

1. Scope of Application

1.1 All offers, sales, deliveries and services by I.S.T. Innovative Sewer Technologies GmbH, Rombacher Hütte 19, 44795 Bochum (hereinafter referred to as "I.S.T.") will be carried out exclusively on the basis of the present sales and delivery terms. Any contrary or deviating terms by a customer will not be recognized regardless of when I.S.T. became aware of them. This will also apply where I.S.T. carries out the delivery notwithstanding awareness of the customer's contrary or deviating terms. Any deviations from the present sales and delivery terms will only be valid if they are confirmed by I.S.T. in writing.

1.2 The present sales and delivery terms will apply without further agreement to all future transactions with the same customer.

2. Offer and Conclusion of the Contract

2.1 All offers by I.S.T. are always subject to change unless otherwise explicitly stated. Cost estimates are non-binding. Initial offers are made free of charge unless otherwise agreed. I.S.T. reserves the right to charge adequate remuneration for further offers as well as preparatory work where no delivery contract is concluded.

2.2 A contract for a delivery order will only be formed after written confirmation by I.S.T. Amendments, addenda or ancillary agreements must likewise be confirmed in writing by I.S.T.

2.3 The appurtenant documents to the offer such as illustrations, drawings or weights and measurements are only approximate unless specified explicitly as binding. The figures specified for length of the cables, hoses (including felt hoses), ropes, etc. are to be understood as having a tolerance range of +/- 5%.

I.S.T. reserves all ownership and copyrights to illustrations, drawings, cost estimates, calculations or other documents.

They may not be made accessible to third parties without the written consent of I.S.T. They must be returned immediately to I.S.T. where the order falls through or as soon as the order has been carried out completely.

3. Purchase Price and Payment

3.1 I.S.T.'s prices are in EUROS and ex works, unless otherwise agreed, but exclude packaging, which will be charged separately. Value added tax at the statutory rate is not included in the prices; it will be specified on the invoice at the statutory rate at the date of invoicing. Costs for inspections, reports or certificates by the government bodies or inspection authorities will likewise be charged separately.

3.2 Unless otherwise agreed payments are due to the full amount, without charges for I.S.T. as follows:

Robots: Net prior to delivery.

Machine technology: Net prior to delivery.

Consumable supplies: Within 30 days net after the invoice date.

3.3 I.S.T. has the right to deliver only upon down payment, advance payment or C.O.D.

3.4 Bills of exchange and checks are only accepted for the sake of payment. All discount and bill of exchange charges are to be borne by the Customer.

3.5 The regulations "Uniform Customs and Practice for Documentary Credits" published by the ICC will apply in their respective valid version to payments per letter of credit.

3.6 The Customer does not have the right to set-off, retention or price reduction unless his counterclaims are uncontested by I.S.T. or res judicata. The same will apply in the assertion of guarantee claims.

3.7 Where the Customer is in arrears with payment, I.S.T. has the right to charge default interest to the amount of the respective delay in accordance with German law. Where I.S.T. proves greater default damage, I.S.T. can assert it. However, the Customer has the right to prove that lesser damage was incurred as a consequence of the delayed payment.

3.8 Where I.S.T. becomes aware of circumstances which are detrimental to the Customer's credit rating, all deferred claims will become due immediately. In this case I.S.T. may demand advance payment or the payment of security.

4. Delivery

4.1 Dates for delivery and services (e.g. repairs) will only be approximate unless I.S.T. explicitly confirmed them in writing to the Customer as binding. In the case of a delivery deadline specified as binding, the delivery period will commence upon receipt of the order confirmation by the Customer but not before all technical and business details have been settled and all documents, permits or approvals to be obtained by the Customer have been submitted. Where a bank guarantee or letter of credit is agreed or I.S.T. demands an installment or advance payment the delivery period will commence upon receipt of the money or the corresponding documents.

4.2 Any changes requested by the Customer to the make of the delivery item within the delivery period will extend the delivery period accordingly.

4.3 Compliance with the delivery deadline will be subject to the proviso of the correct and timely supply of goods to the Supplier himself.

4.4 Unless otherwise agreed, delivery is ex works in every case, viz. either ex I.S.T.'s works or ex works of I.S.T.'s supplier in particular where the delivery item is consumable supplies. The Customer assumes I.S.T.'s duties on the basis of the Packaging Regulations in relation to I.S.T. or I.S.T.'s supplier and releases I.S.T. or I.S.T.'s supplier from any obligations in this context.

4.5 The delivery deadline will have been complied with where the delivery item left the I.S.T. works or works of I.S.T.'s supplier before lapse thereof or notification for readiness for dispatch has been given. Where an inspection is to be carried out the inspection deadline will be authoritative or alternately notification or readiness for dispatch, except in the case of legitimate refusal of the goods.

