

## General Purchasing Terms and Conditions of

### IAV Products GmbH

(V 3.0 January 2009)

#### I. Applicability of Terms and Conditions

1. Subject to deviating agreements in particular cases the conclusion of contracts with us is exclusively governed by the following Terms and Conditions. Adverse or deviating terms or conditions of a Supplier will only have binding effect on us if we have expressly confirmed them. Our Terms and Conditions also apply when we accept deliveries without reservations in the knowledge of a Supplier's adverse or deviating terms or conditions.
2. Our Terms and Conditions shall apply to all of our purchases of services or goods. For entrepreneurs (*Unternehmer*) and legal entities incorporated under public law our Terms and Conditions apply also for all future business relations.

#### II. Conclusion and implementation of the contract

1. The Supplier is under the obligation of accepting our order within two weeks. A contract shall only be deemed concluded with us when the Supplier either accepts our offer without reservation or when he receives our written confirmation of the purchase. In case we issue a written confirmation of the purchase, this confirmation will define the subject and the scope of the contract, unless explicitly agreed upon otherwise.
2. The Supplier undertakes to transfer the title to the delivery items without this title being encumbered by any third party rights.
3. Each delivery must be accompanied by a bill of delivery specifying our order data (number and date of the order, cost center).
4. Amendments, collateral agreements, and additional provisions shall require an explicit agreement in order to become effective; such agreement must be in writing to take effect.

#### III. Acquisition of Software

1. If the Supplier delivers software (also, if we download it), we acquire a simple, to other companies within the concern (§ 15 AktG) sub-licensable, assignable right of use which is unlimited in time, space and content.
2. To all other software, including accessories, which is part of the contractual deliverables (i.e. individual software, customized software, documentation, concepts, etc.) we acquire an exclusive, sub-licensable and assignable right of use which is unlimited in time, space and content.
3. The Supplier shall indemnify us from all claims of third parties which derive from the infringement of industrial or intellectual property rights by its software, independent from the fact if fit is standard or individual software.
4. If the licensing of a software for several users is not clearly labelled for named users or concurrent users, the software shall be deemed licensed for concurrent users.
5. The use of open source software within the deliverables shall only be allowed with our prior written consent.
6. If the Supplier uses open source software within the deliverables without our prior written consent, the Supplier must at our command do everything commercially reasonable to replace the software with equivalent proprietary software.
7. License-Audits by the Supplier are only allowed,
  - if there is reasonable suspicion that we have exceeded our rights of use,
  - if the Supplier has declared such reasonable suspicion in writing more than two months preceding the audit,
  - as far as the audit is performed by a lawyer or tax auditor who is sworn to secrecy by law and who is commissioned by us so that he will not alone have access to our systems, and
  - the date of the audit is coordinated with us in due time at least two weeks in advance.

The Supplier shall not be allowed to copy data during the audit unless we explicitly allow it in writing.

#### IV. Documents and Information

1. We reserve the property rights (including intellectual property rights) in all technical specifications, illustrations, drawings, calculations, samples, and any other documents. These must not be made available to third parties without our explicit consent in writing. Such documents and information may be used solely for the manufacture and delivery of goods as per our order. They must be returned to us after the settlement of the order without having to be asked for. We furthermore reserve the right to demand the conclusion of a confidentiality agreement at any time. The Supplier must return all documents and data after delivery, at the latest, however, after acceptance (*Abnahme*).
2. The documents produced by the Supplier for the delivery (sketches, plans, etc.) must be handed over to us clearly arranged and completely as originals, copies or – if so requested by us – as electronic media on suitable data carriers. The Supplier shall be allowed to destroy the documents produced in connection with his deliveries after the periods of limitation have ended. However, before that the Supplier must offer to hand over such documents and must inform us about the intended destruction. The documents may only be destroyed, if we are in delay of accepting the documents offered.

#### V. Right of Retention

A right of retention of the Supplier for his deliverables or documents which are necessary for his performance is excluded. The Supplier is insofar under the duty to perform in advance until completion.

