

General Terms and Conditions for the acceptance of contract production orders and the performance of research and development assignments



I. General provisions

1. The performance of contract production orders and research and development assignments is subject solely to the following general terms and conditions. These apply to merchants/entrepreneurs, legal entities, as well as legal entities constituted under public law or public law special purpose entities in term of § 310 subs. 1 of the German Civil Code (BGB).
2. These general terms and conditions also govern all future transactions between the principal and us. The general terms and conditions of the principal (including conditions of sale) are not deemed recognised even if no explicit objection has been made in particular, unless their validity has been accepted explicitly in writing.
3. To the extent no other rules have been agreed, the provisions of the works contract law (§§ 631 et seq. BGB) shall apply to all contract production orders and the provisions of the services contract law (§§ 611 et seq. BGB) shall apply to all research & development assignments.

II. Contract subject

1. A contract requires our written order confirmation for its inception. The works explicitly described in our offer letter constitute the subject of the order.
2. The information contained in offers and order confirmations pertaining to qualities and services constitute the comprehensive and definitive scope of the performance. Our public statements, those of sub-suppliers, their agents or third parties (e.g. presentation of product properties in public) do not constitute supplement or amendments to this description of performance or descriptions of the scope of delivery or performance.
3. Deviations in the deliveries from the quantities ordered are possible within the context of common commercial quantity tolerances, both with respect to the total agreed quantity as well as individual partial deliveries.

III. Prices, payment conditions

1. The deliveries and services rendered are invoiced based on the prices stated in the offer or order confirmation plus the respective VAT applicable. The statutory VAT is not included. It is stated separately in the invoice on the day of billing.
2. In the case of individual orders we are bound by our prices for a maximum of four months after the contract is agreed. After this period we are entitled to adjust our prices accordingly if there has been an increase in production costs after the contract was concluded and to invoice the price valid on the day of delivery/service. The same applies if the delivery/service is delayed beyond a period of four months after contract agreement for reasons that are due solely to the contract partner or lie in the scope of the risk he is obliged to bear. If the price increase exceeds 5% of the total price originally agreed, then the contract partner is entitled to rescind the contract. This right to rescind lapses if not exercised within two weeks of the date upon which notice of the new price was given.
3. If goods or research results have to be stored by us because of the customer's default in acceptance, we reserve the right to charge an appropriate separate remuneration for this.
4. The agreed prices are due and payable immediately after delivery/service, to the extent not otherwise explicitly agreed in writing. The allowance of a delayed payment requires an agreement. The contract partner is deemed in default without further notice if payment has not been rendered within 15 days of the due date. The customer is not entitled to retention based on defects, except if the delivery/service is obviously defective, resp. the customer has an obvious right to refuse acceptance of the work; in such cases, the contract partner is entitled only to withhold an amount appropriate to the defect and expected cost of supplementary performance (esp. the costs to remedy defects).
5. We reserve the right to demand an advance payment or collateral from the principal.
6. If, after the contract has been concluded, a substantial deterioration in

the principal's economic conditions becomes known to us, such that the claim for consideration is jeopardised, then our claims shall become due immediately. Such a substantial deterioration in the customer's economic condition is deemed given, esp. if the principal ceases payments, is overindebted, commences insolvency proceedings, or a motion for such proceedings is denied for want of assets. We are entitled then to make further performance dependent upon advance payments or collateral, demand immediate cash payment or rescind the contract without incurring liability.

IV. Resale of goods/mortgage of goods

In the event the principal sells the delivered goods to a third party prior to full payment, as a precaution, the principal is deemed without further notice to have assigned to us all claims against his customer arising from the sale, together with all incidental rights. The assignment applies only to the amount corresponding to our invoiced price. The share of our claim assigned is to be satisfied first.

V. Obligations/liability of the principal

1. The principal is liable for the suitability and quality of the raw materials and substances delivered or provided by him and that they are free of defects. The principal is obliged to disclose to us all safety-relevant properties (e.g. explosion risk) pertaining to the substances he delivers and in the case of performing contract production orders, also to disclose the final products produced and to deliver the current safety data sheets.
2. If in the context of performing a contract production order or a research and development assignment, harmful substances are released by us or if these substances cause environmental disturbances of any kind (including odour nuisances), and if this release or environmental disturbance is due to incorrect or incomplete disclosures by the principal as to the qualities of the materials provided, then the principal is deemed liable to us for all damage arising or that arises for this reason. In the case of a damage incident the principal is obliged to prove that the disclosures made to us were complete and accurate and that the specific risk occurring was unknown to him.
3. If in connection with contract production or a research and development assignment, claims are asserted against us by third parties under hazard liability law regulations (e.g. the German Environment Liability Act, UmweltHG), the principal indemnifies us and holds us harmless in internal relations, unless the claim is based upon a deliberate or grossly negligent breach of duty we committed.

