



## **General terms and conditions of purchase**

### **IAG Ihlenberger Abfallentsorgungsgesellschaft mbH (version from 15 April 2015) for use in business transactions with companies**

#### **§1 Scope of application**

(1) All deliveries, services, and offers with the exception of construction services and employment relationships of the suppliers of IAG shall be offered exclusively under these general terms and conditions of purchase. They are a component of all contracts IAG Ihlenberger Abfallentsorgungsgesellschaft mbH (hereinafter referred to as IAG) concludes with its suppliers for the deliveries or services offered by the suppliers.

(2) Terms and conditions of the suppliers of IAG or third parties shall not be applicable, also if IAG does not object to their applicability separately on a case-by-case basis. Even if IAG refers to a letter that includes the terms and conditions of a supplier or of a third party or that refers to any such, this shall not be construed as acceptance of the respective terms and conditions.

(3) Besides, the supplier expressly acknowledges these general terms and conditions of purchase by supplying the delivery. Should the supplier not agree to these general terms and conditions of purchase, the supplier shall immediately inform IAG thereof in writing prior to the execution of the order. In this case, IAG reserves the right to withdraw the order.

(4) No oral ancillary agreements were concluded.

#### **§ 2 Orders and commissions**

In coordination with the supplier, IAG shall have the right to change the time and place of delivery as well as the type of packaging at any time by written notification, complying with a period of at least 7 calendar days prior to the agreed delivery date. The same shall apply to a change of the product specification, provided that such change can be implemented in the course of the normal production process of the supplier without a considerable expenditure of time; in these cases, the notification period as set out in the previous sentence shall be at least 14 calendar days. IAG shall reimburse the supplier for any proven and appropriate additional costs that are incurred as a result of such a change. If such changes result in delays of the delivery which cannot be avoided in the normal production and business operations of the supplier when reasonable efforts are made, the originally agreed delivery date shall be postponed accordingly. The supplier shall notify IAG in writing of the additional costs or the delay of delivery that can be expected according to the supplier's careful estimate in good time, but at least within 7 working days after receipt of the notification set out in the first sentence.



### **§ 3 Prices, payment conditions, invoice details**

(1) The prices shall especially include the material testing process as well as the delivery and the transport to the shipping address set out in the contract, including packaging.

(2) The goods must be packaged in a manner that prevents transport damage.

(3) If the price does not include packaging and if no remuneration was agreed for the not only lent packaging material provided, packaging material shall be invoiced at cost price as listed in receipts. On request of IAG, the supplier shall take back the packaging at the supplier's own cost.

(4) No remuneration shall be paid for demonstrations, presentations, negotiations, and/or the preparation of offers and projects, unless remuneration was agreed beforehand in writing.

(5) Unless agreed otherwise, IAG shall effect the payment of the purchase price once a delivery is complete, a due and auditable invoice was received and after receipt of all documents required under the contract within 10 days with a discount of 3 % or within 30 days at the net price. The payment shall be effected by bank transfer. The supplier shall indicate corresponding bank details for this form of payment. In case of a partial shipment, the payment shall only become due with the final shipment. This shall not apply to apportioned contracts.

(6) Invoices shall be submitted to IAG in duplicate and separate from the shipment. The order number of IAG, the article number, delivery quantity, and the shipping address must be stated in any and all order confirmations, shipping documents, and invoices. If any of this information is missing and if this results in delayed processing by IAG in the course of normal business, the payment periods set out in section 6 shall be extended by the amount of time that processing is delayed. The supplier must factor in the duration of such delay into its evidence included in the written reminders. In case of wrong or incomplete delivery or service, IAG shall have right, without prejudice to any other of its rights, to retain any payments for any and all claims arising from the business relationship to an appropriate extent until a supplementary performance was provided in due form, without the supplier being entitled to damages; this shall apply without a loss of discounts and other reductions in price.

(7) In case of delayed payment, IAG shall owe interest on payments in arrears of five percentage points above the base rate in accordance with section 247 *BGB* [*Bürgerliches Gesetzbuch*, German Civil Code].