4.6 I.S.T. has the right to make partial deliveries or render only a partial range of services at any time.

4.7 Even where there are agreed binding deadlines and delivery periods I.S.T. will not be liable for delivery and performance delays where it is in arrears with delivery due to force majeure and events significantly impairing or impeding delivery by I.S.T. in particular strikes, lock-outs or official orders, even where they occur to the suppliers of I.S.T.

I.S.T. will have the right to postpone its delivery or service for the period of delay plus an adequate run-up time or to rescind the contract wholly or partially on the basis of the non-performed part. I.S.T. will notify the Customer of the start, end and anticipated duration of the aforementioned circumstances to the best of its abilities.

4.8 I.S.T. will not be in arrears with delivery where I.S.T. has provided the Customer with a replacement for the period up until delivery of the actual item which meets all technical and functional requirements of the Customer, complying with the contractual delivery terms and I.S.T. assumes all costs incurred for provision of the replacement item. The same will apply in the case where the replacement item fails. In such a case the Customer can provide a replacement item for the failed replacement item.

4.9 In the case of delay by I.S.T. the Customer will stipulate an adequate period of grace for performance of the contract for I.S.T.

4.10 Where I.S.T. is in arrears and damage is thereby incurred to the Customer he will have the right to demand flat-rate default compensation which will be 0.5% for each full week of delay, but at maximum 5% of the value of the part of the total consignment which was unable to be used on time or in accordance with the contract due to the delay.

Where in the case of delay the Customer concedes to I.S.T. an adequate period for performance, taking into account the exceptions stipulated by law, and the period is not met by I.S.T., the Customer will have the right to rescission within the framework of the statutory provisions.

All claims arising from delayed delivery are covered by the flat-rate default compensation. Claims going beyond this can be asserted exclusively in accordance with Item 8.2 of the present terms.

5. Passing of Risk, Transport, Delayed Acceptance

5.1 The risk will pass to the Customer when the delivery item leaves the I.S.T. works or the works of I.S.T.'s supplier even where partial deliveries are made or I.S.T. assumed other payments such as shipping costs or delivery or assembly. Where an inspection of the goods and final acceptance is to take place this will be authoritative for establishing the time of passing of risk. The inspection must be carried out immediately at the inspection date or alternately after I.S.T. notifies readiness for inspection. The Customer may not reject the goods solely on the basis of a minor defect.

5.2 Where shipping or inspection and acceptance of goods is delayed or is not carried out due to circumstances not attributable to I.S.T. the risk will pass to the Customer from the date of notification of readiness for shipping and inspection and final acceptance.

5.3 Unless otherwise agreed, the transport of the delivery items will be at the expense and risk of the Customer.

5.4 At the Customer's request and at his expense, I.S.T. will take out theft, breakage, transport, fire and water damage insurance or insurance for other insurable risks for the consignment.

5.5 Where the Customer is in arrears with acceptance or he breaches any other cooperation duties, I.S.T. will have the right to demand compensation for the damage incurred, including any additional expenditure, in particular due to delayed acceptance of the consignment.

5.6 Where commercial clauses such as FOB, CFR, CIF, etc. apply they are defined in accordance with the applicable Incoterms of ICC.

6. Retention of Title and Other Securities

6.1 I.S.T. will reserve the ownership of the delivery item until all claims by I.S.T. against the Customer from the business relationship including any future claims from contracts concluded at the same time or a later date have been settled.

This will apply even where individual or all of I.S.T.'s claims were incorporated into an ongoing invoice and the balance has been established and recognized. In the case of breach of contract by the Customer, in particular in the case of delayed payment, I.S.T. will have the right to take back the delivery item after issuing a warning and to declare rescission and the Customer is obligated to release the item.

6.2 The Customer has the right to dispose of the delivery items in the regular course of business provided that the terms for securing I.S.T.'s claims against the Customer as set out in Items 6.3, 6.4 and 6.5 have been met. A breach of the duty set out in the aforementioned clause will entitle I.S.T. to immediate termination of the entire business relationship with the Customer.

6.3 It is hereby agreed between I.S.T. and the Customer that all claims by the Customer from the future resale or rental of the consignment to a third party or on any other legal ground (insurance, illegal act, etc.) for securing all claims by I.S.T. from the business relationship with the Customer will pass to I.S.T. upon conclusion of a contract for a consignment. However, the Customer will retain the right to collect the assigned claims until I.S.T. requests disclosure of the assignment. Reassignment of the claims already assigned to I.S.T. is prohibited to the Customer.

The Customer is obligated to assign ownership or any other right within the scope of the resale of the items accepted for payment to I.S.T. when the Customer acquires the ownership or other right. The Customer must store the aforementioned items for I.S.T., must treat them with care and insure them adequately.

