



# IMA SCHELLING GROUP

## Terms and conditions INDUSTRIAL CONSULTING

### I. Application of the terms and conditions

1. These terms and conditions apply to all current and future consulting and other services that the company IMA Schelling Deutschland GmbH, hereinafter referred to as IMA SCHELLING, provides to customers on the basis of an order or an order confirmation. Additional duties adopted by IMA SCHELLING shall not affect the validity of these terms and conditions. In any case, the version valid at the time of contract conclusion is binding.

2. Conflicting or differing terms of business of the customer do not bind IMA SCHELLING, even if IMA SCHELLING does not object to them or even if IMA SCHELLING unconditionally renders performance or accepts the customer's performance. The provisions of this paragraph equally apply insofar as the terms of business of the customer, irrespective of the contents of these terms of conditions, deviate from statutory provisions..

### II. Conclusion of the contract

1. **Orders of the customer** are to be put in writing. If the customer's order deviates from the proposal or the tender submitted by IMA SCHELLING, the customer will emphasize the differences as such.

2. All orders, in particular also those received by employees of IMA SCHELLING, will **take effect exclusively if followed by a provisional and/or final written acknowledgement** of the order by IMA SCHELLING. The actual delivery of the goods ordered, any other conduct of IMA SCHELLING or silence on the part of IMA SCHELLING does not allow the customer to assume the formation of the contract. IMA SCHELLING can dispatch such provisional and/or final written acknowledgement of the order up to and including **fourteen (14) calendar days** after the customer's order has been received by IMA SCHELLING.

3. The provisional and/or final written **acknowledgement of the order** by IMA SCHELLING shall be **received in time**, if it is received by the customer within seven (7) calendar days after its date of issue. The customer will inform IMA SCHELLING without delay, if the provisional and/or final written acknowledgement of the order is received with some delay.

4. The provisional and/or final written acknowledgement of the order by IMA SCHELLING sets out all the **terms of the contract** and brings the contract into effect even if - except for the price for the goods and the quantity to be delivered - the written acknowledgement is not consistent with the declarations of the customer in every respect, especially with reference to the exclusive application of these International Conditions of Sale. Particular wishes of the customer, namely warranties or guarantees with reference to the goods or the performance of the contract as well as method and extent of examinations and acceptance tests to be done in the works of IMA SCHELLING therefore require express written confirmation by IMA SCHELLING in every case. The contract will only fail to come into existence if the **customer objects in writing** that the acknowledgement of the order by IMA SCHELLING is not completely consistent with the declarations of the customer, the customer specifies the deviations in writing and if the objection is received by IMA SCHELLING within a short time, at the latest seven (7) calendar days, after receipt of the provisional and/or final written acknowledgement of the order by the customer.

5. Confirmations produced by the customer are of **no effect** without any objection by IMA SCHELLING being necessary. In particular, neither the actual delivery of the goods, any other conduct of IMA SCHELLING or silence on the part of IMA SCHELLING shall give rise to any belief by the customer in the relevance of his confirmation.

6. IMA SCHELLING's **employees**, commercial agents or other sales intermediaries are not authorized to dispense with the requirement of a provisional and/or final written acknowledgement of the order by IMA SCHELLING or to make promises which differ from its content or guarantees. If and to what extent such persons are authorized to make or receive declarations with effect for or against IMA SCHELLING, is to be determined according to German law.

### III. Work to be performed by IMA SCHELLING

1. The parties agree that IMA SCHELLING's contractual duty is only to provide services, but not the bringing about of a particular result or the procurement of any specific economic success. The parties also agree that the exclusively service-oriented nature of IMA SCHELLING's duty to perform will not change even when IMA SCHELLING agrees to record the results of its service in writing and to create and transfer the corresponding reports, studies or the like.

Unless otherwise agreed upon, these do not represent an expert opinion but only essentially reflect the contents of the procedure and of the results of the service.

2. In order to carry out the order, IMA SCHELLING is entitled to outsource certain tasks to a competent third party that has the role of a sub-contractor. The parties also agree that IMA SCHELLING's contractual duty is not to provide tax consulting or any service that belongs to the tasks of an auditor.

3. The parties agree that IMA SCHELLING is not committed to check that the information, data or documents it has received in writing or verbally are technically or mathematically correct, complete or formally correct. However, if IMA SCHELLING finds out within the framework of the provision of its services that the information, data or documents it has received in writing or verbally is obviously incorrect, incomplete or formally incorrect, it will point this out to the other party.

