

# IFTEST – General Terms and Conditions (Revision 4/2014)

## 1. General provisions and scope

1.1 Business between IFTEST and the Client shall be subject to these General Terms and Conditions unless the Client objects in writing immediately after receipt of these General Terms and Conditions. They shall supersede any Client provisions to the contrary not expressly accepted by IFTEST in writing. All Terms and Conditions shall apply unless any or all of them have been agreed otherwise in writing. If IFTEST acts as a buyer, IFTEST's General Terms and Conditions of Purchase shall apply in addition.

1.2 Until explicitly agreed otherwise, these Terms and Conditions shall apply to all current and future business, even if a specific order makes no explicit reference to these Terms and Conditions.

1.3 Agreements and legally relevant declarations of the parties to any present or future contract shall only be valid to the extent that they have been made in writing.

## 2. Definitions

2.1 Customer relations ("Orders") shall be distinguished as follows:  
- development orders (software and hardware);  
- manufacturing orders.

The customer shall be referred to as the "Client" in either case.

2.2 The following two types of manufacturing orders shall be distinguished:  
- basic agreement with call-off orders;  
- individual orders

## 3. Offers

3.1 All offers made by IFTEST shall be void. Prices and dates shall not be binding until IFTEST has confirmed the order. IFTEST shall retain title to and copyrights in all documents submitted to the Client. No part of such documents may be disclosed to third parties.

3.2 IFTEST will base all pricing on the documents provided by the Client. To the extent that well-defined Client specifications are not available, IFTEST shall be free to choose equivalent parts.

3.3 At the offering stage, the Client shall already make IFTEST aware of any legal, administrative, and other regulations that will affect the execution of the contract.

## 4. Conclusion of the contract

4.1 Orders might be submitted in oral or written form.

4.2 An order shall be deemed accepted, and the associated contract concluded, when IFTEST confirms it in writing or via email upon receipt. Oral agreements must be confirmed by IFTEST in writing or by email in order to have binding effect.

4.3 IFTEST shall be entitled to supply up to 10% more or less of the volumes or quantities agreed in the contract.

## 5. Specifics of development orders

5.1 Execution of development orders shall be subject to the means at disposal enabling IFTEST to meet the requirement specified by the Client; otherwise, IFTEST shall be entitled to withdraw from the respective contract by providing notice of termination.

5.2 In such a case, the Client shall be obliged to reimburse IFTEST for the expenses incurred up to the withdrawal from the contract.

## 6. Changes, modifications and amendments

6.1 IFTEST reserves the right to make any and all changes, modifications or amendments it deems necessary to execute the order.

6.2 In case the Client provides documents or manufacturing-papers, the Client shall timely notify IFTEST of any changes.

The Client shall recompense IFTEST for extra costs IFTEST incurs due to changes, instructions, or specifications made, set or requested by the Client. This shall particularly apply to changes to the product specifications in case of development contracts.

## 7. Prices

7.1 Due to the lack of a different agreement, all prices shall be quoted net (excluding Value Added Tax), ex works, without packaging, and without any deduction whatsoever.

7.2 The Client shall pay all extra costs incurred for freight, insurance, export, transit, import and other permits or for certifications. The Client shall also pay all taxes, dues, fees, duties and such incurred under the contract or it shall hold IFTEST harmless against all such costs IFTEST can show to have incurred.

7.3 Prices shall be appropriately adjusted, if delivery dates are postponed for any of the reasons of section 9.4 hereof, if the scope of agreed deliveries or performance is changed, or if the material or the design is changed for reasons not attributable to IFTEST.

7.4 IFTEST shall also be entitled to adjust the fixed prices of development orders, if executing a specific development order was handicapped by circumstances unforeseeable by IFTEST.

## 8. Terms of payment

8.1 Unless agreed otherwise, IFTEST's invoices shall be payable immediately without any discount or deduction whatsoever and no later than 30 days after the invoice date.

8.2 Payment obligations shall be considered fulfilled when the amount due has been credited to the account stated on the invoice and when IFTEST is free to dispose of it.

