



Institut Bauen  
und Umwelt e.V.

## General Terms and Conditions

Version 01/2021

## **1. Area of applicability**

1.1 The following terms and conditions apply to all services contracted with the Institut Bauen und Umwelt e.V. (IBU), including all supplementary services and other secondary obligations related to the execution of contracts, if the client is an entrepreneur (Section 14 German Civil Code (BGB)), a legal entity under public law or a special fund under public law.

1.2 These terms apply exclusively. Any general terms and conditions of the client, including any purchasing conditions, are not applicable and are hereby excluded. Contractual conditions of the client are not components of this contract, including those which the IBU does not expressly contradict.

1.3 Any individual agreements made with the client (including additional or supplementary agreements or amendments to these terms) always take precedence over these terms. Subject to evidence to the contrary, the content of such agreements will be agreed in a written contract or confirmation from IBU.

1.4 Legally relevant declarations and notifications by the client with regard to the contract (e.g. setting deadlines, reminders, cancellation) must be made in writing. Text form is sufficient. Any statutory formal requirements and further evidence, in particular if there are doubts about the legitimation of the person making the declaration, remain unaffected.

## **2. Mandating methods**

2.1 Contracts for the verification of an environmental product declaration (EPD) or approval of a software-based tool for drawing up EPDs as well as contracts for the assessment of data conformity (SuPIM) are made by placing an order using the IBU online tool (<https://epd-online.com>).

2.2 All other contracts are entered into by signing an offer letter from IBU or a separate contract signed by both parties to the

contract or by IBU executing the work requested by the client.

2.3 IBU's offers are always subject to change unless they are expressly designated as binding. This also applies if IBU provides the client with documents such as catalogues, brochures, technical documentation (e.g. drawings, illustrations, plans, calculations, costings, references to DIN standards), including in electronic form.

## **3. Performance of the Work**

3.1 The scope of IBU's service is defined in detail in the General Instructions for the IBU EPD Programme amended from time to time, to which reference is hereby made. The contracts will be executed in accordance with the conditions listed therein. Deviations from this principle are not valid unless they have been expressly agreed in writing between the client and IBU.

3.2 IBU will execute its work according to professional standards and undertakes to take the necessary caution and to follow generally recognised business practices and to comply with statutory regulations.

3.3 IBU has the right to transfer performance to subcontractors under the contract provisions and have them perform the services. The IBU will select these subcontractors impartially.

## **4. Duty of the client to cooperate**

4.1 The client warrants that all required actions to assist on its part and that of its vicarious agents or third parties will be carried out in due time and without charge to IBU. The client must in particular provide IBU with all information and data required for the execution of the order.

4.2 For EPDs to be verified, the client must comply in particular with the rules and specifications contained in the PCR guidance text Part A "Life Cycle Assessment and Requirements for the Background Report" as well as those contained in the specific PCR guidance text Part B: Requirements for

the EPD" to be applied for construction products with similar requirements and functionalities in each case (product group or product category).

4.3 If the client fails to fulfil its obligations to assist and if the client is unable to complete the entire or part of the contract within the agreed time for this reason, the period agreed for this purpose will be extended accordingly.

4.4 The client bears any and all additional costs arising from work needing to be repeated or delayed due to the late, incorrect or incomplete provision of information or the improper performance of its assistance. IBU is further entitled to bill the client for these additional costs, even if the parties have agreed to a fixed or maximum price.

## **5. Fees**

5.1 The fees for IBU's services can be found in the currently valid version of the IBU's Schedule of Fees, to which reference is hereby made.

5.2 Individual services will be contracted and billed separately.

5.3 IBU is entitled to reimbursement of its necessary expenses incurred in the performance of its duties under this contract.

## **6. Payment terms**

6.1 All invoice amounts are due for payment without deduction no later than four weeks after receipt.

6.2 Payment transfers should indicate the invoice number and the membership or customer number and be made to the bank account of the Institut Bauen und Umwelt e.V. designated

6.3 If the client does not pay by the due date, interest will be charged from the due date on the outstanding amounts at a rate of 9 percentage points above the relevant base interest rate in accordance with Section 247 BGB. IBU reserves the right to claim further default damages.

