



IFAB Ingenieure für angewandte Brandschutzforschung GmbH

[Institute for Applied Fire Safety Research]

General Terms and Conditions of Business (Version 06/2018)

1 SCOPE

- 1.1 The legal relationships of IFAB Ingenieure für angewandte Brandschutzforschung GmbH (Agent) are governed by the following terms and conditions of contract for business transactions and, insofar as permitted, also transactions with non-traders.
- 1.2 Any terms and conditions of business of the Principal which deviate from these Terms and Conditions of Business shall only be included in the terms of contract if they are expressly acknowledged in writing by the Agent.

2 CONTRACT

- 2.1 The object of a contract shall be any type of testing, reporting, checking, investigation (including the acquisition of testing equipment), research work, audits, inspections or certifications (hereinafter 'reports'), i.e. the establishment of facts, presentation of empirical judgements, determination of causes, assessments and reviews.
- 2.2 The nature and scope of a contract or the subject of a report and its intended purpose must be defined in writing when a contract is awarded.
- 2.3 The Principal should note that reports produced are independent reports which cannot be used to achieve the effect of a report produced as part of an independent court procedure to collect evidence (Article 485 et seq. Zivilprozessordnung [ZPO, German Code of Civil Procedure]) The production of a report by the Agent shall not interrupt any periods of limitation in relationships between the Principal and third parties.



3 EXECUTION OF CONTRACT

- 3.1 Contracts shall be executed by the Agent in an impartial manner and to the best of its knowledge and belief.
- 3.2 The Agent can only guarantee specific success, namely a particular result desired by the Principal, in the context of an objective and impartial application of the knowledge and expertise of the engineers working on behalf of the Agent.
- 3.3 The Agent shall be entitled to assign contracts, testing or its reporting work to a third party, either in full or in part.
- 3.4 If experts from other disciplines need to be called upon in order to fulfil a contract appropriately, said experts shall be commissioned on behalf of the Principal.
- 3.5 Moreover, the Agent shall be entitled to carry out any necessary and standard investigations and tests, according to its best judgement, at the Principal's expense or to arrange for these to be carried out, in order to fulfil a contract. If it transpires during an investigation that the investigation needs to be repeated or a testing procedure needs to be extended to a further investigation in order to confirm the results obtained, this shall not be deemed to be an unforeseeable event or, proportionate to the purpose of the report, as an investigation that is time and cost-intensive.
- 3.6 If a deadline is agreed for the presentation of a report, this shall not be seen as the agreement of a firm transaction.
- 3.7 Reports to be produced by the Agent shall be made available in a manner, format and quantity to be agreed by the Agent and the Principal.
- 3.8 Reports produced by the Agent shall only reflect the facts established at the time tests are carried out, in the context of specific instructions given by the Principal or, in the event that such instructions are not given, the specifications on the respective contract order form, relevant commercial practices and such methods, which the Agent considers appropriate for technical, organisational and/or financial reasons. The Agent shall not be obliged to refer to or report on facts or figures that are not included in the specific instructions given by the Principal.
- 3.9 The Principal acknowledges that by providing its services, the Agent adopts neither the position of the Principal nor a third party, nor exempts these from any obligations, nor assumes, limits, removes the obligations on the part of the Principal in respect of third parties or a third party in respect of the Principal, or exempts the Principal in any other manner.



3.10 Upon completion of a contract and payment of the agreed remuneration, the Agent may keep test items (hereinafter 'samples') belonging to the Principal at the Principal's risk and complying with due diligence. If the Principal has not collected documents and samples it has provided within three months of accepting a report, the Agent shall be exempt from any liability.

4 OBLIGATIONS ON THE PART OF THE PRINCIPAL

4.1 The Principal shall not give the Agent any instructions which may distort the Principal's actual findings or the outcome of its task or report.

4.2 The Principal shall ensure that engineers receive all the information, documents and test materials required for the performance of the contract in good time and free of charge.

4.3 A Principal wishing to use the results of a report in the context of a test event shall be obliged to supply sample material under its own responsibility by selecting and sending said sample material.

5 CONFIDENTIALITY

5.1 The Agent shall be prohibited from disclosing, passing on or exploiting a report itself or any facts or documents, which have been entrusted to it or otherwise made known to it in the context of its reporting work, without authorisation. The obligation to maintain confidentiality shall include all facts that are not obvious and said obligation shall continue to apply beyond the term of the contractual relationship.