8.3 The Client shall not be allowed to retain, balance or reduce payments disputed by IFTEST due to complaints, claims, or counter-claims not acknowledged by IFTEST.

8.4 Payment due dates shall apply even if transportation, delivery, assembly, commissioning or acceptance of deliveries or services have been delayed or made impossible for reasons not attributable to IFTEST or if minor parts are missing or if any rework necessities will not prevent the use of such deliveries or services.

8.5 In case the Client is in default of payment or if complete or on-time payment is seriously jeopardized, IFTEST shall be entitled to:

(1) withhold its own service and to deliver goods to the Client only against payment *pari passu* as well as to deposit goods at the expense of the Client; payment of the agreed price for deposited goods shall be due immediately.

(2) demand down payments for the purchase or production price of all raw materials (at costs) and semi-finished products (at manufacturing costs) stored for the purpose of executing the contract. Such down payments shall be due immediately.

(3) stipulate an extension of 10 days for the presentation of a security (unconditional bank guarantee by a recognized bank) covering the value of the contracts or parts of the contracts not yet performed. In case the security is not provided within the set period of time, IFTEST, with regard to the contracts or parts of contracts not performed, shall be entitled: (i) to continue the contract and to decide, if they will still perform themselves or if they will waive actual performance and demand damages (positive interest in the performance), or (ii) to cancel the contract and demand damages (negative interest in the performance).

