

Standard Terms and Conditions of IAVF Antriebstechnik GmbH

Status: January 2020

I. Applicability, scope of supplies and services

1. All supplies and services by IAVF Antriebstechnik GmbH (hereinafter referred to as "IAVF") shall be subject to these Standard Terms and Conditions. Confirmations issued by the Client referring to its own standard terms and conditions shall only apply to the extent that such standard terms and conditions of the Client agree with these Standard Terms and Conditions.
2. The scope of supplies and services shall be defined exclusively and finally by the written quotation issued by IAVF or the agreements concluded in writing between IAVF and the Client. Any goods or services not explicitly included in the scope of supplies and services are hereby expressly excluded from the scope of supplies and services. Any subsequent extension or modification to the scope of supplies and services, including any such amendment waiving the requirement for amendments to be made in writing, shall be made in writing. The scope of supplies and services defined above corresponds to the agreed properties of such supplies and services and shall be deemed to constitute final and exclusive agreement between the Parties concerning the properties of such supplies and services.

II. Deadlines for Delivery and Performance

1. In the event that IAVF states deadlines for the delivery of goods or the performance of services to the Client, said deadlines will be determined with due care in view of technical and commercial factors but shall not be binding on IAVF unless IAVF explicitly confirms such deadlines to be binding in writing. Dates and deadlines shall only become binding when they have been explicitly agreed by IAVF and the Client to be binding in writing. The obligations of IAVF shall be subject to the condition that IAVF is able to purchase the goods and services required for the contract. A declaration issued by a supplier of IAVF shall constitute sufficient proof that IAVF is prevented from supplying goods by reasons beyond its control.
2. In the event that IAVF is prevented from performing its obligations under the contract in good time by circumstances of force majeure or other circumstances beyond the control of IAVF, including material purchasing problems, disturbances to business operations, strike, lockout, lack of transport capacity, acts by authorities, energy supply problems and similar circumstances, including such circumstances affecting the suppliers of IAVF, the period agreed for the supplies and services concerned shall be extended by the duration of such circumstances and the consequences thereof.

III. Guarantees, Rights of the Client in the Event of Defects

1. IAVF warrants that the supplies and services, as defined in Section I.2, will be performed with due care in accordance with the state of the art. IAVF makes no guarantees whatsoever as to the properties of the goods and services. Any declarations made by IAVF concerning the properties or specific characteristics of goods and services shall be deemed to have been made solely for the purpose of defining the agreed characteristics of such supplies and services in accordance with Sections 434 and

633, Civil Code. IAVF shall not be deemed to have provided any further guarantee as to the properties of goods and services except where IAVF has explicitly undertaken in writing to provide a guarantee giving the Client rights which are independent from the statutory rights of the Client in connection with such goods and services.

2. The Client shall notify IAVF forthwith in writing of any defect in goods supplied or in services performed by IAVF; each such notification shall include a precise description of the defect concerned. The Client shall not be entitled to delay payment of the invoice for such supplies and services because of any such defects.
3. In the event of defects in the goods supplied or services performed by IAVF to the Client, the Client shall be entitled to require IAVF to undertake subsequent performance of the contract. At the option of IAVF, such subsequent performance shall take the form of remedial action with respect to the defect concerned or the supply of replacement goods or services free from defects. In the event that subsequent performance of the contract fails or IAVF fails to remedy any defect within a reasonable period of time granted by the Client, the Client shall be entitled to rescind the contract for the goods or services concerned or to claim a reasonable abatement (reduction) of the remuneration agreed. Subject to the provisos stated in Section IV hereinbelow, this provision shall be without prejudice to any rights of the Client to claim damages or compensation for expenditure incurred to no avail.
4. Any claims of the Client for the subsequent performance of the contract, damages or compensation for expenditure incurred to no avail shall be forfeited unless made within twelve months of the delivery of the goods or the performance of services concerned to the Client. Any rescission of any contract by the Client by reason of the supply of goods or the performance of services not in accordance with said contract shall be ineffective if it is made more than 12 months following the delivery of the goods or the performance of the services concerned and IAVF states the defence that such claims made by the Client have not been made in good time.

IV. Limitations of Liability

1. IAVF shall be liable to the Client in the event of the breach by IAVF of material obligations under the contract, always provided that IAVF does not prove that it was not responsible for such breach. For the purposes of this provision, IAVF shall be deemed to be responsible for breaches caused by the wilful act or omission or negligence of IAVF. Provided however that the liability of IAVF shall be limited to such typical loss or damage as could reasonably have been foreseen as of the date when the contract was concluded or to the net remuneration payable to IAVF under the contract, whichever amount is lower, except in the event of wilful act or omission or gross negligence of IAVF. In the event of the breach by IAVF of obligations other than material obligations under the Contract, including without limitation the obligation to have due regard to the rights, legal entitlements and interests of the Client, IAVF shall be under no liability for any loss or damage, including without limitation consequential loss or damage, if IAVF proves that it was not responsible for the breach concerned. For the purposes of this provision, IAVF shall only be considered to be responsible for breaches caused by the wilful act or omission or gross negligence of IAVF.
2. The limitations of liability provided for in Paragraph 1 of this Section IV shall not apply in the event of rights held by the Client under guarantees provided by IAVF as to the properties of the goods and services or death, personal injury or damage to health caused by the wilful act or omission or negligence of IAVF. The provisions of this Section IV shall not operate to change the burden of proof to the detriment of the Client.
3. In the event that the Client makes engines, transmissions or other components available to

IAVF for test purposes, the risk of damage to such engines, transmissions or other components shall always be borne solely by the Client in the event that such damage is caused by the services to be performed by IAVF under the contract.

V. Confidentiality

1. The Client shall keep confidential any and all information and documents concerning IAVF which may come to its attention in connection with the goods supplied or the services performed by IAVF, until such information and documents have become public knowledge. Except to the extent that the provision of such information and documents is part of the services of IAVF under the contract, the Client shall handle with due care any and all information and documents received from IAVF in or in connection with the goods supplied and the services performed, irrespective of whether any such information or documents is explicitly designated as an industrial or trade secret of the IAVF or is evidently an industrial or trade secret of IAVF or not, shall not divulge any such information or document to any third party and shall not record, store, copy or otherwise document or use any such information or document.
2. All present and future work results for which proprietary rights may be obtained or other intellectual property rights used by IAVF for the delivery of goods or performance of services under the contract shall remain the sole property of IAVF. IAVF shall grant to the Client a free of charge, non-exclusive, non-transferable license to use such work results or other intellectual property rights to the extent that such use is necessary in connection with the use of the services performed or goods supplied by IAVF under the contract, which use is provided for or intended by the contract.

VI. Final Provisions

1. Any legal relationships between IAVF and the Client shall be governed by and construed and interpreted in accordance with the law of Germany.
2. The place of performance of the contract and the venue for any disputes arising between the Parties out of or in connection with the contract shall be Karlsruhe, provided however that IAVF shall also be entitled to bring proceedings against the Client at any of the client's statutory venues for disputes.
3. If any of the provisions of these Standard Terms and Conditions is or becomes ineffective or void, the other provisions of these Standard Terms and Conditions and these Standard Terms and Conditions as a whole shall remain in full force and effect.