4. IMA SCHELLING has to supply the service described in the written order confirmation and to transfer the ownership. If the service to be provided requires further details, IMA SCHELLING will make the specifications while taking into account its own concerns and the justified concerns of the customer of which IMA SCHELLING becomes aware. IMA SCHELLING is not committed to provide services that are not listed in its written order confirmation or in these terms and conditions; in particular, IMA SCHELLING is not committed to disclose or provide information or documents not agreed upon in writing.

5. IMA SCHELLING's obligations under the contract made with the customer are owed only to the customer. Third parties not involved in the conclusion of the contract, in particular the **customer's clients**, are not entitled to request delivery to be made to them or to bring any other contractual claim against IMA SCHELLING. The customer's responsibility to take delivery continues to exist even if he **assigns rights to third parties**. The customer gives IMA SCHELLING an unlimited indemnity against all claims made by third parties against IMA SCHELLING out of the contract made with the customer.

6. Agreed **delivery time periods** or **delivery dates** are subject to the customer's procuring any required documents, releases, permits, approvals, licences or any other authorizations or consents in sufficient time, opening letters of credit and/or making down-payments as agreed and performing all other obligations incumbent upon him properly and in good time. Moreover, agreed delivery time-periods begin on the date of the written acknowledgement of the order by IMA SCHELLING. IMA SCHELLING is entitled to deliver earlier than at the agreed delivery time or to select the date of delivery within the period for delivery.

7. IMA SCHELLING is entitled to perform contractual duties **after the agreed date** if the customer is informed of the date postponement and notified of a time period for subsequent performance. Under these conditions, IMA SCHELLING is also entitled to make multiple trials of subsequent performance. The customer can object to the subsequent performance within a reasonable period of time if the subsequent performance is deemed unreasonable.

8. Without waiving further legal rights, IMA SCHELLING is entitled to invoke the **objection of uncertainty** in accordance with § 321 BGB if IMA SCHELLING is concerned that the customer may not fully or only partially perform its contractual duties. In particular, IMA SCHELLING is entitled to invoke the objection of uncertainty if the customer insufficiently performs its duties owed to IMA SCHELLING or to third parties or delays payments or if the limit set by a credit insurer has been exceeded or is exceeded with the pending delivery. Instead of raising an objection, IMA SCHELLING can also decide to perform or not perform future deliveries, including those already confirmed, depending on whether the customer makes payment in advance or not. IMA SCHELLING is not obliged to continue performance as long as the customer fails to provide adequate security to avert the objection or as long as it can be deemed to provide contestable services.

### IV. Duties of the customer

1. Irrespective of continuing obligations of the customer to guarantee or to enable payment, the customer **undertakes to pay** the agreed price on the dates listed in the written order confirmation or – if such date is not listed – upon receipt of the invoices. The legal amount of interest on maturity can be determined from §

288 BGB. The periods granted for payment will cease to apply and outstanding accounts will be due for immediate payment if purchasers of the customer pay for goods delivered by IMA SCHELLING subject to retention of title, if bankruptcy proceedings are brought against the assets of the customer, if the customer fails to honour fundamental obligations towards IMA SCHELLING or third parties without providing a justifiable reason, if the customer made incorrect statements regarding its creditworthiness or if the coverage promised by a credit insurer is reduced for reasons IMA SCHELLING is not responsible for.

2. With the payment of the **agreed price**, the payments owed to IMA SCHELLING are settled. Legal **VAT**, if prescribed by law, will be invoiced separately and shall be paid additionally by the customer.

3. In each individual case, promises of **discounts** are to be disclosed in IMA SCHELLING's written order confirmation; they only apply on the condition that payment of all liabilities of the customer to IMA SCHELLING is made fully and in due time.

4. **Payments** shall be transferred in € without deduction and free of expenses and charges via the banking institute stipulated by IMA SCHELLING. Unconditional crediting to the bank account shall be authoritative for the **timeliness** of payment. The employees as well as agents or other sales representatives of IMA SCHELLING are not entitled to accept payments.

5. Regardless of the currency and of the jurisdiction of any court, IMA SCHELLING is entitled at his own discretion to **set off** incoming payments against claims existing against the customer by virtue of his own or assigned rights at the time of payment.

6. Any statutory rights of the customer for **set-off** against claims of IMA SCHELLING are excluded, except where the corresponding claim of the customer against IMA SCHELLING is founded in the customer's own right and has either been finally adjudicated or is due and undisputed. § 215 BGB shall not apply to business transactions at national level.

7. Any statutory rights of the customer to **suspend** payment or taking delivery of the goods or to suspend other obligations and to **raise objections or counterclaims** are excluded, except where despite written warning IMA SCHELLING has committed a fundamental breach of its obligations due and arising out of the same contractual relationship and has not offered any adequate assurance. § 215 BGB shall not apply to business transactions at national level.