VI. Special provisions for the performance of research and development assignments

1. Research and development results
The results of the research and development will be supplied to the principal after the assignment has been completed, pursuant to the agreements concluded. Research and development assignments are performed subject to application of scientific diligence and compliance with recognised engineering practice. No guarantee is given for the actual and planned attainment of the research and development objectives or the suitability of the results or products for the principal's purposes. No liability whatsoever is accepted for the course of research and development that is unsuccessful or not according to plan. No liability is accepted for any defined result.
2. Inventions, industrial property rights, licenses
a. Should inventions result in the context of the research and development assignment that could lead to the inception of industrial property rights (patents, registered models, registered designs, trademarks), then the contract partner will be informed in writing. On a case-by-case basis, separate agreements will be concluded as to by whom and where any industrial property rights claims should be filed,

who bears the costs and who holds the rights thereto.

- b. The granting of exclusive or non-exclusive licenses of the principal to know-how generated or to work created subject to intellectual property rights or industrial property rights is possible but requires a separate agreement.
- c. The provisions pursuant to No. 2 (a) and (b) also apply where the principal contributed to the tooling costs necessary for the performance of the assignment.

VII. Special provisions for the performance of contract production orders

1. Acceptance and warranties
 - a. Conformity with contractual condition of the delivery item is based upon the time when risk is transferred.
 - b. With the exception of justified refusal of acceptance, the principal is obliged to accept and receive the goods supplied to him. If the principal is in default of acceptance we are entitled to demand compensation for damages caused and any additional expense incurred. The same shall apply if the principal negligently breaches his cooperation duties. Upon incidence of default either or acceptance or payment, the risk of deterioration or accidental destruction transfers to the principal. In the event the principal justifiably rescinds the agreement after default in acceptance, the ordered product will be sold quickly at market prices. If sale is impossible the ordered product will be destroyed or recycled. The costs of production, storage and sale or recycling will be deducted from the sales revenue/the value of recycling. The principal is to bear the costs of any disposal that may be required.
 - c. If by request the goods are sent to the customer, then the risk of accidental destruction or deterioration is transferred to the principal no later than when the goods leave the plant. If the delivery is performed by a forwarding agent, then the risk is transferred to the principal when the goods are delivered to the forwarding agent. This applies regardless of whether the shipment is performed from the place of performance or who bears the freight costs.
 - d. The principal is obliged to inspect the goods without delay after delivery to the extent compliant with proper business procedure. In particular immediate notice is to be given of obvious defects; while notice of obscured defects is to be given immediately upon their discovery.
 - e. The principal's warranty rights presume that he has properly fulfilled his duties of inspection and notice in the case of defects. This does not apply to the extent the defects were concealed by us maliciously or in such exceptional cases as we may have guaranteed properties.
 - f. No warranty rights of any kind will be recognised where the defect arises due to a defect in the raw materials and substances supplied by the principal.
 - g. Claims for defects do not arise solely by virtue of insignificant deviations from the agreed qualities, only insignificant limitations to utility, natural wear and tear or damage resulting from improper handling after transfer of risk, excessive use, unsuitable operating material or due to special external influences not anticipated by the contract. In cases where the principal or third parties have performed changes to the products delivered no claims for defects will be recognised in connection with such changes or the consequences thereof.
 - h. The principal is not entitled to assert claims for the remaining defect-free partial quantities on the basis of a defective partial delivery.
2. Lapse of claims
 - a. Claims due to defects, regardless of the grounds, lapse within one year. However this does not apply to cases subject to § 438 subs. 1 no. 1 BGB (legal defects to immovable property), § 438 subs. 1 no. 2 BGB (Buildings and property on buildings), § 479 subs. 1 BGB (Entrepreneur's recourse claim) or § 634 a subs. 1 clause 2 BGB (Buildings or works, performance of which comprises planning or supervisory services rendered). The cases of exception in the foregoing clause 2 are subject to statutory limitation of three years.
 - b. The limitations according to (a) apply to all claims against us for damages in connection with defects regardless of the legal basis for the claim.
 - c. The limitations pursuant to (a) and (b) do not apply in general to cases of intentional or malicious concealment of a defect or to the extent we have warranted properties for the delivery item. Also the limitations do not apply to grossly negligent breaches of duty—not comprising the delivery of a defective item, resp. rendering of a defective service—negligent breach of material contractual obligations, in the case of a negligent injury to life, limb or health or to application of the product liability law. The limitation for compensation claims also applies to the reimbursement of futile expenditures. The limitation commences for all claims upon delivery; in the case of works upon acceptance.
 - d. To the extent not otherwise expressly provided, the statutory regulations for the beginning of the limitation period, the suspension of expiry, suspension and recommencement of limitation period are unaffected.
 - e. A shift in the burden of proof to the disadvantage of the principal has no connection to the foregoing rules.
3. Inventions, industrial property rights, licenses
 - a. If inventions arise in the context of the contract production order that could lead to intellectual property rights (patents, registered models, registered designs, trademarks), then IBU-Tec AG will assert these and inform the principal immediately. The principal undertakes not to have such inventions protected in his own interest.
 - b. The granting of exclusive or non-exclusive licenses to the principal for know-how created or works subject to intellectual property rights or to such rights is possible, however requires a separate agreement.
 - c. The rules pursuant to No. 3 (a) and (b) also apply if the principal contributes to the tooling costs necessary to perform the order.

