



## General Terms and Conditions of Purchase 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 the following General Terms and Conditions of Purchase (hereinafter 'Terms and Conditions'). Any conflicting or deviating terms and conditions of the supplier shall be binding on us only if we have expressly acknowledged them. Our Terms and Conditions shall also apply if we accept deliveries without reservation in the knowledge of conflicting or deviating terms and conditions of the supplier.
2. These Terms and Conditions shall apply to all our purchases of supplies and services. With respect to entrepreneurs and legal entities under public law, our Terms and Conditions shall also apply to all future business relations.

### II. Conclusion and Implementation of the Contract

1. The supplier is obliged to accept our order on the basis of these Terms and Conditions within a period of two weeks. A contract with us shall only be deemed concluded upon receipt of an unconditional order confirmation.
2. The supplier undertakes to provide us with ownership of the agreed delivery items free of third-party rights.
3. Each delivery must be accompanied by a delivery note which must contain our order data (number and date of order, person who ordered).
4. Amendments, collateral agreements and supplements require an express agreement in order to be valid; these must be in writing to take effect.

### III. Delivery of Dangerous Goods

1. If a delivery consists of dangerous goods or items containing hazardous substances, the supplier is obliged to provide us with the relevant safety data sheets in good time, but at least three working days before the delivery date agreed for the delivery concerned. The same applies to the transmission of appropriate safety information if a safety data sheet is not required according to applicable law.
2. The relevant information must be sent (a) to IAV GmbH, Abtlg. P-SH, Carnotstr. 1, 10587 Berlin, Germany, or (b) by e-mail to [arbeitsicherheit@iav.de](mailto:arbeitsicherheit@iav.de).
3. If the information referred to in this clause is not provided or is not provided in good time, we shall be entitled to refuse acceptance of the delivery.

### IV. Purchase of Software

1. If the supplier provides us with standard software (including by way of download), we shall acquire simple, transferable rights of use thereto, which may be sublicensed to our affiliated companies within the meaning of § 15 of the German Stock Corporation Act (AktG) and which are unrestricted in terms of duration, territory and content.
2. With respect to all other software, including accessories, which is the subject of the contractual services (individual software, software created within the scope of customizing, documentation, concepts, etc.) we shall require exclusive, transferable, sub-licensable rights of use, unlimited in terms of time, space and content. Unless otherwise agreed, such software shall be provided to us in the form of source code including documentation.
3. The supplier shall indemnify us against all claims of third parties based on an infringement of property rights by the software supplied by it, irrespective of whether it is standard or individual software.
4. Unless it is expressly agreed in writing whether a software is licensed for use by named users or concurrent users, the software shall be licensed for concurrent users.

5. The integration of open-source-software within the scope of the contractual services shall only be permitted with our prior written consent. If the supplier integrates open-source-software into software provided to us without our consent, the supplier shall, at our request, do everything reasonable to replace the open-source-software with equivalent proprietary software.
6. Unless otherwise agreed, defects in the software or impairments of use originating from the sphere of the supplier shall be remedied by the supplier without delay. The supplier shall inform us regularly, at least quarterly, about any defects or impairments of use that have occurred as well as the remedial measures and times.
7. Supplier's license audits (checks of compliance with the rights usage regulations for software that the supplier provided to us) are only permitted,
  - if there is reasonable suspicion that we have exceeded our rights of use,
  - if the supplier has presented such reasonable suspicion to us in writing at least two months before the audit,
  - if the audit is carried out exclusively by a third party from the legal and tax advisory professions who is legally bound to secrecy and who has been commissioned by us to carry out the audit together with our employees, without the third party having sole access to our systems, and
  - the date of the audit and the manner in which it is to be carried out have been agreed with us in due time, but at least two weeks in advance.

The supplier is not permitted to copy data during the audit unless we expressly permit the supplier to do so in individual cases.

