
GENERAL TERMS AND CONDITIONS

1. Scope

- 1.1. The following General Terms and Conditions (hereinafter referred to as 'GTC') apply to all deliveries and services (collectively referred to as 'Services'), in particular to the 'Safexpert' software system stored on a data carrier or made available for download in the version provided or ordered, as well as to all associated utility programmes, sample files, software documentation and other related material (collectively referred to as 'Software') provided by IBF Solutions GmbH, FN 477543 w at the Regional and Commercial Court of Innsbruck, Austria, Bahnhofstraße 8, A-6682 Vils, IBF Solutions GmbH, HRB 738391 at the Stuttgart Local Court, and IBF Solutions AG, FN CHE-325.938.071, Zurich (collectively and individually hereinafter referred to as 'IBF') vis-à-vis third parties (hereinafter referred to as 'Contracting Party'). IBF concludes contracts for services with its contracting parties – even without specific reference in individual cases – exclusively on the basis of these GTC, unless otherwise agreed in writing. It is expressly stated that these GTC apply only to contracting parties who are deemed to be Business / Enterprise / Entrepreneur within the meaning of Section 1 of the Austrian Consumer Protection Act.
- 1.2. The application of the Contracting Party's GTC – of whatever nature – is excluded; this applies even if they do not conflict with these GTC or if they have not been expressly objected to, unless they have been expressly acknowledged in writing by IBF. Nor shall any acts of performance/fulfillment or silence on the part of IBF constitute acceptance of the Contracting Party's GTC. Such GTC of the Contracting Party shall not be binding on IBF even if the Contracting Party has made compliance with these GTC an express condition.
- 1.3. In the event of a conflict between provisions of these GTC and provisions of other contractual components (in particular individual contracts and licence and service terms), the provisions of the individual contracts (including quotations) shall take precedence, followed by those of the licence and service terms, and finally those of these GTC.
- 1.4. Should – for whatever reason – individual provisions of these GTC or other components of the contract (in particular individual contracts and licence and service terms) be or become invalid, or should there be a gap in the provisions, the remaining provisions shall remain in force. In such a case, the invalid provision shall be replaced, or the gap filled, by a valid provision that comes as close as possible to the invalid one in economic terms.
- 1.5. IBF may at any time propose amendments to these GTC or other components of the contract (in particular individual contracts and licence and service terms) to the Contracting Party. The proposed amendment, together with the full text of the amended provisions, shall be sent to the Contracting Party in writing no later than two months before the planned date of entry into force. If the Contracting Party does not object in writing at least one month before the date of entry into force, the amendment shall be deemed to have been approved. IBF must expressly draw the Contracting Party's attention to this fact when notifying them of the amendment.
- 1.6. IBF may also unilaterally amend these GTC or other contractual components (in particular individual contracts and licence and service terms) at any time, provided that the amendments are minor, objectively justified (e.g. adaptation to legal requirements, technical innovations, changes to the software) and reasonable for the Contracting Party. The amendments shall take effect 14 days after notification.

- 1.7. Subject to the provisions set out at 1.5 and 1.6, any amendments or additions to these GTC or other contractual components (in particular individual contracts and licence and service terms) must be in writing to be legally valid. This also applies to any waiver, amendment or repeal of this written form requirement. The written form within the meaning of these GTC or other contractual components (in particular individual contracts and licence and service terms) requires the transmission of a legible statement, in which the identity of the person making the statement is specified, on a durable medium. A durable medium is any medium that enables the recipient to store or retain a statement addressed to them personally in such a way that it remains accessible to them for a period of time appropriate to its purpose, and which is capable of reproducing the statement unchanged (e.g. letters, emails, electronic text messages). A handwritten signature is not required.

2. Conclusion of the contract

- 2.1. Offers made by IBF are subject to change. A contract is therefore not concluded merely upon the Contracting Party's declaration of acceptance, but only once IBF has confirmed this declaration of acceptance (hereinafter referred to as the 'order confirmation'). The actual commencement of the provision of services by IBF shall also be deemed to constitute an order confirmation in this sense.
- 2.2. Where an offer from IBF relating to services (seminars, training courses, workshops), projects and bespoke developments contains only approximate details, the Contracting Party grants IBF the right to deviate slightly from the offer, with such deviation being binding on the Contracting Party. A deviation shall be deemed minor if the change is insignificant in relation to the total amount of the offer and does not place an unreasonable burden on the Contracting Party. IBF may make changes to the software at any time without prior notice.
- 2.3. Order confirmations issued by IBF are only binding if they are made in writing by authorised representatives. Verbal information and undertakings, statements in brochures or advertising of any kind, illustrations, samples, and details regarding characteristics, performance, intended use, quality, etc., provided by IBF are also non-binding, unless they are expressly named as binding by IBF in writing.
- 2.4. Contracts between IBF and its contracting parties shall apply irrespective of whether any official approvals are granted. Unless otherwise agreed in writing, the responsibility for obtaining such approvals lies with the contracting parties. Should IBF obtain such approvals on behalf of the customer, it may charge an additional reasonable fee. Should amendments to the original contract be necessary in order to obtain an approval, the corresponding amendments shall be deemed to have been agreed.

