

## General Purchasing Terms and Conditions of

### IAV GmbH Ingenieurgesellschaft Auto und Verkehr

(Version June 2019)

#### I. Applicability of Terms and Conditions

1. Subject to deviating agreements in individual cases the conclusion of contracts with us is exclusively governed by the following Terms and Conditions. Adverse or deviating terms or conditions of a Supplier will only have binding effect on us if we have expressly confirmed them. Our Terms and Conditions also apply when we accept deliveries in the knowledge of a Supplier's adverse or deviating terms or conditions without express reservation.
2. Our Terms and Conditions shall apply to all of our purchases of services or goods. For entrepreneurs (*Unternehmer*) and legal entities incorporated under public law our Terms and Conditions apply also to all future business relations.

#### II. Conclusion and Implementation of the Contract

1. The Supplier is under the obligation of accepting our order within two weeks. A contract shall only be deemed concluded with us when we receive a written, unreserved confirmation.
2. The Supplier is obligated to transfer the title to the delivery items free of any third party rights.
3. Each delivery must be accompanied by a bill of delivery specifying our order data (number and date of the order, customer).
4. Amendments, collateral agreements and additional provisions shall require an explicit agreement in order to become effective; such agreement must be in writing to take effect.

#### III. Delivery of Dangerous Goods

1. If a delivery consists of dangerous goods or of goods containing dangerous substances, the Supplier shall provide us with the according safety data sheet in good time, but no later than three working days before the agreed delivery date for the delivery concerned. The same shall apply for the communication of appropriate safety information if the Supplier is not required to provide a safety data sheet by applicable law.
2. The respective information shall be communicated to us (a) at the address IAV GmbH, Abtlg. C-SH, Carnotstr. 1, 10587 Berlin, or (b) via e-mail to [arbeitsicherheit@iav.de](mailto:arbeitsicherheit@iav.de).
3. Should the Information specified in this Section not be provided or not be provided on time, we have the right to refuse delivery of the goods.

#### IV. Purchase of Software

1. If the Supplier delivers standard software (also, if we download it), we acquire a simple and assignable right of use, which shall not be restricted regarding territory, duration or content and which we are entitled to sub-license to other companies within the group (Section 15 of the German Corporation Act [*Aktiengesetz*]).
2. To all other software, including accessories, which is part of the contractual performance (individual software, customized software, documentation, concepts, etc.) we acquire an exclusive, assignable and sub-licensable right of use which shall be unlimited regarding territory, duration and content.
3. The Supplier shall indemnify us from all claims of third parties which derive from the infringement of industrial or intellectual property rights by her/his software, irrespective of whether it is standard or individual software.
4. If not explicitly stipulated whether a multi-user license is a named user license or a concurrent user license, the software shall be licensed for concurrent users.
5. The use of open source software as part of the contractual performance shall only be allowed with our prior written consent.
6. If the Supplier uses open source software without our prior written consent, the Supplier must at our request take all reasonable measures to replace the software with equivalent proprietary software.
7. License audits (evaluation of compliance with the agreed terms of use concerning software delivered to us by the Supplier) by the Supplier are only allowed,
  - if there is reasonable suspicion that we have exceeded our rights of use,
  - if the Supplier has stated such reasonable suspicion in writing at least two months prior to the audit,
  - to the extent that the audit must exclusively be performed by a third party lawyer or tax auditor bound by law to maintain professional confidentiality; such auditor shall be mandated by us and shall perform the audit jointly with our staff without her/him having sole access to our systems, and
  - the date of the audit and the mode of performance are coordinated with us in due time and at least two weeks in advance.

The Supplier shall not be allowed to copy data during the audit unless we explicitly allow it in writing.

#### V. Documents and Information

1. We reserve title and copyright to all technical specifications, illustrations,

drawings, calculations, samples, and any other documents; these must not be made available to third parties without our express consent in writing. Such documents and information may be used solely for the manufacture and delivery of goods as per our order. We reserve the right to request the conclusion of a confidentiality agreement at any time. The Supplier must return all documents after performance of the order, or at the latest after acceptance (*Abnahme*).

