



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

(December 2021 version)

I. Applicability of these Conditions

1. Subject to deviating agreements in individual cases, contracts with us (IAV GmbH Ingenieurgesellschaft Auto und Verkehr, Carnotstr. 1, 10587 Berlin, Germany) shall be concluded exclusively in accordance with these General Terms and Conditions for Sales and Services (hereinafter 'Terms and Conditions'); by placing the order, the customer declares its agreement with the Terms and Conditions. Contradictory or deviating terms and conditions of the customer are only binding for us if we have expressly accepted them; our confirmation must be in writing. Our Terms and Conditions shall also apply if we provide our delivery or service without reservation in the knowledge of conflicting or deviating terms and conditions of the customer.
2. These Terms and Conditions apply to all our sales and services and to all obligations resulting from a contractual relationship with the customer. With respect to entrepreneurs and legal entities under public law, our Terms and Conditions shall also apply to all future business relations. For deliveries of goods and equipment, Clause XV. of these Terms and Conditions shall apply with priority.

II. Conclusion of the Contract / Changes to the Contract

1. A contract with us shall only be deemed to have been concluded when the customer accepts our quotation without reservation or when he receives our written order confirmation or when we commence with the execution of the delivery or service. If we issue a written order confirmation, this will define the subject and the scope of the contract, unless expressly agreed otherwise.
2. Amendments, collateral agreements and supplements as well as any agreements on quality or the assumption of guarantees require an express agreement in order to be effective; this must be in writing in order to be effective.

III. Contract Execution

1. Unless expressly agreed otherwise, the object of delivery or performance shall only have the characteristics, technical data, etc. expressly stipulated in the contract; these shall only constitute warranties if we expressly declare that we wish to assume liability for them irrespective of fault or if they are expressly designated as such by us; warranty declarations must be made in writing to be effective. We reserve the right to make technical and design deviations from descriptions and details in our brochures, catalogues or similar sales documents and to exchange (partial) products for technically equivalent or better technical standards; for the customer no rights will arise from such changes. Such descriptions and information as well as advertising statements (including those of the manufacturer) do not include any warranty statements. Unless otherwise stipulated by law, we are only obliged to provide advice to the extent that we have assumed this as our main contractual obligation.
2. In the case of the delivery of software, further and new developments of software (updates and upgrades) are not included in the scope of delivery, unless expressly agreed.
3. We are entitled to store copies of work results as well as documents and other information, which were developed or received in the context of the execution of the contract, on our own systems, taking into account confidentiality obligations.
4. Software work results shall be provided to the customer in the form of compiled object code, unless another form, such as the provision of source code, has been expressly agreed in exceptional cases. Software developed or used by us for the creation of the work results (esp. software tools) shall not be deemed work results and must not be provided to the customer.
5. Within the scope of the contractual services, the use of open-source-software is generally permitted. Open-source-software is any software that is distributed under terms of use and licensing

conditions for open-source-software, the essential obligation of which include the passing on or disclosure of the source code of the software. We will inform the customer upon delivery of the work product which open-source-software components have been incorporated into the work product as well as which license terms are applicable thereto. Content-related or formal requirements of the customer for the aforementioned notification shall only be binding if these are agreed in writing.

6. The customer shall provide us with all information relevant for the performance of our delivery and/or service in full. We are not obliged to check data, information or other services provided by the customer for their completeness and correctness, unless there is a reason to do so under consideration of the respective circumstances of the individual case or if the obligation to check has been expressly assumed as a contractual obligation.
7. Insofar as work is carried out at the customer's premises, our employees shall be provided free of charge with the workstations and work equipment required in each case. If we must perform work outside our company premises, the customer shall be obliged to take all necessary measures to comply with all legal duties to maintain safety 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 if the necessary measures have not been taken. If it has been agreed that we provide contractual services in the customer's IT systems, the customer shall make these IT systems available to us free of charge and free of errors.
8. Notwithstanding our continuing responsibility for the performance of services owed under the contract, we shall be entitled without restriction to involve third parties in the performance of the contract.
9. The decision as to which of our employees will be used to provide a service is ours alone.