### V. Documents and Information

1. We reserve the property rights and copyrights to technical requirement profiles, illustrations, drawings, calculations, samples and other documents; these must not be made accessible to third parties without our express written consent. Such documents and information must be used exclusively for production and delivery on the basis of our order. We reserve the right to demand the conclusion of a confidentiality agreement at any time. The supplier must return all documents to us without being asked to do so after processing the order, but at the latest after our acceptance.
2. The documents prepared by the supplier for the fulfilment of the order (drawings, plans, etc.) shall be handed over to us clearly and completely as originals, tracings of the originals or, at our request, as other electronic media or on data carriers. The supplier is entitled to destroy the documents created by it in connection with the fulfilment of its contractual obligations after the expiry of the limitation period for claims for defects. Prior to this, however, the supplier must offer to hand over these documents to us and notify us of the intended destruction. The documents may only be destroyed if we are in default of accepting the offered documents.

### VI. Rules 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 Supplier Code of Conduct (Code of Conduct for Business Partners).
2. The provisions of our Supplier Code of Conduct (available at <https://www.iav.com/en/terms-of-use/>) are binding for the supplier and form an integral part of the business relationship with us. The supplier shall also pass on the standards of our Supplier Code of Conduct to its business partners and oblige them to comply with these standards. The supplier shall regularly monitor compliance with such obligations.
3. We reserve the right to reasonably audit supplier's compliance with the provisions of our Supplier Code of Conduct at the supplier's premises in an appropriate manner after prior notice and in conformity with applicable law. During the review, data protection obligations as well as confidentiality obligations of the supplier towards third parties shall



be adequately taken into account. We shall treat the information obtained during the review as confidential. In the event of a suspected violation of our Supplier Code of Conduct, the supplier is obliged to support our investigation of the situation.

4. Should a violation of the provisions of our Supplier Code of Conduct be identified, we reserve the right to take appropriate measures depending on the severity of the violation and the extent of the supplier's fault. This includes in particular a demand to remedy the violation of legal provisions or contractual agreements without delay, the assertion of claims for damages, and the termination of the contract. In particularly serious cases, we have the right to extraordinary termination of the contract for cause. Such cause shall be deemed in situations where there is a violation of the prohibition of child and forced labor, if a violation has not been remedied within a reasonable period of time despite our request to do so, or if the supplier's violation is likely to have a negative impact on our reputation.

#### **VII. Data Protection**

1. Insofar as the supplier obtains access to personal data or processes confidential information from us that contains personal data, it complies with the applicable data protection regulations, in particular the principles from Art. 5 EU General Data Protection Regulation (GDPR). The supplier shall ensure that its employees only have access to the personal data to the extent that this is necessary in accordance with the need-to-know principle, and after it has instructed them about the data protection regulations to be complied with and obliged them to handle the personal data confidentially. The supplier shall take appropriate technical and organizational measures to ensure a level of data protection that is at least adequate with regard to the risk resulting from the processing.
2. If the supplier processes personal data on our behalf as a processor within the meaning of Art. 4 No. 8 of the GDPR, the supplier shall only be entitled to process such personal data in accordance with documented instructions from us and only after the supplier has concluded a separate data processing agreement with us pursuant to Art. 28 of the GDPR. Unless otherwise expressly agreed in such agreement, the supplier shall only process such data within the territory of the European Union.
3. If the supplier processes our personal data outside the territory of the European Union or the European Economic Area, where required we will conclude with the supplier the relevant module of the EU standard contractual clauses for the transfer of personal data to third countries, as amended.

#### **VIII. Rights of Retention and to Set off Payments**

The supplier shall only be entitled to set off payments, to withhold documents or services prepared by it which are necessary for the fulfillment of its contractual obligations and to plead non-performance of the contract if its counterclaims have either been established by a final and non-appealable court decision (*res judicata*), are uncontested, or acknowledged by us in writing. The supplier shall also be entitled to set off payments if its counterclaims directly arise from the same contract as our claims.

