

## General terms and conditions of procurement for deliveries and services (“procurement terms”) of IFA Technology GmbH, A-2012

### 1. General matters, scope of application

- 1.1 The following procurement terms, as amended at the time, shall be an integral part of the orders by IFA Technology GmbH for deliveries and services (hereinafter “Services”). They shall be applicable towards enterprises, public-law entities and public-law funds (Clients).
- 1.2 By uncontradicted acceptance of these procurement terms, Contractor declares its agreement with their exclusive validity for the order in question and for all and any subsequent transactions without a repeated express agreement being necessary herefor. If specific agreements deviating from these procurement terms are made for a specific order, these procurement terms shall apply subordinately and as a supplement.
- 1.3 Applicability of deviating general terms and conditions of Contractor is hereby challenged, also for the event of them being transmitted to Client in letters of confirmation or in any other way. Unreserved acceptance of order confirmations and deliveries as well as their payment shall not portray acknowledgement of deviating terms and conditions of Contractor.

### 2. Quotation, side-agreements, inadmissible advertising

- 2.1 Oral side-agreements and exclusion, amendment and/or supplementation of these procurement terms shall require Client’s express written confirmation in order to take effect.
- 2.2 The use of orders for reference and/or advertising purposes shall require Client’s prior written approval.

### 3. Drawings, models, tools

Client’s ownership and/or copyrights and/or other protective rights shall remain reserved for all illustrations, drawings, models, samples, calculations, construction plans and other documents which Client provides or has paid for in order to perform the order; these documents may only be used for work to perform the order and may not be reproduced and/or made accessible to third parties without Client’s express written consent. They shall be returned to Client without specific request and free of charge following the completion of the order. To this extent, Contractor shall not be authorised to claim a right of retention.

Contractor shall also impose the above duties on third parties to which it makes Client’s documents accessible.

Contractor engages to treat the present agreement and the information and documents acquired within its framework confidentially and only to make them accessible to third parties to the extent unavoidable for the performance of the agreement. Executive organs and employees as well as contracting parties of Contractor shall be obligated to confidentiality accordingly.

Contractor shall be liable towards Client for all damages caused by a culpable breach by it or a third party to which it has made the information or documents accessible.

### 4. Responsibility for technical information

Client’s approval of drawings, calculations or other documents shall not affect Contractor’s sole responsibility with a view of the object of service. This shall also apply to suggestions, recommendations and other cooperation on Client’s part.

### 5. Inspections

Following punctual prior announcement, Client and/or its employees and/or third parties named by it shall at any time have access to Contractor’s and/or its sub-contractors’ production phases in order to inspect the state of production, the use of suitable material, the employment of the necessary specialised workers and proper performance of the service ordered. Such inspections shall be without any kind of legal effect with a view to all and any acceptance, an inspection shall not replace an acceptance nor shall it in any way limit Contractor’s sole responsibility with a view to its services; in particular no objection of Client’s co-culpability can be derived from it.

### 6. Replacement parts

Contractor assures that replacement parts and parts subject to wear and tear shall be available for each order for 10 years after the end of the warranty.

### 7. Transport of hazardous goods, labelling of dangerous substances, packaging

- 7.1 It shall be a matter for Contractor to check before accepting the order whether the objects stated in the order and/or their component parts are to be classified as hazardous substances (e.g. paints, adhesives, chemicals or inflammable, oxidising, explosion-capable, combustible, toxic, radioactive, corrosive or self-igniting substances) in the country of origin, the country of destination and/or in all transit countries. In such cases, Contractor shall inform Client without delay and extensively. With its written order confirmation at the latest, it shall send Client the binding declarations, correctly filled in and provided with a legally binding signature, necessary according to legal directives for dispatch.
- 7.2 In the packaging, labelling and declaration of hazardous substances, Client shall be obliged to observe the nationally and internationally valid directives in question, in particular
 

Marine freight	Hazardous Goods Ordinance - Sea IMDG Code
Air freight	UNICAO IATA RAR US-Do!
Rail	EVO/RID and Hazardous Goods Ordinance - rail
Road	ADR and Hazardous Goods Ordinance - road
General	Hazardous Goods Ordinance.

All and any deviating and/or additional national directives of the country of destination in question shall also be observed if the country of destination has been stated in the order.
- 7.3 Contractor assures assumption of all damage occurring as a result of incorrect information in the binding declarations or due to the fact that existing directives are not complied with in the handling (packaging, dispatch, storage etc.) of hazardous substances.
- 7.4 Contractor shall take packaging material back free of charge for Client.

### 8. Export licence

Contractor shall be obliged to notify Client in writing, no later than its order confirmation, whether and to what extent state export licences are necessary or other statutory or official terms and conditions are to be totally or partly fulfilled for the order or they are subject to export limitations of the USA.

