

# General Terms and Conditions for Deliveries and Services of IAV GmbH

## I. Scope of these Terms and Conditions

1. Subject to deviating agreements in individual cases, the conclusion of contracts with us is governed exclusively by the following Terms and Conditions; when placing an order the Customer thereby accepts our Terms and Conditions. Adverse or deviating terms and conditions shall only have binding effect on us if we have expressly confirmed them; such confirmation shall be made in writing. Our Terms and Conditions shall also apply if we deliver without reservation even if we know of the contradictory or deviating terms and conditions of the Customer.

2. These General Terms and Conditions shall apply to all our deliveries and to all of the duties that might result from any relationship with the Customer under the law of obligations. Our Terms and Conditions shall also apply to all future business relations with entrepreneurs (*Unternehmer*) and legal entities incorporated under public law.

## II. Conclusion of Contract / Amendments of Contract

1. A contract with us shall only be deemed concluded if the Customer accepts our offer unreservedly, or if the Customer receives our written confirmation of the order or if we start to carry out delivery. If we give a written confirmation of the Customer's order, this confirmation shall define the subject and the scope of the contract, unless expressly agreed upon otherwise.

2. Amendments, collateral agreements and additional provisions as well as any agreements regarding the stipulation as to condition (*Beschaffensvereinbarung*) or the giving of guarantees shall require an explicit agreement in order to become effective; that agreement shall be made in writing to take effect.

## III. Performance of the Contract

1. Unless expressly agreed upon otherwise, the delivery item need only have such qualities, technical characteristics, etc. as expressly defined by the contract; these contractual obligations shall only be guarantees in a legal sense if we explicitly state that we accept liability without fault or if we expressly state them to be such guarantees; guarantees must be made in writing to take effect. We reserve the right to make technical and design changes to the specifications and statements in our prospectus, catalogues or similar sales documents; and we may replace products (or parts of products) with such of same or better technical standards; for the Customer no rights against us shall arise as a result of such changes or replacements. No such specifications or statements or advertising messages (also those made by the manufacturer) shall constitute a declaration of guarantee. Unless required to do so by law, we shall be obligated to give advice only insofar as agreed upon as a main contractual duty.

2. If software is included within the scope of delivery, the installation of the software on the hardware at the licensee's facilities, the adaptation of the software to the licensee's hardware and software, as well as support and maintenance services, shall not be contractual obligations unless expressly agreed upon.

## IV. Rights of Use, Software Licences

1. We hereby grant the customer non-exclusive rights of use in proprietary software (own software) supplied (along with the goods) and any other deliverables supplied. The licensee may not adapt such proprietary software, disassemble it, subject it to reverse engineering or decompile it into any other code forms unless the prerequisites of Sections 69d or 69e of the German Copyright Act (*Urheberrechtsgesetz*) are fulfilled.

2. In so far as software supplied (along with the goods) concerns proprietary software of a third party supplier (third party software), the foregoing provisions shall not apply. Rather, in this case we shall only arrange an agreement with the third party manufacturer. The Customer recognises the conditions of use of the third party manufacturer supplied along with the goods, which we expressly refer to; these alone are significant for the scope of the rights granted.

## V. Delivery Dates, Schedules Limitations

1. Delivery dates and other appointed times shall be binding only if they have been explicitly agreed upon as fixed and firm; such agreement must be made in writing in order to take effect. Unless times and dates have been agreed upon as fixed and firm, we shall not be in default until a reasonable grace period for delivery set by the Customer has lapsed without performance.

2. In case the delivery owed by us is delayed because of unforeseeable circumstances arising through no fault of ours (such as industrial disputes, disturbance of operations, transport impediments, lack of raw materials, governmental measures – including such circumstances at the level of our suppliers – as well as failure of our suppliers to deliver to us (*Selbstbelieferung*) in due time), we shall be entitled to withdraw from the contract partly or in full or, at our discretion, to postpone the delivery for as long as the hindrance lasts. The Customer shall be informed immediately of the non-availability of the services or goods. Should we withdraw from the contract, we shall furthermore refund to the Customer any consideration the Customer already provided. Claims for damages on the part of the Customer shall be excluded.

3. In case the Customer is in default of acceptance or otherwise culpably fails to fulfil its duties to co-operate, we shall be entitled, after unsuccessful reminder, to claim any damage resulting therefrom, including any related additional expenditure. In this case, the risk of accidental loss or accidental deterioration of the delivery item shall pass to the Customer at the time the default of accepting delivery occurs.

