

'GCBs' General Conditions of Business for Verification- and Test Mandates, Status: January 2021

General conditions of business for verification- and test mandates, examinations, inspections and freely agreed services rendered by IMA Materialforschung und Anwendungstechnik GmbH (Inc.) (hereinafter referred to as IMA Dresden)

Art. 1

Generalities and valid application

1. These General Conditions are validly to apply exclusively for all verification and test mandates, examinations, inspections and freely agreed services to be rendered, which IMA Dresden concludes with a client as a contractor.
2. Any contradictory conditions divergent from these General Conditions of a client will not be recognised and accepted by IMA Dresden, unless it approves such expressly in writing. These General Conditions are also to remain validly applicable even when IMA Dresden proceeds to render the services unconditionally, although already in the knowledge of the existence of any conditions contradictory to or divergent from these General Conditions.
3. The General Conditions of IMA Dresden only apply to entrepreneurs within the meaning of § 14 BGB – Bürgerliches Gesetzbuch (German Civil Code).
4. All rights, to which IMA Dresden is entitled under any German Federal statutory requirements, going beyond these General Conditions, remain unaffected by the foregoing stipulations.
5. Oral declarations or agreements made in individual cases take precedence over these General Conditions and require written confirmation by IMA Dresden to be effective.

Art. 2

Offerings and offering documentation

1. The offerings from IMA Dresden are – unless specifically indicated in the written offering as legally binding – are always 'subject to change' and therefore not legally binding. A mandate is only then concluded upon the issuance by IMA Dresden of a written confirmation of the mandate, or by an unaltered acceptance on the part of the client of a binding offer of IMA Dresden.
2. The contractual basis of a mandate and determinative for the extent of the services to be rendered, are the written confirmations of mandate and the legally binding offerings of IMA Dresden.
3. The mandates of a client placed with IMA Dresden are always to be deemed as legally binding on that client.
4. IMA Dresden hereby retains all ownership rights and copyrights, as well as any other sundry protection rights in all offerings, tenders, illustrations, technical drawings, calculations and other sundry records, which a client receives from IMA Dresden. Before any passing-on of such to third parties, a client is to obtain the express written permission of IMA Dresden.
5. Any obvious errors, printed-, calculatory and written faults and obviously intrusive calculation deficiencies are not to be legally binding on IMA Dresden and do not provide a client with an opportunity for asserting indemnities for loss or damage.

Art. 3

Fees and conditions of payment

1. All fees are expressed in Euro currency plus statutory value-added tax to be borne by a client at the currently valid rate, which will be separately shown in the final account of fee.
2. Changes, project delays, runtime extensions or postponements during or after the order is placed entitle IMA Dresden to charge any additional costs actually incurred or to reimburse lower costs. If examinations, inspections and freely agreed services are not completed for reasons for which the client is responsible, the client owes the full agreed remuneration less expenses saved by IMA Dresden. Any further legal claims of IMA Dresden remain unaffected.
3. The deduction of a discount off the total final fee is to require written agreement.
4. Unless otherwise indicated in the confirmation of mandate or in any binding offering of IMA Dresden, the final fee is payable within 14 days of the date of the account of fee without any deductions.
5. In cases of arrears of payment, IMA Dresden is entitled to invoke the relative statutory requirements.
6. If the client defaults on payment, IMA Dresden is entitled to claim statutory default interest. We reserve the right to assert further damage and the flat-rate damage fee in accordance with § 288 Para. 5 of the German Civil Code (BGB).
7. The client is only entitled to set-off rights if his counter-rights have been legally established, are undisputed, synallagmatic with the main claim or are recognized by the IMA Dresden. The client is only authorized to exercise a right of retention if his counterclaim arises from the same contractual relationship.

8. In the event of justified doubts about the solvency or creditworthiness of the client, in particular in the event of payment arrears, IMA Dresden is entitled to revoke any payment terms granted and to request advance payment or securities for further deliveries.
9. In the event of the cancellation of a contract, part of a contract or a service before the start of processing, the client can be obliged to compensate IMA Dresden for the loss. In the case of a complete cancellation, the loss damage is a flat rate of 10% of the order value unless the client can prove that the damage was lower. In the case of partial cancellation, the client will be charged at least the amount of the services already provided. IMA Dresden reserves the right to provide evidence of higher damage.
10. The client bears any additional work that arises from the fact that work has to be repeated, extended or delayed as a result of late, incorrect or incomplete information or improper cooperation.

