

# General Terms and Conditions

ibk IngenieurConsult GmbH (*hereinafter "ibk"*)  
Kornstraße 17 - 21 • 30167 Hanover • Germany



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## §1 VALIDITY OF THE TERMS AND CONDITIONS

- (1) For all - also future - services of ibk (*services, delivery of goods and engineering services*) in national and international business transactions, exclusively the terms and conditions of ibk contained in the respective order confirmation as well as the following General Terms and Conditions shall apply, even if they are not explicitly mentioned in later contracts or in business correspondence.
- (2) Any conflicting, additional or deviating provisions, in particular purchasing conditions of the client, shall only become part of the contract if they have been expressly agreed in writing. They shall also not apply if ibk performs services without reservation in the knowledge of conflicting or deviating conditions.
- (3) An integral part of the agreement between the parties is, in the case of their inclusion, the concluded (*framework*) contract, the offer of ibk, the order confirmation of ibk, the respective service description and these general terms and conditions. In the case of contradictions the agreements shall apply in the order listed in this paragraph.

## §2 CONCLUSION AND FORM OF CONTRACTS

- (1) Offers and cost estimates of ibk are subject to change and non-binding, unless they have been expressly designated as binding. This requirement of the written form itself can only be waived by written agreement.
- (2) The written order confirmation of ibk - if issued - is authoritative for the term, type and scope of the services and the respective price.
- (3) Contracts as well as any guarantee statements require the written confirmation by ibk to come into force. This requirement of the written form itself can only be waived by written agreement.
- (4) A contract for the provision of services only comes into effect when the contract is signed by both parties, upon receipt of the order confirmation from ibk or when the ordered services are carried out.

## §3 SERVICE CONTENT AND EXECUTION / COVID-19 PANDEMIC

- (1) The scope of the services is derived from the contract or the offer and the order confirmation of ibk.
- (2) ibk renders the contractually owed services through qualified personnel. Proof of the qualification of the personnel deployed will be provided on request.
- (3) ibk provides the tools required for the service.
- (4) The employees of ibk do not enter into an employment relationship with the client. The client will issue instructions exclusively to the responsible employee named by ibk with effect for and against ibk.
- (5) The use of sub-contractors, who work on behalf of ibk, is also possible without the client's prior express consent.
- (6) Execution deadlines are only binding if ibk expressly confirms them as fixed deadlines.
- (7) The dates and deadlines stated in the order confirmation or in the contract are agreed upon under the condition that business operations are not disrupted by the COVID-19 pandemic. Incidents associated with the COVID-19 pandemic or similar circumstances, which, for example, lead to a (partial) lockdown of public life, to a lack of means of transport, to operational disruptions due to the limited presence of employees, delayed delivery of raw materials and components, difficulties with border clearance and import or export customs clearance or impairments of travel activities, will - insofar as this has an effect on performance periods and deadlines - be extended for as long as the incident continues. The client is not entitled to rescind the contract or to assert claims for damages. Furthermore, if necessary, the adjustment of the specified services to changed circumstances, such as the changeover from on-site activities to remote working mode, shall take effect.

## §4 SPECIAL CONDITIONS FOR SERVICE WORK

- (1) Without a supplementary agreement, the performance of service work comprises only the performance of preventive maintenance on a defined maintenance object, i.e. regular, not occasion-related work to maintain the maintenance object in a condition consistent with normal wear and tear, including its inspection in accordance with the respective manufacturer's specifications. Such services include delivery and installation of spare parts (*mainly small parts such as gaskets*). The delivery and installation of spare parts require a separate order.
- (2) For corrective maintenance measures, e.g. repairs in case of component failure or damage to the maintenance object, ibk submits a cost estimate to the client based on the inspection report. The corrective maintenance measures are only carried out in accordance with the client's order; a deviation of up to 15% between the actual and the estimated cost expenditure shall be deemed agreed.
- (3) The use of parts shall be decided upon as and when necessary, however, the replacement of parts other than those directly affected may also be necessary for the execution of work.
- (4) As a rule, the client shall facilitate the proper exposure (*if necessary dismantling and/or removal*) of the maintenance object. This includes in individual cases, at the request of ibk, e.g. support provided by qualified auxiliary personnel, the use of crane systems or scaffolding as well as the provision of utilities such as electricity or compressed air. The provision of transport facilities shall be effected according to ibk's instructions.
- (5) The service is deemed to have been accepted when the maintenance object is recommissioned without objections.

