

IBExpert Standard Business Terms (General Terms and Conditions)

I. Scope of application, supplementary terms of contract

1.1 The IBExpert Standard Business Terms ("General Terms and Conditions") shall apply to all contractual relations with customers in connection with deliveries and services of IBExpert ("IBExpert") and shall be deemed to be an integral part of the contract, unless otherwise agreed in an individual written agreement between IBExpert and the customer. The General Terms and Conditions also apply to future business relations with the same customer, without IBExpert being required to refer to the validity of each individual contract with this customer.

1.2 These General Terms and Conditions shall apply exclusively. Any deviating, contradicting or supplementary general terms and conditions of a customer shall only become an integral part of the contract if IBExpert has agreed to their validity explicitly and in writing. This requirement of consent shall apply in all cases, particularly if IBExpert, being aware of the general terms and conditions of the customer, performs a delivery or service unconditionally for the customer.

1.3 Solely IBExpert managing directors are entitled to agree on any other terms of delivery and services which deviate from these General Terms and Conditions.

1.4 The General Terms and Conditions shall be supplemented by specific IBExpert Contract Terms for the Supply of Software ("General Terms and Conditions Software"), IBExpert Contract Terms for the Lease of Software ("General Terms and Conditions Software Lease"), IBExpert Contract Terms for the Maintenance of Software and Support Services ("General Terms and Conditions Maintenance"), IBExpert Contract Terms for the Provision of Consultancy and other Professional Services ("General Terms and Conditions Services"). The above provisions shall apply mutatis mutandis, in particular to the scope of application of these terms of contract.

1.5 The following references to the application of statutory provisions serve only for clarification purposes. Therefore, even without such a clarification, the statutory provisions shall apply unless they are directly modified by the following General Terms and Conditions.

II. Offers, conclusion of contract

2.1 IBExpert offers shall be subject to change without notice and non-binding. This also applies if IBExpert has handed over to the customer, prior to the conclusion of the contract, catalogues, product descriptions or technical documentation (e.g. user manuals, calculations, cost calculations), to which IBExpert reserves property rights and copyrights.

2.2 Every order of software programs made by the customer or order placement of any other service by the same shall apply as a binding contractual offer unless otherwise specified in the order or order placement or other agreements. IBExpert has the right to accept this contractual offer within four weeks from receipt by IBExpert. Acceptance can be declared either in writing (e.g. through order confirmation) or through delivery of the software programs or performance of the other services to the customer.

2.3 In the case of electronic transmission of an order, the regulation of Art. 312 e, para. 1, phrase 1, Nos. 1 to 3 German Civil Code (Obligations in Electronic Transfer) shall be excluded. IBExpert shall not be obliged to confirm any orders received by electronic means. Incoming email received by IBExpert on working days between 0:00 and 16:00 hours shall be deemed to have been received at 16:00 hours, unless an earlier retrieval can be proved. Email received by IBExpert between 16:01 and 23:59 hours shall be deemed to have been received on the following working day at 16:00 hours unless an earlier retrieval can be proved.

III. Delivery, dispatch, transfer of risk

3.1 Deliveries of software programs (data media, user manuals and other documentation - if existing) or other goods shall be carried out EXW (Ex Works IBExpert) according to INCOTERMS 2000. At the customer's request, the software programs or other goods can be sent to a different destination. If collection by the customer or pick-up by third parties has not been agreed upon and the customer has not issued any special instructions, IBExpert has the right to determine the type of shipment (in particular carrier, shipping route, packaging) itself.

3.2 The risk of accidental loss and accidental impairment shall be transferred to the customer at the time of delivery. For delivery it does not matter whether the customer is in delay of acceptance. In the case of shipment the risk of accidental loss and accidental impairment shall already be transferred when the shipment leaves the works or the warehouse of IBExpert, at the latest upon delivery to the freight forwarding company, carrier or other person or institution appointed to carry out shipment. In the case of transfer of software programs by electronic means of communication, e.g. internet, the risk shall pass to the customer as soon as the software leaves the sphere of influence of IBExpert (e.g. the server operated by IBExpert during download). In such a case, IBExpert is only responsible for the proper availability of the software for downloading.

3.3 Agreed delivery dates shall only be regarded as binding if they have been explicitly assured to be binding in writing by IBExpert. If delivery dates have been agreed as binding, IBExpert shall not be considered in default without written warning by the customer.

3.4 Compliance with periods and deadlines for deliveries requires that the customer provides all information necessary for delivery in due time, and in particular performs the obligations to cooperate for which he is responsible. If this requirement is not met, the delivery deadline shall be extended appropriately. This shall not apply if IBExpert is responsible for the delay.