6.4 Where the securities specified in Items 6.1, 6.2 and 6.3 are not recognized or are restricted under the laws of the country in which the delivery items are located the Customer will be obligated to inform I.S.T. of this immediately and to offer equivalent securities.

6.5 The processing and conversion of the goods by the Customer will always be carried out for I.S.T. Where the goods are processed with other items not belonging to the goods I.S.T. will acquire coownership in the new item on the basis of the value of the goods to the other processed items at the time of processing. Where I.S.T.'s goods or delivery items are merged or blended into a single item and the other item is discernibly the main item, the Customer is assigning to I.S.T. proportional co-ownership, to the extent that this main item belongs to him.

The Customer will safeguard the ownership or co-ownership on behalf of I.S.T. The same will apply to the item created by processing or conversion as to the original goods.

6.6 Where the value of the securities conceded in accordance with Items 6.16.1 - 6.5 exceeds I.S.T.'s claims by more than 20%, I.S.T. will release claims in excess thereof upon the Customer's request.

6.7 The Customer is obligated to insure the goods against theft, breakage, fire, water and other customary insurable risks. I.S.T. may demand proof that an adequate insurance policy was taken out and insure the aforementioned risks at the Customer's expense where necessary.

6.8 In the case of pledging, seizures or other types of third party access to items or claims subject to security rights by I.S.T. the Customer must inform I.S.T. immediately and support I.S.T. with the assertion of its rights. The costs of any court or out-of-court intervention are to be borne by the Customer unless reimbursement thereof is demanded by a third party.

6.9 Where bankruptcy is filed for against the Customer's assets this will entitle I.S.T. to immediately rescind the contract and to demand immediate return of the delivery item.

6.10 Items 6.1 Clause 3 and 6.9 apply accordingly to any items accepted for payment according to Item 6.3.

7. Guarantee

7.1 The following guarantee regulations apply to the sale of new delivery items:

7.2 I.S.T. will honor its guarantee that the delivery items are free of defects and state-of-the-art should a defect due to a circumstance prior to the passing of risk be detectable, in particular due to a faulty make, poor material or defective design. Beyond this, a guarantee will only be given where I.S.T. explicitly assumed a guarantee for the features of the delivery item in the respective delivery contract.

7.3 The prerequisite for assertion of guarantee claims by the Customer is inspection of the delivery items for defects by the Customer within a week after delivery and where a defect is detected, immediate notification in writing to I.S.T. Defects which cannot be detected even after careful inspection during passed to the Customer without the non-delivery being due to the Customer's fault. This period are to be reported to I.S.T. immediately, but by the latest one week after detection.

Delivery as defined by this clause is the date on which the delivery item passes to the Customer's ownership or should have

7.4 Changes in the design or make carried out prior to delivery of the ordered item within the framework of general design and production changes at I.S.T. will not be regarded as defects of the delivery item provided that they do not cause the delivery item to become unusable for the purpose intended by the Customer.

7.5 The guarantee for defects to the delivery item comprises either rectification of the defect through make-up performance by I.S.T. or a replacement delivery, according to I.S.T.'s choice. Replaced parts will become the property of I.S.T.

Where the defect rectification fails the Customer must stipulate an adequate period of grace for make-up performance or a replacement delivery by I.S.T. Where rectification fails again the Customer can demand the reduction of the purchase price by the amount by which the value of the delivery item is reduced due to the defect or opt to rescind the contract. Where there is only a minor defect the Customer will have the right to reduce the purchase price.

7.6 In order to carry out all rectifications or replacement deliveries deemed necessary by I.S.T. the Customer must concede I.S.T. the necessary time and opportunity. This failing, I.S.T. will be exempted from the duty to rectify the defect and the liability for the consequences. The Customer may only independently rectify a defect which I.S.T. is obligated to rectify or have it rectified by third parties where this is necessary for preventing significant risks to company safety or for averting a disproportionate extent of damage. In such cases the Customer must inform I.S.T. immediately.

7.7 The guarantee by I.S.T. does not extend to the consequential costs from the rectification of the defects such as in particular shipping costs, import costs, import duties, transport costs, incidentals and accommodation, crane and towing costs, recovery costs (e.g. excavation of milling robots no longer in functioning condition), costs of necessary provision of assemblers and temporary staff.

7.8 I.S.T.'s liability for essential third party services will be limited to the assignment of claims it is entitled to against the supplier of the respective third party service. Where legitimate guarantee claims by the Customer against the supplier of the third party services are not satisfied even though the Customer did everything reasonable, including litigation to assert the claims I.S.T. is assuming the guarantee joint and severally in accordance with the provisions set out in Item 7, but is exclusively assuming all costs for litigation by the Supplier against the supplier of the third party service.