#### **§ 4 Delivery period, delivery, transfer of risk**

- (1) The delivery date set out in the order (delivery date or period) is binding. If delivery takes place prior to the agreed delivery date, IAG reserves the right to not accept the delivery and to return it at the costs and risk of the supplier.
- (2) The supplier shall assume unlimited liability for the procurement of the supplies and services required for the services/ deliveries also if the supplier is not at fault.
- (3) The supplier shall be obliged to immediately notify IAG in writing if any circumstances occur or become apparent to the supplier which make it impossible to comply with the agreed delivery date.
- (4) In case of delayed delivery, IAG shall be entitled to statutory claims in their unlimited form, including the right of withdrawal and the claim for damages instead of performance after unsuccessful expiry of an appropriate extension of time.
- (5) In case of delayed delivery, IAG shall have the right, after prior written notification of the supplier, to charge a contractual penalty of 0.5 % for every commenced week of delay, but in total no more than 5 % of the respective order value. The contractual penalty shall be offset against any damage caused by the delay that the supplier has to reimburse IAG for.
- (6) If the supplier also fails to deliver or to provide a service within an appropriate time period for supplementary performance set by IAG, IAG shall have the right, after expiry of this period, to commission a third party with the fulfilment of the contract and to demand the contractor to reimburse any necessary expenses and additional costs. The right of the contractor to provide a supplementary performance and the obligation of IAG to accept this performance shall expire once IAG obtains a replacement in the course of fulfilling the task itself after expiry of the period or if IAG demands damages instead of a performance.
- (7) Partial shipments shall require the approval of IAG.
- (8) Devices must be accompanied by a technical description and a user manual free of charge. In case of software products, the delivery obligations shall only be deemed complied with if the documentation (system technology and user documentation) was handed over in full. In case of programmes specifically developed for IAG, the programme must also be supplied in the source format in addition to the above.
- (9) If the supplier has to provide material samples, test protocols, quality documents or other contractually agreed documents, one of the conditions precedent for completeness of the delivery and service is the receipt of these documents by IAG.



(10) The provisions of the regulation on hazardous substances and the safety recommendations of the responsible German technical bodies or professional associations such as, for example, VDE, VDI, DIN, must be complied with. Pertinent certificates, test certificates, and proofs must be attached to the delivery free of charge.

(11) The supplier shall be solely responsible for compliance with accident prevention regulations when providing deliveries and services. The protective devices required under these regulations as well as any instructions of the manufacturer must be provided free of charge.

(12) The risk shall be transferred to IAG upon receipt at the shipping address indicated by IAG in case of delivery without installation or assembly, and, in case of delivery with installation or assembly, upon successful completion which shall be documented through an acceptance protocol. Mere putting into operation or use by IAG shall under no circumstances replace formal acceptance.

#### **§ 5 Protection of ownership**

(1) IAG reserves the title or copyright to any orders and commissions placed by IAG and to the drawings, images, calculations, descriptions, and other documents made available to the supplier. The supplier must not make these available to third parties, nor must the supplier disclose them, use them itself or through third parties or duplicate them without the express permission of IAG. The supplier shall return these documents and any copies thereof to IAG in full on request if the supplier has no more need for them in the course of normal business operations or if negotiations do not end in the conclusion of a contract.

(2) Tools, devices, and models IAG makes available to a supplier or which are produced for contractual purposes and invoiced separately to IAG by the supplier shall remain the property of IAG or shall become the property of IAG.

(3) Retentions of title of the supplier shall only apply insofar as they are related to the payment obligations of IAG for the products in question to which the supplier retains title. Extended or prolonged retentions of title in particular are not permissible.

#### **§ 6 Warranty, liability**

(1) In case of defects, IAG shall be entitled to statutory claims in unlimited form.

(2) Also in case of only minor deviation from the agreed characteristics or in case of only minor damage, IAG shall have the right to withdraw from the contract and shall be entitled to damages instead of the performance in full.



(3) In all cases, the supplier shall be liable for the supplies and services it procured as if they were its own deliveries and services, also if the supplier is not at fault. This shall apply in regard to defects especially.

(4) Supplied goods must be free from the rights of third parties. In case of the delivery of data processing programmes, the contractor shall be liable for holding all necessary rights, especially industrial property rights, that are required for the sale of the programme.

(5) Deviations of quality and quantity shall always be deemed reported in time if IAG communicates these to the supplier within 14 working days of receipt of the goods at IAG. Hidden material defects shall always be deemed reported in time if the notification is sent to the supplier within 7 working days of detection of the defect.