2. The documents produced by the Supplier as part of her/his performance (drawings, plans, etc.) must be handed over to us as a complete and orderly compilation of originals, copies or – if so requested by us – electronic media or on suitable data carriers. The Supplier shall be allowed to destroy the documents produced in connection with her/his performance after the limitation period for claims of defects has expired. However, before doing so the Supplier must offer to hand over such documents and must inform us about the intended destruction. The documents may only be destroyed if we are in default of accepting the offered documents.

#### VI. Code of Conduct for Business Partners

1. With regard to our business conduct and dealing with our employees and business partners, the society and the environment, we have committed ourselves to integrity, corporate culture, fairness and independence. In accordance with these business values, we have issued a Code of Conduct for Business Partners (Supplier Code of Conduct).
2. The terms of the Supplier Code of Conduct, available on IAV's website (<https://www.iav.com/en/terms>) in the latest release, are binding on the Supplier and form an integral part of its business relationship with IAV. The Supplier will communicate the standards of the Supplier code of Conduct to its business partner and will obligate them to comply with these standards accordingly. The Supplier will regularly monitor compliance with these obligations.
3. IAV reserves the right to reasonably audit and inspect the Supplier's compliance with the terms of the Supplier Code of Conduct upon prior notification and in conformity with the applicable law. The audit must adequately regard the Supplier's data protection obligations and its confidentiality obligations towards third parties. IAV will treat the information obtained during the audit and inspection as confidential. In case of a suspected breach of the Supplier Code of Conduct, the Supplier is obliged to support the investigation of the situation.
4. In the event of a breach of the standards in the Supplier Code of Conduct, IAV reserves the right to take appropriate measures depending on the severity of the breach and the extent of the Supplier's default. This particularly includes the demand for prompt remedy of the breach of legal provisions or contractual agreements, and the assertion of claims for damages. In especially severe cases, IAV reserves the right to termination without notice. Especially severe cases particularly include breaches of the prohibition of child and forced labor, breaches that are not remedied within a reasonable period of time despite a request to do so, or breaches that are likely to have an adverse effect on IAV's reputation.

#### VII. Data Protection

1. If the Supplier receives access to personal data, he ensures the adherence to all applicable data protection regulations. In particular, unless the Supplier is required by mandatory law to perform specific processing, the Supplier will process personal data solely for the purpose of rendering the contractual services. In addition, the Supplier will not use the data for its own purposes or for purposes of third parties. The Supplier warrants that its employees will only be granted access to personal data, as far as is strictly necessary and after having instructed them about the data protection regulations to be observed. Also, the Supplier must commit its employees to confidentiality when handling the personal data. The Supplier shall take appropriate technical and organizational measures to ensure a level of data protection at least appropriate to the risk arising from the processing. The Supplier will determine the appropriate measures in consultation with us. In doing so, the Supplier will apply state of the art technologies. In addition, the Supplier will always consider the implementation costs and the nature, scope, circumstances and purposes of the processing. Finally, in determining the appropriate technical and organizational measures, the Supplier must take into account the seriousness of the risk to the rights and freedoms of the natural persons concerned, as well as the different probabilities of occurrence. The Supplier will document the respective technical and organizational measures in suitable form before the start of the processing with regard to the specific object of the contract and provide evidence thereof to us.
2. If the Supplier processes personal data on our behalf, the Supplier shall only be entitled to process this personal data in accordance with our documented instructions and only after the Supplier has concluded a separate contract between controller and processor under Article 28 GDPR with us. Unless expressly agreed otherwise in such Contract, the Supplier will process these data only within the territory of the European Union.
3. Art. 82 GDPR applies for our liability and for that of the Supplier, in each case towards third parties. Internally the Supplier is liable to us according to statutory law for all damages due to violations of these terms and

conditions, also for violations against the underlying agreements, as well as against the legal data protection regulations, which he, his coworkers or those with whom the contract is executed cause during or in connection with the performance of the contractual duties.

#### **VIII. Right of Retention**

A right of retention of the Supplier for her/his performance or documents produced by him which are necessary for her/his performance is excluded. The Supplier is insofar obliged to prior performance until completion.

