

General Terms & Conditions of Sale, Delivery and Payment of Indunorm Hydraulik GmbH

I. Scope, general information

- These General Terms & Conditions of Sale, Delivery and Payment ("Terms & Conditions") apply to all business relationships of Indunorm Hydraulik GmbH, Oderstraße 3, 47506 Neukirchen-Vluyn, Germany ("INDUNORM") with its customers ("Customers"). The Terms & Conditions apply only if the Customer is an entrepreneur (Section 14 of the German Civil Code (BGB)), a legal person under public law or a special fund under public law.
- Private consumers are not supplied. The products are intended exclusively for professional use and as a matter of principle do not meet the requirements that must be observed in respect of private consumers.
- The Terms & Conditions apply, in particular, to contracts for the sale and/or delivery of movable items ("goods"), irrespective of whether INDUNORM manufactures the goods itself or purchases them from suppliers (Sections 433, 651 BGB). The Terms & Conditions apply in their latest version as a framework agreement for future contracts for the sale and/or delivery of movable items with the same Customer without INDUNORM having to make express reference to any changes and without having to agree these Terms & Conditions again.
- These Terms & Conditions apply exclusively; INDUNORM does not recognise contradictory conditions or conditions that deviate from these Terms & Conditions of the Customer unless INDUNORM has expressly agreed to their application. These Terms & Conditions also apply exclusively if INDUNORM makes delivery to the Customer without reservation, in full knowledge of the Customer's contradictory conditions or conditions that deviate from these Terms & Conditions. Delivery to the Customer without reservation does not constitute acceptance of deviating or contradictory business conditions.
- Individual agreements made with the Customer in specific cases (including ancillary conditions, addendums and alterations) always take precedence over these Terms & Conditions. A written contract or written confirmation from INDUNORM is definitive as far as the content of agreements of this sort is concerned, subject to evidence to the contrary.
- Legally relevant declarations and notifications that are to be provided to INDUNORM by the Customer after conclusion of contract (e.g. notice periods, notification of faults, declaration of withdrawal or reduction in payment) must take written form to be effective.
- References to the application of statutory regulations are for clarification only. Even without such clarification, the statutory regulations therefore apply, unless they are directly modified or expressly excluded by these Terms & Conditions.

II. Conclusion of contract

- All quotations from INDUNORM are subject to change and are non-binding. This applies even if INDUNORM has provided the Customer with catalogues, technical documentation, other product descriptions or documents – including in electronic form – to which INDUNORM retains title and copyright, see also in this connection VIII., Property rights.
- Orders for goods by the Customer are deemed to be binding offers of contract. Unless other conditions are associated with the order, INDUNORM is entitled to accept this offer of contract within 4 weeks of receipt by INDUNORM.
- Acceptance of the order may be declared either by delivery of the goods to the Customer or by written order confirmation, in which case sending the order confirmation by electronic data transmission is sufficient to comply with the requirement for written form. An automatic confirmation of receipt of the order ("confirmation of receipt") does not constitute acceptance of the Customer's purchase offer by INDUNORM.
- If INDUNORM uses electronic media for the purposes of conclusion of a contract for delivery of goods or provision of services (contract using e-commerce), the Customer shall forego provision of appropriate, effective and accessible technical equipment for detection and correction of input errors, communication of the information specified in Art. 246c of the Introductory Act to the German Civil Code (EGBGB) and confirmation of receipt of the order. Orders placed by electronic means are deemed to have been received only when they have been retrieved and opened by INDUNORM.
- A contract also comes about in the context of e-commerce only when INDUNORM accepts the Customer's offer by express order confirmation or shipment of the goods.