3.5 If, despite proper stocking and for reasons not attributable to IBExpert, IBExpert does not receive supplies or services at all or not correctly or in due time from a subcontractor, or if events of force majeure occur, IBExpert shall inform the customer in due time in writing or in text form. In such a case, IBExpert shall be entitled to postpone the delivery during the period of hindrance, or to withdraw from the contract in whole or in part with regard to the part of supplies not yet delivered, provided that IBExpert has complied with the above information obligation and has not assumed the procurement risk. Force majeure is defined as illegal strike and lockout, interventions by public authorities not due to the fault of IBExpert, energy and raw materials shortages, transport bottlenecks not caused by IBExpert's negligence, restraints on operation, for example by fire, water and mechanical damage, and all other impediments which when looked at objectively were unforeseeable and have not been caused by the fault of IBExpert. If a deadline or period of delivery has been agreed with binding effect and the agreed deadline or period of delivery has been exceeded, the customer shall be entitled, following expiry of an adequate additional period granted, to withdraw from the contract for the part unfulfilled, if he cannot objectively be expected to adhere to the contract. The customer shall be entitled to no further claims in such case.

3.6 IBExpert shall have the right to effect partial deliveries and services. This does not apply if the customer has no interest in the respective partial delivery or service.

3.7 If IBExpert defaults on the delivery, the customer can demand compensation for each complete week of delay to the amount of three (3) percent, though no more than a total of fifteen (15) percent, of the net order value of that part of the delivery, which was not put into effective operation because of the delay, provided that the customer can substantiate that he has incurred a loss as a result thereof. The customer may only withdraw from the contract in accordance with the statutory provisions only if IBExpert is responsible for the delay of delivery. On request by IBExpert, the customer shall be required to explain within a reasonable period whether he wishes to withdraw from the contract because of the delay of delivery or whether he insists on delivery.

3.8 If delivery is impossible, the customer is entitled to claim damages, unless IBEExpert is not responsible for the impossibility of delivery. However, the claim for damages by the customer shall be limited to twenty-five (25) percent of the net order value of the part of the delivery that cannot be put into effective operation due to the impossibility. The right of the customer to rescind the contract shall remain unaffected.

3.9 Claims for damages on the part of the customer due to delayed delivery, due to impossibility of delivery as well as claims for damages in lieu of performance, which go beyond the limits specified in subsections 3.7 and 3.8, are excluded in all cases of delayed delivery as well as in cases of impossibility. However, the liability limitations in subsections 3.7 and 3.8 do not apply to the extent that liability is mandatory in cases of intent, gross negligence, breach of a material contract or liability for injury of life, body or health. The limitation of IBEExpert's liability in the case of negligent violation of a major contractual obligation to the typical contractual, foreseeable damage in accordance with subsection 7.2 shall remain in force in any case.

IV. Remuneration, terms of payment

4.1 Unless fixed prices have been expressly agreed, the amount of the price for the respective delivery or service is based on the IBEExpert price list valid at the time of the order confirmation. Prices are quoted net, ex warehouse, without any deductions and exclusive of the statutory value added tax.

4.2 IBEExpert expressly reserves the right to reject checks or bills of exchange. They are always only accepted as conditional payment. Discount and bill charges shall be borne by the customer and are due immediately. If the customer pays invoices by remittance from abroad, any expenses related to the receipt of payment shall be borne by the customer.

4.3 Invoices are due and payable in advance without deduction upon receipt of the invoice, unless otherwise agreed in the order confirmation. Once this period has elapsed, the customer shall be in default. If the customer is in default of payment, the annual default interest rate shall be eight (8) percentage points above the base rate in accordance with Section 247 of the German Civil Code (BGB).

4.4 If no fixed prices have been agreed, IBEExpert reserves the right to change prices reasonably if, after conclusion of the contract, cost increases occur as a result of material purchasing or production costs, taxes, wage costs or incidental wage costs as well as costs of energy and costs resulting from environment protection requirements and if there is a period of more than two months between conclusion of the contract and delivery. Any increase in the above sense shall be excluded to such extent as the costs for the mentioned factors are compensated for by a cost reduction for other than the mentioned factors in relation to the burden of total costs for the supply.

4.5 The customer has a right to offset only if his counterclaims have been legally established or recognized as ready for decision in a lawsuit, or in writing by IBEExpert. Furthermore, the customer can exercise a right of retention only if his claim, on the basis of which he withholds payment, is based on the same contractual relationship and has either been legally established, or recognized as ready for decision in a lawsuit, or is recognized by IBEExpert.

4.6 If the customer is in default with payments to a significant amount, IBEExpert has the right to temporarily discontinue further performance of services, which stem from the same legal relationship to which IBEExpert has contracted, and to demand due all outstanding amounts from this relationship immediately. In this case any agreed dates or deadlines for the performance of outstanding deliveries and services on the part of IBEExpert are invalid, without any requirement for IBEExpert to make specific reference thereto.