#### **IX. Industrial and Intellectual Property Rights and Know-how**

1. The Supplier grants to us, free of charge, the right to use within the project such industrial and intellectual property rights and know-how as the Supplier has used in performing the contract. All documents, drawings, programs and other work results prepared by the Supplier for us shall pass into our sole ownership and possession without any additional compensation being payable therefor. We shall be entitled to produce or have third parties produce parts using the documentation furnished by the Supplier, and shall be entitled to transfer and assign this right to third parties.
2. The Supplier transfers to us the exclusive rights of use and exploitation to all delivery items and to all work results which are accomplished in connection with the contractual performance and are capable of being protected by industrial and intellectual property rights. The transfer of inventions, rights of use and exploitation is compensated in full by the agreed remuneration.
3. The Supplier hereby warrants that she/he is unaware of any facts or circumstances, in particular of any industrial or intellectual property rights of third parties, which would impede or prohibit the production of the products and processes necessary to perform the contract and that no claims have been made or may be made against her/him for infringement of industrial or intellectual property.
4. The Supplier shall indemnify and hold us harmless against all claims of third parties which are the consequence of infringements of industrial and intellectual property rights resulting from the Supplier's deliveries or services.
5. The Supplier shall inform us without undue delay of any industrial and intellectual property rights which might adversely affect the use of the Supplier's work products.
6. The Supplier shall further notify us of any inventions she/he and/or her/his sub-contractors/sub-suppliers made in connection with the performance of the contract, disclose to us all documents necessary in order to exploit the inventions and provide us with any information we request with respect to the inventions. The Supplier's obligation to notify also extends to any know-how she/he develops in connection with the performance of the contract. The Supplier ensures that she/he claims all inventors' rights from employees and independent contractors, and shall transfer and assign the same to us. We may thereupon apply for registration of industrial and intellectual property rights covering the invention ourselves domestically and abroad, and shall bear the costs associated therewith. Each Party shall itself bear the cost of paying its employees such compensation for employee inventions as is required by law. The Supplier shall in due time enter into agreements with all employees, sub-contractors/sub-suppliers and other vicarious agents (*Erfüllungsgehilfen*) she/he uses in the performance of the order, by which the respective other party acknowledges to be bound by the terms set forth above. Regarding any industrial or intellectual property rights originating in her/his performance, the Supplier agrees not to contest our application for registration either by nullity action or by filing an opposition and not to support any third party in contesting such industrial and intellectual property rights.

#### **X. Prices and Payments**

1. The prices quoted in the order are binding. The prices include free delivery to the delivery address as well as any packaging materials unless expressly agreed otherwise; such agreement must be in writing. An obligation to return the packaging materials applies only when specifically agreed upon. However, the Supplier will take back the packaging materials at our request.
2. The prices quoted in the order include travelling expenses and other incurred expenses unless otherwise agreed in writing. Should the Supplier by specific agreement be entitled to invoice travel expenses such expenses may only be invoiced in accordance with our travel expense guideline (*Reisekostenrichtlinie*). In such case, procuring our travel expense guideline is the Supplier's responsibility. Travelling expenses and other incurred expenses may only be invoiced up to the amount provided for by law.
3. The prices set forth in the purchase order are to be considered net prices, i.e. excluding VAT in all instances where it is legally due. In case VAT needs to be added to the prices, the Supplier will take care to specify the legally due VAT in his invoice. The Supplier assesses his responsibilities in tax matters and will assume responsibility for all possible consequences which he might incur concerning tax matters. Further, he will indemnify us from any claims that might arise from infringements of tax regulations.
4. Irrespective of the delivery address, all bills shall be addressed to our central accounting department "*Zentrales Rechnungswesen*" in Berlin. We will pay within 30 days upon receipt of a properly issued invoice.

Should we pay within 14 days upon receipt of a properly issued invoice, we are entitled to deduct a discount of 2 % (*Skonto*).