**9. Prices, pricing, payment terms, arrears**

- 9.1 The agreed contractual prices shall be binding and shall be understood exclusive of the statutory value added tax.
- 9.2 To the extent that nothing to the contrary has expressly been agreed in writing, the prices shall be understood FCA (named destination) pursuant to INCOTERMS 2010.
- 9.3 Payment shall be less 3% discount 14 days after complete and proper performance of the contract and receipt of the invoice or net within 45 days.
- 9.4 In the event of agreed advance payments, the payment period according to Section 9.3 shall be calculated purely from receipt of the invoice. All and any agreed advance payments shall not release Contractor from its duty to claim all services in a specified final invoice.
- 9.5 Arrears shall occur following maturity and only on the basis of an express reminder.
- 9.6 Client shall not fall into arrears of payment if it has erred in good faith concerning the existence of an objection made against Contractor's claims to remuneration or a right of retention which is claimed.
- 9.7 If Client's arrears in payment are based on simple negligence, default interest shall be limited to 3 (three) percentage points above the basic rate of interest (§ 247 German Civil Code) to the extent that Contractor does not prove that it has suffered greater damage as a result of the arrears.
- 9.8 Client's payments shall under no circumstances imply acknowledgement of the proper and flawless performance in the sense of an inspection.

**10. Offset, right of retention**

- 10.1 Rights of offset or retention shall accrue to Client to the statutory extent.
- 10.2 Disputes concerning the amount of remuneration to be paid to Contractor shall not entitle Contractor to cease its services partly or totally, even only temporarily.

**11. Delivery period, delayed delivery**

- 11.1 The delivery time stated in the order shall be binding. Premature deliveries and/or part deliveries shall require Client's express written consent.
- 11.2 Contractor shall be obliged to notify Client without delay in writing if circumstances, from which it can be seen that the delivery time cannot be complied with, occur or become recognisable.
- 11.3 If Contractor is in arrears with its service, Client shall be entitled to demand 0.2% of the total contractual price per full calendar week of exceeding the date, albeit no more than 5% of the total contractual price, as a contract penalty alongside performance. The right to claim further-reaching damages on account of arrears and to claim damages in lieu of performance and the right to withdrawal from the contract pursuant to statutory provisions shall remain unaffected. Client's right to demand the contract penalty shall remain in existence until the final invoice/payment, even if it has not reserved such right at the acceptance of the service.
- 11.4 In addition and notwithstanding its other rights, Client can, following fruitless expiry of a suitable period of grace set by it or if the service is no longer of any interest for it or in the event of danger in delay or in order to avoid further damage or without setting a period of grace in cases of urgency, Client can have a service not yet rendered by Contractor rendered by a third party at Contractor's expense.

In each case of replacement performance by Client, Contractor shall procure all the information necessary herefor for Client at its own expense and, in the event of all and any own or third parties' rights existing thereto, provide documents in its possession and also procure corresponding rights of use to the scope necessary for the replacement performance or hold Client harmless against claims from said third parties' rights.

Upon conclusion of the present contract, Contractor declares its agreement with use of its protective rights in replacement performance by Client or third parties commissioned by it. The claim to payment of the contract penalty originating by the time of commissioning to the third party shall be fulfilled in any case.

**12. Assignment of receivables**

Claims aimed against Client may only be assigned with its prior written consent. This shall not apply to assignments within the framework of an extended retention of title. § 354 a German Commercial Code shall remain unaffected.

**13. Passage of risk**

Contractor shall bear the risk pursuant to the terms and conditions of delivery agreed with it in the individual case pursuant to Section 9.2.

**14. Documents**

Contractor shall be obliged to state Client's order number and the markings contractually agreed on all dispatch papers and/or delivery notes, otherwise all and any consequences, e.g. further delays or additional costs shall be ascribed to it alone.

**15. Warranty, notification of defects, recourse**

- 15.1 Contractor shall warrant for the fact that its services fulfil the acknowledged rules and the current state of the art and the standards, directives and norms existing in Contractor's county and in the country of destination (including safety, industrial protection and accident prevention directives), fulfil the agreed quality, have the guaranteed properties and are also free of defects in quality and title.
- 15.2 Contractor shall be obliged to examine the service without delay for all and any defects in accordance with the circumstances and climatic and other requirements at the place of use in question and to notify Client of existing defects immediately after their discovery.
- 15.3 The statutory warranty claims including the rights from § 478 German Civil Code (entrepreneur's recourse) shall accrue to Client without limitations.  
In any case, Client can, at its choice, demand remedying of defects or replacement service from Contractor, the latter bearing all the expenditure necessary for the purpose of remedying of defects or replacement service.  
Following notification of Contractor, Client shall also be entitled to carry out remedying of the defect itself if a suitable period for remedying of the defect set by it has expired or subsequent performance provided by Contractor has failed. Setting of a period shall not be necessary in cases of danger in delay or specific urgency. Client can demand an advance payment from Contractor on its necessary expenditure induced hereby.

