

# General Terms and Conditions of Sale and Supply of IBAF GmbH

## (Issue date: October 1, 2016)

- § 1 General**
- 1 Our terms and conditions as detailed hereinafter shall apply exclusively; we do not recognise the contractual conditions of customers unless we have agreed to these individually in writing.
  - 2 Our terms and conditions also apply where we execute the supply or service without express reservation despite knowledge of the contractual terms of the customer.
  - 3 Oral agreements are deemed null and void. The text of the relevant order confirmation shall apply in all cases.
- § 2 Quotation – Documentation**
- 1 Unless otherwise agreed individually and in writing, our quotations are without obligation. If an order is received on the basis of such a quotation, we shall be obliged to reject this immediately if we are not prepared to provide the corresponding product or service.
  - 2 All documentation, calculations and specifications belonging to the quotation are likewise without obligation; § 1 (2) above applies accordingly.
  - 3 We reserve unlimited copyright on all documentation, calculations, specifications or other written material. Copies may only be made where this is necessary for executing the contract concerned. Documentation transferred in accordance with §2 (1) shall be returned to us on request.
- § 3 Delivery period**
- 1 The scheduling incorporated in an order shall serve as guidance in the handling and timing of the order. Dates will only have a binding character where they are expressly agreed as set deadlines. Such agreement requires the written form to be effective. In all cases, limiting periods shall only begin from the time at which all collaborative actions required of the customer have been completed and, where appropriate, following transfer an agreed payment on account. Subsequent change requests or late collaborative actions on the part of the customer shall extend the delivery and performance times accordingly.
  - 2 Where a delivery time is indicated as binding in our order confirmation, we shall be liable for damage or losses caused by delay in cases where we are unable to prove that such delay is due to causes for which we cannot be held responsible according to the provisions of the underlying contract.
  - 3 Liability for compensation per §3 (2) above is further dependent on the dereliction of duty underlying the delay and default being material to the extent that achievement of the contractual purpose was jeopardised by such action or omission. In this case, the default loss or damage claimed against and payable by us shall be limited to a reasonably foreseeable amount. Damages and compensation over and above such sums are hereby precluded.
  - 4 In the event that the delay or default is attributable to gross negligence, our liability shall be determined in accordance with prevailing law.
- § 4 Delivery – Transfer of risk**
- 1 The danger of accidental loss, damage or deterioration of the supplies or services to be effected by us shall be transferred “ex works” to the customer; where a service or item that has to be physically accepted is the object of our contractual obligation, “ex works” delivery shall be replaced by the respective acceptance procedure or some other act of approval confirming our delivery as being contractually compliant. This applies unless otherwise agreed in writing.
  - 2 In the event that the customer is delayed in performing the acceptance procedure, risk of loss, damage or deterioration shall be transferred to it on notification of readiness to deliver.
  - 3 The costs of packaging and of delivery will be invoiced separately.
- § 5 Prices – Terms and conditions of payment**
- 1 All prices are subject to statutory value added tax where applicable.
  - 2 The customer is obliged to make payments in accordance with the terms and conditions of payment stated in the order confirmation. This applies particularly for any part-payments, down payments or instalment payments. Unless otherwise agreed, our invoices are payable within 30 calendar days calculated from the invoice date.
  - 3 In the event that the customer falls into payment arrears, we shall be entitled to charge interest in accordance with the statutory default interest rate applicable at the time to transactions between businesses; we also reserve the right to claim for more extensive damage or loss.
  - 4 The right of retention (lien) from earlier or other transactions in the business relationship is expressly precluded. This does not apply where the demands are uncontested or have been declared legally binding.
  - 5 The customer is only authorised to offset claims where its counterclaim has been declared legally binding, has been recognised by us or is uncontested.
  - 6 We will notify the customer immediately where it is foreseeable that the agreed payment will be insufficient to achieve the desired contractual objective. We will also propose a payment adjustment. If this becomes necessary for reasons which, on order award, were not foreseeable by us or are beyond our control, and where no alternative agreement can be reached with the customer, the adjustment suggested becomes binding.
- § 6 Retention of title**
- 1 We shall retain title on all items supplied by us until final payment of all claims arising from the business relationship with the customer.
  - 2 The customer is entitled to sell items to third parties that are still subject of our retention of title (reserved goods). However, in so doing it shall immediately assign the claim on the third party to us as collateral in the amount of the purchase price/payment (including VAT) agreed in the contract between the customer and us. The customer shall remain entitled to assert this claim on the third party as long as the latter does not default on payment or as long as insolvency proceedings have not been applied for or opened with respect to its assets. In these cases, we shall be entitled to revoke the customer's authority to collect claims and will collect the claims ourselves with disclosure of said assignment.
  - 3 In the event that the customer combines or mixes the reserved goods with other goods, we shall receive proportional co-ownership of said combination or mixture in the amount corresponding to the value of the purchase price/payment provided for in §6 (2) above.
  - 4 In the event that the customer further processes the reserved goods, this shall be deemed as having been performed on our behalf.
  - 5 In the event of a levy of execution, seizure of attachment or other disposition by a third party in respect of the reserved goods, the customer is obliged to lodge a third-party action against execution; in the event that the third party does not bear the ensuing costs incurred by the customer, the customer shall bear such costs.
  - 6 In the event that the value of the reserved goods exceeds by more than 10% the value of the securities assignable to us in accordance with this contract, we shall, on demand by the customer, release the surplus securities in a manner of our choosing.
  - 7 The customer shall only take possession of research and development outcomes on full payment of the agreed amount. Our property may be neither mortgaged nor pledged as a security.
  - 8 In the event that our ownership of a research and development outcome expires or lapses as a result of combination, mixing or processing, it is hereby agreed that ownership of the ensuing unitary item shall be transferred to us in