## V. Cancellation of the contract

1. Giving consideration to the governing statutory provisions for withdrawal, the **customer** is **entitled** to withdraw from the contract if the performance owed to IMA SCHELLING has become impossible, if IMA SCHELLING has fallen into default of performing fundamental contractual duties or has otherwise substantially violated its duties arising from the contract and if IMA SCHELLING is responsible for the performance default or violation of duty. In order for a performance default to be considered to exist, it is always necessary – without the waiver of further legal requirements and also in the case of a calendar-defined period of performance – that, after the due date, a separate written demand is directly addressed to IMA SCHELLING to carry out the performance within an appropriate period of time. After the event that entitles the customer to withdraw from the contract has occurred, the customer must give notice of withdrawal from the contract within reasonable time in writing and to IMA SCHELLING directly.

2. Without prejudice to his continuing legal rights, **IMA SCHELLING** is entitled to avoid the contract in whole or in part without compensation if the customer objects to the application of these International Conditions of Sale, if on grounds for which IMA SCHELLING is not responsible the written acknowledgement of the order by IMA SCHELLING is received by the customer more than fourteen (14) calendar days after its date of issue, if insolvency proceedings relating to the assets of the customer are applied for, if the customer without providing a justifiable reason does not meet fundamental obligations due towards IMA SCHELLING or towards third parties, if the customer has provided inaccurate information regarding his creditworthiness, if the cover given by a credit insurer is reduced on grounds for which IMA SCHELLING is not responsible, if IMA SCHELLING through no fault of his own does not receive supplies properly or on time, or if for other reasons IMA SCHELLING cannot be expected to fulfil his obligations by means which taking into consideration his own interests and that of the customer as far as ascertainable and legitimate at the time of formation of the contract, are unreasonable in particular in relation to the agreed counter-performance.

## VI. Damages

Any information and advice shall be given by the contractor to the best of its knowledge and in accordance with the standards of proper professional practice. The Contractor shall not be liable for absence of economic profit.

The contractor shall be liable pursuant to the statutory provisions relating to the contracts for work and services insofar as the customer claims damages that are based on intention or gross negligence.

The customer cannot raise liability and warranty claims relating to the up-to-dateness, correctness, completeness or quality of the data assets of third parties on which the service is based, specifically of the documents published by authorities and funding institutions.

Moreover the contractor is not liable for any consequential damage caused by defects, such as loss of profit, missing savings or other indirect damages.

## VII. Other provisions

1. A message considered to be **in writing** requires neither a personal signature nor an electronic signature. Notifications via email or fax are considered to be in writing as well as other text forms without any requirement to mark the end of the message.

2. The **data** about the customer which is received in conjunction with the business relationship shall be **processed** by IMA SCHELLING in accordance with the Federal Data Protection Act.

## VIII. General principles of the contract

1. The **place of delivery** is stated in the order confirmation. The place of payment and place of fulfilment for all other obligations arising from the legal relationship between IMA SCHELLING and the customer is Lübbecke. These regulations will also apply if IMA SCHELLING performs work for the customer at another place or if performed work needs to be undone.

2. The contractual and extra-contractual legal relations between IMA SCHELLING and the customer shall **exclusively be governed by German law** as well by common practice in Germany.

3. Any contractual and extra-contractual litigation resulting from or in the context of contracts intended for the application of these terms and conditions, including insolvency disputes, will be settled definitely in accordance with the arbitration rules of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtswesen <DIS>) under exclusion of ordinary legal proceedings. The arbitration court consists of three arbitrators; in the case of disputes in which the amount in dispute is less than EUR 50 000, the arbitration court consists of one arbitrator. The place of the arbitral proceedings is Köln (Cologne), Germany; the language is German. The jurisdiction of the arbitration court excludes, in particular, any other jurisdiction stipulated by statute based on a personal or material relationship. If this arbitration clause is invalid or should become invalid, the exclusive local and international jurisdiction of the courts which have jurisdiction for Lübbecke, Germany, is agreed for all disputes instead. IMA SCHELLING is, however, entitled to take legal action before the competent court that has jurisdiction for Lübbecke, before any competent court at the domicile of the customer or any other competent national court.

4. If any of the provisions of these terms and conditions are or become unenforceable, the remaining provisions shall nevertheless be binding and enforceable. The parties agree that the unenforceable provision will be replaced as soon as possible with an enforceable provision that comes closest to the economic intention underlying the unenforceable provision.