III. Prices – payment terms

- All prices of INDUNORM are understood to be ex warehouse plus value added tax at the statutory rate at the time of conclusion of contract.
- In the case of purchase by mail order (Section VII clause 1), the Customer shall meet the transport and packing costs ex warehouse (including the costs of transport packing and loading) and the costs of transport insurance chosen by the Customer, unless specified otherwise below. Every order will be charged by Indunorm with a (shipping) fee according to the "Versandsystem". Any customs duties, fees, taxes and other official payments shall be met by the Customer.
- INDUNORM shall charge the Customer the disposal fees charged by Duales System Deutschland GmbH shown in the list below, unless the Customer can demonstrate to INDUNORM by means of a disposal certificate that it works with its own disposal system (e.g. Duales System Deutschland GmbH). INDUNORM does not accept return of transport packaging or any other packaging in accordance with the German Packaging Ordinance: it becomes the property of the Customer. Pallets are excepted.
- INDUNORM shall impose a small order charge for small orders because of the higher processing cost.
This is
• EUR 10,00 for a net goods value up to EUR 100,00.
- If the agreed delivery period is more than one month from conclusion of contract, INDUNORM is entitled to charge the price on the price list on the date of delivery plus the applicable value added tax at that time.

IV. Payment terms

- Unless agreed otherwise, the agreed purchase price is due and must be paid immediately on issue of invoice and delivery of the goods.
- If INDUNORM is entitled to collect receivables from the Customer by direct debit on the basis of a SEPA direct debit mandate, the Customer agrees that INDUNORM shall provide it with a pre-notification at the latest three (3) calendar days before the date of intended collection (performance date).
- The date of receipt of payment for all payment methods is deemed to be the date on which INDUNORM is able to dispose of the amount due from the Customer.
- On expiry of the payment period specified in IV.1., the Customer is in default. Interest shall be charged during the period of default at the applicable statutory interest rate. INDUNORM reserves the right to pursue claims for additional losses. In respect of merchants, this is without prejudice to the right of INDUNORM to claim commercial default interest (Section 353 of the German Commercial Code (HGB)).
- In the case of repeated default of payment, a fee of EUR 20 is charged.
- The Customer has rights to offset and rights of retention only insofar as the claim made by the customer for offsetting or retention is legally established or uncontested. In the case of defects in the delivery, the counterclaims of the Customer remain unaffected.
- If, after conclusion of contract, it becomes apparent that INDUNORM's claim for the purchase price is at risk because of the Customer's inability to pay, INDUNORM is entitled to refuse performance in accordance with statutory regulations and – following a notice period as appropriate – to withdraw from the contract (Section 321 BGB). In the case of contracts for the manufacture of non-fungible goods (customised or special manufacture), INDUNORM may declare its withdrawal as soon as it becomes aware of the Customer's inability to pay. The statutory regulations concerning the requirements for notice periods remain unaffected.
- If INDUNORM has an outstanding payment claim against the Customer under the ongoing business relationship, INDUNORM may refuse deliveries of goods until the Customer has made the payment due. This applies correspondingly if a credit limit granted to the Customer by INDUNORM is exceeded. INDUNORM is entitled at any time to make delivery, in whole or in part, only on payment in advance, including as part of an ongoing business relationship. INDUNORM shall provide notification of a reservation of this sort at the latest on binding confirmation of contract.

