



# Allgemeine Bestellbedingungen ABB – General Ordering Conditions of IBM iX Berlin GmbH and IBM iX Switzerland AG

## 1 Contract Documents

The order including all attachments for products and services, which are subject of this order shall constitute the prevailing agreement between the Purchaser [AG = *Auftraggeber*] and the Supplier. The Supplier's offer is an integral part of this order, insofar as the Purchaser has expressed his written consent to it (text form is also possible).

Subsequently changed conditions, set out in a response by the Supplier to this order, conditions, which should be declared additionally to the herein contained conditions (thus representing a counteroffer), shall be expressly rejected by the Purchaser. The Purchaser's order may not be altered by Supplier's counteroffers. In case this order should not accurately reflect the outcome of the agreement between Purchaser and Supplier about the subject matter of the order, then the Supplier will have to object to the order indicating the POD or PO Number towards the Purchaser (e-mail will be sufficient).

## 2 Prices

The Supplier's remuneration for his services as well as the reimbursement of ancillary costs shall be stipulated in the respective individual order. All to be rendered services including the assignment of rights shall be compensated for with the agreed remuneration.

Unless otherwise agreed in writing with the Purchaser, Supplier's costs that arise in the context of fulfilling this order shall not be reimbursed. The "Euro" shall be considered as currency unit for price determinations.

## 3 Taxes

All applicable taxes, costs, fees, charges or other assessments, which should be imposed or levied worldwide by a government- or tax authority (including local authorities) in the context of selling products or services, other applicable taxes as well as value added tax and other dues or fees in the context of the Purchaser's payments to the Supplier for products and/or services, which will be provided to the Purchaser in connection with this order, fall within the scope of responsibility of the Supplier and have to be paid by him. In accordance with applicable law, the Purchaser shall retain pertinent taxes on payments to the Supplier and shall solely pay net yield to the Supplier. If Purchaser provides a direct pay certificate, certification of an exemption from tax, or reduced rate of tax imposed by an applicable taxing authority, then Supplier agrees not to invoice, nor pay, any such tax unless and until the applicable taxing authority assesses such tax, at which time Supplier shall invoice and Purchaser agrees to pay any such tax that is legally owed. Purchaser shall withhold taxes as required under applicable law on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof.

## 4 Terms of Payment

Unless otherwise mandated by local law, Purchaser's payments shall have to be settled strictly net within 30 days after receipt of a valid invoice or after receipt of the Supplier's products or services, whichever date is later.

In addition to the legally required contents, the invoices must contain the information listed below so that they can be processed. If invoices do not comply with these requirements of the Purchaser, the Purchaser is entitled to reject invoices:

- Invoices in e-mail attachments are only accepted in PDF format, optionally also PDF/A
- The invoice must include AG's POD number and contact person
- Invoices must be accompanied by proof of services/time sheets
- The invoice may only refer to one order
- The value as well as the individual price of an invoice item may not exceed the value/individual price of the respective order item (in case of price variations please get in touch with the responsible purchasing agent);
- Invoices and credit vouchers shall have to be issued separately;
- The invoice shall have to be issued displaying the order currency;
- Every invoice item shall have to refer to the respective order item;
- Please send your invoice via e-mail to:  
[invoice-berlin@IBMix.de](mailto:invoice-berlin@IBMix.de) (for IBM iX Berlin GmbH) or  
[invoice-switzerland@ibmix.ch](mailto:invoice-switzerland@ibmix.ch) (for IBM iX Switzerland AG)

Please note that our terms of payment refer to the date of receipt of acceptable invoices.

Before the first order, the Supplier will also fill in the questionnaire for Suppliers and provide the Purchaser with his master data, in particular his complete company name, address, VAT identification number and bank account details. The Supplier shall inform the Purchaser immediately of any changes to the master data.