4. Should the purchase agreement constitute a business to be settled on a fixed date within the meaning of Section 286(2) No. 4 German Civil Code (*Bürgerliches Gesetzbuch*) or Section 376 of the German Commercial Code (*Handelsgesetzbuch*), or should the Customer, in consequence of a delay on our

part, be able to justifiably assert that the Customer is no longer interested in the further fulfilment of the contract, we shall be liable in accordance with the statutory provisions, subject to the liability restriction of Clause IX. of these Terms and Conditions. This shall also apply in so far as the delay in delivery is based on an intentional or grossly negligent contractual infringement on our part; any fault on the part of our representatives or (vicarious) agents shall be attributable to us. In so far as the delay in delivery is not based on an intentional contractual infringement for which we are responsible, our liability for damage shall be limited to foreseeable, typically occurring damage. We shall also be liable in accordance with the statutory provisions, subject to the restriction of liability of Clause IX. of these Terms and Conditions, in so far as the delay in delivery, for which we are responsible, is based on the culpable infringement of a significant contractual obligation; in this case, however, our liability for damage shall be limited to the foreseeable, typically occurring damage. In addition, we shall only be liable in the event of a delay in delivery for flat-rate compensation for delay in the amount of 3% of the value of goods delivered for each full week of delay, however not more than 15% of the value of goods delivered.

5. If, for reasons within our responsibility, the fulfilment of our performance obligation proves to be impossible within the meaning of Section 275 (1) of the German Civil Code (*Bürgerliches Gesetzbuch*) or if we are entitled to refuse performance pursuant to Section 275 (2) and (3) of the German Civil Code (*Bürgerliches Gesetzbuch*), we shall be liable exclusively in accordance with the statutory provisions, but subject to the liability restrictions pursuant to Clause IX. of these Terms and Conditions, which shall not be affected.

## VI. Passing of Risk

1. Where nothing to the contrary arises from the order confirmation, delivery is agreed EXW (Incoterms 2000). This means that we bear the costs of the packaging, and all other costs shall be borne by the Customer, in particular costs and risks of transportation. Loading charges shall also be borne by the Customer.

2. The risk of accidental loss or accidental deterioration of the delivery item shall pass to the Customer with its dispatch, notwithstanding our agreement to bear the forwarding costs or to assume other additional obligations or the case of partial delivery. We refer to Clause V (3) sentence 2 of these Terms and Conditions.

## VII. Prices and Payments

1. The prices specified by us shall apply, with the addition of the respective statutory VAT (where applicable). Unless otherwise agreed upon, we shall be entitled to additionally claim reimbursement of expenses.

2. Our invoices are due and payable in accordance with the agreed instalment plan without deduction of cash discount and free of charge, or, in any other cases, within 30 days from the date of invoice. If checks or bills of exchange are accepted in individual cases due to explicit agreement, it shall be only in lieu of payment and also without cash discount. The Customer shall bear any discount charges incurred. Payments by check shall only be accepted as performance of the contract if the respective amounts are credited to our account without reservation. We reserve the right to demand adequate partial and advance payments.

3. In case we have several payment claims against the Customer, we shall decide against which obligation the payment is credited. The Customer may only claim rights of set-off, if its counterclaims have become *res judicata*, are undisputed or have been recognised by us in writing. The same shall apply in respect to the assertion of retention rights.

4. If, after the conclusion of the contract, we learn of circumstances which seem to jeopardise our claims against the Customer due to its lack of solvency, we shall be entitled to effect outstanding deliveries only against prepayment or provision of security and, after unsuccessful expiry of a deadline set for this purpose, to withdraw from the contract; Clause V. 3. of these Terms and Conditions shall apply accordingly.

5. In case of default in payment, the Customer shall be obliged to pay the applicable statutory default interest, unless we prove higher damages.

## VIII. Warranty (*Mängelansprüche*)

1. In case of defects, the Customer shall give us the opportunity for subsequent performance within an adequate period of time unless such subsequent performance cannot be reasonably accepted by the Customer in an individual case, or special circumstances exist, which, after weighing up the interests of both parties, justify an immediate withdrawal from the contract. In any case, we shall be entitled to choose between remedying the defect and supplying defect-free goods. In case of the remedy of the defect, we shall be obliged to bear all necessary expenses, especially travel and transportation costs, working and material costs, unless those are increased due to the fact that the purchased item was transported to a location other than the contractual place of performance.

2. If standard products of third-party manufacturers are used, in regard to which we only acted as intermediary for the contract with the third-party manufacturer, the Customer's claims shall be directed to the respective third-party manufacturer; this shall also apply in case of infringement of third-party intellectual property rights by the third-party manufacturer.