V. Reservation of title

- Until full payment of all current and future claims under the purchase agreement and the ongoing business relationship (hereinafter "secured claims") has been made, INDUNORM shall reserve title to the goods sold.
- The goods under reservation of title by INDUNORM (hereinafter the "reserved goods") may not be pledged to third parties or transferred as security until full payment has been made. The Customer undertakes to notify INDUNORM promptly in writing if an application to instigate insolvency proceedings is made in respect of its assets or if third parties access the reserved goods, in particular in the form of seizure. The Customer undertakes in the case of access to the reserved goods by a third party to inform the latter of the reservation of title of INDUNORM. If the third party is not in a position to reimburse the costs incurred by INDUNORM either in court or out of court in this connection, the Customer shall be liable for them in respect of INDUNORM.
- In the event of conduct in breach of contract on the part of the Customer, in particular non-payment of the purchase price due, INDUNORM has the right to withdraw from the contract in accordance with the statutory regulations and to demand release of the goods on the grounds of reservation of title and withdrawal (hereinafter: "enforcement event"). If the Customer does not pay the purchase price due, INDUNORM may enforce these rights only if INDUNORM has previously set the Customer an appropriate period of grace without success or if setting such a period of grace may be dispensed with under statutory regulations.
- The Customer is permitted to resell and/or process the goods under reservation of title in the normal course of business. In this case, the following provisions apply in addition.
 - The reservation of title extends to the products created by processing, mixing or combining the reserved goods in their full value, in which case INDUNORM is deemed to be the manufacturer. If, in the case of processing, mixing or combining with goods of third parties, the title of those third parties or the title of the Customer remains in place, INDUNORM shall acquire co-ownership in the proportion of the invoice values of the processed, mixed or combined goods. Otherwise the same applies to the product created as to the goods supplied under reservation of title.
 - The Customer shall assign the receivables in respect of third parties resulting from the resale of the goods or product or from the combination of the reserved goods with a piece of land to INDUNORM with immediate effect as security, either in full or in the amount of any co-ownership share, in accordance with the preceding paragraph. INDUNORM shall accept the assignment. The obligations of the Customer described under 2 also apply in relation to the assigned receivables. The assignment also applies to other receivables that take the place of the reserved goods or otherwise come about in relation to the reserved goods, such as insurance claims or claims based on improper handling in the event of loss or destruction.
 - Both the Customer and INDUNORM are entitled to collect the receivables. This collection entitlement may be withdrawn by INDUNORM in the event of an enforcement event. INDUNORM undertakes not to collect the receivables from third parties resulting from resale of the goods as long as the Customer properly meets its payment obligations in respect of INDUNORM, is not in default of payment, no application has been made to instigate insolvency proceedings against it, there is no other impairment to its ability to pay and INDUNORM has not asserted its reservation of title by withdrawal and demand of release of the goods in accordance with 3. In the case of an enforcement event, INDUNORM may demand that the Customer disclose the assigned receivables and their debtors, provide all of the information required for collection, hand over the associated documentation and notify the debtors (third parties) of the assignment.
If the Customer exercises its collection right, INDUNORM is entitled to the agreed gross delivery price of the goods delivered from the collected earnings.
 - If the realisable value of the reserved goods, the items that replace them or the receivables exceed the value of the secured receivables of INDUNORM by more than 20%, INDUNORM shall release securities on demand by the Customer. The choice of the securities to be released is at INDUNORM's discretion.

VI. Delivery period, delivery date, force majeure and default of delivery

- Delivery and service performance periods and delivery and service performance dates are agreed individually or specified by INDUNORM on acceptance of the order.
- The start of individually agreed delivery and service periods or delivery and performance periods specified by INDUNORM presupposes that all of the technical requirements have been clarified and any cooperation obligations on the part of the Customer have been met.
- If, for reasons for which it is not responsible, INDUNORM does not receive deliveries or services from suppliers or subcontractors despite proper, congruent coverage, or they are incorrect or not supplied on time, or if force majeure intervenes, i.e. obstacles to performance for which INDUNORM is not responsible and which last for more than 14 calendar days, INDUNORM shall inform the Customer of this promptly in writing. In this case, INDUNORM is entitled to postpone the delivery or service by the duration of the obstacle or to withdraw from the contract in whole or in part for the part of the contract that has not been fulfilled, insofar as INDUNORM has met its information obligation as described above, has not expressly accepted the procurement or manufacturing risk and the obstacle to performance is not of a temporary nature. Examples of force majeure include strikes, lockouts, official interventions, shortage of energy and raw materials, transport bottlenecks and obstacles to operation for which INDUNORM is not responsible, for example fire, water and machine damage, and all other obstacles for which, when considered objectively, INDUNORM is not culpable. INDUNORM is not responsible for these circumstances even if it is already in default of delivery before the event occurred.
- If a delivery or service performance date or a delivery or performance period is agreed as binding and if, as a result of events as described under 3 above, the agreed delivery or performance date or agreed delivery or performance period is exceeded by more than four weeks, or if in the case of a non-binding performance deadline, compliance with the contract is objectively unreasonable for the Customer, the Customer is entitled to withdraw from the contract on the grounds of the unfulfilled part of the contract.
- Default of delivery applies to INDUNORM in accordance with the statutory regulations. In any case, however, a reminder from the Customer is required. If INDUNORM is in default on delivery, the Customer may demand flat-rate compensation for the damage as a result of the default. The flat rate compensation is 0.5% of the net value of the goods for every completed calendar week of default, but up to a maximum total of 5% of the net value of the goods delivered late. INDUNORM reserves the right to demonstrate that the Customer has not suffered losses or has suffered significantly smaller losses than the above flat rate.
- This is without prejudice to the Customer's rights under Section X. of these Terms & Conditions and the statutory rights of INDUNORM, in particular in the case of an exclusion of the obligation to provide performance (e.g. because of the impossibility or unreasonableness of performance and/or substitute performance).