## 5 Taking Delivery respectively Acceptance

Payment does not signify taking delivery respectively acceptance of the products or services; said products or services shall first be checked and tested and will then be accepted or rejected. Optionally, the Purchaser may either reject the products and services that do not correspond with the specifications for taking delivery or with the acceptance criteria, while requiring reimbursement or he may demand the Supplier to immediately repair or exchange the products in question free of charge or to execute the services once more. The Purchaser shall be entitled to return to the Supplier, at Supplier's expenses, products that do not correspond with the specifications for taking delivery or with the acceptance criteria.

## 6 Cancellation

The Purchaser may cancel this order within 14 calendar days without giving any reasons. In case the Purchaser should cancel the order without giving any reasons, the Purchaser will pay the Supplier actual and reasonable costs for works that have been satisfactorily completed until the day of the cancellation. In no case, may that payment exceed the agreed price.

## 7 Import and Export

In the framework of this order, the Supplier shall be the competent and responsible importer and exporter. He shall be obliged to observe all import- and export laws and administrative requirements, inter alia, as regards to paying all accruing dues, taxes and fees as well as observing all applicable laws, regulations, certifications and registrations in connection with the import or export of the Supplier's products, including requirements as regards to product security, electromagnetic compatibility, telecommunication, taking back products/-recycling and environmental



protection, however, without being limited to that. Upon Purchaser's request, the Supplier shall immediately provide all information required for the export and import of the products, inter alia, key figures for export controls (ECCN = Export Control Classification Number) and subtitles or certifications and/or test results in connection with the products or services. The Supplier shall also inform the Purchaser in writing about changes as regards to the information for exporting and importing products provided by the Supplier.

## 8 Risk Assumption /Delivery

Right of ownership and risk assumption shall be the responsibility of the Supplier, up until delivery of the in connection with this order acquired products at the place of delivery, as has been determined in the order and accepted by the Purchaser. As regards to the Supplier's delivery of the products, adhering to the deadlines is essential. The Supplier shall immediately inform the Purchaser, if he should be unable to adhere to one deadline respectively delivery date stipulated in this order. As regards to a delayed delivery, the Purchaser shall be entitled to statutory claims, according to which he shall, inter alia, be entitled to procure a substitute delivery from another source and to demand compensation for the additional costs from the Supplier.

## 9 Examination and Notification about Non-Compliance

In case of a commercial transaction (§ 377 HGB [Handelsgesetzbuch = German Commercial Code]) taking delivery respectively acceptance of the provided products shall take place subject to Purchaser's examination, showing no deficiencies. The Purchaser shall be obliged to examine the provided products within a reasonable period of time. Obvious defects shall be considered as notified in a timely manner towards the Supplier, if the Purchaser makes a complaint within 14 days after receipt of the product. The Purchaser shall be obliged to make a complaint about hidden defects within 14 days after discovery of the defect. The deadline shall be deemed to have been met, if the Purchaser will make the complain in a timely manner.

## 10 Warranties

The Supplier shall warrant as follows: i. He himself and his vicarious agents will dispose at the required knowledge about all laws, regulations and provisions, which apply for the provision of products and services hereunder, and will observe such provisions (at his own expenses); ii. Products and services will neither infringe personal rights, publicity rights, nor the reputation and intellectual property rights of third parties; iii. The products will be free from defects in design, material and workmanship; iv. Relating to warranties, specifications and requirements in accordance with the offer, the products will correspond to the offer and are suitable and safe for use; v. The Supplier will not use, disclose or transmit information across borders, which will be processed for the Purchaser and which could identify individuals ("personal data"), unless this should be necessary in order to fulfil this order; vi. Solely upon prior notification and in compliance with all applicable laws, provisions and regulations stipulated by federal, state and local governments, will the Supplier disclose, export or re-export any of the Purchaser's information, procedures or products, which will be created in the framework of this order or authorise Supplier's vicarious agents to do so.

## 11 Intellectual Property

The Supplier shall grant to the Purchaser all rights and licences necessary for using, transferring, passing on and distributing the products and services and also for exercising those rights granted

to the Purchaser and to his associated companies, under the present order.