3. The Customer's rights in regard to defects assume that the latter has duly fulfilled its obligations of examination and reporting the defect in accordance with Section 377 German Commercial Code (*Handelsgesetzbuch*).

4. The Customer shall assert any claims of defect in writing naming all defects detected and the circumstances under which they appeared. It is not considered a defect if the defect alleged by the Customer cannot be reproduced. If the Customer manipulated the supplied components, hardware or software in

any way, the Customer may not assert any claims of defect, unless the Customer proves that its intervention did not cause the defect.

5. In case it becomes apparent that the defect alleged by the Customer does not exist, and especially in cases in which an alleged defect cannot be reproduced, we shall be entitled to demand reasonable compensation for our efforts and costs, unless the Customer acted with only slight negligence.
6. Should the subsequent performance fail, should we refuse to effect such performance, or should its acceptance be deemed unreasonable by the Customer, the Customer shall solely be entitled to assert the remaining statutory claims of defect (withdrawal from the contract, reduction of payment due, self-remedy of defects, damages or compensation for frustrated expenses). Damages can only be claimed as stated in Clause IX. of these Terms and Conditions.
7. Should the defect consist of an insignificant deviation from the stipulation as to condition, we shall, at our discretion, only grant the Customer a right to subsequent performance or to an appropriate reduction of the payment due. Should no stipulation exist as to condition, the same shall apply in the event of an insignificant deviation from the suitability for the use assumed by the contract, otherwise the customary use usual with goods of the same kind and which the customer may expect in accordance with the type of goods.

#### **IX. Liability and Termination**

1. We shall be liable for damages exclusively in accordance with the following provisions:

Our liability is restricted to

- intentional acts or gross negligence
- any intentional or negligent breach of essential contractual obligations.

Unless the damage was caused intentionally, our liability is limited to compensation of the contractually typical and foreseeable damages. As far as we are liable for slight negligence, the following shall apply: our liability shall in any case of pecuniary damages be limited to a maximum amount of € 100,000.00 per case of damage; in any case of material damage our liability shall be limited to a maximum amount of € 500,000.00. Any further liability on our part for pecuniary or material damages is excluded. The liability for personal injury as well as product liability shall remain unaffected by the preceding provisions.

2. We shall be only liable for the retrieval of data if the Customer ensured that lost data may be retrieved with reasonable expenditure. Therefore the Customer is obligated to regularly store data and programmes in intervals which are adequate in view of the use.
3. In so far as our liability is excluded or restricted according to the above regulations, this shall also apply for our agents, employees and other staff members, representatives and (vicarious) agents, and shall also apply for any claims based on fault in the course of contracting (*culpa in contrahendo*), infringement of any secondary contractual obligation and claims under tort (Sections 823 et seq. of the German Civil Code [*Bürgerliches Gesetzbuch*]), but not, however, for claims according to Sections 1 and 4 of the German Product Liability Act (*Produkthaftungsgesetz*).
4. The Customer shall have no right to withdraw from the contract as a result of an infringement of our contractual obligations which is due to circumstances arising through no fault of ours and which does not consist of a defect of the item purchased.

#### **X. Period of Limitation**

1. The Customer's claims of defect shall be statute-barred within one year from the statutory commencement of the limitation period. This shall not apply for claims pursuant to Section 438 (1) No. 1 and 2 of the German Civil Code (*Bürgerliches Gesetzbuch*).
2. If the Customer is an entrepreneur, any other contractual claims due to our breach of duty shall be statute-barred within one year from the statutory commencement of the limitation period.
3. Notwithstanding the above provisions the statutory periods of limitation shall apply in the following cases:
  - for damages resulting from injuries to life, body or health;
  - for any other damages based on intentional or grossly negligent breach of duty by ourselves, our legal representatives or (vicarious) agents;
  - for the Customer's right to withdraw from the contract as a result of our culpable infringement of our contractual duties which does not consist of a defect of the item purchased;
  - for claims resulting from fraudulent concealment of a defect and for claims resulting from a guarantee as to condition (*Beschaffungsgarantie*) within the meaning of Section 444 of the German Civil Code (*Bürgerliches Gesetzbuch*);
  - for claims to remuneration for expenses pursuant to Section 478(2) German Civil Code (*Bürgerliches Gesetzbuch*).