IV. Cooperation Obligation of the Customer

1. In development projects the customer and we must closely cooperate to achieve the goals of the project. The contracting parties therefore undertake to show mutual consideration, to provide comprehensive and immediate information as well as precautionary warning of risks and protection against disruptive influences, including from third parties.
2. The customer undertakes as an essential contractual obligation to ensure that it provides agreed cooperation and supply services in the required quality and in the time agreed upon or which is necessary to realize the project in time without further costs for us. Insofar as this is necessary for the success of the project, it shall in particular provide its own personnel in sufficient numbers as well as competent contact persons for the entire duration of the project. Insofar as requirements are formulated in the specifications or elsewhere in the contract for external systems operated by the customer or by third parties, the customer shall be responsible to us for ensuring that these requirements are met.
3. If information or documents provided by the customer prove to be incorrect, incomplete, ambiguous or objectively not feasible, the customer shall make the necessary corrections and/or additions immediately after being notified by us. The customer shall immediately rectify or have rectified any defects or malfunctions of components provided by us.

V. Rights 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. If 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 accepts the terms and conditions of use of the third-party-supplier, to which we expressly refer; these terms and conditions will be authoritative for the scope of the right of use.



2. Irrespective of the scope of the transfer of rights to the customer, we are in any case permitted to use ideas, concepts, acquired know-how, etc. for further developments and services, also for other customers.
3. The final examination that the work results are free from third party property rights is the sole responsibility of the customer. We are not responsible for this. Industrial property rights within the meaning of this provision include rights to patents and their applications, utility models, trademarks and business designations, design and business names as well as copyrights. When carrying out a development project, we shall endeavor to achieve a work result that is free of third-party industrial property rights, applying the care customary in the industry. This means that we are obligated to notify the customer immediately of any third-party property rights known to us or of which we become aware and to obtain the customer's decision on their use or non-use in the respective work result. However, we are not obligated to perform any further duties, such as conducting a separate property right search (e.g. freedom to operate search).

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 only be binding if they are expressly agreed as binding deadlines; this agreement must be in writing to be effective. Insofar as no binding dates and deadlines have been agreed with us, we shall only be in default if the customer has previously set us a reasonable grace period for the performance of the delivery owed without result. In any case, deadlines shall only commence once the customer has fully complied with the requirements under its obligation to cooperate and - in case it was so agreed - after receipt of a prepayment. Subsequent requests for changes or delayed cooperation on the part of the customer shall extend the delivery times appropriately.
2. If the delivery owed by us is delayed due to unforeseeable circumstances for which we are not responsible (e.g. industrial disputes, natural disasters, epidemic / pandemic, operational disruptions, transport obstacles, shortage of raw materials, official measures, in each case also at our downstream suppliers, and including late delivery from our suppliers), we shall be entitled to withdraw from the contract in whole or in part or, at our discretion, to postpone the delivery for the duration of the hindrance. The customer will be informed immediately about the non-availability of the services. In the event of our withdrawal, we will also refund the customer's consideration. In cases of force majeure, claims for damages by the customer are excluded.
3. If the customer fails to meet its obligations to cooperate, assist or supply in whole or in part, the performance dates and deadlines affected by this shall lose their binding force, and in particular we shall not be in default. After unsuccessful reminder, we shall be entitled to demand compensation for the damage incurred by us, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the delivery item shall also pass to the customer at the point in time at which the customer is in default of acceptance. If the customer does not fulfil its obligations to cooperate or to contribute to the project within a reasonable additional period following the further reminder, we shall also be entitled to terminate the contract with immediate effect. In this case we shall be entitled to claims for compensation and remuneration at least in an amount resulting from § 649 German Civil Code (BGB); additional claims on our part shall remain unaffected. We shall have the same right if, as a result of the delay that has occurred, we are no longer able to carry out the project within a reasonable period of time or only at considerably higher costs, for example due to other obligations.
4. If we are in default for reasons for which we are responsible, or if our obligation to perform is excluded for reasons for which we are responsible due to impossibility in accordance with § 275 (1) of the German Civil Code (BGB), or if we can refuse performance in accordance with § 275 (2) and (3) of the German Civil Code

(BGB), we shall be liable exclusively in accordance with the statutory provisions, subject to the limitations of liability in Clause XI. of these Terms and Conditions, which shall remain unaffected.

VII. Transfer of Risk

The risk of accidental loss or accidental deterioration of the delivery item shall also pass to the customer upon dispatch if we have assumed the shipping costs or other additional services or if a partial delivery is made. Reference is made to Clause VI. 3. sentence 3 of these Terms and Conditions.