5.2 Said obligation to maintain confidentiality shall also apply to all employees working for the Agent.

6 COPYRIGHT

6.1 The Agent shall retain copyright in respect of the services provided insofar as these lend themselves to this.

6.2 The publication of a report or its use through duplication and distribution shall only be permitted in the context of the contractually agreed intended purpose where reference is made to the Agent by name.



6.3 If the Principal intends to make reference in its product or corporate advertising to the fact that individual products or product families have been assessed by the Agent, either by quoting parts of a report or simply by referring to the Agent by name, this shall require prior contractual agreement. If such an agreement is not made in a report contract, using the results of the respective report in extract or quote form shall be excluded both in product and corporate advertising.

6.4 The Principal shall not be permitted to change or edit reports or to only use extracts from these. Investigation reports or expert reports may be passed on to authorities or other public agencies provided and insofar as this is required in accordance with the contractual purpose or is prescribed by law.

7 PAYMENT - PAYMENT ARREARS

7.1 The agreed fee shall be due and payable 14 days after invoicing.

7.2 Payment orders, cheques and bills of exchange shall only be accepted by special arrangement and only on account of payment and shall include all charges for discount and recovery.

7.3 From the beginning of the default, the Principal owes the Agent in addition to the fee for default interest. They are calculated in accordance with the Civil Code BGB § 288 (2) for commercial transactions with 9% above the current base rate. The agent reserves the right to claim any higher damage resulting from the delay.

7.4 In the event that bills of exchange and cheques are not honoured, the Agent shall be entitled to make all claims for remuneration due and payable immediately.

7.5 The Principal may only offset against Agent claims if the Principal's respective counter claim is undisputed or a legally enforceable claim exists. The Principal may only claim a right of retention insofar as this is based on claims arising from the agreement reached.

8 TERMINATION

8.1 The Principal and the Agent may terminate the agreement at any time for good cause. Termination shall be indicated in writing.

8.2 Good cause entitling the Principal to terminate an agreement shall include a breach of the obligation to provide objective, independent and impartial reports.



- 8.3 Good cause, which entitles the Agent to terminate an agreement, shall include refusal on the part of the Principal to cooperate as necessary (more particularly in accordance with Section 4.2), an attempt on the part of the Principal to exert an unlawful influence on engineers commissioned to prepare a report, the use of report findings and part results beyond the contractually agreed purpose for preparing the report, the unauthorised duplication of reports, and if the Agent discovers after accepting the contract that it lacks the expertise required to fulfil said contract.
- 8.4 Moreover, termination of an agreement shall be excluded.
- 8.5 If an agreement is terminated for good cause for which the Agent is responsible, the Agent shall only be entitled to remuneration for the partial service provided prior to termination insofar as the Principal is able to make objective use of said service.
- 8.6 In all other cases, the Agent shall maintain the entitlement to payment in full as per contractual agreement, less any expenses that have been saved.

9 FAILURE TO MEET DEADLINES

- 9.1 A deadline specified by the Principal for the delivery of a report shall only be deemed agreed if said deadline is expressly confirmed by the Agent.
- 9.2 If a deadline for delivering a report is agreed by the Principal and the Agent, the period until the respective deadline shall commence upon conclusion of an agreement or on the working day on which samples are received. If the Agent requires documents from the Principal in order to produce a report or if an advance payment is agreed, the period until the respective deadline shall not commence until said documents or advance payment have been received.
- 9.3 The Agent shall only fall into arrears if it is responsible for a delay in providing a report. A delay in delivery shall not apply in the event of obstacles hampering the provision of a report, for example, instances of force majeure, illness, strike and lock-out, which are due to events not attributable to the Agent and which lead to severe operational disruption. The period for delivery shall be extended in such cases by the duration of the respective obstacle. If such obstacles to delivery make the provision of a report impossible for the Agent, the latter shall be released from its contractual obligations. The Principal shall not be entitled to compensation in such cases.
- 9.4 The Principal may only request compensation for delay, in addition to delivery, if it can be proven that the Agent has acted with wilful intent or gross negligence.



