

8. Warranty for Defects, Period of Limitation, Installation and Assembly Instructions

8.1. The Customer has to inspect the goods immediately upon receipt for existing defects and proper condition. Obvious defects must be noted by the Customer on the delivery documents after receipt of the goods and reported to Incab without delay. The assertion of claims due to such obvious defects is excluded if the notification of these defects was not made within the aforementioned period.

8.2. Insofar as defects of the goods were not obvious upon delivery or appear after delivery, such defects shall be notified to Incab immediately after their discovery. The assertion of claims due to such defects shall be excluded if the notification of such defects was not made within the stated period.

8.3. Incab may, at its own discretion, repair or replace defective goods up to two times (supplementary performance). Insofar as the second attempt of supplementary performance has also failed, the Customer may withdraw from the contract or demand a reduction.

8.4. Except in the cases specified in clauses 10.1 and 10.2, claims for defects shall become time-barred one year after delivery of the goods, but no later than fifteen months after Incab's notification of readiness for shipment, unless pursuant to §§ 438 section 1 No. 2 or § 634a section 1 No. 2 the goods are constructions or items which have been used for a construction in accordance with their customary manner of use and have caused the defectiveness of such construction. Other special statutory provisions on the limitation period (in particular § 438 section 1 no. 1, 71 section 3, §§ 444, 445b BGB) shall also remain unaffected.

8.5. The aforementioned provisions shall apply accordingly if other goods or short quantities are delivered instead of the agreed goods.

8.6. Claims for defects by the Customer shall be excluded if the defect is based on a violation of the written assembly and installation instructions provided by Incab or a violation of instructions from Incab regarding restrictions on use.

9. Retention of Title

9.1. The delivered goods remain the property of Incab until all claims, in particular the respective balance claims, which Incab has against the Customer within the scope of the business relationship have been fulfilled. This means that ownership does not pass to the Customer as soon as the goods are handed over to the Customer, but that Incab retains ownership of the goods until all liabilities to Incab have been fully settled.

9.2. The Customer is permitted to process the reserved goods in the ordinary course of business and shall do so on behalf of Incab as manufacturer, but without obligating Incab.

9.3. If the Customer processes, combines or mixes reserved goods with other goods, which is permitted to the Customer in the ordinary course of business, Incab shall be entitled to co-ownership of the new item in the ratio of the invoice value of the reserved goods to the invoice value of the other processed or used goods. If Incab's ownership expires due to combination or mixing, the Customer already now transfers to Incab the ownership rights to the new stock or item to the extent of the invoice value of the reserved goods and shall hold them in custody for Incab free of charge.

9.4. The Customer may resell the reserved goods only in the ordinary course of business, under its normal terms and conditions of business and as long as it is not in default of claims of Incab, provided that it agrees with its customers on a retention of title and that the claims from the resale are transferred to Incab by way of assignment. The Customer is not entitled to dispose the reserved goods in any other way. The use of the reserved goods for the performance of contracts of work and services shall also be deemed to be a resale.

9.5. If the Customer resells the reserved goods together with other goods not delivered by Incab, the claims from the resale or the respective balance claims shall be assigned to Incab in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. In case of resale of goods in which Incab has a co-ownership share according to clause 9.3, the Customer shall assign a part of the claim to Incab corresponding to Incab's co-ownership share.

9.6. The Customer shall remain authorized to collect the assigned claim. Incab's authority to collect the receivables itself remains unaffected. Incab is obligated not to collect the claims as long as the Customer is not in default of payment towards Incab and in particular no application for the opening of insolvency or similar proceedings has been filed.

If this is the case, however, Incab may demand that the Customer discloses the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents to Incab and notifies its purchasers of the assignment. The Customer is in no case entitled to otherwise assign the claims against his purchasers.

9.7. In the cases mentioned in Clause 3.4, Incab is also entitled to prohibit the Customer from processing and reselling the reserved goods. In these cases, as well as in the event of a breach by the Customer of the obligations under Clause 9.4, Incab may also demand the return of the reserved goods at the Customer's expense, excluding any right of retention of the Customer.

9.8. The Customer already now authorizes Incab to directly or through authorized agents enter and drive on its premises and business premises, and to take possession of the reserved goods, insofar as the case of default occurs.

9.9. If the value of the existing securities exceeds the secured claims by more than 10% in total, Incab is obliged to release securities of its choice to this extent at the Customer's request.

9.10. The Customer is obliged to notify Incab immediately about any seizure of the reserved goods or other impairments of the reserved goods by third parties (e.g. lessor's lien).

9.11. To the extent a retention of title cannot be agreed on with the Customer under the applicable law, a lien on the goods, on the further processed goods or on the Customer's claim against third parties shall be deemed to have been agreed between Incab and the customer. Lien means that the goods serve as security for Incab until full payment of the purchase price and thus may be further processed or resold by the Customer only with Incab's consent.

10. Liability/Damages

10.1. In accordance with the statutory provisions Incab shall be liable without limitation for damages resulting from culpable injury to life, body and health, from intentional or grossly negligent breach of duty, as well as from culpable breach of essential contractual obligations (the obligation whose fulfillment makes the proper execution of the contract possible in the first place and on whose observation the contractual partner regularly relies and may rely), insofar as the achievement of the purpose of the contract is jeopardized thereby.

10.2. Incab shall also be liable without limitation for claims arising from the product liability law as well as for other claims that are indispensable according to the statutory regulations.

10.3. In all other cases, Incab's liability for damages shall be limited to the amount of the compensation for the foreseeable damage typical for the contract, but no more than the order value.

10.4. The preceding limitations of liability shall also apply in favor of Incab's legal representatives and vicarious agents.

11. Place of Fulfilment, Place of Jurisdiction, Applicable Law

11.1. Place of fulfilment is the registered office of Incab.

11.2. The place of jurisdiction for all legal disputes arising from or in connection with these GTC is the registered office of Incab. However, Incab is also entitled to sue the Customer at the Customer's general place of jurisdiction.

11.3. All legal relations between Incab and the Customer shall be governed exclusively by the laws of the Federal Republic of Germany.

11.4. The application of the UN Convention on contracts for the international sale of goods is excluded.

11.5. In the event of any discrepancies between the German and English versions of the GTC, only the wording of the German version shall be binding.

12. Credit Checks and Data Transfer to Credit Agencies

Incab transmits data to credit agencies in accordance with §§ 6 sec. 1 letter f DSGVO regarding the execution of the contract between Incab and the Customer in accordance with the contractual provisions (in particular regarding the timely payment). The credit agencies store and use the data received, among other things, to assess the credit risk of the Customer. The credit agencies transmit the data received to their respective contractual partners in order to provide them with information for assessing the Customer's creditworthiness.

13. Severability Clause, Other

13.1. Should individual provisions or regulations of these general terms and conditions of business and delivery be or become invalid, the remaining provisions and regulations shall remain unaffected.

13.2. Amendments and supplements to these GTC are only effective if they are agreed on in text form. With the exception of managing directors or authorized signatories, Incab employees are not entitled to make verbal agreements that deviate from the written agreement.

As of 01.07.2022