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

1. The supplier grants us free of charge the right to use industrial property rights and know-how used by the supplier in the performance of the contract in the project. All documents, drawings, programs and other work results that the supplier produces for us shall become our sole property and our possession without any additional remuneration. We are entitled to manufacture parts with the documentation supplied by the supplier, to have them manufactured by third parties, or to transfer this right to third parties.
2. Upon their creation, the supplier shall transfer to us the exclusive rights of use and exploitation of all work results and services capable of being protected by industrial property rights in connection with the performance of the contract.
3. The supplier shall inform us without undue delay of its industrial property rights or rights capable of being protected which existed

prior to the commencement of the contract (hereinafter 'Background IP'), insofar as these are required for the use of the work results and services capable of being protected that are created in connection with the performance of the contract. Such Background IP may only be used with our prior consent in the course of the execution of the contract. The supplier shall grant us a non-exclusive, transferable and sub-licensable right of use, unlimited in terms of content, time and place, in respect of such Background IP. This provision shall also apply to supplier's background know-how.

4. The supplier warrants that it is not aware of any circumstances, in particular of any industrial or intellectual property rights of third parties, which would impede or prohibit the production of the work results and processes necessary to perform the contract and that no claims have been made or may be made against it for infringement of industrial or intellectual property.
5. The supplier shall indemnify us against all claims of third parties arising from the infringement of property rights resulting from its deliveries or services.
6. The supplier is obliged to inform us without delay of all industrial property rights which could prevent the use of the supplier's work results.
7. The supplier is also obliged to inform us of all inventions it and/or its subcontractors/sub-suppliers created in connection with the execution of the order, to submit all documents required for the exploitation of inventions and to provide all information requested by us regarding inventions. The supplier's obligation to provide information also extends to its know-how which arises in connection with the execution of the contract. The supplier shall ensure that inventor's rights are claimed against employees and/or independent persons and transferred to us. We may then register the invention ourselves for the creation of an industrial property right in Germany and abroad and shall bear the associated costs. Each party shall bear its own employee inventor's compensation for its employees to be paid within the scope of the statutory provisions. The supplier shall conclude agreements in good time with all its employees, subcontractors/sub-suppliers and other vicarious agents used in the performance of the contract, by which they acknowledge the above agreements to be binding on them. The supplier undertakes not to contest industrial property rights arising in the course of the work and registered by us, either with an action for annulment or with an objection, or to support third parties in contesting these industrial property rights.
8. The transfer of inventions, rights of use and exploitation according to this Clause IX is fully compensated upon the payment of the relevant agreed-upon remuneration.
9. Both parties agree that in principle each party shall have unrestricted access to the work results of the joint research and development or commissioned research and development, including any intellectual property rights and know-how arising therefrom, for the purposes of further research, development and exploitation as soon as they are available and to the extent nothing to the contrary results from the relevant individual agreement. Upon request, we shall conclude a separate agreement with the supplier on the form of such right of use in its favor and on the remuneration for this in each individual case.

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

1. The prices stated in our 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 shall only exist in the event of a special agreement; however, the supplier shall take back the packaging at our request.
2. Unless otherwise agreed in writing, the prices stated in the order, including travel costs and other expenses, shall apply. If, by way of exception, travel expenses are to be invoiced on the basis of a specific agreement, settlement shall be made exclusively in accordance with our travel expenses guideline. If necessary, the supplier is obliged to obtain our travel expenses guideline. Travel costs and other expenses may be invoiced at a maximum of the amount provided for by law.



3. The prices shown in the order are net prices to which the respective statutory value added tax - insofar as this is incurred - shall be added. Should value added tax be payable on the prices, the supplier shall specify the legally owed value added tax in its invoice. The supplier shall verify and be responsible for the tax implications affecting it and shall indemnify us against all claims resulting from infringements of tax regulations.
4. Supplier's invoices must always refer to our corresponding order data (number and date of the order). Invoices must always be sent to our central accounting department in Berlin, irrespective of the delivery address. We shall pay within 30 days of receipt of a proper invoice. If payment is made within 14 days of receipt of a proper invoice, we shall be entitled to deduct a 2% discount.
5. We shall be entitled to rights of set-off and retention to the extent provided by law.

