

General Terms & Conditions of Institut für Galvano- und Oberflächentechnik Solingen GmbH & Co. KG
(hereinafter referred to as IGOS)
As at 01.01.2016

1. Field of application

- a. IGOS' General Terms & Conditions apply exclusively; any conditions contained in the terms and conditions of our commissioning parties that deviate from, are in contradiction to or attempt to expand our General Terms & Conditions shall not apply, unless they have been explicitly accepted by IGOS in writing.
- b. We hereby explicitly reject any attempt by the commissioning party or its agents to apply any external provisions and any attempt to impose the principle of renvoi. In particular we hereby reject any subsidiary applicability of provisions to which the commissioning party may seek to refer.
- c. Our General Terms & Conditions apply to all legal claims by commissioning parties, irrespective of their legal foundation.
- d. Our General Terms & Conditions shall also apply in cases where we render our services without stipulating conditions in the knowledge that opposing or additional provisions exist.
- e. These Terms & Conditions apply to corporations, legal entities in public-law, special entities and individual consumers.

2. Contractual partner

- a. IGOS' exclusive contractual party is the party that commissioned us and to whom we have responded by confirming the commission.
- b. In the absence of any agreed provisions to the contrary, IGOS renders its services on behalf of the commissioning party named in the quotation or confirmation of order. All liability towards Third Parties not specifically named in the quotation is formally rejected.

3. Telephone support

- a. Information communicated by telephone shall not be legally binding. For binding information, it is necessary for the potential commissioning party to submit the components in question for examination and define the process parameters (e.g. any specifications to be applied, chemicals to be used, detailed process steps).

4. Costing, quotations, confirmations of order

- a. IGOS is in a position to quote the anticipated costs of a standard examination (e.g. a corrosion test), although some variable costs (laboratory time) can only be charged on the basis of actual costs incurred.
- b. If the customer commissions IGOS to perform the work on the basis of the costing, IGOS will issue a corresponding confirmation of order. The contractual agreement with IGOS comes into effect as soon as the confirmation of order is received.
- c. Customers who are already aware of the applicable costs may commission IGOS without the need for a quotation. The contractual agreement with IGOS comes into effect in such cases as soon as the confirmation of order and the conditions it contains are received.
- d. In all other cases, IGOS will issue a written quotation. If the customer's purchase order differs from the quotation, IGOS will confirm the order on the basis of the quotation and point out the fact in the confirmation of order that there is a discrepancy.
- e. A lack of response by the commissioning party to the confirmation of order issued by IGOS is tantamount to acceptance of the terms it contains in accordance with Section 362 German Commercial Code (HGB); where this provision does not apply to private individuals.
- f. Quotations and confirmations of order issued by IGOS are subject to the principle of E&OE.

5. Range of services for laboratory examinations

- a. Laboratory services are rendered as defined procedures (e.g. measurements of layer thicknesses, hardness tests, corrosion tests etc.). The resulting Analysis Report will confirm whether the processes applied were within or outside the range of services for which IGOS is accredited.
- b. The analysis results of laboratory tests relate exclusively to the specimens submitted by the commissioning party.
- c. Specimens will, in all likelihood, become damaged in the course of and as a result of the tests (e.g. through corrosion, cutting etc.). Unless the customer explicitly requests in writing that the specimens are stored, they will be destroyed a fortnight after the Analysis Report has been dispatched. Any ground sections prepared from specimens will be destroyed six months after the Analysis Report has been dispatched. IGOS reserves the right to charge the commissioning party for the costs of disposal.

6. Range of services for process improvements

- a. In the case of process improvements, our propositions relate exclusively to the process described to us (process step improvements) and the materials and coating materials disclosed to us (improvements in coating).
- b. Where a visit to the production facility has been conducted by us, our improvement suggestions will relate to the installations and processes viewed on-site. Any modifications made by the commissioning party that take place after our visit cannot be included in the services rendered by IGOS.
- c. The commissioning party undertakes to test run the improvements proposed by IGOS for three months before they become part of series production to determine whether the improvements are achievable in practice.