10 GUARANTEE

- 10.1 The Principal may initially simply request the rectification of defects in an incomplete report at no extra cost.
- 10.2 An additional period of an appropriate length shall be required for this purpose, however, not during the period for delivery that was originally agreed.
- 10.3 If defects are not rectified within an appropriate period or if such rectification fails, the Principal may request the cancellation of the agreement (withdrawal) or a lowering of the fee (reduction).
- 10.4 Defects must be notified to the Agent as soon as they are discovered; failing which guarantee claims shall cease to apply.
- 10.5 Claims on account of a defective reporting service shall expire by limitation after one year. The period of limitation shall commence upon receipt of a report by the Principal.

11 LIABILITY

- 11.1 Reports shall be produced on the basis of information, documents, quality requirements and/or samples provided by the Principal or indicated in its contract brief and shall serve exclusively for the benefit of the Principal. The latter shall take responsibility for drawing the required conclusions from reports. Neither the Agent nor its senior staff, employees or sub-contractors shall be responsible vis-à-vis the Principal or third parties for actions of any kind, which have been taken or not taken on the basis of such reports, nor for incorrect tests which are based on unclear, incorrect, incomplete or misleading information provided by the Principal.
- 11.2 Advice shall only be given by the Agent on the basis of documents and information provided by the Principal.
- 11.3 The Agent shall not be liable for late, partial or incomplete services provided insofar as this is due directly or indirectly to events that are beyond the Agent's control.



- 11.4 Liability on the part of the Agent shall be limited to gross negligence and wilful intent. Regardless of the degree of fault, the Agent shall only be liable for such damage, which arises as a result of a breach of obligations that are essential for achieving the purpose of the agreement (cardinal obligations) as well as in the event of injury to life, limb or health and claims in accordance with the ProdHG [German Product Liability Act]. Claims for compensation shall be limited to foreseeable damage that is typical in the case of contracts and which has not been caused deliberately or as a result of gross negligence.
- 11.5 Exclusion of liability shall include, insofar as legally permissible, all claims of any kind whatsoever by the Principal against the Agent, its employees, representatives, vicarious agents and assistants arising from a report contract or its execution, including any claims arising from Article 280 Bürgerliches Gesetzbuch [BGB, German Civil Code] and rights of recourse on the part of the Principal in accordance with Article 426 Bürgerliches Gesetzbuch [BGB, German Civil Code].
- 11.6 The Agent shall not be liable, insofar as legally permissible, for indirect or consequential damage, more particularly not for lost profits, loss of trade, loss of business opportunities, reduction in goodwill or any costs in connection with a product recall.
- Moreover, the Agent shall not be liable, insofar as legally permissible, for any losses, damages or costs, which the Principal may incur as a result of a claim by a third party (more particularly in the event that product liability claims are made).
- 11.7 In the event of liability on the part of the Agent, liability vis-à-vis the Principal for outstanding debts due to losses, penalties, damages or expenses of any kind and amount, regardless of the reasons for their occurrence, shall not exceed the total fee which the Agent received for the specific services that gave rise to the respective outstanding debt.
- 11.8 All claims in connection with a specific inspection/production facilities assessment service, with the exception of such claims on account of injury to life, limb or health and/or in the event of gross negligence or causing damage deliberately, shall be limited to the fee charged for five (5) man days.
- 11.9 In the event of claims for compensation, the Principal shall notify the Agent in writing within 30 days of discovering the respective circumstances justifying damages. Claims for compensation arising as a result of breaches of obligations shall expire by limitation 12 weeks later calculated from receipt of a report by the Principal.



12 PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW

- 12.1 The place of performance shall be the Agent's place of business.
- 12.2 If the Principal is a registered trader, legal entity or special fund under public law, the Agent's place of business shall be the sole place of jurisdiction.
- 12.3 If the Principal has no general place of jurisdiction in Germany or if, following the conclusion of an agreement, its place of residence or usual place of residence is not known at the time of filing a complaint, the Agent's place of business shall also be deemed the place of performance.
- 12.4 The relationship between the Agent and the Principal shall be subject to German law excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and rules under international private law.
- 12.5 The invalidity of individual contractual provisions shall not affect the remainder of the agreement.

13 PRIVACY STATEMENT

- 13.1 The handling of personal data in the context of business cooperation can be reviewed under the current privacy statement of IFAB GmbH available on the website:

Berlin, June 2018