6.4 If clients remain in arrears after being given a reasonable grace period for payment, the IBU may terminate the contract without the client being able to derive any rights from this, withdraw any declaration already issued under this contract, claim damages for non-performance, and refuse further performance of the contracted services.

6.5 Clients may only set off uncontested, legally established claims against the claims of IBU.

## **7. The client's rights with regard to the EPD**

7.1 If the client's EPD is verified, the client is entitled to use it within the scope specified by the General Programme Instructions.

7.2 The client is entitled to have a valid verified EPD, i.e. an EPD with a positive verification statement, published in the IBU database system.

7.3 While the EDP is valid, as a declaration holder the client is entitled to:

- (a) attach the IBU EPD logo to products which fall under the area of applicability of the verified EDP in accordance with the Trade Mark Statutes, after successful verification of their products and to use them product-specifically.
- b) advertise and market its products in print or other media using the declaration and display it in unaltered form in advertising actions.

Reference is made to the validity of the IBU Trade Mark Statutes.

7.4 IBU must first agree to any other advertising actions taken by the client which refer to the activities of IBU.

7.5 An EPD may only be transferred from the original owner to a third party (by a so-called "private label agreement") with the involvement and consent of IBU. If the client does not intend to publish an EPD

under its own name, it must document this fact in a separate agreement with the IBU.

7.6 It is also possible to name two companies on one EPD, for example supplier and manufacturer, by agreement with the IBU.

7.7 The client may withdraw its EPD at any time by notifying the IBU.

## **8. The client's obligations with regard to the EPD**

8.1 Clients are responsible and may be held liable for the information and content of the EPDs they submit for verification. Furthermore, they are liable for all data provided and declare that it is complete and correct by commissioning the verification. In the event of misuse of data or manipulated information, the Institut für Bauen und Umwelt e.V. reserves the right to withdraw permission to use the EPD concerned with the IBU trade marks in accordance with clause 9(2), and to take further legal action.

8.2 During the period of validity of its EPD(s), the client is required to notify IBU in good time of any changes of name, ownership- and legal form as well as changes of address. In this case, IBU will assume the updating of the EPD without the need to enter into a new verification contract.

8.3 The client must notify IBU or its verifier of any significant changes in operations under its control that affect the results of its EPD. Changes may result from significant changes to the production process, raw material supply, energy supply or other relevant operational factors.

8.4 The client must furthermore accept that IBU is entitled to share information received with respect to the verification process to fulfil its statutory and regulatory reporting duties and that IBU is entitled to share information and documentation, including such relating to the contract with the client and the subject matter of the contract at the request of any accrediting agency. This includes information in

particular about the execution of the verification process, the granting and revocation of permits, attestations and certificates and about occurrences and precautions taken to protect itself from risks related directly or indirectly to the verified EPDs.

## **9. Restriction, expiry and withdrawal of permission to use EPDs with the IBU trade marks**

9.1 Permission to use EPDs in connection with the IBU trade marks expires under the Trade Mark Statutes when

- a) the period of validity stated on the EPD expires or
- b) the client withdraws the EPD at its own volition before the validity expires.

9.2 IBU may restrict permission to use EPDs in connection with the IBU trade mark or declare them invalid or revoke them with immediate effect:

- a) if there are arrears on payments of more than 6 months after due date despite a reminder being sent
- b) if at the time of verification facts were not or incorrectly seen and assessed or were not recognisable and these facts would have prevented verification. such as inaccurate data or false statements or
- c) if the client has brought about the verification of the EPD with incorrect or incomplete data, or
- d) if the client is also using existing EPDs on non-declared products, thus representing misuse of the trade mark, which undermines the basis of trust necessary to continue working together.
- e) if the EPDs or the IBU trade mark are used by the client to create misleading or otherwise impermissible advertising or
- f) if the client alters or falsifies verified EPDs.