VII. Delivery, transfer of risk, default of acceptance, return of goods

- Delivery is ex warehouse, wherever the place of fulfillment is. On demand by and at the expense of the Customer, the goods may be delivered to a different destination (purchase by mail order). Unless agreed otherwise, INDUNORM is entitled to determine the type of shipping (in particular, the transport company, transport route, packaging) itself. The shipping costs are determined by Section III. of these Terms & Conditions.
- Part deliveries are permitted unless unreasonable disadvantages for the Customer result from them. Part deliveries are permitted in particular if the part delivery is usable by the Customer within the framework of the contractual purpose and delivery of the remaining ordered goods is ensured.
- Taking account of interests in individual cases and within the context of what is reasonable, INDUNORM reserves the right in the case of custom-made products to overdeliver or underdeliver as is standard commercial practice, which is reflected in the invoice.
- The risk of accidental destruction or accidental deterioration of the goods is transferred at the latest on handover to the Customer. In the case of purchase by mail

order, the risk of accidental destruction or accidental deterioration of the goods and the risk of delay is transferred to the Customer as soon as the goods are handed over to the shipping company, freight forwarder or other person or organisation appointed to transport the goods. If the Customer is in default of acceptance, it is the equivalent of handover. In the event of a dispute, the Customer is responsible for proving non-delivery or late receipt of a delivery.

5. If the Customer is in default of acceptance, fails to cooperate or if the delivery is delayed for other reasons that are the responsibility of the Customer, INDUNORM is entitled to demand compensation for the losses incurred, including any additional costs (e.g. storage costs). INDUNORM shall charge flat-rate compensation of 5% of the net value of the goods for each week that begins, starting from the end of the delivery period or – if there is no delivery period – on notification that the goods are ready for shipping, but up to a maximum of 10% of the net value of the goods that have not been accepted. This is without prejudice to the right to demonstrate greater losses and any statutory claims by INDUNORM (in particular compensation for additional expenses, appropriate damages, termination or withdrawal); the above flat-rate compensation shall be offset against any further monetary claims, however. The Customer has the right to demonstrate that INDUNORM has not suffered losses or has suffered significantly smaller losses than the above flat rate.
6. Apart from the warranty for defects, there is no right to return the goods; in particular, special types outside the standard range and custom-made products cannot be exchanged. If INDUNORM agrees to the return of goods as a gesture of goodwill in individual cases, INDUNORM is entitled to demand a re-storage fee of 20% of the net value of the goods, but at least EUR 25.00, up to a maximum of EUR 250.00 per stock item. The Customer shall also meet the costs of the return shipment.