3. Services, Delivery Times and Partial Deliveries

- 3.1. The place of performance for all mutual services is IBF's registered office in 6682 Vils. The place of performance shall remain IBF's registered office even if a different location has been agreed for handover.
- 3.2. The risk in respect of (partial) services provided by IBF shall in all cases pass to the Contracting Party upon provision of the service – including where made available as a download.
- 3.3. Stated delivery dates and delivery periods are, in principle, non-binding. A delivery date or delivery period is only binding if such binding nature was agreed in writing at the time the contract was concluded. The delivery date or delivery period is deemed to have been met if the Contracting Party is notified by IBF that the service is ready for download or – should such notification not be given – if the service has in fact been made available by IBF as a download. There is no entitlement to the handover of the source code. Compliance with the delivery times or periods specified by IBF is conditional upon the Contracting Party's timely and proper fulfilment of its obligations, including, in particular, the provision of answers to all technical queries that the Contracting Party is required to clarify, compliance with the agreed terms of payment, and the fulfilment of any further obligations to cooperate.
- 3.4. Delays in delivery caused by delays on the part of suppliers, force majeure, government intervention, natural disasters, war, riots, strikes at IBF's own premises or at those of its suppliers, or due to other circumstances not caused by IBF, shall entitle IBF, once the cause of the hindrance has ceased, to make up for the delivery within a reasonable period, without the Contracting Party being entitled to any claims arising from the delay.

- 3.5. The Contracting Party shall itself ensure that its computer environment meets the minimum requirements and is sufficiently compatible to enable it to utilise IBF's services on its own premises.
- 3.6. If the Contracting Party commissions IBF to carry out bespoke software development in accordance with a specific legal or regulatory status and, upon completion, the delivered development no longer complies with the legal or regulatory status applicable at the time of commissioning, IBF shall not be liable for this circumstance, provided that the development was completed within a reasonable time or the delay resulted from reasons for which the Contracting Party is responsible.
- 3.7. In the case of time-limited rights of use, IBF is entitled, upon termination of the contract and without prior notice, to block the Contracting Party's access to the software and other services. The Contracting Party must therefore arrange for any necessary data backups and data exports in good time before the contract ends.

4. Term and Termination

- 4.1. Unless otherwise agreed, contracts of indefinite duration (e.g. licence agreements) are concluded for an indefinite period.
- 4.2. The term of the contract begins upon conclusion of the contract.
- 4.3. Continuing obligations may be terminated in writing, subject to a notice period of one (1) month – following the expiry of any minimum term – with effect from the end of each month.

5. Fees and Terms of Payment

- 5.1. All prices are quoted in EUR and are net prices excluding taxes, duties and delivery costs. These will be invoiced separately to the Contracting Party as and when they arise. Such costs may include VAT, travel expenses, customs duties, etc. No delivery costs are incurred for software deliveries.
- 5.2. If an order is accepted without a prior quotation from IBF, or if services are provided which are not included in the price stated in the quotation, IBF may charge a reasonable fee for this, which, in case of doubt, shall be calculated in accordance with IBF's current price list.
- 5.3. All invoices are due for payment in full within thirty (30) days of receipt.
- 5.4. IBF is entitled to make partial deliveries and to issue partial invoices in respect thereof.
- 5.5. All recurring fees shall remain unchanged for the agreed minimum term or until the next possible termination date. At the start of each new billing period, IBF is entitled to revise the recurring fees at its own discretion and to notify the Contracting Party thereof. The amended recurring fees shall be deemed to have been accepted if the Contracting Party pays the first invoice showing the amended fees or fails to terminate the contract in due time before the start of the relevant new billing period, resulting in an automatic extension of the term. IBF shall notify the Contracting Party of the revised fees in good time so that the Contracting Party has at least a period of fourteen (14) days in which to give notice of termination in due time. In the event of even partial default on payment, IBF shall be entitled, following a prior reminder, to suspend the provision of the relevant service until full payment has been made. The statutory right to interest remains unaffected.
- 5.6. If the implementation or completion of projects and bespoke developments is not carried out (in whole or in part) for reasons attributable to the Contracting Party, IBF shall be entitled – without prejudice to any further statutory and contractual claims – to charge twenty-five per cent (25%) of the unperformed services as set out in the quotation as a cancellation fee. Services already rendered and expenses incurred (e.g. for third-party components already procured) shall be invoiced at the agreed prices.
- 5.7. Set-off against counter-claims is mutually excluded, unless the counter-claim has been expressly acknowledged or has been established by a final and binding court decision.
- 5.8. Discounts of any kind granted in individual cases, including cash discounts, do not give rise to any entitlement to the same being granted in future.
- 5.9. Payments must be made by bank transfer to IBF's bank account as specified on the invoice. Bills of exchange and cheques are accepted only on account of payment, with all related charges, taxes and other levies being borne by the Contracting Party.