VIII. General limitations of liability

1. In cases of intentional or gross negligence on our part or that of a representative or agent as well as injury to life, limb or health, we are subject to the statutory liability. Our liability in cases of gross negligence is limited to those claims for damages which are typical for the contract and which may be reasonably expected, to the extent there is no other exceptional case as listed in clause 1 or clause 3 of this section 1. In all other cases, we are only liable in accordance with the product liability law, for negligent breach of material contractual obligations of if we maliciously concealed a defect or—exceptionally assumed a guarantee for the quality of the product. A material contractual obligation is deemed to be when the breach of duty pertains to a duty compliance with which is penultimate for the proper performance of the contract and compliance with which the contract partner may regularly rely. The compensation claim for the breach of material contractual obligations is limited however to that damage which may be expected from this type of contract, to the extent that none of the exceptions listed in clauses 1 or 3 of this subsection one also pertains.
2. The rules in the foregoing subsection 1 apply to all compensation claims regardless of their legal basis, esp. for defects, breach of contract or tort. They also apply to the claim for reimbursement of futile expenditure. However, the liability for delays in services/deliveries is governed by No. IX of these conditions.

IX. Delivery time and liability for delays in performance/delivery

1. The commencement of any delivery or performance period stated by us presumes that all technical issues have been resolved and the timely delivery of all necessary raw materials by the principal.
2. Compliance with our service and delivery obligations also presumes that the duties of the principal have been performed timeously and properly.
3. If the principal defaults in acceptance or negligently violates other cooperation duties, we are entitled to demand compensation for any damage thus incurred, including additional expense. We reserve the right to assert more extensive claims or rights.
4. To the extent the prerequisites of No. 3 are fulfilled, the risk of accidental destruction or accidental deterioration of the item sold is transferred to the principal at the time when he is in default of either acceptance or debts.
5. We are liable if the delivery or service is delayed:
 - a. in cases of intent or gross liability on our part or on the part of a representative or agent and
 - b. in cases of injury to life, limb or health pursuant to the provisions of the law.
 Our liability in cases of gross negligence is limited to those claims for damages which are typical for the contract and which may be reasonably expected, to the extent there is no other exceptional case as listed in clause 1 or clause 3 of this section 1. Excepting the cases of clause 1 and clause 2 our liability for default is limited to the compensation in addition to performance and instead of performance (including reimbursement of futile expenditure) to ten per cent of the value of the delayed portion of the delivery or service. Further claims by the principal—also after expiry of a performance deadline given to us—are excluded. The foregoing limitations to liability in No. 5 do not apply to negligent breach of material contractual duties; a material contractual obligation is deemed to be when the breach of duty pertains to a duty upon compliance with which is penultimate for the proper performance of the contract and compliance with which the contract partner may regularly rely. The compensation claim for the breach of material contractual obligations is limited however to that damage which may be expected from this type of contract, to the extent that no further case of clause 1 arises. A shift in the burden of proof to the disadvantage of the principal has no connection to the foregoing rules.

X. Data storage/data use

1. We are entitled to store and process test and measurement results for statistical purposes.
2. We are authorised to process or cause to be processed by third parties personal data provided to us in the context of the principal's defined purpose. Storage is only performed for purposes of customer information (newsletter, etc.). No other transfer will be made to third parties.

XI. Place of performance, court of jurisdiction

1. The place of performance for all services and payments and exclusive jurisdiction for disputes is Weimar.
2. The jurisdiction of the courts of Weimar applies even if the customer lacks a general domestic place of jurisdiction or if its domicile is unknown at the time suit is filed.

XII. Separability, applicable law

1. Should any of the foregoing provisions be or become invalid or unenforceable, in whole or in part, the validity of the remaining provisions shall remain unaffected thereby. In place of the invalid provision the provisions of statute shall apply, unless in this case a particular contractual provision has been agreed.
2. The entire contractual relationship and all legal relations arising therefrom are subject solely to the law of the Federal Republic of Germany. The UN Sales Convention (CISG) does not apply.

Weimar, 1st of January 2013

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