VIII. Property rights

1. The Customer undertakes to notify INDUNORM promptly of claims based on property rights by third parties relating to the products supplied by INDUNORM. INDUNORM is entitled but not obliged to take responsibility for the legal defence, at its own cost.
2. The Customer shall guarantee that goods and services provided are not subject to third-party property rights. In the case of legal defects, the Customer shall indemnify INDUNORM against all claims by third parties unless it is responsible for the legal defect.
3. INDUNORM reserves title and copyright to all documents and aids provided to the Customer, in particular drawings, graphics, drafts, calculations, descriptions, plans, models, samples or sample items, technical specifications, documents, data storage devices and software programs, unless otherwise agreed in the individual case. Documents and aids of this sort shall be used exclusively for the contractual service and may not be made accessible to third parties without the express written consent of INDUNORM. The Customer shall return the aforementioned items completely to INDUNORM on demand and destroy any copies made if they are no longer required in the normal course of business or if negotiations do not lead to conclusion of a contract.
4. The Customer shall be granted a non-exclusive, non-transferrable right of use to the software programs, associated documents and subsequent additions for internal purposes involving the products for which programs are supplied. All other rights to the programs and the documentation, including copies and subsequent additions, remain reserved to INDUNORM. The Customer shall ensure that these programs and documents are not made accessible to third parties without the prior consent of INDUNORM. Copies may be made exclusively for archive purposes, as replacements or for troubleshooting. Provision of source programs requires separate written agreement. If the originals carry a mark indicating that they are protected by copyright, this mark must be applied to all copies made for the aforementioned purposes by the Customer. Unless otherwise agreed, the right of use is deemed to have been given on order delivery and delivery of the programs, documents and subsequent additions. Modifications to the programs are not permitted; if programs modified by the Customer or third parties are used, INDUNORM cannot be held liable for any damage. The attention of the Customer is drawn to the fact that faults in software programs cannot be ruled out completely, given the current state of technological development. The Customer shall check the software immediately on delivery and notify INDUNORM promptly in writing of any obvious errors. INDUNORM shall guarantee that the software essentially corresponds to the description in the documentation and the specifications in the order confirmation as far as its function is concerned. Apart from this, INDUNORM does not guarantee any specific characteristics of the software programs nor their suitability for customer purposes or customer needs. INDUNORM cannot accept liability for recovery of data unless INDUNORM causes their destruction through gross negligence or malicious intent and the Customer has ensured that those data can be reconstructed with reasonable effort from the data material which is held in machine-readable form. Insofar as exclusions of liability in accordance with the above paragraphs may only be agreed as legally binding between full merchants, an exclusion of liability that is legally permissible shall be agreed in the case of a transaction with a non-merchant.

IX. Claims for defects by the Customer

1. The statutory regulations apply to the Customer's rights in relation to material and legal defects, unless specified otherwise.
2. The basis for INDUNORM's liability for defects is, above all, the agreement of the characteristics of the goods. The details, drawings, samples, technical specifications and data and the recommended applications in brochures, catalogues, advertisements, price lists and quotation documents are non-binding and do not constitute agreements of characteristics. In particular, colour patterns and illustrations may vary from the original for reasons of technical representation. The aforementioned details are deemed to be an agreement of characteristics of the goods only if and insofar as they are confirmed by INDUNORM expressly as binding and are included effectively in the individual contract. Agreements of characteristics do not exempt the Customer from checking the goods for their suitability for the intended purposes, processes and applications. Guarantees of characteristics are only those that are expressly designated as such by INDUNORM in the order confirmation. If no characteristics are agreed, the statutory regulations must be used to determine whether there are defects. INDUNORM cannot accept liability for public statements by the manufacturer or other third parties (e.g. advertising claims).
3. The Customer's claims for defects presuppose that it has met its inspection and complaint obligations (Sections 377, 381 HGB). If a defect is apparent on inspection or subsequently, INDUNORM must be notified of it promptly and specifically in writing. Notification is deemed to be prompt if it is given within five days; sending the notification on time suffices to comply with this period. Notwithstanding this inspection and complaint obligation, the Customer shall provide notification in writing of obvious defects (including incorrect delivery and underdelivery) within five days of delivery; here, too, sending the notification on time suffices to comply with this period. If the Customer fails to carry out proper inspection and/or notification of defects, liability of INDUNORM for the defect that has not been reported is excluded.
4. If the item delivered is defective, INDUNORM may first choose whether to provide supplementary performance by rectifying the defect (repair) or by supplying an item without defects (replacement delivery). This is without prejudice to the right of INDUNORM to refuse supplementary performance under the statutory requirements.
5. INDUNORM is entitled to make the supplementary performance dependent on the Customer paying the purchase price due. However, the Customer is entitled to retain part of the purchase price in proportion to the defect.
6. The Customer shall give INDUNORM the time and opportunity to provide the supplementary performance due, in particular by handing over the goods about which complaint has been made for inspection purposes. In the case of replacement delivery, the Customer shall return the defective item to INDUNORM in accordance with the statutory regulations. Supplementary performance does not involve either the disassembly of the defective item or installation of a new one, unless INDUNORM was obliged to install the item originally.

