

## General Terms and Conditions for Sales and Services of IAV GmbH Ingenieurgesellschaft Auto und Verkehr

(V03 05/2018)

### I. Applicability of 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 or conditions of a Customer will only have binding effect on us if we have expressly confirmed their application; our confirmation must be in writing. Our Terms and Conditions also apply when we provide our deliveries or services in the knowledge of a Customer's adverse or deviating terms or conditions without express reservation.
2. These General Terms and Conditions are applicable to all our sales and services and to all of the obligations that might result from any relationship with the Customer. For entrepreneurs (*Unternehmer*) and legal entities incorporated under public law our Terms and Conditions apply also to all future business relations.

### II. Conclusion of Contract / Amendments of Contract

1. A contract shall only be deemed concluded with us when the Customer either accepts our offer without reservation or when she/he receives our written confirmation of her/his order or when we commence with the delivery of goods/rendering of services. In case we issue a written confirmation, this confirmation will 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 specification of quality (*Beschaffensvereinbarung*) or the giving of guarantees shall require an explicit agreement in order to become effective; this must be in writing to take effect.

### III. Execution of Contract

1. Unless expressly agreed upon otherwise the object of our sales and services need only be of such quality or have the technical characteristics etc. as expressly defined by the contract; such definitions only constitute guarantees (*Garantien*) if we expressly accept liability without fault or explicitly state them to be such guarantees; any guarantee must be made in writing to take effect. We reserve the right to make technical and design changes to the descriptions and specifications in our brochures, catalogues or similar sales documents and we may exchange products or parts thereof against such of same or better technical standards; for the Customer no rights will arise from such changes. Neither such descriptions nor such statements or any advertisements (also those made by the manufacturer) shall amount to a declaration of guarantee. Unless required by law we owe advice only if agreed to as a main contractual obligation (*Hauptpflicht*).
2. Unless expressly agreed upon, future improvements and developments of software (updates and upgrades) are not within the scope of delivery.
3. The Customer shall be obliged to provide us with all information necessary for the delivery of goods and/or rendering of services, and to do so in full. We are under no obligation to check the Customer's data, information or other services for completeness and correctness unless particular circumstances arise in an individual case which give cause to do so or we have contractually and expressly accepted such obligation. In case work is to be done at the Customer's place of business, our personnel shall be provided with the required workplaces and equipment free of charge.
4. If we have to perform work outside our company premises, the Customer shall be obliged to take all necessary measures in order to comply with all legal duties to maintain safety (*Verkehrssicherungspflichten*) unless otherwise determined either by the nature of the business or by agreement with the Customer. We shall be entitled to refuse execution of the delivery of our goods and/or rendering of our services as long as the necessary measures have not been taken.
5. Notwithstanding our responsibility to carry out the contractual obligations we may without reservation hire third parties for the fulfilment of the contract. If employees whose participation was agreed upon under the contract are prevented due to reasons for which we are not responsible, we may substitute other suitable employees for them.

### IV. Customer's Duties to Cooperate

1. In development projects the Customer and we must closely cooperate in order to achieve the goals of the project. The parties therefore undertake to show mutual consideration, to inform each other fully and without delay and to warn each other, as a precaution, of any risks while furthermore protecting each other from any interference including such from third parties.
2. The Customer undertakes as a main contractual duty (*wesentliche Vertragspflicht*) to ensure that all duties to cooperate and all her/his contributions agreed upon will be available in the necessary quality and in the time agreed upon or which is necessary to realize the project in time without further costs for us. As far as necessary for the success of the project the Customer will especially provide own personnel in sufficient number and competent contact persons for the complete duration of the project. In case the parties have stipulated certain requirements for outside systems operated by the Customer or a third party in the specifications or in another section within the contract, the Customer is responsible for meeting those requirements.
3. Should information, records or material provided by the Customer prove to be faulty, incomplete, ambiguous or objectively unfeasible, the Customer will make the necessary corrections and/or amendments immediately after we have informed him of such circumstances. Reported faults or functional deficiencies will immediately be remedied by the Customer or a third party by order of the Customer.

### V. Right of Use

1. Unless specifically and contractually agreed upon otherwise, we grant with the delivery of the results which have been compiled within the scope of the Customer order (e.g. concepts, construction drawings, software or similar results) to the Customer a simple, i.e. non-exclusive right to use the results. The right of use will be specified in the agreement to be concluded in each individual case. In case the results delivered were not compiled by us we will generally only act as intermediary for a contract with the third-party-supplier. The Customer therefore agrees to the

accompanying terms and conditions of the third-party-supplier to which we will make reference; these terms and conditions will be authoritative for the scope of the right of use.