- 15.4 Insofar as Client is entitled to remedying the defect itself pursuant to Section 15.3 above, Section 11, no. 4, shall be applicable to Contractor's duties.

All costs incurred in remedying of the defects, in particular for dismantling, assembly, travel, freights, packaging, insurance, customs and other public dues, examinations and technical inspections shall be borne by Contractor

15.5 Client's claims on account of defects shall be barred after 36 months starting from passage of risk (Section 13) unless agreed to the contrary. If the service is intended for a construction and has caused the latter's defectiveness, the period for barring shall be 5 years. Longer statutory periods of barring shall remain unaffected; §§ 438 sub-section 3, 479 and 634 a sub-section 3 German Civil Code shall likewise remain unaffected.

15.6 Insofar and as long as Client notifies and complains of defects towards Contractor pursuant to § 377, German Commercial Code, the warranty period shall be extended by the duration of the complete remedying of the defects. If Contractor provides a new object or new replacement parts in the course of warranty, the period of barring shall recommence with passage of risk, albeit no longer than five years from passage of risk or seven years in the case of construction services.

15.7 The regulation of § 476 German Civil Code shall apply accordingly, although the period shall be extended to 18 months.

**16. Product liability, indemnification, insurance coverage**

16.1 To the extent that Contractor is answerable for a product defect or a breach of statutory/official safety directives, it shall hold Client harmless against all and any claims to damages made by third parties at first written request. Over and above this, Client shall have a claim to reimbursement of all expenditure which it in particular incurs in connection with recall actions arranged for by it for this reason. To the extent possible and reasonably to be expected, Client shall notify Contractor in advance. The right to further-reaching statutory claims shall remain reserved.

16.2 The same shall apply accordingly to the extent that in particular a downstream contractor or sub-contractor of Contractor is answerable for a product defect or the breach of the aforementioned safety directives within the framework of the service rendered by it.

16.3 Contractor shall be obliged to insure itself adequately against product liability and to prove this to Client at any time in writing upon request, in particular with a written confirmation from Contractor's insurance company.

**17. Liability for environmental damage**

Contractor assures assumption of all damage caused by a breach of **environmental law directives** in connection with its services (e.g. **emission protection law**, used oil and water balance law, waste disposal law and/or ordinances issued in this regard). It shall hold Client harmless against all and any claims to damages made by third parties in this connection at first written request. Over and above this, it shall indemnify Client for damage incurred by the latter.

The same shall apply accordingly to the extent that in particular a downstream contractor or sub-contractor of Contractor is answerable for such a breach in connection with the service rendered by it.

**18. Force majeure**

Only natural catastrophes and war shall be deemed incidents of force majeure.

**19. Protective rights**

Contractor shall vouch for the fact that no third parties' rights are impinged in connection with the handling of the orders. In the event of all and any claims by third parties, Contractor shall hold Client harmless against all such claims at first written request. The duty to indemnification shall relate to all expenditure necessarily incurred by Client from and/or in connection with such claims.

**20. Sub-placements**

20.1 To exercise rights of retention towards its sub-contractors (sub-entrepreneurs, suppliers, planning offices etc.), Contractor shall require Client's prior written consent.

20.2 To avoid exercising of rights of retention by Contractor's sub-contractors, Client shall be entitled to make direct payments to the sub-contractor which, to the extent concerned with justified claims of the sub-contractor, shall be deemed as payment in lieu of performance in the relationship to Contractor.

20.3 In any case, third parties, in particular sub-contractors, used by Contractor to perform its duties from the order or otherwise involved by it in connection with its services, shall be vicarious agents of Contractor.

**21. Partial ineffectivity**

In the event of ineffectivity of individual contractual provisions, the validity of the remaining contractual provisions shall remain unaffected. To replace the ineffective contractual provisions, the contracting parties engage to make a supplementary agreement without delay by means of a provision coming closest to the commercial outcome of the invalid contractual provision.

**22. Place of performance**

Place of performance for Contractor's services shall be the agreed place of use, for Client's payments its business headquarters.

**23. Place of jurisdiction, applicable law**

23.1 To the extent that Contractor is a fully-fledged businessman, public-law entity or public-law fund, place of jurisdiction for all kinds of proceedings shall be Client's headquarters: Client can also sue Contractor at its general place of jurisdiction.

23.2 Without exception, the law of the Federal Republic of Germany decisive for business relationships of internal contracting parties shall prevail; applicability of UN purchase law is hereby ruled out.