7. Range of services for damage analyses

- a. Damage analyses are conducted on the basis of information provided by the commissioning party on the location and the conditions in which the specimen was used. As a rule, it is not possible for IGOS to evaluate these. If it is required for IGOS to evaluate the production location and pertaining conditions, the commissioning party is required to commission IGOS explicitly to analyse the location where the damage occurred and to take specimens.
- b. The examinations will take place on the specimens received. IGOS is not in a position to assess whether or not the specimens received actually demonstrate the damage concerned. If the damage is, in fact, not detected in the specimens received, IGOS will propose taking new specimens. IGOS' services are, however, considered to have been rendered in analysing the specimens made available to it and producing the Analysis Report on the basis of those specimens.

8. Time at which the services are rendered, default, damages in lieu of performance

- a. All timing schedules offered by IGOS for examinations are considered to be approximate.
- b. IGOS reserves the right to make partial deliveries. IGOS cannot be held in default with regard to partial deliveries supplied in a timely manner.
- c. Where IGOS quotes a date for delivery of an Analysis Report, adherence to that schedule will depend on the commissioning party having already provided IGOS with the specimens and all pertinent questions relating to the execution of the examination having been properly and fully answered.
- d. The commissioning party shall take into consideration that certain examinations require a period of time specified in the standards.
- e. IGOS reserves the right to meet the agreed deadline for delivery of an Analysis Report by sending it by fax or email.
- f. IGOS can only be considered in default if a reasonable delivery grace period is agreed and that deadline is exceeded. Claims beyond this require that IGOS was responsible for exceeding the agreed grace period. Setting a grace period by the commissioning party can only be considered unnecessary if IGOS has finally refused to perform the contractually agreed services.

- g. The commissioning party's rights in the event IGOS is in default are limited to claiming the additional costs for an examination by a different institute to conduct the examination for which IGOS is in default. No further claims by the customer will be entertained. IGOS shall not be liable to reimburse those additional costs if the commissioning party neglected to notify IGOS in the purchase order that the original deadline was absolutely critical.

9. Prices, terms & conditions of payment

- a. All prices are ex-VAT, the appropriate rate of which is to be added, currently 19% within Germany.
- b. IGOS reserves the right to charge shipping costs for dispatching Analysis Reports and for returning specimens.
- c. Unless otherwise agreed, IGOS is entitled to charge the commissioning party for any disposal costs incurred.
- d. The invoice total is payable immediately in full on receipt of the invoice.
- e. Thirty days after receipt of the invoice, the commissioning party is considered to be in default even without sending reminders. In the case of legal transactions not involving consumers, IGOS reserves the right to charge the commissioning party interest for late payment in the amount of 9 percentage points over the basic rate of interest in accordance with Section 288(2) German Civil Code (BGB). In the case of consumers, the rate of interest on arrears is 5 percentage points over the basic rate of interest.
- f. If the commissioning party is in arrears, it shall bear not only the costs of the aforementioned interest but also the costs of legal proceedings (payment collection, lawyers etc.).

10. Place of performance

- a. The place of performance is the registered office of IGOS in Solingen, Federal Republic of Germany.