## §5 SPECIAL CONDITIONS FOR ENGINEERING SERVICES

- (1) Engineering services, such as the preparation of mechanical or electrotechnical planning for a plant or machine or the preparation of a risk assessment or documentation, are always furnished on the basis of the information provided by the client. The latter is responsible for the correctness and completeness of this information: therefore, ibk will not check this information in detail. ibk will only investigate the facts if this has been expressly agreed.
- (2) No specific success is owed with the acceptance of the engineering services; the technical implementation of the rendered services is entirely the responsibility of the client.
- (3) Insofar as work services are nevertheless involved, acceptance is deemed to have taken place if the client does not refuse acceptance within 14 days of receipt of the notice of completion from ibk with good reason.

## §6 SPECIAL CONDITIONS FOR THE DELIVERY OF PLANTS/COMPONENTS

- (1) The agreed services are provided in accordance with the recognised rules of technology. The obligation to perform includes the delivery and, if expressly agreed, the installation of the plant or components for facilities within the defined interfaces. The functionality of the plant is only guaranteed up to this interface. No promise is made with regard to the durability of the plant, unless ibk has given an explicit durability guarantee.
- (2) The client shall obtain or arrange for any approvals / permits / notifications / communications to / from third parties (*offices, authorities, etc.*) required for the plant on his behalf and at his own expense. The client as operator is solely responsible for the plant.
- (3) The client shall be notified of the completion of the plant or component by means of a notice of completion. After completion of the plant or component, a trial run will be performed, if expressly agreed upon, in which the essential characteristics required for the operation and function of the plant or component are tested. The trial

operation is considered to be trouble-free if there are no defects affecting the function.

- (4) After completion of the trial operation or after completion of the plant or component, depending on whether a trial operation has been agreed upon, ibk will inform the client of the readiness for acceptance. If, within a period of 2 weeks after receipt of the notification of readiness for acceptance, the client does not carry out acceptance without giving written notice that he is prevented from carrying out acceptance for factually justified reasons, the plant or component shall be deemed to have been accepted (*fictitious acceptance*). The plant or component shall also be deemed to have been accepted without defects as soon as the client puts it into use or into operation - even if only partially - without authorisation (*fictitious acceptance*).
- (5) In all other cases, acceptance shall be effected by means of a written acceptance report (*i.e. signed by both contracting parties*). If the client refuses to sign the acceptance report, it will be sent to him by email/fax/letter. The content of this acceptance report will be deemed to be confirmed by the client unless he informs ibk in writing within 5 working days of the reasons for not acknowledging the acceptance report.
- (6) Minor defects which do not impair proper functioning of the plant or components do not entitle the client to deny acceptance.
- (7) If no maintenance contract with ibk exists, the client is responsible for plant maintenance from the time of plant handover (*at the latest 14 days after notification of completion*).

## §7 SPECIAL CONDITIONS FOR ASSEMBLY AND COMMISSIONING

- (1) The term "assembly" is uniformly used for assembly and commissioning. They shall be carried out on the respective assembly object specified in the statement of work. Work on other plants, machines or machine components is generally not owed. This does not apply in the event of imminent danger. If it should be necessary to carry out work on other plants, machines or machine parts in order to complete the work, we will inform you accordingly. This work is then to be carried out by the client as a preliminary work towards our services.
- (2) If programming work is required during commissioning, then this only includes those programming steps which are necessary for commissioning according to the manufacturer's specifications. ibk only carries out the programming work. Errors in the software itself are the responsibility of the software or hardware manufacturer and are beyond the responsibility of ibk. For the execution of the work all necessary interfaces and the necessary software must be provided.
- (3) ibk bears no responsibility for the construction site equipment unless this has been expressly agreed in writing.
- (4) For each type of assembly the client must assume the following obligations at his own expense:
- Timely provision of the necessary lifting gear for unloading (*forklift, crane, heavy-duty crane, etc. as required*);
  - Provision of auxiliary personnel such as the required skilled workers or helpers with the necessary tools in the required number;
  - Provision of operational forces and water including the necessary connections up to the point of use, heating and general lighting;
  - At the assembly site, the availability of adequate storage space for the delivery items, installation materials, tools, etc. in sufficiently large, suitable, dry and lockable rooms and, for the assembly personnel, the provision of appropriate work and common rooms including sanitary facilities;