- 8.6 If the Client fails to meet the agreed dates of payment, it shall, from the 30<sup>th</sup> day after the date of invoice and without a separate reminder, have to pay a default interest of 2% above the statutory default interest rate; moreover and notwithstanding its right to claim for the remaining damage, IFTEST shall be entitled to request reminder charges of CHF 30.00 (plus VAT) per reminder.
- 8.7 IFTEST shall retain property in the goods until such time that they have been fully paid and it shall have the right to register a reservation of title.
- 8.8 In case the Client also supplies goods to be processed by IFTEST (Parts Provided), such Parts Provided shall not be invoiced by the Client; IFTEST shall only be obliged to confirm receipt of the Parts Provided. Unused Parts Provided shall be returned to the Client and the Client shall raise no further claims in connection therewith.
- 9. Period and term of delivery**
- 9.1 The period of delivery shall begin on such date that the contract has been signed, all official formalities like import, export, transit, and payment permits obtained, down payments made, any securities provided, and the technical key issues clarified. The delivery deadline shall be considered met when the notification of readiness for dispatch has been sent to the Client by the end of the period of delivery.
- 9.2 Any specific delivery date agreed instead of a period of delivery shall be equivalent to the last day of a period of delivery.
- 9.3 The obligation to deliver within the agreed period of delivery assumes that the Client has complied with all its contractual obligations.
- 9.4 The period of delivery shall be reasonably extended: (1) if the data needed for performing the contract is not sent to IFTEST on time, or if the Client makes subsequent changes to the information, thus causing deliveries or performance to be delayed; (2) if IFTEST, despite its due diligence procedures, fails to prevent any obstacles from occurring at its own or the Client's site or for any other reason (e.g. epidemics, mobilization, war, riots, major operational interruptions, accidents, industrial disputes, late or faulty delivery of the required raw materials, semi-finished of finished products, rejection of important components, administrative measures, natural events); (3) if the Client or a third party are behind with their work to be performed or in default of performing their contractual obligations, especially if the Client does not comply with the terms of payment; (4) if the Client wishes to make changes that will impact the work in progress such that IFTEST will suspend the work in progress in order to account for the changes in requirements and to avoid additional costs.
- 9.5 A penalty for late delivery shall require a separate written agreement and be considered a lump sum indemnification. It may be claimed only if IFTEST can be shown to have caused the delay and if the Client is able to substantiate the damage. Offering the Client to make replacement deliveries shall void any claims for a generally agreed penalty.
- 9.6 A delay in delivery shall be no reason for the Client to claim for damages or cancel the contract.
- 9.7 Notwithstanding any agreements to the contrary expressly made under framework or other contracts stipulating successive deliveries call-off orders must be placed within twelve (12) months of signing such contract or contracts.
- 10. Packaging**  
Unless otherwise stated in the offer, packaging shall be invoiced separately and shall not be taken back. The Client shall return to the original place of dispatch, and pay for such return, of any and all packaging labeled as IFTEST's property.
- 11. Transfer of usufruct and risks**  
11.1 Usufruct and risks shall be transferred to the Client when the delivery is dispatched ex works at the latest.
- This shall also apply to delivery prepaid, sent subject to cif, fob or similar clauses, if a delivery is agreed to include assembly, or if the transport is organized and managed by IFTEST. The transfer of usufruct and risks shall be irrespective of the time of transfer of ownership.
- 11.2 If a dispatch is delayed upon the Client's request or for reasons not attributable to IFTEST, the risk shall be transferred to the ordering party at the time originally scheduled for dispatch ex works. Henceforward, all goods included in such delayed delivery shall be stored and insured on the account and at the risk of the Client.
- 12. Dispatch, transport, and insurance**
- 12.1 Special wishes regarding the dispatch, transport, and insurance of any delivery shall be made known to IFTEST in due time. All transportation will be made on the account and at the risk of the Client.
- 12.2 The Client shall complain to the last carrier immediately upon receipt of any dispatch or transportation it is complaining about.
- 12.3 It shall be the Client's duty to take out insurance cover for damages of any kind.
- 13. Inspection and acceptance of deliveries and services**
- 13.1 The Client shall check the deliveries and services within 10 days after receipt and immediately notify IFTEST in writing of any faults or defects. Deliveries and services shall be deemed accepted if this clause is not complied with.
- 13.2 The Client shall immediately enable IFTEST to rectify, pursuant to section 14.5 below, any deficient deliveries or services found not to meet contract requirements during the aforementioned tests or inspections.
- 13.3 Acceptance inspection procedures and the associated conditions shall be agreed separately.
- 13.4 Acceptance shall also be deemed completed: (1) if, for reasons not attributable to IFTEST, an agreed acceptance inspection cannot be carried out on the scheduled date; (2) if the Client fails or refuses to carry out the acceptance without being entitled to do so; (3) when the Client starts using IFTEST's deliveries or services.
- 13.5 Except for the rights expressly stipulated in section 14 hereof, defective deliveries or services shall not justify any Client rights or claims.
- 14. Warranty and liability for defects**
- 14.1 Upon the Client's written request, IFTEST, at its sole discretion, undertakes to make every reasonable effort to quickly repair or replace goods found to be defective or unusable during the warranty period; it is the Client's duty to return such goods to IFTEST. To the extent that a defect is not repaired within two successive 30-day periods of grace, the Client shall be allowed to cancel contract coverage for the defective goods and to claim back the price paid for such defective goods. Whereas this right of cancellation shall not apply to minor defects, the Client shall have the right to claim for a reasonable reduction of the original price.
- 14.2 IFTEST shall improve any engineering results delivered and found to be non-conforming. If IFTEST fails to remedy the shortcomings within a period of three months, the Client may withdraw from the development contract and claim back the price paid for the non-conforming engineering result. Whereas such right of withdrawal shall not apply to marginal defects or to engineering results still made use of by the Client, the Client shall have the right to claim for a reasonable reduction of the price paid.
- 14.3 The warranty period shall depend on the kind of contract:  
- Production without procurement of a value of at least 30% of the manufactured material: 6 months.

- Production with procurement of a value of more than 30% of the manufactured materials: 12 months.

- Development of software or hardware: 18 months on the development result.

The warranty period shall begin when the deliveries or services are dispatched ex works or upon a mutually agreed acceptance procedure. In any case, the warranty period shall end not later than 12 months (production without procurement) or 18 months (production with procurement) or 24 months (development of software and hardware) after the readiness to deliver has first been made known.

