

# 'GCBs' – General Conditions of Business - Use of Online Databases, Status: January 2021

## General Conditions of Business for the Use of Online Databases of

IMA Materialforschung und Anwendungstechnik GmbH (Inc.) (hereinafter referred to as IMA Dresden)

### Art. 1

#### Generalities and valid application

1. The subject of these General Conditions is the conclusion of fee-based use of the online databases and services offered by IMA Dresden.
2. IMA Dresden does not recognize any terms and conditions of the customer that contradict or deviate from these General Conditions, unless it has expressly agreed to their validity in writing. These General Conditions also apply if IMA Dresden carries out the delivery to the customer without reservation in the knowledge of conflicting or deviating conditions of the customer.
3. The General Conditions of IMA Dresden only apply to entrepreneurs within the meaning of § 14 BGB – Bürgerliches Gesetzbuch (German Civil Code).
4. Rights to which IMA Dresden is entitled under the statutory provisions beyond these General Conditions remain unaffected.

### Art. 2

#### Offer and formation of the contract

1. The offers of IMA Dresden are - unless expressly marked as binding on the offer letter - always subject to change and therefore not binding. After receipt of the order, a contract is only concluded with the written order confirmation from IMA Dresden or through unchanged acceptance of the binding offers from IMA Dresden by the customer.
2. The contractual basis and decisive for the scope of the service obligation are the written price lists (on www.wiam.de), order confirmations and binding offers from IMA Dresden.
3. Orders placed by the customer are always binding for the customer.
4. Obvious errors, printing errors, miscalculations, typographical errors and obvious, obvious calculation errors are not binding for IMA Dresden and do not give the customer any claim for damages.

### Art. 3

#### Prices and terms of payment

1. The prices, conditions and terms of use result from the price lists and product descriptions of IMA Dresden in the version valid at the time of the order.
2. The statutory value added tax is not included in the price, but is shown separately in the invoice at the statutory rate applicable on the day the invoice is issued.
3. Unless otherwise stated in the order confirmation or the binding offer from IMA Dresden, the price for the use of the online databases and services is due for payment within 14 days of the invoice date without deduction. The receipt of the money by us is decisive for the timeliness of the payment.
4. In the event of default in payment, IMA Dresden is supported by the statutory rights. The customer is in default no later than 30 days after the due date and receipt of the consideration.
5. If the customer defaults on payment, IMA Dresden is entitled to claim interest on arrears in the amount of 9 percentage points above the base rate. We reserve the right to assert further damage and the flat-rate damage fee in accordance with § 288 (5) BGB – Bürgerliches Gesetzbuch (German Civil Code).
6. In the case of justified doubts about the solvency or creditworthiness of the customer, especially in the event of payment arrears, IMA Dresden is entitled to revoke any payment terms granted.

### Art. 4

#### Commencement of user entitlement and obligations of the customer

1. The customer acknowledges that the database is a database work Para. 2, 87a Para. 1 UrhG.
2. For the use of the online databases and services, the customer acquires the simple, non-exclusive, non-sub-licensable, non-transferable to third parties and limited to the term of the contract, under the condition and under the individual legal agreement -ret right of use.
3. Only the customer is authorized to use it, as well as in the scope of Art. 4 no. 2 existing usage rights, additional authorized users optionally designated by the customer or in accordance with the agreed individual contract, regardless of whether they are actively using the online database at a certain point in time ("named user principle"). IMA Dresden provides the customer with an access option for himself and for other authorized users of the online services, usually in the form of a link with the corresponding approval for the customer's IP address.
4. Any use beyond the the use named in Art. 4 no. 2 is excluded and requires the prior separate written approval of IMA Dresden. This

applies in particular to the automated retrieval of content, the creation of systematic collections from the research results or the data deliveries, the systematic further processing of research results by the customer or other authorized users, in particular by copying something that is essential in terms of type and scope Part of the databases, removing references to copyrights, copying saved research results to other data carriers or networks, entering research results for use in a local retrieval system, creating and using reproductions that are not exclusively for one's own (professional) The use of the customer, the duplication of documentation, including extracts, as well as any other than Art. 4 no. 1 form of commercial use going beyond, in particular a resale of the research results.