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

1. The delivery time stated in the order is binding. If circumstances arise which indicate that the agreed delivery time cannot be met, the supplier is obliged to inform us immediately.
2. In the event of a delay in delivery, we shall be entitled to the statutory claims. In particular, we shall be entitled to claim damages instead of performance after a reasonable additional period of time set for the performance has passed without result. Even if a contractual penalty has been agreed, we may instead demand the full amount of the damage we can prove was due to supplier's default.

#### **XII. Claims for Defects**

1. We are entitled to all statutory claims for defects without restriction. In any case, we shall be entitled to demand from the supplier, at our discretion, either the rectification of defects or the delivery of a defect-free item (replacement delivery); the supplier shall then be obliged to bear all expenses necessary for rectifying the defect or the replacement delivery. We expressly reserve the right to claim damages, in particular damages in lieu of performance.
2. Insofar as we have a statutory obligation to give notice of defects, our notice of defects shall be deemed to be in time if it is given within ten working days.
3. The statutory limitation periods shall apply to our claims, in particular our claims for defects, against the supplier. The statute of limitations shall be suspended if the legal requirements for this are met; if the supplier, with our consent, examines the existence of a defect or its elimination, the statute of limitations shall also be suspended until the supplier notifies us of the result of the examination, declares the defect eliminated, or refuses to continue the elimination. In the event of subsequent performance or the replacement of defective individual parts by the supplier, the warranty period shall begin anew for these parts.

#### **XIII. Liability**

1. The supplier shall be liable without limitation within the scope of the statutory provisions. In particular, it shall be liable for ensuring that national and foreign patents and other industrial property rights are not infringed by the purchase and use of the items offered and delivered by it. The supplier is obliged to provide appropriate insurance cover.
2. The supplier shall indemnify us on first request against all claims of third parties if and to the extent that it is obliged to compensate us for any damage.

#### **XIV. Additional Requirements when purchasing transport and forwarding services from the supplier**

1. The supplier shall be responsible for loading the goods safely for transport and operation and for unloading them at the recipient's premises. It shall provide the necessary and suitable load securing equipment in accordance with the applicable statutory and other regulations, e.g. VDI 2700 ff., tension belts, anti-slip mats, edge protectors, etc.
2. The supplier shall be responsible for ensuring that it or the persons it

employs for the performance of the service are in possession of a valid driver's license at all times.

3. The supplier shall maintain all necessary insurance, in particular driver's liability insurance and transport insurance, throughout entire duration of the assignment. Upon request, the supplier shall provide us with evidence of the existence of such insurance.
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 such 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 it and its agents, in particular supplier's carriers and their personnel deployed for the transport, comply with the legal regulations applicable to the transport, in particular, where applicable, with §§ 3 ff. GüKG. The supplier and each carrier must hold a permit in accordance with § 3 GüKG, an authorisation in accordance with § 6 GüKG, or a community licence, and must not use such a permit, authorisation or licence in an unauthorised manner.
6. Upon request, the supplier is obliged to immediately submit to us for inspection all documents to be carried along in accordance with the applicable legal regulations.
7. The supplier is a toll debtor and is obliged to pay the toll in the statutory amount.

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

1. Insofar as the supplier's services are intended for use within the scope of an order placed with us by one of our customers ("Customer Order") or are otherwise directly related to a Customer Order, this shall be noted in the order in a form permissible under the confidentiality regulations applicable to the Customer Order.
2. If the Customer Order is cancelled for a reason for which we are not responsible, we shall be entitled to cancel supplier's order without notice for the future by notifying the supplier immediately.
3. In the event of cancellation, the supplier shall be entitled to invoice for services already demonstrably rendered up to the date of receipt of our cancellation notice. The supplier shall have no further claims for payment or reimbursement of costs.