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- e. The client shall take the necessary measures to protect ibk's assembly personnel and material, e.g. by providing protective clothing and protective devices which are necessary due to special circumstances at the installation site and which are not customary in ibk's industry;
  - f. The client shall ensure that the unloading site can be reached via an adequately secured, passable and load-bearing access road;
  - g. Prior to the start of the assembly work, the client shall provide the necessary information on the location of concealed power, gas and water lines or similar installations as well as the necessary structural data without special request;
  - h. Prior to the start of assembly, the delivery items required for the commencement of the work must be available on site and all necessary preliminary work must have progressed to such an extent that the installation or assembly can begin immediately upon arrival of the assembly personnel and can be carried out without interruption;
  - i. If the assembly is delayed due to circumstances that - in particular at the construction site - occur through no fault on the part of ibk from the client's sphere of risk, the client shall bear the costs for waiting time and further necessary travel of the assembly personnel to a reasonable extent;
  - j. Each week the client shall diligently certify the working hours of the assembly personnel. The client is obliged to hand over to the assembly personnel a written confirmation of the completion of the assembly without delay.
- (5) ibk shall not be liable for work carried out by assembly personnel or other vicarious agents, insofar as such work is not associated with the delivery or installation or assembly, or insofar as it has been arranged by ibk.
- (6) Unless otherwise agreed, a plant shall be commissioned immediately after assembly. At the time of commissioning, the client must provide the necessary operating materials, such as electrical power, water, chemicals and the like. At the same time, the client will provide the necessary operating personnel for the entire period of commissioning in order to ensure sufficient instruction. The plant is operated at the risk of the client.
- (7) The work is carried out in accordance with the manufacturer's specifications and the recognised rules of technology.

## §8 PRICES AND PAYMENT

- (1) The services are provided at the prices and conditions set out in the contract or in the order confirmation of ibk. The prices stated therein are binding. The value added tax valid at the time of invoicing is added.
- (2) All invoices from ibk are payable within 20 days without deduction - unless otherwise agreed in writing. A payment is considered to have been made when ibk can dispose of the amount.
- (3) In case of late payment, interest on arrears is due in an appropriate amount, but at least, at ibk's discretion, in the amount of the customary bank interest or the statutory interest (§§ 288, 247 BGB). We reserve the right to claim further damages. If ibk decides to accept bills of exchange, this is only on account of performance and not in lieu of performance. ibk is entitled to revoke the deferment of payment inherent in the acceptance of bills of exchange at any time and to demand immediate payment. When accepting bills of exchange, the bank discount and collection charges are calculated from the expiry date of the invoice and are to be paid immediately in cash.
- (4) Counterclaims of the customer shall only entitle him to offset and assert a right of retention if they have been legally established or are undisputed. The client can only assert a right of retention if his counterclaim is based on the same contractual relationship.
- (5) ibk is entitled to only execute outstanding services against advance payment or provision of security if, after conclusion of the contract, circumstances become

known that are likely to significantly reduce the client's creditworthiness and through which the payment of outstanding claims of ibk by the client arising from the respective contractual relationship is jeopardised. This applies accordingly if the client refuses or fails to pay outstanding claims of ibk and there are no undisputed or legally established objections to the claims of ibk.

- (6) Claims by ibk for payment of the remuneration become time-barred within five years, notwithstanding § 195 BGB.

