

General contractual terms and conditions

As a suitable notified body, IBExU Institut für Sicherheitstechnik GmbH (hereinafter “IBExU”) provides services in accordance with Directive 2014/34/EU of the 26th February 2014 on the harmonisation of the laws of the Member States relating to equipment and protective systems intended for use in potentially explosive atmospheres in connection with the German Equipment and Product Safety Law (11th Regulation on Explosion Protection Products) of the 12th December 1996 (as at 2016) under the following conditions:

1.

The activities performed by IBExU as a notified body are classified as a supply of services. The issue of conformity documents in accordance with Annex III to IX of the Directive shall not be mandatory.

2.

The contractual agreement between IBExU and the applicant/customer (hereinafter “Customer”) shall start when IBExU sends the Customer confirmation of its application/order (hereinafter “Order Confirmation”).

The subject of the contract shall be conformity assessments within the meaning of the aforementioned Directive. Alongside the Order Confirmation, Directive 2014/34/EU shall form the main basis of the contract. Consulting services shall not form part of the order.

Upon submitting its application or placing an order, the Customer confirms that the application/order shall be exclusively submitted to the notified body IBExU and that it has a right to submit an application/place an order in the meaning of Directive 2014/34/EU.

3.

The Customer shall be given any necessary information about product testing and auditing provided by IBExU as stipulated in the Directive.

Insofar as this is necessary, the Customer shall be informed of the results of product testing and audits.

If the results of the product test or audit are positive, the Customer shall be issued with a written test or audit report. The Customer shall receive the original report in German.

If the report subsequently confirms that the requirements of Directive 2014/34/EU have been met by the product or quality assurance system being tested and there are no other obstacles to overcome, IBExU shall issue the Customer with a conformity document in accordance with Directive 2014/34/EU based on this report.

A conformity document will not be issued in the event of a negative test or audit result.

4.

Unless otherwise specified by law, conformity documents issued to confirm the conformity of equipment, components and protective systems with the requirements of Directive 2014/34/EU shall be valid indefinitely.

The Customer shall receive the original report in German.

5.

Conformity documents issued to confirm the conformity of quality assurance systems with the requirements of Directive 2014/34/EU shall generally be valid for a period of three years.

The Customer shall receive the original report in German.

6.

The Customer may receive copies of reports and conformity documents in another language in addition to German subject to an appropriate agreement. The translations of these documents shall be labelled as such. In the event of a dispute, the content of the German original shall be exclusively binding.

7.

IBExU shall provide its services under the purview of the Customer. It is therefore mandatory that the Customer actively cooperates with IBExU.

In particular, the Customer shall provide IBExU with an adequate number of prototypes for testing, free of charge and together with all associated technical documents, such as illustrations, parts lists, material data sheets, functional descriptions, and user information/operating instructions. The documentation should preferably be submitted in German. Alternatively, English is possible.

If the Customer intends to provide IBExU with a disassembled prototype, it shall notify IBExU of this in advance. IBExU reserves the right to conclude separate agreements for the provision of its services.

The Customer shall provide IBExU with technical documents in duplicate pursuant to Directive 2014/34/EU for the purpose of product testing. The Customer shall label the technical documents as test documents.

The Customer shall receive a set of test documents bearing IBExU's stamp once the order is completed.

The technical documents and prototypes submitted for the purpose of product testing shall meet all the requirements of Directive 2014/34/EU.

If the Customer decides to use a standard, its technical documents and prototypes must meet the requirements of the standard. If this is not the case, the Customer shall inform IBExU of each deviation from the standard. IBExU shall not be obligated to issue notifications in this respect.

Prototypes may be damaged or destroyed during testing.

8.

The Customer shall provide IBExU with documents on its quality assurance system, including all relevant technical documents for the approved product and a copy of the EU type examination certificate, for auditing purposes. The documentation should preferably be submitted in German. Alternatively, English is possible.

The documents provided for auditing purposes shall meet all the requirements of Directive 2014/34/EU.

9.

IBExU shall be entitled to inspect all of the Customer's documents necessary for product tests and auditing as well as those of suppliers, end customers or third parties, and to archive them as needed for processing.

Insofar as this is necessary, IBExU's staff shall have unlimited access to the Customer's relevant facilities, sites and areas. It shall fall to the Customer to make any arrangements necessary for carrying out assessments, including but not limited to providing appropriately trained staff and entering into any necessary agreements with suppliers, end customers and third parties.

Assessments shall also include investigations into complaints, as well as their resolution and documentation.

10.

IBExU may request that equipment, protective systems and components be marked with essential notes for safe use and that components also be marked with notes on the correct conditions for installation in a device or protective system (see relevant conformity document markings with an X or U behind the document number), as well as that these are recorded in the operating manual.

11.

IBExU shall specify the EX markings for the devices, protective systems and components of tested products, as well as labelling with its EU identification number as a notified body (0637) pursuant to all relevant regulations.

12.

Conformity documents and reports shall pass into the Customer's ownership after IBExU has made its delivery and received full payment from the Customer. Like all documents and other information provided in connection with product testing and auditing, these documents shall be kept confidential at all times.

13.

Conformity documents, summaries of issued conformity documents and other confidential information shall not be published by IBExU unless this is required by law. IBExU shall notify the Customer of any such publication in advance.

It shall be noted that IBExU is subject to reporting requirements in accordance with certain EU directives.

14.

The Customer shall immediately inform IBExU if the manufacturing process for an approved product is ceased or if changes are made to an approved product or quality assurance system that could affect the product or system's ability to meet the requirements set out in Annex II of the Directive.

15.

IBExU shall be entitled to suspend, retract, or declare an issued conformity document invalid if:

- a) it is subsequently determined that the issued document should not have been issued,
- b) the Customer fails to meet its obligations to IBExU as a notified body, and particularly if the product placed on the market does not correspond to the prototype submitted for testing,
- c) the legal requirements prescribed for the certified product or quality assurance system are no longer met (e.g. as a result of significant, new information) and the existing defect cannot be eliminated

within a statutory or otherwise reasonable period of time (the same shall apply if the test item or quality assurance system is no longer provided for in the relevant regulations),

- d) the requirements set out in Annex II of the Directive are no longer met and/or the relevant modifications needed in light of new or revised requirements are not implemented on time. Information on modifications shall be issued on our website inter alia and the Customer shall keep track of this information accordingly.

16.

Before suspending, retracting, or annulling a valid conformity document, IBExU shall notify the Customer and give it the opportunity to comment.

17.

After a valid conformity document is suspended, retracted or annulled, the Customer shall no longer be entitled to assert a claim for damages. The same shall apply if test results, conformity documents and reports are passed on by the Customer and result in third-party damage or loss.

18.

The suspension, retraction, annulment or expiry of a valid conformity document shall also require the Customer to amend all usage guidelines, e.g. labelling and marketing materials with reference to the document, as well as to take action requested as necessary. The same shall apply in the event that a presumption of conformity ceases to exist.

19.

The Customer shall have the right to file an appeal against the testing procedure, the results of testing or other actions by IBExU within 14 days of notification of the same. If the Customer wrongly claims that a defect exists and the review process incurs additional costs, the Customer shall reimburse IBExU for these in full.

20.

The costs incurred by IBExU in the performance of services for the Customer shall be billed to the Customer. This shall also apply in the event that a conformity document cannot be issued.