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

1. If the supplier is commissioned by us as a subcontractor for one of our customers, it is obliged, for the duration of the assignment as a subcontractor and for one year thereafter, not to carry out any business activity vis-à-vis this customer related to the same or a substantially similar service as the services which (i) we and (ii) the supplier perform on our behalf for this customer. This applies irrespective of whether this business activity is carried out directly or indirectly, and irrespective of whether this is carried out as a principal, agent, member of a governing body, employee, employer, investor, consultant, controlling shareholder, partner in a joint venture or in any other activity on our own behalf or on behalf of a third party.
2. Paragraph 1 shall not apply if the supplier did not obtain the customer contact resulting in subsequent commencement of business for the customer through its position as a subcontractor. For the duration of the supplier's assignment as our subcontractor and one year thereafter, there exists a presumption that the supplier obtained customer contact through the activity as our subcontractor.
3. Paragraph 1 shall not apply to business activities vis-à-vis a customer who demonstrably already belonged to the customer base of the supplier at least one year prior to the commencement of the contractual negotiations between the supplier and us.
4. If the supplier is commissioned by us as a subcontractor for one of our customers, it must keep the identity of the customer secret from third parties and refrain from making public or using, directly or indirectly,



information which it obtained as a result of its involvement as a sub-contractor, unless we grant prior written consent.

5. In the event of a culpable breach of its obligations pursuant to paragraphs 1 and 4 of this Clause XVI, the supplier shall be obliged to pay us a contractual penalty in the amount of EUR 30,000.00 for each breach and waive the plea of continuation. The assertion of a higher damage by us is not excluded thereby. Any forfeited contractual penalty shall be offset against claims for damages.
6. If we have concrete indications of a breach of the above obligation, the supplier shall be obliged to provide us with complete information in writing within two weeks on the extent to which it has carried out business activities of the type described in paragraph 1 or made public or used information of the type described in paragraph 4 during validity of the Customer Protection Agreement under this Clause XVI.

#### **XVII. Place of Performance, Transfer of Risk, Acceptance, Ownership, Prohibition of Assignment and Advertising**

1. Place of performance for all deliveries and services is Berlin, Germany, unless otherwise agreed.
2. The risk of accidental loss or accidental deterioration of the delivery items or services shall only pass upon handover or acceptance at the respective destination specified by us; in the case of partial deliveries or services, only when the delivery or service has been completed.
3. Insofar as a delivery or service requires acceptance, this shall be recorded in writing or text form. A material defect entitling us to refuse acceptance shall also be deemed to exist if incomplete documentation and operating instructions required for the use of the delivery or service are submitted.
4. The transfer of ownership of the delivery items and objects of performance to us shall be unconditional and irrespective of the payment of the price. If, however, we accept an offer of the supplier for transfer of ownership conditional on payment of the purchase price in an individual case, a reservation of ownership on the part of the supplier shall expire at the latest upon payment of the purchase price for the delivery items and objects of performance. We shall remain authorized to resell the delivery items and objects of performance in the ordinary course of business even before payment of the purchase price, with advance assignment of the claim arising therefrom (alternatively validity of the simple reservation of title extended to the resale). This excludes all other forms of retention of title, in particular the extended retention of title, the transferred retention of title and the retention of title extended to further processing.
5. Supplier's assignment of claims to which it is entitled from its business relationship with us is excluded.
6. The supplier is not entitled to advertise the business relationship with us without our express written consent.

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

1. The exclusive legal venue for all claims against merchants and legal entities under public law arising from the business relationship is Berlin, Germany. However, we are also entitled to sue the supplier at its general place of jurisdiction.
2. In the case of cross-border deliveries, 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 supplier at its general place of jurisdiction or to invoke any other court that has jurisdiction on the basis of VO (EU) 1215/2012.
3. The law of the Federal Republic of Germany shall apply exclusively to all business and legal relations between the supplier 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 Purchasing Terms and Conditions are superseded 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. The German version of these Terms and Conditions can be found on <https://www.iav.com/agb>.