5. If IMA Dresden defaults on setting up access to online databases or services, or if setting up access to online databases or services becomes impossible, for whatever reason, then IMA Dresden is liable limited to compensation in accordance with Art. 7 of these General Conditions.
6. User entitlement commences once the customer pays the invoice charges transmitted by IMA and IMA then activates access to the ordered database. The customer will be notified of the activation by an email message from IMA.
7. The selected products of an online database are only available on a PC via a MAC address indicated on the order form. The MAC (message authentication code) address will be automatically read by the PC from which the order was sent and cannot subsequently be changed. When the data base is to be used by additional PCs, the order procedure will have to be repeated from that PC and incur the relative charges.
8. A customer is responsible for providing the technical necessities for an access to an online database (provision and installation of hardware, operating system software, a connection to the internet and current browser software, etc.). When the software for driving the online database or any other technical components are changed or onward developed, then the customer is responsible for making the necessary adjustments on his-, her-, its hardware and software employed.
9. The customer is obliged to undertake the necessary requirements for backing up his-, her-, its system and data. This includes in particular, a regular and complete data backup and the installation of an up-to-date anti-virus program, etc..
10. The customer is obliged to keep secret the login details provided by IMA as well as passwords. The customer is not entitled to pass these details on to third parties or to employ these beyond the agreed extent of use.

### Art. 5

#### Availability of an online database and contents

1. For technical reasons (updating of data, servicing- and maintenance routines or system downturns), access to an online database can be partially restricted. But, IMA will make every effort to keep such offline activities as reduced as possible.
2. The contents of the online databases will be determined by IMA. In the selection of the upkeep of the data, IMA will employ the usual all due care to be expected. IMA can however give no guarantee for the contents of the information researched by customers as to topicality and correctness, nor for their usability for a specific purpose.

### Art. 6

#### Warranty

1. The online databases of IMA Dresden represent a collection of data (numerical values) from material and material tests that the customer can use for his own purposes. IMA Dresden is not responsible for the correctness of the content (data, numerical values) in its online databases.
2. IMA Dresden corrects technical defects in its online databases within a reasonable period of time. The responsibility of IMA Dresden only extends to the transfer point of the systems it operates to the Internet, but not to the customer's systems and data transmission lines beyond the transfer point.
3. It is the customer's responsibility to notify IMA Dresden immediately of any defects or malfunctions.
4. The customer does not receive any guarantees in the legal sense from IMA Dresden.

### Art. 7

#### Liability for damages due to negligence

1. The liability of IMA Dresden for damages, regardless of the legal reason, in particular for impossibility, delay, defective or incorrect delivery, breach of contract, breach of obligations in contract nego-

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- tations and unlawful acts, insofar as there is a fault in each case, is restricted in accordance with this Art. 7.
- The IMA Dresden is not liable in the case of simple negligence on the part of its organs, legal representatives, employees or other vicarious agents, unless it is a breach of essential contractual obligations.
  - As far as the IMA Dresden is fundamentally liable for damages according to Art. 7, this liability is limited to damage that IMA Dresden foresaw as a possible consequence of a breach of contract when the contract was concluded or that it should have foreseen had it been exercising due diligence.
  - In the case of liability for simple negligence, IMA Dresden's obligation to pay compensation for property damage and further financial losses resulting therefrom is limited to an amount of 5% of the purchase value per case of damage, even if it is a breach of essential contractual obligations.
  - The above exclusions of liability and restrictions apply to the same extent in favor of the bodies, legal representatives, employees and other vicarious agents of IMA Dresden.
  - IMA Dresden is not liable for the impossibility of setting up access or for delays in setting up access to online databases and services, insofar as these are due to force majeure or other events that were not foreseeable at the time the contract was concluded (e.g. operational disruptions -gen of all kinds, difficulties in the procurement of materials or energy, transport delays, strikes, legal lockouts, pandemics, shortages of labor, energy or raw materials, difficulties in obtaining the necessary official permits, official measures or the lack of them correct or late delivery by suppliers) for which IMA Dresden is not responsible. If such events for IMA Dresden make it significantly more difficult or impossible to set up access to online databases or services and the hindrance is not only of temporary duration, IMA Dresden is entitled to withdraw from the contract. In the event of temporary obstacles, the deadlines for setting up access to online databases or services are extended or are postponed by the period of the hindrance plus an appropriate start-up period. If the customer cannot be expected to use the online databases or services of IMA Dresden as a result of the delay, he can withdraw from the contract by making an immediate written declaration to IMA Dresden.
  - The no-fault liability of IMA Dresden for defects already existing at the time the contract was concluded in accordance with § 536a Para. 1 Clause 1 BGB – Bürgerliches Gesetzbuch (German Civil Law Code) is excluded.
  - If IMA Dresden provides technical information and this information does not belong to the contractually agreed scope of services owed by it, this is done free of charge and with the exclusion of any liability.
  - The limitations of this Art. 7 do not apply to the liability of IMA Dresden due to willful behavior, for guaranteed characteristics, due to injury to life, body or health or according to the product liability law.
  - IMA Dresden is not liable for damages that are based on causes that are not within the area of responsibility of IMA Dresden. This applies in particular to damage caused by faults in lines, servers and other facilities that are not the responsibility of IMA Dresden.