VIII. Acceptance

1. Insofar as our delivery requires acceptance, the customer is obliged to do so. Minor defects which do not seriously impair the suitability of the delivery for the contractually specified purpose do not entitle the customer to refuse acceptance, without prejudice to its right to assert statutory claims for defects.
2. Acceptance shall be deemed to have been granted if
 - the customer refuses to declare acceptance in breach of Clause VIII. 1. above or refuses to cooperate in a joint acceptance test despite being requested to do so in due time; or
 - the customer does not immediately declare acceptance in writing after a joint acceptance test has been carried out, although it has been requested to do so by us with a period of seven working days, unless the customer specifically names the faults which cause its refusal of acceptance within this deadline, provided we have notified the customer of the relevance of its 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 services shall be deemed to have been accepted unless the customer expressly raises reservations in writing within 30 days of receipt thereof and in so doing specifically identifies defects, whereby we shall again draw the customer's attention to the intended significance of its conduct at the start of the period. In the event of such a reservation, we shall review our performance. If a reservation of the customer proves to be unjustified, it shall bear the costs incurred, unless it acted without fault or in ordinary negligence.

IX. Prices and Payments

1. The prices quoted by us shall be decisive, to which the respective statutory value added tax - insofar as this is incurred - shall be added. Unless otherwise agreed, we are entitled to reimbursement of expenses in addition to the agreed remuneration.
2. If remuneration is agreed on the basis of hourly or daily rates, our price lists current at the time of performance shall apply unless otherwise agreed in individual cases. There shall be no price increase for services rendered within four months after conclusion of the contract.
3. Our invoices are payable without discount and free of charges according to the agreed payment schedule, otherwise within 30 days of the invoice date. If cheques are accepted on the basis of express agreements in individual cases, this shall only take place on account of payment and also without discount deduction. Any 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 to which debt a payment made is applied. The customer is only entitled to set off payments if its 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. The customer shall also be entitled to set off payments if its counterclaims directly arise from the same contract as our claims.



5. If, after conclusion of the contract, we become aware of circumstances according to which our claims against the customer appear to be endangered by the customer's lack of ability to pay, we shall be entitled to make outstanding deliveries only against advance payment or provision of security; Clause VI. paragraph 3 of these Terms and Conditions shall apply accordingly.
6. In the event of default in payment, the customer shall owe default interest at the statutory rate, unless we can prove higher damages to the customer.

X. Claims for Defects

1. If we have provided a defective delivery or service, the customer shall give us the opportunity to remedy the defect within a reasonable period of 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. In the case of standard products from third-party suppliers for which we have only acted as intermediary for a contract (Clause V. 1. sentence 3 of these Terms and Conditions), the customer's claims for defects shall only be directed against the respective third-party supplier; this shall also apply in the event of an infringement of third-party property rights by the third-party supplier.
3. The customer is obliged to inspect the delivery item for obvious faults which an ordinary customer should discover without particular effort. Obvious defects, such as the absence of components or documentation material, as well as damage that is readily apparent, must be notified to us in writing within one week of receipt of the delivery. Defects which only become apparent later before the expiry of the limitation periods for claims for defects must be notified to us in writing within one week of their discovery by the customer. If the customer breaches its obligation to inspect and give notice of defects, the delivery item shall be deemed to have been approved with respect to the defect in question.
4. Claims for defects must be asserted by the customer in writing, naming all detected defects and stating the circumstances under which they became apparent. A defect shall not be deemed to exist if a defect claimed by the customer cannot be reproduced. If the customer has interfered with delivered components, hardware or software, claims for defects by the customer shall only exist if the customer proves that its intervention was not the cause of 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 simple negligence.
6. If subsequent performance fails, is refused by us or is unreasonable for the customer, the customer shall be entitled exclusively to the other statutory claims for defects (rescission, reduction, self-performance, damages or reimbursement of futile expenses). Claims for damages shall exist exclusively in accordance with Clause XI. of these Terms and Conditions.
7. If the defect is only an insignificant deviation from an agreed quality, the customer shall, at our discretion, only be entitled to rectification or to a reasonable reduction in price. 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 Withdrawal

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

following stipulations:

We are liable on the merits

- for intentional or grossly negligent actions,
- for any culpable breach of essential contractual obligations.

Essential contractual obligations are those contractual obligations the fulfilment of which makes the proper performance of the respective contract possible in the first place, and on the observance of which the contractual partner regularly relies and may rely. In the event of a breach of an essential contractual obligation due to simple negligence, our liability shall be limited to the damage that is foreseeable and typical according to the nature of the contract in question.