2. Notwithstanding the scope of the right of use granted to the Customer we may in any case use ideas, concepts and gained know-how etc. for purposes of further development and services, also for other customers.

### VI. Delivery Terms

1. Any schedule or milestones for a project indicate an outline for the planned performance of the project. Dates and deadlines shall be binding only if they have been explicitly agreed to as binding; such agreement must be in writing to take effect. To the extent dates and deadlines have not been agreed upon as being binding, we shall not be in default until after the Customer has unsuccessfully fixed a reasonable final deadline for the delivery of the goods. In any case, terms shall only commence once the Customer has fully complied with the requirements under her/his obligation to cooperate and - in case it was so agreed - after receipt of a prepayment. Subsequent changes of the order upon the Customer's request and delays of the Customer's contributions shall reasonably extend the time of delivery.
2. In case our performance is delayed through unforeseeable circumstances and without our fault (such as industrial disputes, disturbance of operations, transport impediments, lack of raw materials, governmental measures - including the incidence of such circumstances at the level of our suppliers - also, if we do not obtain supplies in due time ourselves), we shall be entitled to choose, at our discretion, to either revoke the contract in whole or in part or to postpone the delivery for as long as the hindrance lasts. The Customer will be informed immediately of the non-availability of the services or goods. Should we revoke the contract, we will refund to the Customer any consideration already paid. Claims for damages shall be excluded.
3. In case the Customer fails to comply with her/his obligations to cooperate or to contribute to the project or to provide goods in whole or in part, the respective deadlines will lose their binding effect and we will not be in default. After an unsuccessful warning notice we shall be entitled to claim any damages resulting therefrom, including reimbursement for additional expenses. The risk of accidental deterioration or accidental destruction of the goods shall pass to the Customer if she/he is in default of acceptance. If the Customer does not fulfill her/his duties to cooperate or to contribute to the project within a reasonable additional period for performance specified by us in a further warning notice we are additionally entitled to terminate the contract with immediate effect. In this case we are entitled, as a minimum, to compensation and payment according to Section 649 German Civil Code (*Bürgerliches Gesetzbuch*); our further claims remain unaffected. We have the same rights if, due to the delay, we cannot bring the project to an end within reasonable time or if we can do so only at substantially higher costs, e.g. because of other commitments.
4. If - for reasons we are responsible for - we are either in default or our performance is impossible and therefore excluded according to Section 275 (1) of the German Civil Code (*Bürgerliches Gesetzbuch*), or if we are allowed to refuse performance according to Section 275 (2) and (3) of the German Civil Code (*Bürgerliches Gesetzbuch*), we shall be held liable exclusively as provided for by the law, but subject to the limitations of liability set forth hereunder in Section XI. which will not be affected.

### VII. Passing of Risk

The risk of accidental loss or accidental deterioration of the goods shall pass to the Customer upon dispatch, even if we should have agreed to bear the delivery expenses or to take on additional obligations to be performed or in case of a partial delivery Section VI. para. 3. sentence 3 also applies.

### VIII. Acceptance

1. To the extent the acceptance (*Abnahme*) of our delivery is required by law, the Customer shall be obliged thereto. Minor defects not seriously impairing the suitability of the goods with respect to the object of the contract do not entitle the Customer to refuse the acceptance, regardless of her/his right to assert her/his legal claims for defects (*Mängelansprüche*).
2. The acceptance is considered granted if
  - the Customer refuses the acceptance in breach of the above Section VIII. para. 1 or refuses, in spite of having been requested in a timely manner to do so, to participate in the joint testing procedure for acceptance, or
  - the Customer does not declare the acceptance in writing immediately after joint testing although she/he was requested to do so within a period of 7 working days, unless the Customer specifically names the faults which cause her/his refusal of acceptance within this deadline, provided we have notified the Customer of the relevance of her/his actions at the beginning of said period.
3. In case of severable performance we have a right to demand acceptance of a partial delivery.
4. Intellectual/intangible services shall be considered accepted unless the Customer explicitly objects in writing within 30 days after having received such services in written form and she/he specifically names the faults, provided we have notified the Customer of the relevance of her/his actions at the beginning of said period. In case of such objections, we will review our performance. Should objections raised by the Customer prove to be unjustified, the Customer must bear the costs incurred unless she/he acted without fault or in ordinary negligence (*einfache Fahrlässigkeit*).