14.4 Replaced or repaired deliverables are subject to a 6 month's warranty period starting on the date of replacement, completion of repairs or acceptance procedure or, if earlier, at the end of the warranty period of section 14.3 hereof.

14.5 IFTEST shall bear the costs of repairs made at its own factory. The Client shall bear all extra costs IFTEST incurs because such rework or repair proves to be impossible at IFTEST's factory for reasons not attributable to IFTEST.

14.6 Properties shall be considered guaranteed properties only if the order confirmation of requirement specifications expressly mark them as guaranteed properties.

14.7 IFTEST shall accept liability for deliveries and services provided by subcontractors only to the extent that they are covered by the subcontractors' warranty obligations.

14.8 The warranty shall not include any damages resulting from natural wear, insufficient maintenance, disregard of operational regulations, operating errors, excessive use, inappropriate means of operation, chemical or electrolytic influences, construction or assembly work not executed by IFTEST, or damages caused by other reasons not attributable to IFTEST.

14.9 Warranty shall end forthwith if the Client or a third party makes changes or repairs to the products or goods delivered without prior approval in writing by IFTEST or if the Client fails to make all reasonable efforts to mitigate a damage or to allow IFTEST to remedy the defect.

14.10 A limited warranty shall apply to products ordered without any or with only an incomplete inspection: IFTEST will remedy any and all shortcomings the customer can specifically show to be attributable to IFTEST in that the lack or restriction of serviceability of the products concerned is due to deficient assembly or the use of defective parts by IFTEST. There shall be no warranty or liability in excess of the above.

14.11 Defects or shortcomings of the goods or development results supplied shall entitle the Client to no other rights or claims than the ones stipulated in section 14 hereof.

14.12 Only intent or gross negligence shall justify IFTEST's liability for claims the Client may raise based on bad advice or a similar event or owing to IFTEST having violated any of its ancillary obligations.

## 15. Consequences of non-performance or failure to perform on time

15.1 In all cases of bad or non-performance not expressly accounted for in these General Terms and Conditions, the Client may set IFTEST a reasonable period of grace and enforce due and diligent performance of the relevant deliveries and services by threatening to cancel the contract, specifically if IFTEST, without good cause, starts working on deliveries and services at a time that renders on-time completion unlikely or if a performance can be reliably anticipated to be –contrary to the contract due to IFTEST's fault. If IFTEST can be shown to be responsible for not making appropriate use of such period of grace, the Client may withdraw from the contract with regard to the deliveries and services reliably anticipated to be delayed or non-conforming and claim back the associated share of payments made previously.

15.2 In such a case, the provisions of section 16 hereof shall apply to the Client's claims for damages and the waiver of further liabilities.

## 16. Disclaimer of further liability on the part of IFTEST

16.1 These General Terms and Conditions finalize all cases of breach of contract and their legal consequences as well as any and all claims the Client may raise on whatever legal ground. Especially, all claims for damages, reduction, cancellation of or withdrawal from the contract not specifically stipulated herein shall be excluded.

16.2 On no account shall the Client be entitled to claim for damages not found on the actual deliverable including, but not limited to, loss of production, utilization, orders, profit or any other direct or indirect damage.

16.3 This non-liability clause shall not apply to illegal intention or gross negligence on the part of IFTEST but it shall apply to any illegal intention or gross negligence attributable to its auxiliary persons.

## 17. Right of recourse

IFTEST shall have a right of recourse to the Client in all cases of personal injury or physical damage to third-party property attributable to the actions or omissions of the Client or its auxiliary persons that IFTEST is made liable for.

## 18. Venue and applicable law

18.1 The Client and IFTEST covenant to accept IFTEST's registered office as the place of jurisdiction. IFTEST shall also have the right to prosecute the Client at its own place of business and the places of jurisdiction provided by law.

18.2 The legal relationship of the parties hereto shall be subject to Swiss substantive law. The Vienna-Law (United Nations Convention on Contracts for the International Sale of Goods, CISG) shall not apply.

In case of discrepancies, the original German text shall prevail.