5. We are entitled to the rights of offsetting claims or rights of retention to the extent provided for by law.

#### **XI. Time of Delivery**

1. The time of delivery quoted in the order is binding. Should any circumstances arise as a result of which the delivery time agreed upon cannot be adhered to, the Supplier shall notify us immediately.
2. In case of a default in delivery, we are entitled to the claims provided for under applicable law. We are specifically entitled to claim damages in lieu of performance (*Schadensersatz statt der Leistung*) after a reasonable additional period of time for the performance has passed without result. Even if a contractual penalty applies, we are entitled to instead demand full compensation for the damage provably caused by default.

#### **XII. Claims for Defects (*Mängelansprüche*)**

1. We are without any restrictions entitled to all claims for defects (*Mängelansprüche*) provided for under applicable law. In any case, we are entitled to demand cure (*Nacherfüllung*) by choosing between remedying the defect or delivering new goods / rendering services free of faults (substitute deliveries); the Supplier shall bear all necessary costs for the remedy of the defect or the substitute delivery. We specifically reserve the right to claim damages and in particular the right to demand damages in lieu of the performance (*Schadensersatz statt der Leistung*).
2. Should the law require us to give notice of defects (*Rügepflicht*), our notice shall be deemed as made in due time if made within ten working days.
3. Our claims against the Supplier, particularly our claims for defects (*Mängelansprüche*), are subject to the statutory limitation periods. Limitation is suspended if the relevant statutory requirements are fulfilled. Additionally, limitation shall be suspended while the Supplier is by mutual agreement reviewing the existence of a fault or the means of remedying it, until the Supplier notifies us of the result of her/his analysis, declares that the fault has been remedied, or refuses to continue with the remedy of the fault. In case of a cure (*Nacherfüllung*) or the exchange of a defective individual part by the Supplier, the period of limitation for the parts affected hereby shall begin anew.

#### **XIII. Liability**

1. The Supplier shall, to the extent provided for by law, be liable without any restrictions. She/he shall especially be liable for the non-infringement of any national or foreign patents or any other industrial or intellectual property rights by the purchase and use of the objects offered and delivered by the Supplier. The Supplier shall ensure adequate insurance coverage.
2. The Supplier shall indemnify and hold us harmless against all third party claims upon our first request if and to the extent that she/he is liable to us for the payment of damages.

#### **XIV. Additional requirements when purchasing transport and forwarding services from the Supplier**

1. The Supplier shall be responsible for securely loading the goods for transport, as well as for the unloading at the consignee. He must ensure the use of the necessary and suitable load securing equipment in accordance with the applicable statutory and other regulations, e.g. VDI 2700 ff., such as tension belts, non-slip mats, edge protectors etc.
2. The Supplier shall be responsible for ensuring that he or the persons employed by him for the provision of the service are always in possession of a valid driver's license.
3. The Supplier shall maintain all necessary insurance for the entire duration of the assignment, in particular driver's liability insurance and transport insurance. Upon request, the Supplier must provide evidence of the aforementioned insurance policies.
4. The supplier is responsible for ensuring that the persons performing the service have such qualifications and further training as are required by the law on the initial qualification and further training of drivers of certain motor vehicles for the carriage of goods or passengers. Upon request, the Supplier must provide us with proof of the aforementioned qualifications and further training. The Supplier shall also be responsible for compliance with the driving and rest periods of the drivers and for the proper technical condition of the transport vehicles used.
5. The Supplier shall be responsible for ensuring that he and his vicarious agents, in particular the executing carriers and their personnel employed for transport, comply with the legal provisions applicable to transport, in particular, where applicable, Sections 3 et seqq. of the Road Transport Act. The Supplier and each executing carrier must hold a permit according to Section 3 of the Road Transport Act or an authorization according to Section 6 R of the Road Transport Act or a joint license and must not use such a permit, authorization or license inadmissibly.
6. Upon our request, the Supplier shall immediately present all documents to be carried in accordance with the applicable legal regulations for our inspection.
7. The Supplier is the toll debtor and undertakes to pay the toll at the statutory rate.

legally binding.