### Art. 8 Termination

- IMA Dresden can terminate the contract with the customer at any time for an important reason. An important reason exists if the customer or his authorized user has seriously violated these General Conditions or other contractual obligations repeatedly despite a warning from IMA Dresden. A serious case of abuse exists, when the customer is in delay with payment despite at least two reminders or at least provisional insolvency proceedings have been opened against the customer's assets. Claims for damages remain unaffected. Upon termination of the contract, IMA Dresden will immediately block the customer's access to the online services.
- IMA Dresden is free to assign its claims against the customer.

### Art. 9 Data protection

- IMA Dresden uses personal data from customers to process and take orders, to deliver goods, to provide services and to process payments.
- A transfer of personal customer data to third parties only takes place with the expressly declared consent of the customer or if the transfer is necessary to safeguard the legitimate interests of IMA Dresden, provided that the interests worthy of protection or fundamental rights of the customers do not prevail. In addition, IMA Dresden is only entitled to transmit customer data if it is legally obliged to hand over the data. The collection, transmission or oth-

er processing of personal data of the customer for purposes other than those mentioned here is not permitted and does not take place on the part of IMA Dresden.

- For further information, please refer to the data protection information for customers, suppliers and other contractual partners on the IMA Dresden website.

### Art. 10

#### Revocation right of the customer and revocation remedies

- When the customer is a consumer under Art. 13 of the German 'BGB – Bürgerliches Gesetzbuch' (Civil Law Code), he-, she-, it has a statutory right of revocation of agreements and contracts.

#### Revocation Remedies

##### Revocation right

Customers can declare revocation within 14 days without the necessity of stating the reasons, in text form (e.g. letter, telefax or email message). The 14 day time period commences upon receipt of the revocation remedies in text form, but not before the conclusion of any agreement and not before the completion of the information requirements of IMA, pursuant to the statutory requirements of Art. 246, Para. 2 in conjunction with Art. 1, Paras. 1 and 2 of the German Federal 'EGBGB – Einfuehrungsgesetz zum Buergerlichen Gesetzbuch' (Introductory Legislation to the Civil Law Code) and the statutory duties of IMA under Art. 312g, Para. 1, Sentence 1 of the 'BGB' Civil Law Code in conjunction with Art. 246 Art. 3 of the 'EGBGB' Introductory Legislation to the Civil Law Code. To comply with the time period for revocation, it is sufficient to send the revocation declaration in good time within the 14 days. The declaration of revocation should be sent to:

By postal mail: IMA Materialforschung und Anwendungstechnik GmbH  
Wilhelmine-Reichard-Ring 4  
01109 Dresden, Germany

or by email message: [ima@ima-dresden.de](mailto:ima@ima-dresden.de)

##### Consequences of revocation

In case of an effective revocation, the mutual performances received by each of the parties are to be returned and any earned benefits relinquished (e.g. interest payments). When the customer is unable to return or relinquish to IMA the performance received as well as the benefits earned (e.g. the user benefits) not entirely but only partially or only in a poor condition, the customer will be required indemnify IMA for loss of value. This can lead to a situation where the customer will still have to pay the contracted fees for the time period up to the date of the declaration of revocation. The obligation to make fee payments runs for 30 days. This time period commences for the customer on the date of the sending of the revocation declaration and for IMA on the date of receipt thereof.

##### Special notice

The revocation right of the customer becomes priority null and void when the agreement is completed by both parties at their express wish, before the customer can exercise his-, her-, its right to revoke.

##### End of the revocation remedies

### Art. 11

#### General provisions, Place of jurisdiction, place of performance

- If one of the contractual partners stops making payments, or if insolvency proceedings are applied for over their assets or an out-of-court settlement procedure is applied for, the other is entitled to withdraw from the non-fulfilled part of the contract.
- The law of the Federal Republic of Germany applies exclusively to the exclusion of the UN Sales Convention (CISG) and the reference regulations of German international private law.
- If the customer is a merchant, the place of business of IMA Dresden is the place of jurisdiction. However, the IMA Dresden is entitled to sue the customer at his place of residence.
- IMA Dresden is authorized to change these general terms and conditions. Any changes will take effect on the announced date of entry into force.
- Unless otherwise agreed, the place of performance for all contractual and legal claims is the registered office of IMA Dresden.