proportion of the value of our contribution (invoice amount) until the agreed monetary amount is fully paid.

- 9 In the event that the research and development outcome is sold on, the customer assigns all rights arising from such sale until full payment of the agreed amount with effect *in rem*.
- 10 In the event of deliveries being made to other jurisdictions in which the above reservation of title regulations do not afford the same protection as in Germany, the customer will do everything in its power in order to provide us immediately with corresponding security rights. The customer will assist in all measures, e.g. registration, publication etc. necessary for and promotional to the effectiveness and implementability of such security rights.

## § 7 Cancellation, liability

- 1 In the event of other breaches of duty not arising from deficient performance, the customer shall not be entitled to rescind this contract in cases where we are not responsible for the infringement. This does not apply where it is unreasonable to require the customer to continue to abide by the provisions of this contract.
- 2 The liability of the company, its legal representatives, employees and agents arising from breach of duty and tort (legal offences) shall be limited to cases of wilful intent and gross negligence. In the event of a breach of major contractual obligations (so-called cardinal duties), the company shall also be liable in cases of minor negligence. In all cases, provided that there has been no damage to life, limb or health, liability shall be limited to the foreseeable, contractually typical loss. In the event of damage to life, limb or health, liability shall be unlimited.
- 3 Where, within the framework of our order confirmation, a limitation to liability for damages is agreed, this shall take precedence over other contractual provisions.
- 4 Liability in accordance with product liability law remains unaffected.
- 5 Liability for damages in the event of a warranty accepted by us likewise remains unaffected.
- 6 Where we, on the basis of an express commitment, are required to manufacture or supply an item as a state-of-the-art research and development outcome, application of the relevant regulations arising from sales law or services contract law shall only be permissible in the event of deficiencies subject to the restrictions provided for in the following subclauses:
  - 6.1 In the event that the research and development outcome achieved by us proves to be deficient, we shall first be granted an opportunity to remedy such deficiency – possibly a number of times, depending on the type of research and development outcome, the deficiency and other circumstances – by way of rectification, improvement or substitute delivery, at our discretion.
  - 6.2 In the event that we reject the opportunity to remedy such deficiency, or the remedial work fails, or if such remedial work is unacceptable to the customer, the customer may, at its discretion, either rescind the contract or reduce the amount payable (discounted price) or demand compensation. The right to rescind can only be exercised in the event of a significant deficiency. This lapses if the customer does not invoke cancellation within 14 days of receipt of notification of such rejection or such failure of the remedial work, or within 14 days after the time at which the unacceptability for the customer of the remedial work becomes apparent.
  - 6.3 In the event of defects of title arising from the violation of the proprietary rights of third parties, we shall only be held liable where these rights exist in the Federal Republic of Germany, the customer uses the research and development outcome in accordance with the contractual provisions, third parties are entitled to lay claim to such outcome, and the customer has notified us in text form immediately of the claims asserted by the third party. Remedial work in accordance with § 8 (1) shall be performed such that we, at our discretion, obtain for the customer the right or authorisation to use the outcome in accordance with the contractual provisions, or modify the research and development outcome such that proprietary rights of third parties affected are not violated, or find an alternative solution with the customer that deviates from the contract.