11. Warranty, complaints about defects, warranty period

- a. The examinations conducted are considered to be as contractually agreed if they conform to the methods stipulated in the standards or those prescribed by the commissioning party and confirmed by IGOS in the confirmation of order.
- b. Any complaints by the commissioning party must be communicated within a time period of a fortnight after receipt of the Analysis Report including details of whether, in that party's opinion, there is an error in the method of examination or in the technical evaluation of the analysis. It is only by adhering to this time schedule that IGOS will be in a position to repeat the examination on the specimens that will, up to that point, still be available. If the commissioning party does not notify any complaint within a fortnight of receipt of the Analysis Report, the results of the analysis and the evaluation are considered to have been approved. This approval is deemed to exclude all and any claims for remedial performance and damages for any legal reasons whatever.
- c. Where the Parties are unable to agree whether or not the examinations conducted by IGOS were faulty, the Parties agree to enlist the services of an arbitrator to reach a binding decision on the contentious subject matter in accordance with Sections 317 et seq. German Civil Code. The arbitrator shall be a sworn expert. If the Parties are unable to agree on an arbitrator, either Party is entitled to request the German Chamber of Commerce to appoint one. This choice of an arbitrator appointed by the Chamber of Commerce can only be rejected in the same way a judge may be rejected, where that person is not felt to be qualified or impartial. The costs of the arbitration process shall be based on the winner & loser principle.
- d. The rights of the commissioning party in the case of residual performance are limited to a repeat of the inadequate examination.
- e. If IGOS does not conduct the promised examinations as required, claims for damages by the commissioning party in lieu of performance are limited to any additional costs incurred in having the examinations conducted by a different institute. Claims for damages can only be entertained if the commissioning party has allowed the grace period prescribed in Section 281 German Civil Code and that period has expired.
- f. The warranty period is 12 months from receipt of the Analysis Report.

12. Off-setting & retention

- a. Commissioning parties are only entitled to exercise a right of offset or retention where IGOS does not reject the commissioning party's claim, or recognises that claim or where it is the legally enforceable judgement of a court of law.

13. Liability

- a. Claims for damages against IGOS shall only exist if IGOS can be shown to have acted in gross negligence or with intent in causing the damage. This restriction shall not apply in cases where claims are made for death, personal injury or claims under product liability legislation.
- b. The commissioning party shall not be entitled to claim for damages if it did not notify IGOS during commissioning that faulty examination results might result in high levels of damage. A high level of damage in this context is one exceeding EUR 50,000.
- c. Claims by the commissioning party for financial loss, in particular resulting from loss of profit, loss of production or production interruptions are hereby explicitly excluded. Claims for damages of this type shall only exist if IGOS can be shown to have acted in gross negligence or with intent.
- d. IGOS shall not be liable for financial loss incurred by the commissioning party as a result of demands by third parties. Claims for damages of this type shall only exist if IGOS can be shown to have acted in gross negligence or with intent.
- e. IGOS shall not be liable for useless expenditures, damages or reimbursement of other costs in the case of process improvements and new developments where the commissioning party has not run trials with the propositions made by IGOS for at least three months under series production conditions and then had the coatings examined by professionals.
- f. Claims for damages by the commissioning party shall be limited to EUR 100,000.
- g. Where liability of IGOS is excluded or limited, the same exclusions and limitations shall apply to all those entities and individually authorised to represent IGOS, its managing directors, employees, agents and assigns. The aforementioned exclusions and limitations shall not apply if the individual(s) or entity/entities can be shown to have acted in gross negligence or with intent.

14. Confidentiality & intellectual property

- a. IGOS shall only draw up an Analysis Report for the commissioning party. The commissioning party is not authorised to publish the results of the examinations or make them available to third parties without prior written authorisation from IGOS.
- b. IGOS reserves all rights in the testing methods and all possible copyright in the Analysis Reports.

15. Legal validity

- a. Only original, written Analysis Reports that have been signed and dispatched by IGOS shall be legally valid.

16. Court of jurisdiction, choice of law

- a. The Court of jurisdiction for all and any disputes between the Parties arising from or in connection with commissions to conduct examinations is that applicable to the registered head office of IGOS in Solingen.
- b. The Parties hereby agree that the law of the Federal Republic of Germany shall apply and that application of UN commercial law is explicitly excluded. Legal proceedings shall be subject to the Code of Civil Procedure (ZPO) of the Federal Republic of Germany. The contractual language is deemed to be German.