## §9 WARRANTY

For defects as to material and title, which were duly notified in time, ibk provides warranty as follows, to the exclusion of further claims:

- (1) ibk warrants that the services are always carried out according to the current state of technology. This also includes any used spare parts. The warranty period shall be one year as of the start of the statutory limitation period. The warranty period for replacement parts and rectification of defects is 6 months from the end of the rendering of the service.
- (2) All services that turn out to be defective as a result of a circumstance at the time of transfer of risk are to be repaired or replaced free of charge at the discretion of ibk. Replaced parts will become the property of ibk.
- (3) As a matter of principle, only the quality specifications of the contract are considered the quality of the service. Public statements, extolments or advertisements of the manufacturer or third parties do not represent any additional contractual quality specifications.
- (4) The defect-related rights of the client are subject to the condition that he has fulfilled his obligations of inspection and notification of defects according to §§ 377, 381 HGB, in particular that he has inspected the item in question immediately upon receipt and that he has notified ibk immediately in writing of apparent defects and deficiencies that were evident during such an inspection. The client must notify ibk in writing of hidden defects immediately after their discovery. The notification is considered to be immediate if it is made within 6 working days, whereby the date of receipt of the notification at ibk is authoritative in observing the deadline. If the client fails to carry out the proper inspection and/or notify ibk of defects, ibk's liability for the defect is excluded. The client must describe the defects in writing when notifying ibk. The burden of proof for all claim prerequisites, in particular for the defect itself, for the time at which the defect was discovered and for the timeliness of the notification of defects lies with the client.
- (5) Subsequent performance claims are excluded in the case of minor deviations or deviations that are deemed reasonable for the client.
- (6) In order for ibk to carry out all improvements and/or replacement deliveries that appear necessary, the client must give ibk the required time and opportunity after consultation with ibk; otherwise ibk is relieved from liability for the ensuing consequences. Only in urgent cases of a danger to operational safety or to prevent unreasonably extensive damage, in which case ibk must be informed immediately, does the client have the right to rectify the defect himself or have it rectified by third parties and to demand reimbursement of the necessary expenditure from ibk. In this case the client is obliged to provide evidence of all circumstances of the urgent self-remedy.
- (7) If a notification of defects is unjustified, ibk is entitled to demand compensation from the client for the expenses incurred, unless the client proves that he is not at fault with regard to the unjustified notification of defects.
- (8) Out of the direct costs arising from the reworking or replacement delivery carried out by ibk, ibk bears - insofar as the complaint proves to be justified - the costs of the replacement part including return shipment to the original place of dispatch. If the goods are not at the place of delivery, the client bears all additional costs that ibk incurs as a result of this in remedying the defect, unless

the transfer to another location corresponds to the contractual use.

- (9) If the client chooses to withdraw from the contract due to a legal and/or material defect after a failed subsequent performance, he is not entitled to any additional claims for damages due to the defect. If the customer chooses compensation for damages after subsequent performance has failed, the goods shall remain with the client as far as this is reasonable. The compensation for damages shall then be limited to the difference between the purchase price and the value of the defective item. This does not apply if ibk has caused the breach of contract fraudulently.
- (10) No warranty is given in the following cases in particular: Unsuitable or improper use, faulty installation, commissioning and/or improper use by the client or third parties, especially assembly not complying with the state of technology, natural wear, faulty or negligent treatment, improper maintenance, unsuitable operating materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences, insofar as they are not the responsibility of ibk. Furthermore, no warranty is given for consumables, normal wear and tear and damage due to inadequate storage of the products, as well as for adverse changes of the products which are not due to production faults but to natural ageing of the products.
- (11) The client only obtains guarantees in the sense of the law from ibk if they are expressly described as such. Any guarantees of third party manufacturers remain unaffected by this.
- (12) Any improper modifications or repair work carried out by the client or third parties commissioned by him without the prior consent of ibk will invalidate liability for the consequences arising from this. In these cases the warranty obligation for ibk expires in its entirety unless the client proves that the changes or repair work could not have been the reason for the damage.

