

IBAK Conditions of Sale and Delivery (VuL 3/18)

I. General

1. These Conditions of Sale and Delivery are valid for all existing and future contracts, supplies and other services including consultation and provision of information and so forth. Statements to the contrary from the customer making reference to his general trading and purchasing conditions are hereby expressly contradicted.
2. In the case of IBAK computer software, the IBAK "Conditions for Use of Software" apply in addition.
3. **The contract does not become valid until we have given our confirmation of order in writing. Collateral agreements, reservations, alterations or additions to the contract are only valid if they are confirmed by us in writing.** If we do not issue a confirmation of order to a customer in response to his order, the despatch of the consignment with the invoice and/or delivery note shall be regarded as acceptance of order.
4. We retain full and unrestricted title and copyright to all estimates, drawings, photographs and other data; these must not be disclosed to third parties without our consent and must be returned to us without delay on demand.
5. Drawings, reproductions, indications of weights and measures and any other data appertaining to quotations are to be understood as approximations unless otherwise expressly confirmed. Indications of lengths of cables, ropes and similar are to be understood with a tolerance of +/- 5%.
6. Our units, equipment and systems comply in their conception and design and in the models marketed by us with the general requirements of the EU in relation to health and safety at the time when they are placed on the market. Operation must be performed by suitably qualified and trained personnel and our technical instruction manuals must be observed.
7. We reserve the right to modify our products in line with latest technical developments.
8. Data protection: **We store data within the scope of our mutual business relationships in compliance with the Federal German Law on the Protection of Data (Bundesdatenschutzgesetz BDSG).**
9. For contracts and transactions between us and foreign customers, it is agreed that the law of the Federal Republic of Germany shall apply to all business relationships, irrespective of the legal footing on which they may be based. In addition, standard UN commercial law –CISG- shall apply, inasmuch as this is not modified by these Conditions of Sale and Delivery. Contractual language for business relations with foreign customers is German or English.
10. The customer undertakes to duly dispose of the delivered items when he ceases using them at his own expense and in compliance with the statutory regulations. If the customer transfers title to the delivered items to another company, this company must likewise contract to fulfil this undertaking. In the case of non-compliance, the customer shall carry the costs of disposal.

II. Prices

1. Prices are to be understood in EUROS, excluding installation and commissioning, unless otherwise expressly stated in the confirmation of order, unpacked ex works and excluding the lawful value-added tax valid at the given time.
2. Costs of approvals, expert opinions or certificates from public authorities or testing bodies demanded by the customer will be charged separately.
3. If the customer subsequently wishes to alter, delete or return goods from orders, this will only be effected against payment of the costs incurred.

III. Retention of Title

1. We retain title to all delivered items until receipt of all payments arising from the corresponding supply or service contract respectively (goods subject to an unpaid seller's right of lien).
2. The customer may sell, pledge or give in security the delivered item only with our prior written consent. We must be informed without delay of any confiscation or other disposition by third parties. If he infringes the terms of the contract, in particular in the case of default of payment, the customer is obligated to surrender the delivered items on demand. The enforcement of retention of title and the pledging of delivered items by us shall not be regarded as cancellation of contract.
3. We undertake to release on the customer's demand the securities due to us inasmuch as the value of the securities exceeds the claims to be safeguarded by more than 20 %. The choice of the securities to be released is incumbent on us.
4. If the customer resells or hires out the delivered item in the normal course of business he shall assign to us from the beginning all claims arising from the resale against the buyers or third parties to the extent of the final amount of invoice (including VAT), irrespective of whether the delivered item is resold before or after processing. We are authorised to collect these claims notwithstanding the assignment. Our right to collect the claims ourselves is not affected by this. However, we undertake not to collect the claims as long as the customer meets his liabilities from the collected proceeds, is not in default of payment and also in particular, as long as he has not declared his insolvency and as long as there is no stoppage of payments. In the event of this happening, however, we can demand that he disclose to us the assigned claims and their debtors, provide all information necessary for

collection, surrender the corresponding documents and advise the debtors (third parties) of the assignment.

5. Processing or refashioning of the delivered item by the customer is always effected in our stead. If the delivered item is processed with other items which do not belong to us, we shall acquire co-ownership of the new item. The item resulting from the processing shall also be deemed an item subject to an unpaid seller's right of lien.
6. If the delivered item is bonded inseparably to other items which do not belong to us, we shall acquire at least a share of co-ownership of the new item, proportionate to the value of the delivered item to the other bonded items at the time of bonding. The customer shall therefore preserve the resulting sole property or joint property in our stead.
7. If the customer declares his insolvency, we are entitled to cancel the contract and demand the immediate return of the delivered items.