#### VI. Industrial and Intellectual Property Rights and Know-how

1. The Supplier grants to us, on a gratuitous basis, the right to use within the project such industrial and intellectual property rights and know-how as the Supplier has used in performing the contract. All documents, drawings, programmes and other work products prepared by the Supplier for us shall be deemed to pass to our sole ownership and possession without any additional compensation being payable therefor. We shall be entitled to produce (or have third parties produce) parts using the documentation furnished by the Supplier, and shall likewise be entitled to transfer and assign this right to third parties.
2. The Supplier transfers to us the exclusive rights of use and exploitation to all works and services the Supplier renders in connection with his performance of the contract, to the extent such works and services are capable of being the subject-matter of industrial and intellectual property protection. The compensation agreed in each case shall be deemed to constitute full consideration for the transfer of inventions and for the right to use and exploit them.
3. The Supplier hereby warrants that he is unaware of any facts or circumstances, and in particular that he is unaware of any industrial or intellectual property rights of third parties, which would impede or render it illegal to produce the products and processes necessary to perform the contract and that no claims have been made or may be made against him for infringement of industrial or intellectual property.
4. The Supplier shall indemnify and hold us harmless against all claims of third parties which are the consequence of infringements of industrial and intellectual property rights resulting from the Supplier's deliveries or services.
5. The Supplier shall inform us without delay of all industrial and intellectual property rights which might constitute impediments to the use of the Supplier's work products.
6. The Supplier shall further inform us of all inventions the Supplier and/or his sub-contractors/sub-suppliers made in connection with performing the contract, shall disclose to us all documents necessary in order to exploit the inventions and shall provide us with all such information as we may request with respect to the inventions. The Supplier's duty of information is also deemed to extend to such know-how as he may gain in the course of performing the contract. The Supplier shall ensure that he shall claim all inventor's rights from employees and independent contractors, and shall transfer and assign the same to us. We may thereupon apply for registration of industrial and intellectual property rights covering the invention ourselves domestically and abroad, and shall bear the costs associated therewith. Each Party shall itself bear the cost of paying its employees such compensation for employee inventions as is required by law. The Supplier shall in due time enter into agreements with all such employees, subcontractors/sub-suppliers and other assistants/vicarious agents as he uses in performing under the agreement. Such agreements shall provide that the employees, subcontractors/sub-suppliers and other assistants/vicarious agents used by the Supplier acknowledge the terms set forth above to be binding upon them. The Supplier undertakes that he shall not pursue nullity actions or file oppositions with respect to industrial and intellectual property rights originating in his work products and for which we have filed applications for registration, nor shall he support third parties who take action of any kind against such industrial and intellectual property rights.

#### VII. Prices and Payments

1. The prices quoted in the 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 materials applies only when specifically agreed upon. However, the Supplier will take back the packaging materials at our request.
2. We are entitled to the rights of offsetting claims or rights of retention to the extent provided for by law.
3. Independently of the delivery address, all bills shall be addressed to our central accounting department *Zentrales Rechnungswesen* in Berlin. We pay all properly issued bills within 30 days of receipt. Should we pay a properly issued bill within 14 days of receipt, we are entitled to subtract a discount of 3 % (*Skonto*).

#### VIII. Period of Delivery

1. The period of delivery quoted in the order is binding. Should any circumstances arise as a result of which the delivery time agreed upon cannot be adhered to, the Supplier is under the obligation to inform us immediately.
2. In case of a default in delivery, we are entitled to the claims provided for under applicable law. We are specifically entitled to demand damages instead of the performance (*Schadensersatz statt der Leistung*) after a reasonable grace period granted by ourselves has expired without success. Although contractual penalties may have been agreed upon, we may choose to demand full compensation for the damage provably caused by default instead.

#### **IX. Warranties / Claims of Fault (*Mängelansprüche*)**

1. We are without any restrictions entitled to all claims of fault (*Mängelansprüche*) legally provided for under applicable law. In any case, we are entitled to demand subsequent performance by choosing between remedying the defect or delivering goods / rendering services free of faults (substitute deliveries); the Supplier is then under the obligation to bear all costs required for the remedy of the defect or the substitute delivery. We specifically reserve the right to claim damages and in particular the right to demand damages instead of the performance (*Schadensersatz statt der Leistung*).
2. Should the law place us under the requirement to give notice of defects / to object faults, our complaint shall be deemed as having been made in due time if it was made within ten working days.
3. The periods of limitation provided for under applicable law shall apply to all our claims against the Supplier, especially our claims of fault (*Mängelansprüche*). If the legal requirements for this case have been met, and especially if the supplier analyses the existence of a fault or the means of remedying it with our consent, the running of the period of limitation is suspended until the Supplier notifies us of the result of his analysis, declares that the fault has been remedied, or refuses to continue with the remedy of the fault. In case of a subsequent performance or the exchange of defective individual parts by the Supplier, the period of limitation for these parts shall begin anew.