(6) By accepting or approving the submitted templates or samples, IAG does not waive warranty claims.

(7) Warranty claims shall no longer become time-barred after receipt of a written notification of defects by the supplier. In case of replacement deliveries and removal of defects, the warranty period for replaced and reworked parts shall start again, unless IAG had to deduct from the behaviour of the supplier that the supplier did not consider itself obliged to take the measure, but that the supplier only provided the replacement delivery or removal of defect out of goodwill or for similar reasons.

## **§ 7 Force majeure, withdrawal**

(1) Force majeure shall exempt the parties to the contract from performance obligations for the duration of the interruption and to the extent of its effects. The parties to the contract shall be obliged to immediately provide the necessary information within what is reasonably possible and to adjust their contractual obligations to the changed conditions in good faith.

(2) IAG shall be exempted from the acceptance of the ordered quantity, in part or in whole, and shall insofar be entitled to withdraw from the contract if the delivery cannot be used any longer by IAG due to the delay caused by force majeure under consideration of economic aspects.

(3) IAG shall have the right to withdraw from the contract if the supplier applies for the opening of insolvency proceedings, if insolvency proceedings are opened or if the opening of such proceedings is rejected due to a lack of assets. A right of withdrawal can also be exercised if individual enforcement measures are taken against the supplier.

(4) Moreover, IAG shall have the right to withdraw from the contract if the supplier holds out the prospect of, offers or grants any advantage, irrespective of its type, to any employee or vicarious agent of IAG who is charged with the preparation,



conclusion or execution of the contract or to any third party in the interest of such an employee or vicarious agent of IAG.

(5) If the supplier again provides essentially identical or similar deliveries or services in a defective manner or belatedly, despite a previous written warning by IAG, a supplementary performance shall be deemed unreasonable and IAG shall be entitled to withdraw from the contract forthwith, also in regard to such deliveries and services the contractor is obliged to provide to IAG in the future under this or under another contractual relationship.

(6) Apart from the above, the statutory rights of withdrawal shall remain unaffected.

### **§ 8 Industrial property rights**

(1) The supplier assumes liability for no industrial property rights of third parties in countries of the European Union, North America or in other countries in which it manufactures or has the products manufactured being violated in connection with its delivery.

(2) The supplier shall be obliged to indemnify IAG against any and all claims that third parties assert against IAG in regard to any violation of industrial property rights set out in clause 1 and the supplier shall reimburse all necessary expenses incurred in connection with such claims. This claim shall apply irrespective of culpability of the supplier.

### **§ 9 Spare parts**

(1) The supplier shall be obliged to stock spare parts for the products supplied to IAG for a period of at least 5 years after delivery of the products.

(2) If the supplier intends to cease production of spare parts for the products supplied to IAG, the supplier shall report this decision for discontinuation to IAG immediately after it was made. With reservation of clause 1, this decision must be made at least 3 months prior to the discontinuation of production.

### **§ 10 Secrecy**

(1) The supplier shall be obliged to keep the conditions of the order as well as any information and documents provided for this purpose (with the exception of publicly accessible information) secret and to only use such information and documents for the execution of the order. The supplier shall return such information and documents to IAG immediately on request after the enquiries were handled or orders executed.



- (2) The supplier must not reference the business relationship in advertisement material, brochures, etc. and must not exhibit delivery items manufactured for us without prior written permission of IAG.
- (3) The supplier shall oblige its subcontractors in accordance with this section 10.

### **§ 11 Assignment**

The supplier shall not have the right to assign its claims arising from the contractual relationship with IAG to third parties. This shall not apply to monetary claims.

### **§ 12 Final provisions**

- (1) Place of performance for both parties is the place of business of IAG.
- (2) The contracts concluded between IAG and the supplier are governed by the law of the Federal Republic of Germany under exclusion on the United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980.
- (3) If the contract or these general terms and conditions for purchase contain regulatory gaps, those legally permissible provisions shall be deemed agreed to remedy these gaps which the parties to the contract would have agreed in accordance with the economic purpose of the contract and the purpose of the general terms and conditions for purchase had they known of this regulatory gap.
- (4) The exclusive place of jurisdiction for disputes arising from this contractual relationship is L beck.