#### **XI. Retention of Title**

1. All items supplied shall remain our sole property until fulfilment of the claim for the purchase price, in the case of entrepreneurs until fulfilment of all receivables arising from the business connection. In the event of conduct by the Customer which infringes the contract, in particular in the event of default in payment, we shall be entitled to take back the item purchased. In taking back the item purchased, we shall be withdrawing from the contract. Following the taking back of the item, we shall be authorised to sell it. The proceeds of sale shall be offset against the Customer's obligations under deduction of reasonable expenses in connection with the resale.
2. The Customer shall be obliged to handle the item purchased carefully; in particular it shall be obliged to sufficiently insure the latter at its own expense, at its value when new, against damage resulting from fire, water and

theft. In so far as maintenance and inspection works are necessary, the Customer is required to carry these out in good time and at its own expense.

3. In the event of seizure or any other intervention by third parties, the Customer is required to inform us in writing without delay, so that we can file an action pursuant to Section 771 of the German Code on Civil Procedure (*Zivilprozessordnung*). To the extent that the third party is not in a position to reimburse us the judicial and extra-judicial expenses of an action pursuant to Section 771 of the German Code on Civil Procedure (*Zivilprozessordnung*), the Customer shall be liable for the losses incurred by us.
4. Any pledging, agreement regarding transfer of ownership by way of security or any other form of realisation shall be prohibited unless the purchase is made precisely for the purpose of resale. In this case the Customer shall be revocably entitled to resell the goods over which ownership is retained within the scope of an orderly business transaction, in its own name, as long as it is not in arrears with its payment obligations towards us and no prohibition on assignment exists between the Customer and its clients. In the event of resale in proper form, the Customer must point out our reservation of title of the goods to its client, or in turn reserve title of the goods itself. In addition, already now the Customer assigns to us all claims against its own clients or third parties which shall accrue to it from the resale, and independently of whether the item purchased has been sold on without or following further processing. We hereby accept the assignment. The Customer shall also remain authorised to collect the receivables following the assignment. Our authority to collect the receivables ourselves shall remain unaffected thereby. We undertake, however, not to collect a receivable for as long as the Customer fulfils its payment obligations arising from the proceeds received, does not fall into arrears with payment and in particular is not subject to any application for institution of insolvency proceedings and no cessation of payments occurs. Should this be the case, we may demand that the Customer makes known to us the receivables assigned and their debtors, provides all details necessary for collection, hands over the associated documentation and informs the debtors (third parties) of the assignment.
5. The processing or alteration of the item purchased by the Customer shall always be undertaken for us. Should the item purchased be processed together with other items, not belonging to us, we shall acquire co-ownership in the new item in the proportion of the value of the item purchased (purchase price, including VAT) to the other items processed at the time of processing. In addition, the same shall apply to the item which arises through processing as applies to the item purchased delivered under retention of title.
6. We undertake to release the securities to which we are entitled at the Customer's request, to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%. It is incumbent upon us to select the securities to be released.

#### **XII. Place of Performance and Covenant not to Assign**

1. Place of performance for any and all deliveries shall be Berlin.
2. No assignment of the Customer's claims against us under the business relation shall be permitted.

#### **XIII. Data Protection**

We process personal data in accordance with the relevant data protection regulations, in particular the provisions of the EU General Data Protection Regulation (GDPR). Insofar as we process personal data on behalf of the customer, we will create the necessary legal basis. If applicable, we will conclude a separate contract between controller and processor under Article 28 GDPR.

#### **XIV. Legal Venue and Applicable Law**

1. The legal venue for all claims against merchants and legal entities incorporated under public law which result from the business relation shall be Berlin. This shall also apply to claims arising from cheques, tort claims and third party notices. However, we shall be entitled to take legal proceedings against the Customer before any other competent court.
2. In case of cross-border deliveries, Berlin shall be the exclusive legal venue for all disputes arising from the contractual relationship (Article 23 of the European Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters (EuGVVO) or Article 17 of the Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters (EuGVÜ)). We reserve the right, however, to take legal proceedings against the Customer at its general legal venue or at any other competent court according to the European Council Regulation on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters or the Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters.
3. All business and legal relations between the Customer and us shall exclusively be governed by the law of the Federal Republic of Germany; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

#### **XV. Final Provisions**

1. In case of differences between the German and English version of these Terms and Conditions only the German version shall apply and be legally binding.
2. If any provision of the above Terms and Condition is or shall become invalid, the validity of the remaining provisions shall remain unaffected. The invalid provisions shall be replaced by provisions which come nearest to the economic purpose of the contract with due observance of the interests of the parties.
3. By this set of terms all our earlier General Terms and Conditions for deliveries and services shall be null and void.