#### **X. Liability**

1. The Supplier shall, to the extent provided for by the law, be held liable without any restrictions. He shall be liable especially for the non-infringement of any national or foreign patents or any other industrial or intellectual property rights by the purchase and use of the objects offered and delivered by the Supplier. The Supplier is under the obligation of safeguarding adequate insurance coverage.
2. The Supplier releases us from all third party claims upon our first request if he is liable to us for the payment of damages, and to the extent he so is.

#### **XI. Clientele Protection**

1. Should the Supplier be deployed by ourselves as a sub-contractor for one of our clients, he is under the obligation of
  - not performing any business activities for this client for the duration of his commission as a sub-contractor and during the immediately subsequent period of six months by which he would enter into competition with ourselves or with one of our affiliated companies, this business activity being in any way connected to the subject matter of his commission by ourselves; whereas this shall be independent of whether this business activity is performed directly or indirectly, and independently of whether it is transacted by him as principal, agent, member of a directing body, employee, employer, investor, consultant, controlling shareholder, partner of a joint venture or in any other function, be this in his own or in another's name;
  - maintaining the client's identity confidential towards third parties and refraining from directly or indirectly publishing or using any information which he has received due to having been commissioned as sub-contractor unless previously having obtained our consent in writing.
2. Should the Supplier violate the above obligations, he is – under waiver of the plea of continuation of offence – obligated to pay a contractual penalty which is immediately due for payment, in the amount of EUR 30,000.00 for each case of infringement. This shall not preclude any claim by ourselves for higher damages.
3. Should we establish any actual evidence for an infringement of the above obligations, the Supplier shall be under the obligation of informing us fully within two weeks of the facts, stating whether and to what extent he has developed business activities of the type described in section XI.1, first dash or made information of the type described in section XI.1, second dash public, or has used such information, during the period in which the clientele protection clause was in effect.

#### **XII. Place of Performance, Passing of the Risk, Title, Covenant not to Assign, Advertisement**

1. Place of performance for all deliveries / services rendered shall be Berlin unless otherwise agreed upon.
2. The risk of accidental loss or accidental deterioration of the delivery or service item shall not pass to us until possession of the delivered merchandise has been transferred (*Übergabe*) or the respective service has been accepted (*Abnahme*) at the respective destination; in the case of partial deliveries or services rendered in part, said risk shall not pass to us until all of the goods have been delivered or the service has been rendered in full.
3. Title to the goods delivered or services rendered shall pass to us without any limitations and encumbrances once the delivery or service item is transferred (*Übergabe*) resp. accepted (*Abnahme*). However, a simple clause of retention of title set forth in Supplier's general terms and conditions shall be accepted.
4. The assignment of a Supplier's claims against us which arise from the business relationship is excluded.
5. Without our express consent in writing to such action, the Supplier shall not be entitled to quote his business relationship with ourselves in his advertisements.

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

1. The exclusive legal venue for all claims against merchants and legal entities incorporated under public law which result from this business

relationship is Berlin. We reserve the right to also sue Suppliers at their place of general jurisdiction.

2. In case of cross-border deliveries, Berlin is the legal venue for disputes arising out of the contractual relationship (Article 23 of the European Council Directive on Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters [EuGVVO] or Article 17 of the European Civil Jurisdiction Convention [EuGVÜ]). We reserve the right to also sue the Supplier at its place of general jurisdiction or call upon any court which has jurisdiction according to said European Council Directive or the European Civil Jurisdiction Convention.
3. All legal relations arising out of or in connection with the contractual relationship between the Supplier and us are governed by the substantive law of the Federal Republic of Germany; the United Nations Sales Convention (CISG) shall be excluded.

#### **XIV. Final clauses**

1. In case of differences between the German and English version of these Terms and Conditions only the German version shall apply and be legally binding.
2. If any provision of these Terms and Conditions is or will be invalid, it will not affect the validity of the other provisions hereof. In place of the invalid provision new provisions shall be inserted which will in meaning get closest to the economic goals of the contract with due observance of the parties interests.
3. All of our earlier versions of the General Purchasing Terms and Conditions are substituted by these provisions.

**Note pursuant to section 33 of the *Bundesdatenschutzgesetz* (Federal Data Protection Act): the Supplier's data will be processed electronically.**