## 12 Ownership of Products

With exception of products that are composed of software (which shall be licensed according to our terms stipulated under "Intellectual Property"), all work results, which will be developed by the Supplier under this order, shall pass into the Purchaser's ownership.

## 13 Exemption

The Supplier shall defend and indemnify the Purchaser and Purchaser's associated companies and shall exempt these from claims (including general costs, expenses and legal charges), which (a) should be enforced on the grounds that products violate proprietary rights, (b) should be based on non-compliance of a warranty, of a guarantee or of other obligations included in this order or (c) should result from a security breach. In case such a claim should be enforced, the Supplier will be obliged to take – at his own expenses – the first applicable remedial measure as follows: (i) to confer the rights granted under this order to the Purchaser; (ii) to change the product to the extent that no rights will be violated and simultaneously achieve compliance with the provisions stipulated in this order; (iii) to replace the product by such non-infringing products, that no rights will be violated and the regulations of this order will be adhered to; or (iv) to accept the return or phase out of the infringing product as well as to refund already paid amounts for the product in question.

## 14 Limitation of Liability

To the extent legally permissible, the Purchaser or his associated companies shall not be liable for loss of sales, lost profits, incidentally occurring damages, indirect damages, consequential damages, special damages or fines including compensation for damages. In no event shall Purchaser's liability to Supplier exceed the total amount of fees actually paid by Purchaser to Supplier hereunder. In particular, the Supplier shall be liable towards the Purchaser for any fines imposed on the Purchaser in accordance with § 21 Sec. 2 and 3 MiLoG [*Mindestlohnengesetz – German Minimum Wage Act*], as well as for any claims against the Purchaser in accordance with § 14 AEntG [*Arbeitnehmer-Entsendegesetz – German Posted Workers Act*], if he should culpably violate his obligations resulting from the Minimum Wage Act. These limitations of liability shall not be applicable for losses or damages, resulting from a violation of a guarantee assumed in connection with a business transaction in the framework of this order, for damages due to non-compliance of essential contractual obligations, for personal injuries or for damages caused due to wilful intent or gross negligence or caused in the framework of the German Product Liability Act (ProdHaftG [= *Produkthaftungsgesetz*]).

## 15 Assignment

The Supplier shall not be entitled to assign his rights or to commission subcontractors without the Purchaser's written consent. Any unauthorised assignment shall be invalid. Notwithstanding anything to the contrary set forth herein, Supplier may assign this Agreement, in whole or in part, to any new entity divested, spun-off, or otherwise formed by or from Supplier or any other company of the IBM Corporation who, prior to such formation, used or uses any of the Deliverables and/or Services hereunder.

## 16 Confidentiality

The Supplier shall be obliged to treat all information about the Purchaser's economic and other matters strictly confidential, i.e.



information, which will become known to him during the cooperation as well as all information about business and trade secrets, which he will receive, while processing the individual project orders, and he shall be obliged to protect the information against any unauthorised access by third parties.

This obligation shall not be applicable for information, which is or will become common knowledge, without breaching this agreement, which will verifiably have been developed independently or which will legitimately have obtained by third parties without any obligation to confidentiality or which already had been in the Supplier's possession at the time of disclosure. "To treat confidentially" in the sense of this Agreement shall mean that the Supplier will not pass on, divulge or respectively disclose information, contents or data to third parties or transfer information in the technical as well as non-technical sense, provided that they are not to be made accessible to pre-defined third parties, in accordance with pertinent contractual provisions.

Furthermore, the Supplier shall be obliged to keep non-electronic documents as well as electronic documents safe, which will be presented by Purchaser's clients in the framework of individual project orders and Supplier shall be obliged to exclude any inspection of such documents by third parties.