IV. Conditions of Payment

1. Unless otherwise agreed, all payments are to be made within two weeks from the date of invoice, strictly net.
2. We are entitled to invoice to the customer down payments amounting to 90 % of the value of the given contract, unless 50 % down payment is agreed upon.
3. We have the right to effect deliveries on a cash on delivery basis or against advance payment.
4. Bank and discount charges are to be paid by the customer.
5. The customer is entitled to set off and enforce retaining liens only inasmuch as the adverse claims have been recognised by us in writing, are not disputed by us or have been finally and conclusively established by a court of law.
6. Bills of exchange will only be accepted after prior written agreement and under reserve of their discountability.
7. If the customer defaults in his obligations for payment, we shall be entitled to claim interest on arrears in compliance with §288 BGB at a rate of 8 % over the base rate in accordance with §247 BGB.

V. Delivery Dates for Goods and Services

1. Delivery periods and dates are to be understood as approximations unless we have designated them expressly and in writing to the customer as binding. The delivery period counts from the date of despatch of our confirmation of order but not before clarification of all technical and commercial details and presentation of any permits which might be required. If a down payment, a bank guarantee or a letter of credit is agreed upon, the delivery period counts from receipt of payment or the corresponding documents. If any alterations to the contract goods or services are demanded by the customer within the delivery period, the delivery period shall be extended accordingly.
2. The observance of delivery periods and dates is subject to correct and punctual deliveries from our sub-suppliers.
3. Delivery periods and dates shall be deemed to have been observed if the delivery item has left our factory or readiness for shipment has been advised before their expiry.
4. Partial services and partial deliveries are permitted.
5. If shipment is delayed for reasons for which the customer is answerable, he shall compensate for the costs caused by the delay, beginning one month after advice of readiness for shipment.
6. If non observance of the delivery period is due to force majeure, industrial strife or other events which are beyond our control, the delivery period shall be suitably extended. We shall advise the customer soonest of the beginning and end of such events.
7. The customer can cancel the contract without notice if full performance finally becomes impossible for us before transfer of risk. Furthermore, he can cancel the contract if it becomes impossible for us to execute part of an order and if he has lawful interest in refusing partial delivery. If this is not the case, he must pay that part of the price of contract which falls upon the partial delivery. The same shall apply in the case of inability on our side. Otherwise paragraph XI shall apply. If the impossibility or inability occurs in default of acceptance, or if the customer is solely or predominantly answerable for these circumstances, he shall remain liable for payment in return.

VI. Transfer of Risk

1. The commercial terms agreed upon are to be interpreted in accordance with the INCOTERMS in force at the time of making the contract, otherwise the following shall apply: Shipment of the delivery item is effected at the expense and risk of the customer. Risk is transferred to the customer on acceptance or approval, on shipment or at the latest however when the delivery items leave our premises, irrespective of whether despatch is effected from the place of fulfilment and irrespective of who carries the freight costs. If the goods are ready for shipment and acceptance is delayed for reasons for which we are not answerable, risk shall pass to the customer on receipt of advice of readiness for shipment.
2. We insure the goods to be shipped against transport risks of all kinds on request and at the customer's cost.

VII. Acceptance

The customer must not refuse to accept supplies and services because of negligible defects.

VIII. Defects of Quality

IBAK undertakes liability as follows for defects of quality:

1. All parts or services showing defects within the period of limitation - irrespective of the operating period - shall be repaired free of charge, replaced or supplied anew at our choice, provided that the cause of the defect already existed at the time of transfer of risk.
2. Claims arising from defects of quality expire by limitation after 12 months or after 2000 operating hours, depending on which event occurs first. This does not apply in the case of wilful or grossly negligent breach of obligation by IBAK or fraudulent concealment of a defect. This does not affect the statutory regulations on the suspension of running of time and interruption and resumption of the statute of limitations.
3. The customer must claim in writing without delay for defects of quality. The customer must advise us in writing of obvious defects of our supplies and services at the latest 7 workdays after acceptance or commissioning, and concealed defects at the latest 7 days after discovery; otherwise the notice of defect shall be regarded as out of time in the sense of § 377 HGB.
4. In the case of notice of defects, payments can be withheld by the customer to an extent which is in due proportion to the defects of quality observed. The customer may only withhold payments to assert a notice of defects if there can be no doubt as to its justification and if it has been confirmed by IBAK. If notice of defects was given wrongly, we shall be entitled to have all expenses incurred refunded by the customer.
5. First of all, IBAK or third parties authorised by IBAK must be given several opportunities to fulfil the contract subsequently within a reasonable period of time. If the supply includes special customer-specific services which are not part of our standard sales programme we also have the right to be given several opportunities to fulfil the contract subsequently.
6. If several attempts at subsequent fulfilment are unsuccessful, the customer can cancel the contract or reduce the remuneration by a reasonable amount - without prejudice to any claims for damages under paragraph XI.
7. There is no claim to warranty for only slight deviations from the quality and serviceability agreed upon, for natural wear or damage occurring after transfer of risk as a result of faulty or negligent handling, excessive strain, the use of unsuitable working materials, atomic radiation or on account of particular outside influences which are not provided for in the contract or for non reproducible software errors. Proper handling includes among other things the necessary compliance with our mounting, operating and maintenance instructions, proof of which must be furnished by the customer. If modifications, maintenance or repairs are carried out improperly by the customer or third parties, there is no claim to warranty for these or for the effects of the same. No warranty is given on illuminants.
8. Claims from the customer for his necessary expenses incurred in conjunction with subsequent fulfilment, in particular transport costs, deadheading pay and travelling costs for the journey there or back are hereby precluded. IBAK reserves the right of choice between the elimination of defects and the delivery of a replacement.
9. For claims for damages, paragraph XI (Other Claims for Damages) shall otherwise apply. Other or more far-reaching claims from the customer against IBAK and its vicarious agents arising from defects of quality (in particular for consequential costs or lost profits) other than those regulated in the present paragraph VIII are hereby precluded.
10. For equipment of other manufacturers supplied by us the periods of limitation for defects of quality of the manufacturers concerned shall apply.

IX. Industrial Property Rights, Copyright and Patents; Defective Title

1. IBAK must effect delivery of goods and services which are free of any industrial property rights, copyright and patents of third parties (hereinafter called property rights) solely in the country of fulfilment of contract. Inasmuch as a third party lodges lawful claims in the country of fulfilment of contract against the customer on the grounds of the infringement of property rights by deliveries from IBAK used pursuant to the contract, we are liable to the customer within the period defined in paragraph VIII, section 2 as follows:
 - a) We shall at our choice and at our expense either obtain a licence for the use of the delivered items in question, modify these such that the property right is not infringed or replace them. If it is not possible for IBAK to do so under reasonable conditions, the customer shall be entitled to the lawful rights of cancellation or abatement.
 - b) Our liability for damages is governed by paragraph XI.
 - c) Our liabilities only subsist inasmuch as the customer informs IBAK without delay in writing of the claims asserted by the third party, inasmuch as he does not recognise any infringement and inasmuch as we are solely responsible for all countermeasures and negotiations for settlement. If the customer discontinues use of the delivered items on the grounds of mitigation of damage or for other important reasons, he must inform the third party that the discontinuation of use is not to be understood as recognition of infringement of a property right.
2. Any claims by the customer are precluded inasmuch as he is answerable for the infringement of the property right.
3. Claims by the customer are further precluded, inasmuch as the infringement of the property right is caused by special requirements of the customer, by an application which could not be foreseen by us or through the delivered item being modified by the customer or used together with other products not supplied by us.

4. In the case of infringements of property rights, the provisions of paragraph VIII, sections 4, 5 and 9 otherwise apply accordingly to the claims of the customer regulated in section 1 a).
5. In the case of other defective title, the provisions of paragraph VIII apply accordingly.
6. Other or more far-reaching claims by the customer against IBAK and its vicarious agents on the grounds of defective title other than those regulated in this present paragraph IX are precluded.

X. Impossibility of Performance; Adaptation of Contract

1. Inasmuch as performance is impossible, the customer shall be entitled to claim damages unless IBAK is not answerable for the impossibility of performance. However, the customer's claim to damages is limited to 10% of the value of that part of the supplies which cannot be put into expedient operation because of the impossibility of performance. This limitation does not apply inasmuch as liability is obligatory in cases of premeditation, gross negligence or because of damage to life, bodily injury or damage to health; this provision does not entail any alteration of the burden of proof to the disadvantage of the customer. The right of the customer to cancel the contract is not affected by this.
2. Inasmuch as unforeseeable circumstances in the sense of paragraph V, section 6 considerably alter the economic significance or the contents of the delivery items or have considerable effects on our company, the contract shall be adapted accordingly, taking good faith into account. Inasmuch as this is not economically justifiable, we shall be entitled to withdraw from the contract. If we want to make use of this right of cancellation, we must advise the customer of this without delay after becoming aware of the significance of the events, even if an extension of the delivery time was initially agreed upon with the customer.

