual obligation. In the case of violation of material contractual obligations, our liability shall be limited to the foreseeable damage typical for the contract.

3. In case of claims for compensation of damage against us by third parties, the customer shall exempt us from such claims and, in this respect, shall also bear any necessary defence costs, to the extent that we are not responsible for damages in the internal relationship with our customer.

### § 19 Special legal provisions

Please comply with Directive 2002/95/EC (RoHS) and the Electrical and Electronic Equipment Act when ordering. Both contain a ban on certain environmentally hazardous substances such as lead, which may no longer be used in electrical and electronic devices. The RoHS was implemented in Germany through the Electrical and Electronic Equipment Act, which became effective on 16/03/2005.

In accordance with section 3 of the Electrical and Electronic Equipment Act, manufacturers and importers are obligated to register with the responsible public authority, if they wish to market a product that is included in the catalogue of the Electrical and Electronic Equipment Act.

For details about the RoHS, please visit the pages of the EU at [www.europa.eu.int/eur-lex/pri/de](http://www.europa.eu.int/eur-lex/pri/de).

To view and download the Electrical and Electronic Equipment act go to [www.gesetze-im-internet.de/elektrog/BJNR07620005.html](http://www.gesetze-im-internet.de/elektrog/BJNR07620005.html).

We request that prior to placing an order, you check whether the products submitted to us for coating are affected by the RoHS or the Electrical and Electronic Equipment Act, and that you notify us, should this be the case. If we do not receive any communication from you, we shall assume that the product components submitted to us for coating will not be installed in or combined with products that are to be classified as products in the product catalogue of section 2 paragraph 1 of the Electrical and Electronic Equipment Act.

Insofar as the product components submitted to us for plating are included in the catalogue mentioned above, we request that you inform us which of the exemption clauses in the Electrical and Electronic Equipment Act or the RoHS are relevant.

Please understand that we cannot assume any liability should it later become apparent that the Electrical and Electronic Equipment Act or the RoHS was violated. If such a violation should result in claims made by third parties against us, you shall be legally obligated to exempt us from such claims.

### § 20 Processing of aerospacecraft parts

1. The client is obliged to inform IMO in due time about the intended use of any parts to be processed by IMO for the aircraft and/or spacecraft industry.

2. Any liability by IMO for environmental damages as a result of faults during the operation of aircrafts which can be attributed to aircraft parts manufactured or delivered by IMO after the final acceptance of works performed by IMO in regards to said parts is excluded. This does not apply to acts of willfulness.

Due to IMO's aircraft product liability insurance cover, section § 16.4 (liability) had to be amended.

### § 21 Limitation of claim

1. The limitation period for claims and rights based on defects of our products, services and works, as well as any resulting damages, shall be 1 year. The aforementioned limitation period shall not apply to the extent that longer periods are stipulated by law under section 438 para. 1 No. 2, 479 and 634a para. 1 No. 2 German Civil Code. The limitation period according to sentence 1 shall also apply to all existing claims for compensation against us, regardless of whether they are related to a defect and notwithstanding the legal foundation of the claim. The start of the limitation period shall comply with legal provisions.

2. The limitation period according to the previous paragraph 1 shall not apply in case of intent, if IMO has maliciously concealed a defect, in the case of claims for compensation due to injury to the body or injuries to the health or liberty of a person, claims under the product liability law, grossly negligent violation of obligations or the violation of material contractual obligations.

3. Measures for subsequent fulfilment shall neither inhibit the limitation period for the original rendering of performance nor shall they cause the limitation period to begin anew.

### § 22 Acquisition and retention of title, lien

1. "If payment is made in advance, ownership is transferred upon receipt of the payment amount."

2. If process materials and other property of IMO, materials or production materials are processed, combined or mixed with items belonging to the customer that were provided to IMO for processing, IMO shall acquire joint ownership or sole ownership of the new commodity at a ratio of the value of the IMO service to the object of performance provided by the customer during the time of processing, combining or mixing.

3. If processing, combining and mixing are achieved in such a way that the object of performance provided by the customer is considered as the principle item, then it shall be considered as agreed that proportional ownership shall be transferred automatically to IMO as security for all claims by IMO arising from the business relationship.

4. Insofar as IMO acquires ownership of a commodity of the customer due to its service, according to section 950 German Civil Code or section 947 German Civil Code, IMO shall reserve ownership of this commodity until all accounts of the customer in connection to this business contact have been settled.

5. The customer shall be entitled to resell the commodity of which IMO has acquired ownership in a proper business transaction, provided that he punctually meets his obligations arising from the business relation with IMO; in this case, the amount receivable resulting from the sale will be deemed assigned to IMO at the ratio that the secured IMO performance by reservation of ownership represents to the total value of the sold goods.