### IX. Prices and Payments

1. Prices are applicable as quoted by us, plus the respective statutory VAT, if applicable. Unless otherwise agreed upon we are entitled to claim reimbursement of any expenses incurred in addition to the contractually agreed payment.
2. If a payment based on an hourly or daily rate is agreed upon, our respective price lists in force at the time of performance will apply unless otherwise agreed between the parties. There will be no increase in prices for deliveries or services which are performed within four months after the date of conclusion of the contract.
3. Our invoices are to be paid - without deduction of cash discount and free of additional expenses - in accordance with the agreed schedule of payment, otherwise within 30 days after the date of the invoice. Should we - in individual cases - accept cheques by virtue of express agreement, such acceptance is pending full discharge of the debt and also does not allow for a deduction of cash

discount. Any respective discount charges shall be borne by the Customer. We shall only acknowledge payments by cheque as payment of the agreed remuneration if the respective amount has been credited unconditionally and unrestrictedly to our account. We do reserve the right to demand adequate progress payments and advance payments.

4. In case of several debts being owed by the Customer, we shall determine which debt a payment made is applied to. The Customer is only entitled to set off payments if her/his counterclaims have either been established by a final and non-appealable court decision (*res judicata*) or are uncontested and acknowledged by us in writing. The same shall apply in respect to the assertion of rights of retention.
5. Should we, after conclusion of the contract, become aware of circumstances which appear to endanger our claims against the Customer because of the lack of the ability to pay, we shall be entitled to deliver outstanding performances only against prepayment or provision of security. We shall also be entitled to revoke the contract after expiration of a deadline set for the prepayment or provision of security; Section VI. 3. of these Terms and Conditions shall apply accordingly.
6. In case of default in payment the Customer owes default interest as provided for by law, unless we prove higher damages.

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

1. Should the goods delivered or the services rendered have any faults, the Customer shall give us an opportunity for remedy (*Nacherfüllung*) within reasonable time unless such remedy cannot be reasonably accepted by the Customer in an individual case, or special circumstances are given which, taking into consideration the interests of both parties, justify an immediate revocation of the contract. In any case, we shall be entitled to choose between remedying the defect or delivering goods / rendering services free of faults.
2. If standard products of third-party manufacturers are used for which we have only acted as intermediary for a contract (Section V. 1 sentence 4 of these Terms and Conditions), the respective claims of the Customer shall exclusively be directed at the 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 is obliged to examine the goods delivered/services rendered for obvious faults which an ordinary customer should discover without particular effort. Regarding obvious faults, such as missing components or documentation as well as damages which may be discovered without particular effort, the Customer must notify us in writing within one week after the delivery of goods/rendering of services. Regarding faults which become apparent later, but before the period of limitation for claims of fault (*Mängelansprüche*) ends, the Customer must notify us in writing within a week after the Customer has discovered them. If the Customer does not fulfill her/his obligation to examine goods and/or services or to notify us, the goods delivered/services rendered are deemed accepted concerning the particular fault.
4. The Customer must make claims for defects (*Mängelansprüche*) in writing, specifying all faults discovered and the circumstances under which they appeared. If a fault alleged by the Customer cannot be reproduced, the goods or services shall not be considered to be defective. If the Customer manipulated the components, hard- or software in any way, she/he may make claims for defects (*Mängelansprüche*) only if she/he can prove that her/his manipulations were not the cause for the defect.
5. Should it become apparent that the fault the Customer has alleged does not actually exist, particularly if an alleged fault cannot be reproduced, we shall be entitled to demand reasonable compensation for our effort and cost unless the Customer has acted without fault or in slight negligence (*leichte Fahrlässigkeit*).
6. Should we fail or refuse to remedy the defect, or should the Customer not be able to reasonably accept remedy of the defect, the Customer shall solely be entitled to the other statutory claims for defects (*Mängelansprüche*), i.e. revocation of the contract, reduction of the agreed remuneration (*Minderung*), performing the remedy himself or contracting a third party (*Selbstvornahme*), damages or reimbursement for futile expenses (*vergebliche Aufwendungen*). The Customer shall only be entitled to claim damages in accordance with Section XI. of these Terms and Conditions.
7. Should the fault merely consist of an immaterial deviation from the agreed quality (*vereinbarte Beschaffenheit*), the Customer shall, at our discretion, only be entitled to remedy (*Nacherfüllung*) or to a reasonable reduction of the agreed remuneration (*Minderung*). Should no quality have been specified, the same shall apply to any immaterial deviation from the suitability for the use intended under the agreement or in the absence of a specific agreement the suitability for the customary use, i.e. the common use of such goods which may reasonably be expected by the Customer.