6. Warranty

- 6.1. The warranty period is one year from the date of handover, unless a longer limitation period is mandatory under the law.
- 6.2. IBF warrants that the software and the associated services, in particular access to the Safexpert Live Server, will be available and functional in accordance with industry standards. This also includes a warranty that IT security standards are in line with industry standards and are appropriate. IBF does not guarantee the achievement of a specific result or consistently correct results when using the subject matter of the contract. Nor does IBF guarantee the economic and technical applicability of the services.
- 6.3. IBF accepts no liability for temporary restrictions, outages, unavailability, etc., that are customary within the industry. Furthermore, IBF gives no warranty and accepts no liability for outages, errors, malfunctions or damage resulting from the misconduct of third parties, failure to provide information, improper installation, operation, failure to comply with installation requirements, modified operating system components, interfaces and parameters, infection with computer viruses, Trojans and similar threats, the use of abnormal operating conditions (in particular deviations from the installation conditions) and data storage media, defeating the Contracting Party or third parties commissioned by them, or force majeure.
- 6.4. There is no entitlement to a specific level of availability or uninterrupted use. Furthermore, no warranty is given as to the complete freedom from errors of the software and its data structures, nor as to the data content being up to date at all times.
- 6.5. In the event of disputes regarding the existence or extent of defects, IBF shall be entitled to have the service examined by a generally sworn and court-certified expert, the findings of which shall be binding on both contracting parties. If it transpires that the alleged defect does not exist, the Contracting Party shall bear the expert's costs.
- 6.6. Defects or the failure to provide services must be reported in writing, with a specific description, without delay and at the latest within 14 (fourteen) days of receipt of the service; otherwise, the service shall be deemed to have been accepted unconditionally and free from defects. Defects which cannot be detected within this period even after careful inspection must be reported in writing, with a specific description, without delay and at the latest within 7 (seven) days of becoming known.
- 6.7. The Contracting Party undertakes to appoint qualified contact persons on its part to rectify the defects, to provide IBF with the necessary information and, where applicable, log files, and to describe faults in a way that allows them to be reproduced. Delays due to a lack of cooperation shall extend the resolution times accordingly.
- 6.8. In the case of continuing obligations, if the contract is rescinded under the warranty, the Contracting Party shall be entitled to a refund of the fee only to the extent corresponding to the unused portion of the prepayment period.

7. Compensation

- 7.1. It is expressly stated that IBF does not offer or provide any safety-related advice/consulting and therefore accepts no liability in this regard.
- 7.2. IBF and its vicarious agents shall only be liable for losses incurred by the Contracting Party in cases of wilful misconduct or gross negligence. To the extent permitted by law, liability for slight negligence is excluded.
- 7.3. Likewise, liability is excluded for loss of profit, pure financial loss, consequential damages, data loss, business interruptions and damages arising from third-party claims against the Contracting Party (e.g. penalties charged to the Contracting Party by its customer).
- 7.4. In the event of gross negligence, liability for damages – irrespective of the legal basis for liability – shall be limited in amount to three times the contract sum (net, excluding statutory VAT) or, in the case of contracts comprising several items, to three times the amount of the relevant item sum of the part that caused the damage or is directly related to it.
- 7.5. IBF's liability is furthermore limited to the damage which it could reasonably have foreseen or should have foreseen at the time the contract was concluded, based on the circumstances and facts of which IBF was aware or should have been aware.

7.6. The above limitations do not apply in the case of personal injury.

8. Updates and revisions

- 8.1. IBF's services, and in particular its software, reflect the legal and regulatory framework in force at the time of the software's last update. Any obligation on the part of IBF to adapt or further develop the software in this regard is expressly excluded.
- 8.2. The Contracting Party is obliged to install the software updates and upgrades provided by IBF without delay. IBF is under no obligation to inform the Contracting Party of any updates or upgrades, or to issue a separate reminder regarding their installation.