6. Processing or mixing carried out by the customer on behalf of IMO will not result in any liabilities for IMO.

In order to secure the amount receivable by IMO, in a case of processing or mixing with other commodities not belonging to IMO, the customer shall already now transfer joint ownership of the new commodity to the aforementioned at the ratio that the value of the conditional goods represents, as compared to the other

processed goods, under the condition that the customer keeps the new commodity in custody for IMO.

**7.** Should the customer incorporate or mix the purchased, delivered conditional goods with a principal item belonging to a third party, the customer provides collateral by assigning to IMO, at the time of processing, his right to compensation against this third party, up to the amount of the invoice value. IMO shall accept this assignment.

**8.** At the request of IMO, the customer shall be obligated to provide all necessary information about the inventory of goods belonging to IMO and the amounts payable assigned to IMO, as well as to inform his purchasers about the assignment.

**9.** The customer shall be obligated to provide safekeeping for the conditional goods and to insure them against loss and damage at his own expense. In the event of damages, the customer shall assign possible security claims to IMO

**10.** The customer's right to disposition regarding the goods subject to lien by IMO, as well as the inclusion of the amounts receivable assigned to IMO, shall expire as soon as he no longer meets his payment obligations related to the collected proceeds, or if he stops payment and / or he files an application to initiate insolvency proceedings. In all the aforementioned cases, as well as with other conduct of the customer in violation of the contract, IMO shall be entitled to recover delivered goods that are subject to lien by IMO. Attachment of goods by IMO shall not constitute a withdrawal from the contract, unless IMO expressly confirms this in writing.

IMO shall be entitled to utilisation; the proceeds of sales minus appropriate utilisation costs are to be set off against the liabilities of the customer. The customer now declares consent that persons assigned by IMO to collect the conditional goods will be permitted to enter or drive onto or into the property or building, on or in which the conditional goods are kept, for the purpose of collecting these goods.

**11.** Insofar as the title retention might not apply under the law of the land in which the delivered goods are kept, the customer shall have to provide equivalent collateral, if demanded by IMO. IMO shall be entitled to demand settlement of all open accounts, regardless of agreed periods of payment, should the customer fail to meet such demands.

**12.** For all amounts payable, IMO shall be entitled to hold a lien in regard to the customer's commodities, which IMO acquired ownership of, in accordance with the contract. IMO shall also be entitled to assert the right of lien regarding amounts payable for work carried out earlier, spare parts deliveries and other services, as long as these are connected to the object of performance.

As far as other claims of the business relation are concerned, the right of lien shall apply, insofar as these are undisputed or legally determined. The sections 1204 et seq. German Civil Code and section 50 para. 1 Insolvency Regulations shall apply accordingly.

**13.** If the realisable value of the securities exceeds the amount payable to IMO by more than 10 %, IMO shall release securities of his choice to the customer, should the latter demand this.

### **§ 23 Nondisclosure**

**1.** Insofar as the customer comes into contact with trade secrets and/or our know-how during the implementation of the contract, he shall be obligated to maintain secrecy, as well as to implement measures that protect our legitimate interests against violation and ensure that knowledge worthy of protection is only used in connection with the contract or the subsequent utilisation of the subject matter of the agreement itself. In particular, the customer must provide proof that trade secrets and/or know-how had been previously known or at least evident.

**2.** The customer shall be obligated to treat all business and technical details related to the order as a business secret. He shall continue to be obligated to secrecy with regard to all documents and information, even after the conclusion of the respective contract. Duplication shall only be permitted within the framework of business requirements and provisions of copyright law. Disclosure to third parties shall require our written permission.

### **§ 24 Place of jurisdiction, place of performance, applicable law, data protection, ineffectiveness of a provision**

**1.** Place of jurisdiction, at the choice of IMO, shall be the local court responsible for the registered office of IMO or the general place of jurisdiction of the customer. This shall also apply to disputes arising from the processing of certificates, bills of exchange or cheques.

**2.** Place of performance for payments to be made to IMO arising from the business relation shall be the registered office of IMO.

**3.** German Law shall apply exclusively to contractual relations between IMO and its customers. The applicability of the United Nations Convention on Contracts for the International Sale of Goods from April 11, 1980 (CISG) shall be excluded, insofar as such is relevant.

**4.** IMO uses all of the customer's data exclusively for the purpose of conducting the business transactions and in accordance with the applicable data protection provisions. The customer has, upon written request, the right to access his personal data collected, processed and used by us.

**5.** Should one of the provisions of these conditions be or become ineffective, the effectiveness of the remaining provisions under this contract will not be affected. The contractual partners shall endeavour to replace the ineffective clause with a new clause that is closest possible to the economic purpose of the original wording and that complies with the relevant legal regulations.