V. Retention of title and reservation of rights

5.1 IBExpert reserves all rights to the deliveries and services until full payment of all accounts receivable has been made. This applies in particular to the title to concrete items delivered (e.g. hardware, data media, user manuals, other documentation, etc.) as well as to intellectual property rights (e.g. copyright on software programs and user manuals).

5.2 Deliveries and/or services from IBExpert may neither be pledged to third parties nor transferred to the same as security prior to complete payment of the secured claims. The customer shall be required to notify IBExpert immediately by registered letter if and to what extent seizure by third parties takes place.

5.3 In the event of breach of the contract by the customer, in particular in the case of failure to make payment of the fee due, IBExpert shall have the right to withdraw from the contract according to the legal provisions and to demand return of any goods delivered (e.g. hardware, data media, user manuals, etc.) on the basis of the retention of title and withdrawal, as well as to revoke any rights granted to the customer of use of intellectual property (e.g. rights of use to software programs).

5.4 If the customer has the right to resell the deliveries received from IBExpert in the ordinary course of business, which may be the case, for example, with IBExpert sales partners, the customer shall assign to IBExpert as of now all receivables of the final invoice amount (incl. VAT) of the IBExpert claim, which are due to the customer from his clients or third parties from the resale. The customer shall remain authorized to collect this claim even after the assignment. IBExpert's power to collect the claim itself shall not be affected by this. However, IBExpert shall agree not to collect the claim as long as the customer complies with his payment commitments, is not in default of payment and, in particular, no application has been made for initiation of insolvency proceedings or has been submitted for suspension of payment. If this is the case, however, IBExpert may demand that the customer informs IBExpert of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and notifies the debtors of the assignment. IBExpert shall undertake to release the existing securities at the request of the customer to the extent that the value of the collateral exceeds the secured claims by more than ten (10) percent; IBExpert is responsible for selection of the collateral to be released.

VI. Complaints, customer's obligations to cooperate

6.1 The customer is obliged to inspect goods and services, within eight (8) working days of receipt of the supply or service, for completeness and obvious defects, in particular for obvious deficiencies or damage, and to notify IBExpert in writing about such shortcomings, at the latest within another eight (8) working days from receipt of the supply or service, stating the order details and the invoice number. In the case of non-evident (hidden) defects, the customer shall be required to notify IBExpert about such defects in writing within eight (8) working days after their detection. Observance of the deadline shall be regarded as met if the respective complaint is dispatched in due time. If the customer fails to send the above-defined complaints, liability for any defects not reported shall be excluded. The customer shall bear the burden of proof for compliance and punctuality of the complaint as well as for the existence and time of establishment of a defect.

6.2 In order to avoid losses, the customer is required to ensure that his data is backed up and saved on a daily basis using current state of technology.

6.3 As part of the services owed by IBExpert the customer shall meet any necessary obligations to cooperate free of charge. This includes in particular that the customer shall convey all information necessary to IBExpert, such as the customer's goals and requirements, in due time and unbidden. Furthermore, the customer shall provide any facilities that may be necessary for installation or operation of the deliveries or services in due time.

VII. Liability

7.1 The liability of IBExpert as well as of its legal representatives or vicarious agents is in accordance with the statutory regulations in cases of intent or gross negligence.

7.2 In addition, IBExpert and IBExpert's legal representatives or vicarious agents is not liable for slight negligence in so far as none of the following cases is given:

7.2.1 Damages resulting from injury to life, body or health;

7.2.2. the violation of obligations as defined in Art. 241 para. 2 German Civil Code, if the service can no longer be reasonably expected by the customer;

7.2.3. the acceptance of a guarantee for the quality of a service, for the existence of successful performance or for a procurement risk;

7.2.4. intervention of the provisions of the Product Liability Act;

7.2.5. malice, initial impossibility as well as other cases of mandatory statutory liability;

7.2.6. infringement of a major contractual obligation; in such a case, however, IBExpert's liability shall be limited to compensation for the foreseeable, typically occurring damage or loss.

"Substantial contractual obligations" are those obligations that protect the major contractual legal positions of the customer, which the contract has to grant to him pursuant to its contents and objective; also substantial are those contractual obligations, the fulfillment of which is only made possible by the proper execution of the contract, and on which the customer regularly trusts and may trust. The liability of IBExpert is also limited in cases of gross negligence to the contractually typical, foreseeable damage if none of the exceptions listed above exists. The above regulations do not entail a change in the burden of proof to the detriment of the customer.

7.3 Due to a breach of obligations that is not based on a defect, the customer can only withdraw - provided that other legal requirements are met - if IBExpert is responsible for the breach of obligations. Withdrawal is excluded if the breach of obligations is insignificant.