7. The expenses required for the purpose of inspection and supplementary performance, in particular the transport, travel, work and material costs (not: disassembly and installation costs) shall be met by INDUNORM if there is actually a defect. If, however, the claim for rectification of defects proves to be unjustified, INDUNORM may demand reimbursement of the resulting costs from the Customer unless the absence of any defect was not recognisable to the Customer.
8. In urgent cases, e.g. if operating safety is at risk or to prevent disproportionate damage, the Customer has the right to rectify the defect itself and to demand reimbursement of the objectively necessary costs from INDUNORM. INDUNORM must be notified promptly, if possible in advance, of such self-rectification. The right to self-rectification does not exist if INDUNORM would have been entitled to refuse corresponding supplementary performance in accordance with the statutory regulations.
9. If the supplementary performance fails or an appropriate period for supplementary performance set by the Customer elapses without success or may be dispensed with in accordance with the statutory regulations, the Customer may withdraw from the purchase contract or reduce the purchase price. In the case of a minor defect, however, there is no right of withdrawal.
10. The Customer's claims to compensation or reimbursement of futile expenses exist only in accordance with the specifications of Section X. and are otherwise excluded.

X. Other liability

1. Unless otherwise specified by these Terms & Conditions, including the following provisions, INDUNORM is liable in the event of a breach of contractual and extra-contractual obligations in accordance with the statutory regulations.
2. INDUNORM is liable for compensation – whatever the legal basis – in cases of malicious intent and gross negligence. In the case of simple negligence, INDUNORM is liable only
 - a) for damages involving loss of life, physical injury or damage to health,
 - b) for damages resulting from the breach of a significant contractual obligation (an obligation the fulfilment of which enables proper execution of the contract in the first place and on compliance with which the Customer relies and may expect to rely); in this case, the liability of INDUNORM is restricted, however, to compensation for foreseeable, typical damage.
3. INDUNORM is liable for damages resulting from the breach of ancillary contractual obligations not affecting the delivery item itself only in cases of malicious intent and gross negligence. Such breaches of ancillary contractual obligations include, in particular, failure to implement suggestions or advice provided before or after conclusion of contract or failure to do so properly, or failure to provide instructions or providing defective instructions for operation and maintenance of the item delivered.
4. The limitations of liability resulting from 2 do not apply insofar as INDUNORM has fraudulently concealed a defect or has provided a guarantee of the characteristics of the goods. The same applies to the Customer's claims under the German Product Liability Act.
5. The Customer may withdraw or terminate as a result of a breach of obligation that does not consist in a defect in the goods delivered only if INDUNORM is responsible for the breach of obligation. The Customer's free right of termination (in particular pursuant to Sections 651, 649 BGB) is excluded unless there is good cause which makes adherence to the contract unreasonable for the Customer. Otherwise the statutory requirements and legal consequences apply.
6. INDUNORM is not liable if the Customer resells products intended exclusively for professional use to private consumers.
7. The warranty for services provided in the context of a repair or maintenance order for machinery is limited to the service specifically provided and the spare parts replaced in providing the service. There is no warranty or liability if parts or components purchased not entirely from INDUNORM are used. The same applies if, after a repair or maintenance work on a machine, a defect occurs the cause of which cannot be traced back to the service specifically provided or the spare part used.

XI. Expiry

1. The general expiry period for claims for material or legal defects is 12 months from delivery of the goods to the Customer.
2. The above expiry periods under purchase law also apply to contractual and extra-contractual compensation claims by the Customer that result from a defect in the goods, unless the application of the regular statutory expiry period (Sections 195, 199 BGB) would lead to a shorter expiry period in individual cases. This is without prejudice to the expiry periods under the Product Liability Act. Otherwise the statutory expiry periods apply exclusively to compensation claims by the Customer pursuant to Section X.

XII. Governing law and jurisdiction

1. These Terms & Conditions and all legal relationships between INDUNORM and the Customer are governed by the law of the Federal Republic of Germany, with the exclusion of international uniform law, in particular the UN Convention on the International Sale of Goods. The requirements and effects of the reservation of title pursuant to Section V. are governed by the law at the location of the respective item, insofar as the choice of German law as the governing law is not permitted or effective under it.
2. If the Customer is a merchant within the meaning of the German Commercial Code, a legal person under public law or a special fund under public law, the exclusive place of jurisdiction – including internationally – for all disputes arising directly or indirectly from the contractual relationship is the registered office of INDUNORM in Neukirchen-Vluyn. However, INDUNORM is also entitled to take action at the general court of jurisdiction of the Customer.

As at October 2018