7.9 I.S.T. will not be liable for damage incurred on the following grounds, unless it is directly attributable to I.S.T.'s fault:

- Natural wear and tear;
- Unsuitable or improper use;
- Defective assembly or operation by the Customer or third parties;
- Defective or negligent treatment;
- Use of improper equipment;
- Use of improper replacement materials and parts;
- Chemical, electrochemical, electromagnetic, electric, atomic radiation or similar impact;
- Atomic radiation;
- Use of unsuitable devices supplied by the Customer himself.

This list is not exhaustive.

Moreover, I.S.T.'s guarantee will be extinguished where the delivery item is not subjected to proper maintenance and service in accordance with the prescribed maintenance intervals by I.S.T. itself, and accredited dealer of I.S.T. or the Customer or operator himself in accordance with the instructions by I.S.T. (operating instructions).

7.10 Where rectification by a Customer or third party is improper I.S.T. will not be liable for the consequences. The same will apply in the case of changes to the delivery item carried out without the prior consent of I.S.T.

7.11 I.S.T. can refuse fulfillment of guarantee duties where the Customer has not duly performed his contractual duties.

7.12 The terms set out in Item 7 regulate the guarantee for items delivered by I.S.T. Further-reaching claims by the Customer, in particular with regard to damage not incurred to the delivery item itself, are based exclusively on Item 8.

7.13 Where liability by I.S.T. according to the preceding paragraphs is excluded or limited this will also apply to the personal liability of the employees and other employees of I.S.T. as well as their representatives or vicarious agents.

7.14 Used delivery items will be sold or delivered under exclusion of any guarantee. I.S.T.'s liability as set out under Item 8 will remain unaffected by this exclusion of guarantee.

This exclusion of liability does not apply to customers who are consumers in the sense of § 13 BGB.

8. Liability

8.1 Where the delivery item cannot be used by the Customer in accordance with the contract due to omitted or defective performance of proposals and consultations after conclusion of the contract by I.S.T. or due to breaches of other contractual ancillary duties, in particular instructions for the operation and maintenance of the delivery item, the provisions set out under Item 7 and 8.2 will apply accordingly under exclusion of all further claims by the Customer.

8.2 For damage not incurred to the delivery item itself I.S.T. will only be liable - regardless of the legal grounds

- in the case of intent,
- in the case of gross negligence by company officers (managers) or executives,
- in the case of a culpable injury to life, limb or health,
- in the case of defects which were wilfully concealed or the absence of which I.S.T. had guaranteed,
- in the case of defects of the delivery item where liability according to the Product Liability Act applies to persons or material damage to privately used items.

In the case of culpable breach of cardinal contractual duties I.S.T. will also be liable in the case of gross negligence of non-executive employees and minor negligence in the latter case limited to typical reasonably foreseeable damage. Further-reaching claims are excluded.

8.3 I.S.T.'s liability will be limited to the extent of its manufacturer's liability insurance unless otherwise agreed, coverage of 5 million Euros for personal injury and material damage as well as product financial loss and 50,000.00 EUR for financial loss.

9. Statute of Limitations

All claims by the Customer on any legal grounds will expire after 12 months. The statutory periods will apply in the case of intentional or wilful conduct and in the case of claims according to the Product Liability Act. For customers who are consumers in the sense of § 13 BGB, guarantee claims will expire after 24 months for new delivery items and after 12 months for used delivery items.

10. Software Use

10.1 Where software going beyond the operating manual is included in the scope of delivery, the Customer is being conceded a non-exclusive right limited in time to use this software including its documentation. It is being provided for use on the intended delivery item. Use of the software on more than one system is prohibited.

10.2 All other rights to the software and the documentation, including the copies will remain with I.S.T. or the software supplier. The issue of sublicenses is not permitted.

11. Data Protection

I.S.T. stores data from the business relationship with the customer within the scope of the Federal Data Protections Act (BDSG).

12. Applicable Law, Place of Jurisdiction, Severability Clause

12.1 The laws of the Federal Republic of Germany will apply to the contractual relationship between I.S.T. and the customer; the terms of the UN Sales Convention are excluded.

12.2 The exclusive place of jurisdiction for all disputes arising from the contract between I.S.T. and the Customer, including for claims from bills of exchange or checks, is the court having jurisdiction for I.S.T.'s domicile. However, I.S.T. is also authorized to sue the Customer at his general place of jurisdiction.

12.3 Only the German version of the present Sales and Delivery Terms will be legally binding.

12.4 Should one or several terms or parts of a term of the present Sales and Delivery terms be or become invalid on any ground, this will not affect the overall validity of the contract. The Customer and I.S.T. will be obligated to replace the invalid terms or partial terms with provisions which come as close as possible to the purpose of the contract. The same will apply in the case of an unknown legal gap.