9. Withdrawal

- 9.1. IBF reserves the right to withdraw from the contract with the Contracting Party for objectively justified reasons not attributable to gross negligence on the part of IBF, without the Contracting Party being entitled to derive any claims therefrom. Withdrawal is deemed objectively justified in particular if the necessary cooperation from suppliers is unexpectedly withheld or if, after the conclusion of the contract, it turns out that the execution of a bespoke order or project is not possible using economically reasonable means.
- 9.2. In the event of a withdrawal justified on objective grounds, IBF shall be entitled to invoice the Contracting Party for services already rendered to a reasonable extent.

10. Reproduction and Transfer of Rights

- 10.1. IBF may transfer its rights and obligations arising from the contractual relationship with the Contracting Party, in whole or in part, to a third party, provided this is reasonable for the Contracting Party.
- 10.2. The transfer of rights to the services and, in particular, to the software by the Contracting Party is only permitted with IBF's consent.
- 10.3. Where the transfer of rights to the services, and in particular to the software, is permissible in individual cases, the Contracting Party is obliged to assign the obligations under the contract and these GTC in full to the third party taking over such rights. In the event of such a transfer, a processing fee of currently EUR 100 plus VAT will be charged.
- 10.4. Upon transfer to the third party, all rights of the Contracting Party to the services and the software shall expire.
- 10.5. A temporary transfer of rights to the services and, in particular, to the software – including, in particular, lending, hiring out, leasing, etc. – is not permitted.

11. Other obligations of the Contracting Party

- 11.1. The Contracting Party is obliged to independently verify the correct installation of the software before using it; furthermore, the Contracting Party is responsible for verifying that the software is suitable for its intended purpose.
- 11.2. The Contracting Party must keep its employees and customers continuously informed of all information and instructions provided by IBF, as well as of relevant statutory provisions and official regulations.
- 11.3. The Contracting Party undertakes, in the event of the export or import of the services, to comply with the law of the relevant country as well as Austrian and European foreign trade law, and to provide evidence in the appropriate form of any import and/or export licences, foreign exchange authorisations or similar authorisations required for the export or import of the service. This applies equally to deliveries to countries, recipients or for purposes which the Contracting Party knows or ought to know are subject to legal controls or sanctions. IBF shall not be liable in any way in the event of a lack of authorisations.

- 11.4. The Contracting Party is not authorised to decompile or disassemble the services and, in particular, the software (reverse engineering), unless mandatory statutory provisions preclude this. The Contracting Party is prohibited from removing or altering copyright notices, the licence code or any other identifying features.

12. Confidentiality, Data Protection and Data Processing

- 12.1. All information provided by IBF in the course of the performance of the contract must be treated with care and confidentiality by the Contracting Party and must not be made accessible to third parties. It must be used only for its intended purpose and in accordance with the terms of the contract. The Contracting Party must also effectively impose this confidentiality obligation on its respective employees or other agents, as well as on any other third parties involved in any way in the fulfilment of the subject matter of the contract. The confidentiality agreement shall remain in force indefinitely, and shall therefore also apply for the period following the termination of the business relationship.
- 12.2. Both contracting parties undertake to comply with data protection regulations, in particular to conclude any necessary data processing agreement.
- 12.3. Further information on data protection is available at www.ibf-solutions.com/en/privacy-policy.
- 12.4. In accordance with Section 174(3) of the Telecommunications Act (TKG) and Article 6(1)(f) of the GDPR, the Contracting Party's contact details will also be used to send direct marketing, information and invitations to IBF events by post and by email. The Contracting Party may object to this use at any time by sending an email to office@ibf-solutions.com.
- 12.5. The Contracting Party is obliged to notify IBF immediately of any changes to their residential or business address and contact details. If such notification is not provided, communications shall be deemed to have been received even if they were sent to the last address provided.

13. Applicable law and jurisdiction

- 13.1. For all contracts concluded between IBF and its Contracting Party, and for all claims arising from the legally valid existence or non-existence of these contracts, it is agreed that Austrian substantive law shall apply, to the exclusion of the provisions of Austrian private international law and those of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL).
- 13.2. For all legal disputes arising from a contract concluded or to be concluded between IBF and its Contracting Party on the basis of these GTC, the exclusive jurisdiction of the court with subject-matter jurisdiction over IBF's registered office is agreed. However, IBF may also bring proceedings against the Contracting Party before any other legally permissible domestic or foreign court.