Art. 4

The execution of a mandate

1. All mandates executed by IMA Dresden will be conducted in accordance with the rules of the current state-of-the art of technology. IMA Dresden is not responsible for any success in connection with a verification, test, examination or inspection, and in particular not for any indication for an alteration to the subject matter tested – test specimen or tested materials.
2. The test specimen or test materials are to be sent by a client to IMA Dresden at its corporate domicile postal address (registered office) 'free domicile' and to be collected from there upon completion. All customs duties, value-added tax, levies and the like are to be for the account of a client.
3. The extent of the necessary work routines for completing a mandate is to be determined upon the placing of a mandate. IMA Dresden will then execute the verifications, tests, examinations or inspections at its own discretion. When necessary for the a proper execution of a mandate, IMA Dresden is to be entitled hereby to extend or restrict any verification, test, examination or inspection routines. If such is the case, then IMA Dresden will notify a client with immediate effect.
4. Any mandate time period indicated on the part of IMA Dresden is to be legally non-binding, unless a mandate time period is agreed with a client for a completion report or delivery date. When such a mandate time period is agreed, this is to commence at the date of the confirmation of a mandate on the part of IMA Dresden, but however not before the type and extent of the service to be rendered is definitely determined, and a client has provided IMA Dresden with all the requisite documentation, test specimens and test materials for the execution of a mandate. The mandate time period is to be deemed as completed, when the results' report is presented to a client upon the contractually agreed completion- or delivery date or sent to a client. In case of a consignment by postal mail, the date stamp of the postal authority is determinative and in case of a sending by telefax or email, the date of the 'send protocol' is determinative.
5. Should IMA Dresden exceed the agreed mandate time period, then a client is only to be entitled to withdraw from a mandate or to assert indemnity for loss or damage, when IMA Dresden is definitely in arrears of completion or in impossibility of completion for which IMA Dresden is responsible. The delivery and service obligations of IMA Dresden are suspended as long as the client has not fulfilled his contractual obligation to cooperate. This does not apply if IMA Dresden makes the delay.
6. IMA Dresden is only in arrears when it is responsible for any delay in the execution of a mandate. Should the completion of a mandate be hindered, despite the taking all reasonable due care, by reason, for example: of force majeure ('Act of God'), strikes, lockouts, operational disruptions, pandemic, epidemic, sabotage, breakage, fire, water damage, interventions of the authorities, the inculpable breakdown of test equipment, delays in the delivery of essential component parts , etc., then the mandate time period is to be extended by the duration of any such hindrance together with a reasonably appropriate start-up time. IMA Dresden will inform a client of the occurrence of any such hindrance with immediate effect and indicate the anticipated duration of any such delay.
7. IMA Dresden is to be entitled hereby, to destruct any un-consumed test materials or test specimens as well as any produced probes for the verification-, test, examination- or inspection routines, after the expiry of 6 months, unless any other retention time periods have been agreed. The charges for specialist disposal are to be borne by a client. During any retention time peri-

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od, IMA Dresden is only to exercise the same due care, which it exercises for its own property. Should a client require the return of any test materials or test specimens such is to be indicated in writing to IMA Dresden upon the placing of a mandate. All returns are to be at the charge and perils of a client.

8. The client is to be liable for all loss or damage attributable to the inherent hazardous characteristics of a test material or specimen. A client is also to be liable for all loss or damage caused by a test material or specimen, in particular during transportation or disposal. There is to be no passing of the ownership rights in any test materials or specimens upon their relinquishment to IMA Dresden. A client is also to remain the owner of the test materials or specimens even after the completion of the mandate and is to be deemed the actual waste producer for purposes of all relative statutory requirements.

Art. 5 Results' reports

IMA Dresden will communicate the test results to the client in writing or electronically in a results report. This notification is regarded as the fulfillment of the services on the part of IMA Dresden.

Art. 6 Intellectual Property Rights

1. Unless otherwise expressly agreed, all commercial trade protection rights as well as patent rights, in particular inventions, know-how, sample models, expertises, test results and calculations the property of IMA Dresden.
2. Should during the course of the execution of the mandate, verifications, tests, examinations, inspections, test results and calculations and the like be prepared, which are subject to copyrights, then IMA Dresden hereby grants a client simple and non-transferrable user rights in these, when such is requisite for the contractually agreed purpose. Any other rights are expressly not granted, in particular a client is not to be entitled hereby to alter any test results, verifications, tests, examinations and inspections, their results' reports and calculations and the like, or to process these or to exploit these apart from the contractual purpose, and in particular not to publish these, duplicate or distribute these or to make such publicly available.