XI. Other Claims to Damages and Liability

1. Claims to damages and rights of indemnity of the customer (hereinafter called claims to damages), no matter on which legal basis, in particular for neglect of duties arising from the contractual obligation or for tort are precluded.
2. This does not apply inasmuch as liability is obligatory, in the case of premeditation, gross negligence, damage to life, bodily injury or damage to health. The claim to damages for the neglect of essential contractual obligations is limited to foreseeable damage specific to contracts unless it is a case of premeditation, gross negligence or unless liability is obligatory because of damage to life, bodily injury or damage to health. The above provisions do not entail any alteration of the burden of proof to the disadvantage of the customer.
3. Inasmuch as the customer is entitled to claim damages under this present paragraph XI, this claim shall expire by limitation at the expiry of the period of limitation for claims for defects of quality under paragraph VIII, section 2. In the case of claims for damages under the product liability law the statutory provisions for limitation shall apply. Liability is excluded for damage caused by a defect of the delivered items by slight negligence. Personal liability of IBAK's legal representatives, vicarious agents and personnel for damage caused by them by slight negligence is excluded.
4. Our liability is limited, unless otherwise agreed, to the extent of our manufacturer's public liability insurance, the amount covered being 2.5 Million EUROS for personal injury and damage to property.
5. If our products are exported by the customer, also in the case of further processing and use of components by the customer, we cannot be held liable for the exportability of the contractual products and the national licensing and import requirements in the export countries of the customer.
6. In the case of cancellation of orders for which the customer is answerable, IBAK shall be entitled to claim damages to the extent of the costs incurred.

XII. Place of Performance and Legal Domicile

1. Place of performance and legal domicile for all disputes between the contracting parties arising out of the contract is Kiel, inasmuch as the customer is a general merchant, a body corporate or a public corporation. Notwithstanding this, we are also entitled to take legal action at the domicile of the customer.
2. It is agreed that the law in force in the Federal Republic of Germany shall be applicable to all legal relations between us and the customer, as would be the case between two contracting parties in Germany.

XIII. Arbitration

1. If the contracting parties agree to refer a dispute to arbitration, each party shall appoint an arbiter within 4 weeks at the demand of the opposing party. The Umpire of the Court of Arbitration shall be appointed in each individual case by the president of the Provincial High Court of the legal domicile in accordance with paragraph XII, section 1. The president of the Provincial High Court shall also appoint the arbiter for a contracting party which is in default of appointing an arbiter.
2. The Court of Arbitration shall pass decision on the basis of the agreed delivery conditions.

XIV. Binding Force of the Contract

Even if single provisions of the contract are legally invalid, all other parts of the contract shall remain binding. This shall not apply if adhering to the contract would be lead to unreasonable hardship for one of the parties.

XV. Compliance

1. The customer shall, in general and during the term of this agreement, guarantee compliance with all applicable laws, rules and regulations, including (but not limited to) all anti-corruption laws and regulations. The customer represents that he has not engaged in prohibited activities, either direct or indirect, in connection with the contractual services pursuant to this agreement, as well as any other services rendered to IBAK, and that he will not do so in the future. Prohibited activities include the promise, offer or grant, or the request or receipt, of any undue advantage or benefit with the aim of influencing an action improperly.
2. IBAK is entitled to inspect the customer's ledgers and documents, to audit them and to make copies of them as far as they are related to the execution of this agreement. Inspections shall be reasonable in scope and shall take place at the usual location and at the customary business hours. The customer shall co-operate comprehensively and promptly in the execution of each inspection or each audit carried out by or on behalf of IBAK, including complete and diligent/correct answering of questions and making available of any requested documents.
3. In the event that the customer is in breach of the obligations pursuant to paragraph 1, IBAK shall be entitled to terminate this agreement in writing with immediate effect and without further obligation or liability towards the customer. If IBAK believes that the circumstance which gave rise to termination also constitutes a violation of any applicable anti-corruption law, any claims for payment which the customer may have pursuant to this agreement shall automatically be deemed to be void. The customer shall indemnify and hold harmless IBAK in full measure against all damage, loss, retention of payment, receivables or claims made by third parties as a result of the termination