2. In the case of simple negligent violation of an essential contractual obligation, our liability is – as contract-typical foreseeable – limited to the amount of 50 % of the respective contractual remuneration per case of damage, while our liability for all damages caused in connection with the contract by simple negligence is limited to the maximum amount of 100,000.00 EUR. A case of damage is understood to be a development error and all damages arising therefrom.
3. The liability for damages resulting from injury to life, body or health as well as the liability according to §§ 1, 4 German Product Liability Act (ProdHaftG) remain unaffected.
4. We shall only be liable for the recovery of data if the customer has ensured that lost data can be recovered with reasonable effort. The customer is therefore obliged to regularly back up data and programs at intervals appropriate to the application.
5. Insofar as our liability for damages is excluded or limited in accordance with the above provisions, this shall also apply to the personal liability of our executive bodies, employees and other staff, representatives and vicarious agents and shall also apply to the statutory liability in tort (in particular §§ 823 ff. German Civil Code (BGB) including any recourse claims pursuant to § 840 German Civil Code (BGB), § 5 German Product Liability Act in conjunction with § 426 German Civil Code (BGB)).
6. The customer has no right to withdraw from the contract due to a breach of our contractual obligations caused by reasons for which we are not at fault and which do not consist of a defective goods delivered.

XII. Legal Compliance, Sanctions and Export Controls

1. Conduct in compliance with the law is a matter of course for us and a prerequisite for cooperation with our customers. A breach of the customer's duty to act in accordance with the law shall be deemed to have occurred if it becomes known that the customer, its legal representatives or employees have been convicted of white-collar crime in a business context. In particular, fraud, embezzlement, misappropriation, money laundering, corruption, insider trading as well as tax and insolvency offences shall be deemed to be white-collar criminal acts. The customer shall in particular also comply with national and international export laws as well as with any sanctions imposed.
2. We expect that the customer will inform us as part of its contractual fiduciary duties and within the scope of its legal possibilities about convictions, in particular to the extent the white-collar criminal acts were directed against us.
3. In case of a breach of the obligation pursuant to paragraph 1 of this Clause XII., we are entitled under the conditions of § 314 German Civil Code (BGB) to terminate the contract for cause in addition to our other statutory rights.

XIII. Period of Limitation

1. The customer's claims for defects shall become time-barred after one year from the statutory commencement of the limitation period. Excluded from this are claims according to §§ 438 para. 1 no. 1, 2; 634a para. 1 no. 2 German Civil Code (BGB).
2. To the extent the customer is an entrepreneur, other contractual



claims of the customer for breaches of duty shall become time-barred one year after the statutory commencement of the limitation period.

3. The statutory limitation periods shall remain unaffected by the above provisions in the following cases:
 - for damages resulting from injury to life, body or health;
 - for other damages which are based on an intentional or grossly negligent breach of duty by us, our legal representatives or vicarious agents;
 - for the right of the customer to withdraw from the contract in the event of a breach of duty for which we are responsible, and which does not consist of a defect in the purchased item or the work;
 - for claims due to fraudulent concealment of a defect and from a quality guarantee within the meaning of § 444 or § 639 German Civil Code (BGB);
 - for claims for reimbursement of expenses pursuant to § 445a para. 1 German Civil Code (BGB);
 - for claims for damages according to §§ 1, 4 German Product Liability Act (ProdHaftG).

XIV. Retention of Title

All delivered items shall remain our sole property until our purchase price claim has been paid in full, and in the case of entrepreneurs until all claims arising from the business relationship have been fulfilled. Pledging, transfer of ownership by way of security or other exploitation is prohibited, unless the acquisition was made precisely for the purpose of resale. In this case, the customer is revocably entitled to resell the goods subject to retention of title in its own name within the scope of proper business operations, as long as it is not in default with its payment obligations towards us and there is no prohibition of assignment between the customer and its purchasers. The customer must refer to our reservation of title when reselling the goods to its customers or must reserve the title to the goods on its part.

XV. Deliveries in Kind

If our services are deliveries in kind (such as products, prototypes, parts deliveries as well as proprietary software not exclusively programmed for the customer), the following conditions of this Clause XV. shall apply.

1. We grant the customer simple, i.e. non-exclusive rights of use to deliveries in kind. The further form of the right of use shall be determined by the specific agreement concluded in each case.
2. The reverse translation of software into other code forms (decompilation) as well as other types of reverse engineering of the various manufacturing stages of the software and the removal of the copy protection, the serial numbers and other features serving to identify the program are prohibited, unless permitted by mandatory law. Copyright notices in the software code may not be removed.
3. Insofar as the (co-)supplied software is software of a third-party provider (proprietary as well as open source), the above provisions shall not apply. Rather, in this case we merely broker a contract with the third-party provider. The customer acknowledges the terms and conditions of use of the third-party provider, to which we expressly refer; these alone are decisive for the scope of the rights granted.
4. The installation of the software on the customer's existing hardware, the adaptation of the software to the customer's existing hardware and software support, care and maintenance services as well as further and new developments of software (updates and upgrades) are not part of our contractually owed services, unless expressly agreed otherwise.
5. Extended retention of title
 - a. In addition to Clause XIV. of these Terms and Conditions, the customer hereby assigns to us all claims accruing to it against