"Third parties" in the sense of this Agreement shall not refer to the companies associated with IBM IX DACH. Furthermore, a disclosure shall only be authorised in order to fulfil statutory or administrative obligations and only after prior information of the Purchaser, otherwise only with the Purchaser's written consent. Without the Purchaser's written consent, the Supplier shall be prohibited to draw copies from documents or from information provided in the course of this cooperation for any purposes deviating from the execution of contractual activities. The Supplier shall oblige his own employees to observe confidentiality, and by request he shall submit this declaration of obligation to the Purchaser.

This confidentiality obligation shall continue to exist indefinitely beyond the termination of the contractual relationships.

## 17 Ethical Conduct

Supplier will be familiar and will strictly comply with all laws and regulations on bribery, corruption, and prohibited business practices. Supplier and its affiliates have not and will not, for the purpose of influencing or inducing anyone to influence decisions in favor of Purchaser or any of its affiliates, offer, promise, or make or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel, or other value for a government employee or his/her family members, or (c) any payments or gifts (of money or anything of value) to anyone. Purchaser shall not reimburse Supplier for any such political contributions, payments, or gifts. Supplier's breach (or Purchaser's reasonable belief that Supplier has breached or is likely to breach) of the Ethical Dealings provision constitutes a material breach of this Order and, in such event Purchaser may terminate this Order immediately on written notice to Supplier.

## 18 Applicable Law

This order shall be subject to the laws of the Federal Republic of Germany. The international sales law of the "United Nations Convention on Contracts for the International Sale of Goods" shall be excluded. Place of jurisdiction shall be Berlin.

## 19 General Remarks

Any reproduction of this Order by reliable means will be considered an original of this Order.

Unless otherwise prescribed mandatorily by applicable law, legal or other measures, in connection with this order, shall have to be instigated no later than two (2) years after the cause of action occurred.

So that modifications, changes and additions to this order or a waiver in connection with this order shall be binding for the parties, those shall have to be carried out in writing (text form is also possible) and they have to be duly signed by both parties referring to this order. If the Purchaser should not exercise his rights hereunder, this shall not be considered as an abandonment of his rights.

Without the Purchaser's prior written consent, the Supplier shall not be entitled to use the name or the brands of the Purchaser or that of the Purchaser's associated companies nor to mention or identify the Purchaser or Purchaser's associated companies in marketing material (including recommendations or clients lists) or press releases.

## 20 Data Protection

The Supplier is obliged to inform the Purchaser immediately if the Supplier obtains access to personal data of the Purchaser or customers of the Purchaser or processes personal data.

Should a transmission of personal data from controller to controller be included as part of the services to be purchased, the following applies: The Supplier confirms that he has all the legal requirements to lawfully transfer the personal data of data subjects to the Purchaser, in particular, if required, to have obtained the consent of the data subjects for the transfer to the Purchaser for the purpose in question, and to have provided the data subjects with all required information necessary for compliance with the transparency requirements under the applicable data protection laws.

Purchaser's Supplier Data Processing Addendum (DPA) and applicable DPA Exhibit(s) apply and supplement the Agreement, if and to the extent the European General Data Protection Regulation (EU/2016/679) (GDPR) or the Swiss Federal Privacy Act (SFPA) apply to the processing of personal data under and/or in context with this agreement. Supplier is obliged to inform the data subject of his right of objection referring to the use of his data for purposes of advertising or of market or opinion research that he is carrying out for Purchaser. Purchaser and its Affiliates, and their contractors and subprocessors, may, wherever they do business, store and otherwise process business contact information (BCI) of Supplier, its Personnel and authorized users, for example, name, business telephone, address, email, and user ID for business dealings with them. Where notice to or consent by the individuals is required for such processing, Supplier will notify and obtain such consent. The Supplier's employees involved in the processing of personal data will be obligated to observe data secrecy and, if required, telecommunications secrecy and other secrecy obligations pursuant to applicable law (e.g. § 35 SGB I). These obligations shall continue to apply even beyond the expiry date of the Agreement.

**Status as of April 2022**