#### **XV. Right of Cancellation upon Loss of Customer Order**

1. If and to the extent that the Supplier's deliveries or services are intended for use within an order awarded to us by one of our customers („Customer Order“) or are otherwise directly connected to a Customer Order, this shall be noted in our order to the Supplier in a form permitted under the confidentiality stipulations applicable to the Customer Order.
2. Should we lose the Customer Order for reasons we are not responsible for, we have the right to cancel the order by immediate written notice to the Supplier with immediate effect for the future.
3. Upon cancellation, the Supplier has the right to invoice all goods and/or services which provably have already been delivered and/or performed by the date of receipt of the cancellation notice. The Supplier shall not be entitled to any further payment or compensation.

#### **XVI. Customer Protection**

1. Should the Supplier be deployed by us as a sub-contractor for one of our clients, she/he shall
  - not perform any business activities for this client which are connected to the performance commissioned by us and thus could compete against goods or services offered by ourselves or one of our affiliated companies, for the duration of her/his commission as a sub-contractor and during the immediately subsequent period of six months; irrespective of whether this business activity is performed directly or indirectly, and irrespective of whether it is performed as principal, agent, member of a directing body, employee, employer, investor, consultant, controlling shareholder, partner of a joint venture or in any other function, be this in her/his own or in another's name;
  - keep the client's identity confidential towards third parties and refrain from directly or indirectly publishing or using any information which she/he has received due to having been commissioned as sub-contractor unless previously having obtained our consent in writing.
2. Should the Supplier breach the above obligations, she/he is – under waiver of the plea of continuation of offence – obligated to pay a contractual penalty which is immediately due for payment, in the amount of EUR 30,000.00 for each case of infringement. This shall not preclude any claim by us for higher damages.
3. Should we present any concrete indication for an infringement of the above obligations, the Supplier shall be under the obligation to fully disclose all relevant facts within two weeks, stating whether and to what extent she/he has developed such business activities as described in the first indent of Section XIV.1, or made public or used such information as described in the second indent of Section XIV.1.

#### **XVII. Place of Performance, Passing of Risk, Title, Prohibition of Assignment and Advertisement**

1. Place of performance (*Erfüllungsort*) for all deliveries / services rendered shall be Berlin unless otherwise agreed upon.
2. The risk of accidental loss or accidental deterioration of the delivery or service item shall not pass to us until possession of the delivered item has been transferred (*Übergabe*) or the respective service has been accepted (*Abnahme*) at the respective destination; in case of partial deliveries or services rendered in part, said risk shall not pass to us until all of the goods have been delivered or the service has been rendered in full.
3. Title to the goods delivered or services rendered shall pass to us without any limitations and encumbrances once the delivery or service item is transferred (*Übergabe*) or accepted (*Abnahme*) respectively. However, a simple retention of title (*einfacher Eigentumsvorbehalt*) set forth in Supplier's terms and conditions shall be accepted.
4. The assignment of a Supplier's claims which arise from the business relationship with us is excluded.
5. Without our express consent in writing to such action, the Supplier shall not be entitled to advertise her/his business relationship with us.

#### **XVIII. Place of Jurisdiction and Applicable Law**

1. The exclusive legal venue for all claims against entrepreneurs (*Unternehmer*) and legal entities incorporated under public law which result from this business relationship shall be Berlin, Germany. We reserve the right to also sue Suppliers at their place of general jurisdiction.
2. In case of cross-border deliveries, Berlin, Germany shall be the exclusive legal venue for disputes arising out of the contractual relationship (Art. 25 of EU Regulation 1215/2012). We reserve the right to also sue the Supplier at her/his place of general jurisdiction or call upon any court which has jurisdiction according to EU Regulation 1215/2012.
3. All business relationships and all legal relations between the Supplier and us are subject to the substantive 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.

#### **XIX. Final Provisions**

1. If any provision of these Terms and Conditions is or will be invalid, it will not affect the validity of the other provisions hereof.
2. All previous versions of our General Purchasing Terms and Conditions are substituted by these provisions.
3. In case of inconsistencies between the German and English version of these Terms and Conditions only the German version shall apply and be