#### XI. Liability and Right of Revocation

1. Our liability is exclusively governed by the following stipulations:  
We are liable for:  
- intentional or grossly negligent acts  
- culpable breaches of material contractual obligations (*wesentliche Vertragspflichten*).  
As far as we are liable in cases of ordinary negligence (*einfache Fahrlässigkeit*) our liability is limited in amount to the damages foreseeable and typical for the type of contract. As far as we are liable in cases of ordinary negligence (*einfache Fahrlässigkeit*), our liability shall in any case be limited: In case of pecuniary losses to a maximum amount of € 100,000.00 per damaging event or, should the performance consist of the delivery of a licensed program, to the amount of a lump-sum license fee or the amount due for twelve months of use; the respective highest amount will apply. In case of damages to property caused by ordinary negligence liability is limited to a maximum amount of € 500,000.00 per damaging event. Any further liability on our part for pecuniary losses or damages to property shall be excluded. The liability for injuries to life, body or health (*Personenschäden*) as well as liability under the German Product Liability Act (*Produkthaftungsgesetz*) will not be affected by the preceding clauses.
2. We are only liable for the retrieval of data if the Customer made certain that lost data may be retrieved with reasonable expenses and effort. The Customer is

therefore under the obligation to regularly back up the data and programs in adequate intervals.

3. The exclusion of liability based on the preceding clauses comprises the personal liability of our organs, employees and other staff members, representatives or (vicarious) agents and shall also apply to all claims based on negligence in the course of contracting (*culpa in contrahendo*), breach of an accessory contractual obligation, torts (particularly Sections 823 et seq. German Civil Code [*Bürgerliches Gesetzbuch*] including potential recourse claims according to Section 840 German Civil Code, Section 5 German Product Liability Act in conjunction with Section 426 German Civil Code) with the exception of claims under Sections 1, 4 German Product Liability Act.
4. The right of the Customer to terminate or otherwise revoke the contract as a result of a breach of our contractual obligations due to reasons for which we are not at fault and which do not consist of a defect of goods delivered shall be excluded.

#### XII. Period of Limitation

1. The Customer's claims for defects (*Mängelansprüche*) shall be statute-barred within one year from the statutory start of the period of limitation, except for claims set forth pursuant to Sections 438 (1) No.1 and 2 and 634a (1) No. 2 of the German Civil Code.
2. Any other contractual claims of the Customer due to the breach of obligation shall, if the Customer is an entrepreneur (*Unternehmer*), be statute-barred within one year from the statutory start of the period of limitation.
3. The periods of limitation provided for by law shall not be affected by the above provisions in the following cases:
  - for damages resulting from injuries to lives, bodies 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 revoke the contract due to our failure to comply with our contractual obligations for which we are at fault and which does not consist of a fault of goods delivered or services rendered;
  - for claims resulting from fraudulent concealment of a defect or a guarantee (*Garantie*) within the meaning of Section 444 or Section 639 of the German Civil Code (;
  - for claims to remuneration for expenses pursuant to Section 478 (2) of the German Civil Code .

#### XIII. Retention of Title

All delivered goods shall remain in our exclusive ownership until the purchase price is paid in full, or if the Customer is an entrepreneur, until all claims arising from the business relationship are fulfilled. No pledging, transfer of ownership by way of security or other exploitation shall be allowed unless the goods were specifically acquired for resale purposes. In this case the Customer shall have the revocable right to resell the retained goods in her/his own name within the scope of her/his ordinary course of business, as long as she/he is not in default of financial obligations and assignment of claims is not prohibited by law or by agreement between the Customer and her/his purchasers. In case of resale to her/his purchasers the Customer must make reference to our retention of title or she/he must retain title on the goods for herself/himself.

#### XIV. Place of Performance and Prohibition of Assignment

1. Place of performance for all goods delivered/services rendered shall be Berlin, Germany.
2. Any assignment of a Customer's claims against us which arise from the business relationship shall be excluded.

#### XV. 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 necessary, we will conclude a separate contract between controller and processor under Article 28 GDPR.

#### XVI. 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. This includes cases of claims based on cheques, torts and cases of third party notice (*Streitverkündung*). We reserve the right to also sue Customers before any other court which has jurisdiction under the law.
2. In case of cross-border sales or services, Berlin, Germany shall be the exclusive legal venue for disputes arising out of the contractual relationship between the Customer and us (Article 23 of the European Council Directive on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters [*EuGVVO*] or Article 17 of the European Civil Jurisdiction Convention [*EuGVÜ*]). We reserve the right to also sue the Customer at her/his place of general jurisdiction or bring the matter before any court which has jurisdiction according to said European Council Directive or the European Civil Jurisdiction Convention.
3. All legal relations arising out of or in connection with the contractual relationship between a Customer and us are governed by 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.

#### XVII. Final Provisions

1. If any provision of the above Terms and Conditions is or will become invalid, this shall not affect the validity of the other provisions. In place of the invalid provision a new provision shall be inserted which will in meaning get closest to the economic goals of the contract with due observance of the parties' interests.
2. All our previous general Terms and Conditions for Sales and Services 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 legally binding.