its customers or third parties from the resale of the goods, irrespective of whether the purchased item has been resold without or after processing. We hereby accept the assignment. The customer shall remain entitled to collect the claims even after the assignment. Our authority to collect the claims ourselves remains unaffected. However, we undertake not to collect a claim as long as the customer meets its payment obligations from the proceeds collected, is not in default of payment and, in particular, has not filed for insolvency proceedings or suspended payments. If this is the case, we may demand that the customer informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment.

- b. If the customer processes or transforms the object of sale that is subject to retention of title, this is always done for our benefit. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the value of the object of sale (purchase price including VAT) to the other processed objects at the time of processing. In all other respects, the same principles shall apply to the object created by customer processing as to the object of sale we delivered subject to reservation of title.
 - c. We undertake to release the securities to which we are entitled at the customer's request insofar as the realizable value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released is at our sole discretion.
 - d. In the event of breach of contract by the customer, in particular in the event of default in payment, we shall be entitled to take back the object of sale. Any such taking back shall constitute our withdrawal from the contract. After taking back the object of sale, we shall be entitled to sell it. The proceeds of the sale shall be set off against the customer's liabilities, less reasonable costs of sale.
 - e. The customer is obliged to treat the purchased item with care; in particular, he is obliged to insure it adequately at replacement value against fire, water and theft damage at its own expense. If maintenance and inspection work is required, the customer must carry this out in good time at its own expense.
 - f. In the event of seizures or other interventions by third parties, the customer must notify us immediately in writing so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure (ZPO). The customer shall be liable for the loss incurred by us to the extent the third party is unable to reimburse us for the court and out-of-court costs of an action pursuant to § 771 German Code of Civil Procedure (ZPO).
6. If an underlying purchase contract is a transaction for delivery by a fixed date within the meaning of § 286 (2) No. 4 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB), or if the customer can justifiably claim as a consequence of a delay in delivery for which we are responsible that its interest in the further performance of the contract has ceased to exist, we shall be liable in accordance with the statutory provisions, subject to the limitation of liability set out in Clause XI. of these Terms and Conditions. Contractual penalties are rejected.
 7. The customer's rights in respect of defects shall be subject to the condition that the customer has duly complied with its obligations to examine the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB). In the event of rectification of the defect, we shall be obliged to bear all expenses necessary for the purpose of rectifying the defect, in particular transport, travel, labor and material costs, to the extent these are not increased because the purchased item was brought to a place other than the place of performance.
 8. Unless otherwise stated in the order confirmation, delivery EXW (Incoterms 2020) is agreed.



9. The other provisions of these Terms and Conditions shall also apply to deliveries in kind subordinate to this Clause XV.

XVI. Place of Performance and Prohibition of Assignment

1. The place of performance for all deliveries and services is Berlin, Germany.
2. The assignment of claims against us to which the customer is entitled from the business relationship is excluded.

XVII. Data Protection

We process personal data in accordance with the relevant data protection provisions, in particular the provisions of the EU General Data Protection Regulation (GDPR). To the extent we process personal data on behalf of the customer, we create the necessary legal basis for this and, if necessary, conclude order processing agreements in accordance with Article 28 GDPR.

XVIII. Jurisdiction and Applicable Law

1. The exclusive place of jurisdiction for all claims against merchants and legal entities under public law arising from the business relationship is Berlin, Germany. This also applies to claims arising from cheques as well as claims under tort law and notices of dispute. However, we reserve the right to also sue customers before any other court which has jurisdiction under applicable law.
2. In the case of cross-border deliveries and services, Berlin shall be the exclusive place of jurisdiction for all disputes arising from the contractual relationship (Art. 25 VO (EU) 1215/2012). However, we reserve the right to sue the customer at its general place of jurisdiction or to invoke any other court that is competent according to VO (EU) 1215/2012.
3. The law of the Federal Republic of Germany shall apply exclusively to all business and legal relations between the customer and us; the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

XIX. Final Provisions

1. Should individual provisions of the above Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions.
2. All our previous General Terms and Conditions for Sales and Services as well as our General Terms and Conditions for Deliveries and Services are hereby replaced by these Terms and Conditions.
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. The German version of these Terms and Conditions can be found on <https://www.iav.com/agb>.