Art. 7 The rights of third parties

1. A client is responsible for ensuring, that no rights of third parties exist in the test specimens or materials made available to IMA Dresden, such as ownership-, lien-, copy-, patent-, and/or other user -rights, in particular no commercial trade protection rights, which would be an obstacle for any contractual mandate work on the part of IMA Dresden. Should any legal claims be asserted against IMA Dresden for infringing any such rights, then a client is to keep IMA Dresden harmless-, upon its first demand -from any such claims of third parties and also -from any legal fees and costs of the court.
2. Suggestions on the part of IMA Dresden for alterations to the test specimens or materials are to be investigated by a client itself as to whether any rights of third parties-, in particular commercial trade rights-, are infringed. IMA Dresden is not to be liable hereby for any such infringements of rights. A client is thus to keep IMA Dresden harmless from all such claims of third parties.

Art. 8 Warranty

1. Should a client require subsequent proper completion in case of any deficiency, then IMA Dresden can select to improve or replace.
2. Should a client assert indemnities for loss or damage instead of a subsequent service or self- improvement or -replacement, then IMA Dresden is only liable for a failure after the second unsuccessful attempt at improvement. The statutory cases of the dispensability of setting a time period for subsequent improvements are to remain unaffected by the foregoing.
3. Should any subsequent improvement or replacement only be possible with disproportionate expenditure or is unreasonable for IMA Dresden, or a subsequent improvement or replacement fails, then IMA Dresden can refuse any subsequent improvement or replacement. The statutory rights of a client for diminution of fee,

withdrawal from mandate or indemnity for loss or damage are to remain unaffected by the foregoing.

4. The warranty claim time period becomes statute barred for a client after 12 months, unless IMA Dresden is culpable of gross negligence or fraud or the claims have to do with the death, injury or health of persons.
5. The customer does not receive any guarantees in the legal sense from IMA Dresden.

Art. 9 Legal liabilities

1. Any legal liability of IMA Dresden is excluded hereby, unless loss or damage is incurred premeditatedly or by gross negligence, or the loss or damage is not attributable to any culpable infringement of essential contractual duties. Any legal liability of IMA Dresden is also excluded hereby for contractually untypical, unforeseeable loss or damage.
2. In case of any culpable infringement of essential contractual duties, the legal liability of IMA Dresden is limited to the indemnifiable amount of foreseeable, contractually typical loss or damage.
3. A legal liability for any culpable death or injury to or encroachment upon the health of persons is to remain unaffected by the foregoing exclusions or limitations of legal liability. This also applies to any mandatory legal liability under the product liability legislation as well as for any legal liability in the case of the adoption of a guarantee or warranty or for the assurance of a technical characteristic.
4. When the legal liability of IMA Dresden is excluded or limited hereby, then such is also to apply to the personal legal liabilities of workforce members, representatives and the associated vicarious agents of IMA Dresden.
5. IMA Dresden can adopt no legal liability for damaged or incompletely provided test specimens or test materials, accessory parts as well as packaging.

Art. 10 Data protection

1. IMA Dresden uses personal data from clients to process and record orders, to provide inspection services and to process payments..
2. A transfer of personal client 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 outweigh the interests. In addition, IMA Dresden is only entitled to transmit the client's data if it is legally obliged to disclose the data. The collection, transmission or other processing of personal data of the client for purposes other than those mentioned here is not permitted and does not take place on the part of IMA Dresden.
3. For further information, please refer to the data protection information for customers, suppliers, clients and other contractual partners on the IMA Dresden website.

Art. 11 Export control

1. The client is responsible for the export and import of the test parts and accessory parts and has to prepare the documents and information necessary for the transport and customs clearance as well as to carry out the customs clearance. The client must transmit the following to IMA Dresden:
 - the commercial origin of the test parts and their components,
 - the statistical goods number (HS code) of the test parts,
 - export list number according to Annex AL to the Foreign Trade Ordinance or comparable list items in relevant export lists,
 - For US test parts, the Export Control Classification Number (ECCN) according to the US Export Administration Regulations (EAR).
2. The fulfillment of a contract with the client is subject to the condition that there are no obstacles to fulfillment due to national or international regulations of foreign trade law and no embargoes and / or sanctions.

Art. 12 General stipulations, place of jurisdiction and place of contractual completion

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1. If one of the contracting parties stops making payments or if insolvency proceedings are applied for against their assets or an out-of-court settlement procedure is applied for, the other is entitled to withdraw from the contract for the part that has not been fulfilled.
2. The law of the Federal Republic of Germany applies exclusively to the exclusion of the UN Sales Convention (CISG) and the reference provisions of German international private law.
3. IMA Dresden is authorized to change these General Conditions for test orders, investigations and freely agreed services. Any changes will take effect on the announced date of entry into force.
4. In so far as nothing else is stipulated herein, the place of contractual completion for all contractual and statutory claims is the place of the corporate domicile (registered office) of IMA Dresden.
5. If the client is a businessman, the place of jurisdiction is the place of business of IMA Dresden. However, IMA Dresden is also entitled to sue the client at his local court.