7.4 IBExpert shall not be liable for any loss of data, if the loss would not have occurred with proper data backup within the sphere of responsibility of the customer. A proper data backup can be assumed, if the customer has verifiably backed up his data in machine-readable form on a daily basis and ensures that this data can be recovered with reasonable effort. IBExpert's liability for data loss - unless by deliberate or grossly negligent actions on the part of IBExpert - shall be limited to the typical recovery effort and expenditure that would have arisen in the case of proper data backup.

7.5 In addition, IBExpert shall not be liable if software errors have occurred following a change in the use and operating conditions, after operating errors, after any interventions in the software program, such as changes, adaptation, connections to other programs, and/or after use in breach of the contract, unless the customer provides proof that the errors already existed at the time of delivery of the product or performance of the service or are not causally connected to the above mentioned events.

7.6 If IBExpert's liability is excluded or limited, this shall also apply to the personal liability of non-executive employees and other vicarious agents of IBExpert. The objection of contributory negligence shall remain open.

7.7 If claims for damages according to the above clauses are excluded or limited, this exclusion or restriction shall also extend in each case to damages in addition to performance and damages instead of performance, no matter on what legal grounds, in particular because of concurrent claims based on defects, a breach of obligations based on the contractual relationship, tort or claims for reimbursement of expenses in accordance with section 284 of the German Civil Code. The provisions stipulated in subsection 3.7 additionally apply to liability for default and the provisions in subsection 3.8 to liability because of impossibility.

VIII. Period of limitation

Limitation of claims by the customer - no matter on what legal grounds - shall expire one year from the statutory commencement of the limitation period. This shall not apply if statutory regulations provide for shorter periods. However, the statutory limitation periods shall apply in the following cases:

- to warranty claims if IBExpert has fraudulently concealed the defect or has provided a guarantee for the quality;
- for claims for damages resulting from injury to life, body or health;
- for other claims for damages based on a deliberate or grossly negligent breach of obligations;
- for claims for damages arising from a breach of other major contractual obligations;
- for claims under the Product Liability Act.

IX. Deadlines, threats of damages, cancellation and termination

9.1 If the customer has the legal right to demand damages instead of performance or compensation of expenses, after a deadline set by him has elapsed without effect, such a setting of a deadline must additionally contain an explicit warning of the customer that he will exercise these legal remedies following expiration of the deadline.

9.2 The above subsection shall apply mutatis mutandis if the customer has the legal right to withdraw from the contract with IBExpert or to terminate this contract for cause without notice after an appropriate period of time set by him has elapsed without effect.

X. Secrecy, confidentiality

10.1 If the contracting parties exchange confidential information of a commercial or technical nature or if information from the sector of one party which is usually regarded as a trade secret, such as customer data, becomes known to the other party, the parties shall be required to handle this information in a strictly confidential manner and not to make it accessible to third parties without the consent of the other contracting party, nor to use it in any way outside the performance of the respective contract. Excluded from the mutual obligation of confidentiality is made for such information that demonstrably

- a) is generally evident or becomes evident without a contracting party having a hand in the matter;
- b) becomes known to a contracting party from another source that has no obligation to the other contracting party to maintain secrecy;
- c) must be disclosed by a contracting party (in particular with respect to courts, criminal prosecution agencies and authorities) due to mandatory legal provisions.

10.2 Each contracting party agrees to return all confidential information physically communicated by the other party at any time at its request to the other contracting party or to destroy such information, according to their choice, without retaining copies or records; archiving of documents to meet statutory retention periods remains unaffected. A contracting party's own records, compilations and evaluations that contain confidential information shall be destroyed immediately at the request of the other party; electronically transmitted and/or stored confidential information must be deleted. The completed destruction/deletion shall be confirmed in writing to the other contracting party on request.

10.3 The period of validity of this confidentiality obligation shall be five (5) years longer than the term of this contract.

10.4 However, IBExpert shall retain the right to transmit research files that may contain trade secrets, such as customer data, to licensors (also OEM franchise partners) in order to answer customer questions and solve customer problems in connection with the software transferred by IBExpert. In this case IBExpert shall also require the licensor to maintain confidentiality.

XI. Miscellaneous provisions

11.1 If the customer is a businessman as defined by the German Commercial Code (HGB), a legal entity under public law or a public trust, Oldenburg is the agreed place of jurisdiction. The same shall also apply in the case that the customer has no general domestic place of jurisdiction. However, IBExpert also has the right to file suit at the customer's registered place of business.

11.2 The Laws of the Federal Republic of Germany shall govern the legal relations between IBExpert and the customer under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.3 Any amendment or addition to these General Terms and Conditions must be in writing; this also applies to the repeal of the written form stipulation. Electronic documents, such as email, without a qualified electronic signature, as defined in the Digital Signature Act, do not adhere to the requirements of the written form.

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