- 6.4 The customer is obliged to examine the research and development outcome supplied by us immediately and to notify us without delay of any deficiencies. Claims arising from identifiable deficiencies shall only be accepted where they are notified within a period of 14 days from the date of delivery.
- 6.5 Claims for deficiency shall expire in accordance with § 8 (8).

## § 8 Warranty

- 1 To the extent that defects of quality or title arise, we shall be entitled and obliged to carry out appropriate remedial work. The costs and expenses arising from defect rectification or re-supply shall be borne by us.
- 2 In the event that re-supply or provision of a replacement fails to rectify the problem, the customer shall be entitled to rescind the contract, demand a reduction in price and demand compensation in place of the required performance in accordance with § 7.
- 3 In the case of any third-party supplies purchased by us or other major external products, our warranty liability to the customer shall be limited to assigning claims arising with respect to the sub-supplier on submission of a request in text form by the customer. The claims for deficiencies asserted by the customer shall be exclusively made on the third-party manufacturer or supplier concerned. This applies also and in particular to the violation of proprietary rights of third parties by the external manufacturer or supplier.
- 4 Claims for deficiency asserted by the customer shall only be considered where the customer has performed its obligation to inspect the item and to notify us of any deficiencies in accordance with § 377 HGB (German Commercial Code).
- 5 Claims for deficiency shall be submitted by the customer in text form citing all identified deficiencies and indicating all circumstances under which the deficiencies became apparent. A deficiency will be deemed to not exist where the fault or error asserted by the customer cannot be reproduced. If the customer has intervened in the supplied components, hardware or software, claims for deficiency on the part of the customer shall only be considered where the customer can prove that its intervention was not a cause.
- 6 If a deficiency is due to particular instructions issued by the customer or customer-furnished documentation, or if specified load assumptions were inadequate or flawed, we shall be wholly or partly exonerated from our liability to equal degree. This does not apply where, in applying due care and attention, we would have been in a position to identify the cause as defined in sentence 1 and to register our concerns.
- 7 No warranty will be accepted in respect of causes for which we are not responsible within the framework of our performance and fulfilment obligations, such as the use of unsuitable materials, incorrect assembly or installation, natural wear, use of inadequate foundation soil or faulty construction work.
- 8 The period of limitation for quality defects shall be 12 months calculated from the transfer of risk as per § 4 (1). Claims for damages and compensation shall remain unaffected in accordance with § 7.