## §10 LIABILITY

- (1) ibk is liable for damage and poor performance caused by it or by its legal representatives or vicarious agents through intent or gross negligence. The liability takes effect in case of violation of essential obligations, which enable the proper fulfilment of the contract, on which you have relied, on which you had the right to rely and whose culpable non-performance jeopardises the achievement of the purpose of the contract (*essential contractual obligations*) and in case of acceptance of a quality guarantee and in the event of injury to life, body or health also in cases of simple negligence. Otherwise liability is excluded.
- (2) ibk has unlimited liability - for whatever legal reason - in the event of a breach of a guarantee or injury to life, body or health. The same applies to intent and gross negligence on the part of organs and executive staff. The liability for simple vicarious agents (§ 278 BGB) is excluded to the extent permitted by law.
- (3) In the case of a slightly negligent violation of essential contractual obligations within the meaning of paragraph 1, the liability of the contractor for material and property damage is limited to the average damage typically foreseeable under the contract for the type of service concerned and furthermore to the respective coverage of the liability insurance to be taken out by ibk. This also applies to slightly negligent breaches of duty by legal representatives and vicarious agents of ibk. The above limitation of liability also applies to the personal liability of employees, representatives and organs of ibk.
- (4) Liability of ibk is excluded for damages that result from the client's non-compliance with the obligations to cooperate. If damages arise for ibk due to non-compliance, these are to be compensated by the client.

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(5) The client declares that he is entitled to commission the services and must indemnify ibk from any claims due to the infringement of third party rights, in particular the infringement of property rights. Furthermore, the client shall warrant that for services on site, all legal provisions of occupational health and safety are complied with and that employees of ibk are provided with workplaces according to the state of technology. The client shall indemnify ibk against any claims by third parties (*employees, occupational safety and health authorities*) on the basis of the above obligations.

### §11 PROPERTY RIGHTS / COPYRIGHTS / NON-DISCLOSURE ETC.

- (1) All rights to patents, utility models and industrial designs, trademarks, equipment and other industrial property rights as well as copyrights for the contractual object and services remain with the holders of the rights. This also applies in particular to product designations, software and rights to names and trademarks.
- (2) The client is obliged to keep secret for an unlimited period of time all information that becomes accessible to him through ibk that is designated as confidential or is recognisable as business or trade secrets according to the other circumstances (*in particular commercial and technical details of the performance of services by ibk that are not obvious*) and not to record, disseminate or use them.
- (3) The client shall ensure, by means of suitable contractual agreements with the employees and agents working for him, that these also refrain for an unlimited period from any own use, dissemination or unauthorised recording of such business and trade secrets.
- (4) In the event that the client or one of his representatives culpably breaches the confidentiality of classified information towards ibk, the client is obliged to pay ibk a contractual penalty of 200,000 euros per breach, which is set off against the actual damage. If this breach of this agreement is a continuing infringement, the client is obliged to make a further payment of 100,000 euros to the contractor for each month that the infringement continues. A continuing infringement is committed in particular if it discloses the confidential information to an unspecified circle of recipients, e.g. by publication on the Internet. Any paid contractual penalty shall be set off against any claims for damages. In this context, the contractual penalty represents the minimum damage.

### §12 PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

- (1) The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). The contract language is German.
- (2) The following will be agreed with contracting parties within the European Union in its respective extension: The place of performance for services in the sense of § 1 and the place of jurisdiction for all liabilities and disputes arising from the contractual relationship is the headquarters of ibk or - at ibk's discretion - the location of its branch office responsible for the service. ibk is also optionally entitled to sue at the headquarters of the client or at the place of performance.
- (3) With contracting parties outside the European Union in its respective extension the following is agreed: All disputes arising from and in connection with the respective contractual relationship based on these Terms and Conditions and their conclusion shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with these Rules.

### §13 WRITTEN FORM

As a rule, subsidiary agreements are only effective if they are made in writing. Changes and/or amendments must be made in writing. This also applies to the waiver of the written form requirement itself.

### §14 SEVERABILITY

- (1) Should a provision of these terms and conditions be or become invalid or should the terms and conditions contain a gap, the legal validity of the remaining provisions shall remain unaffected.
- (2) The invalid provision shall then be replaced by such valid provision as comes closest to the parties' intentions; the same shall apply in the event of a gap.