

# General Business Terms and Conditions (General Section) of IBS – Institut für Brandschutztechnik und Sicherheitsforschung Gesellschaft m. b. H.

## **1. Applicability**

These General Business Terms and Conditions apply to the testing, inspection, monitoring, and certification of construction materials and components, technical fire-protection systems, and machinery, as well as to all other services provided by our company. They constitute a framework agreement also for all further transactions in this regard between IBS and its contract partners and become a part of the contract. They are divided into a general section and an order-specific section corresponding to the particular transaction, which is attached to the general section. We do not acknowledge contrary or deviating terms and conditions of the customer, unless same are expressly confirmed or approved by us in writing. Deviations from these General Terms and Conditions that were expressly negotiated in individual contracts and confirmed in writing take precedence, under simultaneous applicability of the other provisions of these General Terms and Conditions.

## **2. Conclusion of contract**

The contract comes into effect through acceptance of our written offer, through execution of a written contract by both parties, or through written acceptance of an offer by IBS. All amendments and supplementations of the contract – including a deviation from these Terms and Conditions – must be made in writing in order to be legally binding. Actions of individuals working for our contract partners, including the signing of offers and contracts, are attributable to the latter, irrespective of whether such individuals were in fact authorised to do so.

## **3. Initial examination, duty of the customer to cooperate**

If on-site inspections and checks are necessary for the provision of our services, the contract partner (customer) is obligated to cooperate at its own risk and expense in the initial examination or check. The customer must make available to us the documentation necessary for fulfilling the contract in a timely manner, in the requested form, and with freight paid, as well as provide all requested information. If checking or monitoring has to be performed outside of our company in order to fulfil the contract, the customer must enable access to the corresponding properties or to the construction component to be checked in such a way that unhindered fulfilment of the contract can occur. In particular, the customer must take all precautions necessary to protect third-party rights.

## **4. Official approvals**

If our services should be necessary for official approvals, we are not liable for the actual granting of the approval. Therefore, the costs for preparing the services provided by us must also be paid even where an authorisation or approval is not granted.

## **5. Rescission**

IBS is entitled to rescind the contract

- a) if performance of the agreed activities or their continuation becomes impossible, would be materially delayed, or is not economically tenable for reasons for which we are not responsible;
- b) if concerns arise with respect to the customer's ability to pay and the customer fails to pay in advance in response to our request, or in the event that bankruptcy or composition proceedings are opened concerning the customer's assets or in the event that a corresponding application for bankruptcy or composition is rejected for lack of assets sufficient to cover costs;
- c) if in breach of duty, the customer violates our contractual interests;
- d) if the customer fails to meet its obligations to cooperate, despite the setting of a grace period;
- e) if the customer directly or indirectly offers, promises, or grants a pecuniary benefit to one of our employees by reason of contract fulfilment or becomes liable to prosecution for whatever reason in connection with order fulfilment.

In every case, the customer is obligated to reimburse us for all expenses that were necessary for preparing to perform the order.

The customer may rescind the contract only up to the start of performance of the ordered services by registered letter. However, all costs incurred with preparatory work for performing the order must be reimbursed to us. In the event of later rescission, we are entitled to compensation in full despite full performance remaining uncompleted.

## **6. Price**

Our prices are based on the relevant guidelines under compliance with the weekly working hours established by statute. In general, order services can be performed only during normal working hours. If work is necessary outside of normal working hours, a special agreement must be made. The added effort and expense resulting from this is charged to the customer.

## **7. Appointment**

The contractually agreed appointments are binding on the contracting parties. In the event of subsequent changes or failure to make requested documents available, we are no longer bound by the appointment. If scheduled appointments cannot be kept due to reasons for which the customer is responsible, the customer must immediately notify us in writing. Postponements caused by the customer become binding only through our written confirmation. Added costs resulting from the aforementioned postponements are charged by us.

If postponements occur on short notice due to, e.g. illness or unavailability of appointments with authorities, we will notify the customer. Compensation of any default or consequential damages of any nature whatsoever suffered by the customer as a result is precluded. Such postponements do not entitle the customer to rescind the contract.

## **8. Warranty and compensation of damages**

We warrant that our services will correspond to each of the standards and guidelines agreed to in the contract. The warranty period is six months, for immovable property, one year, starting with delivery. In every case, a prerequisite for warranty claims is prompt notification of defects, as well as prompt inspection and testing of the goods upon delivery.

We can comply with the customer's specialised instructions – in the sense of the independent position as expert required of us by statute – only to the extent that they can likewise be advocated by us in specialist terms.

Our services must be tested immediately following fulfilment and conveyance of the agreed service.

Any defects must be promptly notified by the customer in writing following fulfilment and conveyance.

The customer bears the burden of proof of showing that the defect already existed at the time of fulfilment/conveyance.

We are liable for direct damages only if the customer can demonstrate gross negligence or wilful misconduct by us or persons we use to perform an obligation (*Erfüllungsgehilfen*). The extent of our liability is limited to the minimum liability insurance amount required under the Accreditation Act (*Akkreditierungsgesetz*, BGBl Nr. 468/1992, as amended) and under the current version of the Accreditation Directive (*Akkreditierungsverordnung*). Liability for indirect damages (including lost profit and other consequential damages) is precluded. Claims for compensation of damages must, however, be asserted not later than 30 days after provision of our total or partial service. These limitations of liability apply both to property damages and to personal injuries. Liability to compensate damages is prescribed six months after knowledge of the damage and the party causing the damage, but in any case 10 years after delivery or service. The customer is liable for all damages caused by a breach of the obligations in these General Terms and Conditions, and it must indemnify us against any third-party claims of any nature whatsoever.

## **10. Prohibition of set-off**

The customer is not entitled to set off our claims against its own claims of any nature whatsoever.

## **11. Place of performance, place of jurisdiction, choice of law**

All contracts are exclusively subject to Austrian law. The registered office of our company in 4017 Linz is deemed agreed to as the place of performance and payment. The jurisdiction of the competent court in Linz is agreed to as the place of jurisdiction for any disputes.

## **12. Proprietary rights**

Absent agreements to the contrary, IBS is at liberty to publish expert opinions in whole or in part and to exploit findings therein at its discretion without cost reimbursement. In addition, the contractor is entitled to list issued orders as references. In this regard, the customer agrees to provide it upon request with the project's key data and an image of the property in printable resolution.

We exclusively hold and retain copyrights to the IT programs and computational models employed. The customer cannot derive any rights of any nature from a use of existing models, which of course always have to be modified to meet the property-related parameters.

## **13. Severability clause**

If individual provisions of this contract should prove to be ineffective or unenforceable, either in whole or in part, or become ineffective or unenforceable following contract conclusion as a consequence of legislative amendments, the remaining contract provisions and the effectiveness of the contract as a whole remain unaffected by same. The ineffective or unenforceable provision is to be replaced by an effective and enforceable provision that most closely approximates the meaning and purpose of the void or ineffective provision.