## § 9 Software

- 1 In the event that our supplies and services also include the provision of software, we accept warranty for the functionality of the software. A warranty covering the results achieved through use of the software is expressly precluded. We do not accept any warranty for the correctness of any or all results within the overall sphere of application of the software or software expansion provided. Utilisation of the results achieved with the software is exclusively the responsibility of the customer.
- 2 All (co-)supplied proprietary software (own software) carries with it simple, i.e. non-exclusive, rights of use granted to the customer. The customer shall not revise, disassemble, reverse-engineer or, using different forms of code, decompile the proprietary software unless the conditions laid down in § 69d or § 69e UrhG (German Copyright Act) are fulfilled. Where the (co-)supplied software is proprietary software of a third-party provider, the aforementioned regulations do not apply. Rather, in these cases, we merely act as intermediaries in providing a contract with the third-party provider. The

customer recognises the associated terms and conditions of usage imposed by the third-party provider, to which we expressly draw the customer's attention. These alone govern the scope of rights granted.

- 3 Irrespective of the scope of rights transferred to the customer, we shall in all cases be permitted to utilise ideas, concepts, acquired know-how etc. for further developments and services both for ourselves and for other customers.
- 4 Where software is provided, further developments of the software (updates and upgrades) shall not be deemed part of the scope of supply unless otherwise expressly agreed.
- 5 In the event that deficiencies arise in the software provided, our warranty obligation shall be restricted to remedial work (rectification of program errors). The warranty is, however, subject to the customer immediately providing notice in text form of apparent deficiencies occurring at the time of item transfer. Deficiencies occurring at a later date must be notified on their discovery. We further do not accept any warranty that the software functionalities will satisfy the requirements of the customer, that all programs will run without interruption, or that all software bugs, defects and errors have been removed. Further warranty claims will not be considered.
- 6 In the event of software errors, we shall only be held liable for the reinstatement or restoration of data belonging to the customer where the customer has ensured that data lost can be recovered at reasonable effort and expense. The customer is therefore obliged to regularly back up data and programs at intervals appropriate to the application.
- 7 All releases, particularly all releases for usage, in respect of the software are to be issued by the customer or licensee. Our service provision (software implementation including documentation) is to be checked and approved for further usage by the customer technical department responsible.

#### **§ 10 Third-party proprietary rights**

- 1 We assume that materials, CAD files, drawings or other documentation and products furnished to IBAF GmbH are not encumbered with third-party rights such as title, lien, copyright, patents and/or other property or proprietary rights that might impede usage by us as defined in this present contract.
- 2 We will inform the customer immediately of third-party proprietary rights that become known to us in the course of the contract where these relate to our development work and could impede agreed usage. The parties to the contract will consult together in order to decide the manner in which such proprietary rights should be accommodated in the further performance of the contract.
- 3 A search of existing third-party proprietary rights and liability for the violation of third-party proprietary rights, or for the payment of damages in recompense for the infringement of third-party proprietary rights by the customer arising from the usage of our goods or services in accordance with the contract, shall only be effected and accepted to the extent offered in the agreed work scope and description.

#### **§ 11 Licensing**

- 1 Where the service we are required to provide relates to the creation or utilisation of software, we will grant to the customer a non-exclusive, time-limited user licence restricted to the territory of the Federal Republic of Germany.
- 2 The licence fee payable for this shall be as indicated in the relevant order confirmation.

#### **§ 12 Confidentiality**

- 1 The parties to the contract shall ensure that information provided by one party to the other of a technical or business nature and identified as sensitive shall be rendered non-accessible to third parties for a period of three years following the end of the order. This does not apply to information which was known to the contractual party or in the public domain prior to such notification, or which was generally accessible, or which enters the public domain following such notification without the involvement or collusion of the other party, or which has become generally accessible, or which corre-

sponds to information which has been disclosed or made accessible to the other party by an entitled third party, or which has been independently developed by an employee of the other party who had no knowledge of the notified information.

- 2 Third parties in the sense of this provision are parties that are not subcontractors that we entrust with work packages as part of the order and that have been similarly instructed to maintain confidentiality.

#### **§ 13 Miscellaneous**

- 1 The legal venue for all disputes arising from this contract is Bochum, Germany.
- 2 German law shall apply; the UN Convention on Contracts for the International Sale of Goods is expressly declared invalid.