9.3 Before declaring the use of an EPD with the IBU trade marks restricted or invalid or

withdrawing permission, IBU will give the client the opportunity to state its position unless the required measures are too urgent to allow time for such a hearing. There will be no hearing when the reason for the declaration of invalidity is that the EPD has expired.

9.4 In the cases of clauses 9.1 and 9.2, the client automatically loses the right to continue to use an EPD with IBU marks.

9.5 IBU may publish restrictions, invalidations and withdrawals and removals of permits to use EPDs with the IBU trade marks on the IBU website for the information of users. The client is in agreement with this.

## **10. Penalty for Breach of Contract**

10.1 The Institut für Bauen und Umwelt is entitled to demand a contractual penalty not exceeding EUR 25,000 from the client if the client

- a) culpably uses verified EPDs unlawfully or
- b) culpably advertises with verified EPDs or the IBU trade marks without permission.

10.2 A forfeited contractual penalty must be offset against a claim for damages by IBU. IBU reserves the right to provide evidence that the loss or damage incurred is higher than the forfeited contractual penalty. The client reserves the right to provide evidence that IBU has incurred a lower loss or damage than the forfeited contractual penalty.

## **11. Appeals and complaints**

11.1 An appeal is a request made to the IBU to review verification and approval decisions.

11.2 A complaint is the expression of dissatisfaction with the IBU regarding its activities.

11.3 Appeals against verification and approval decisions and complaints must always be submitted in writing. IBU will respond to appeals and complaints with a

written statement giving the reasons for the decision or its activities. In the case of technical issues, IBU's Advisory Board (SVR) will be involved to clarify the matter, depending on the complexity. In addition, the appellant or complainant has the right to appeal to the SVR. If the final decision on the appeal or complaint by IBU is not acceptable to the appellant or complainant, or if no agreement is reached, the appellant or complainant is free to take legal action.

## **12. Confidentiality**

12.1 "Confidential Information" for the purposes of this agreement includes all information (whether written, electronic, oral, digitally embodied or otherwise) that is handed over, transmitted or otherwise disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), during the term of this agreement. Confidential Information means in particular documents, test reports, pictures, drawings, know-how, data, samples and project documents. This includes copies of this information in paper and electronic form. Disclosure means revealing the Confidential Information to third parties.

12.2 All Confidential Information transmitted or otherwise made accessible by the Disclosing Party to the Receiving Party under this agreement

- a) must be treated confidentially by the Receiving Party,
- b) may only be reproduced or disclosed to third parties by the Receiving Party where necessary to fulfil the purpose of the contract (esp. verification of the EPDs and publishing them).
- c) must be handled by the Receiving Party and secured against unauthorised access in the same way as it would handle and secure its own confidential information, but under no circumstances with less diligence than observing the objectively necessary care.

12.3 The right of either party to disclose Confidential Information of the other party to third parties remains unaffected if and to the extent that

- a) this is necessary for the fulfilment of mandatory statutory obligations or for the purposes of assertion, exercise or defence of legal claims in and out of court;
- b) this is necessary to comply with disclosure obligations imposed on the party by a stock exchange, government agencies or the administration;
- c) it does so for its own lawful purposes with respect to consultants and auditors who are subject to professional confidentiality; or
- d) if this is disclosed to banks or financial institutions that are bound to secrecy by contract or other legally binding manner.

In cases a) and b), the respective party must promptly notify the other party of any such obligation or intended disclosure and must cooperate with the other party as far as is reasonable to avoid disclosure or to limit such disclosure as far as possible.

12.4 Confidential information for the purpose of this agreement does not include information that

- a) was already public knowledge at the time of disclosure or will become public knowledge without breaching the terms of this agreement, or
- b) the Receiving Party has obtained from a third party who was entitled to share it with the Receiving Party, or
- c) was already in the possession of the Receiving Party at the time it was transmitted by the Disclosing Party, or
- d) was developed independently by the Receiving Party irrespective of the disclosing party transmitting it.

12.5 No transfer or grant of any right to use the Confidential Information is associated, intended or contemplated by the disclosure of Confidential Information under this contract. In particular, each party remains the owner of the Confidential Information to which it or its affiliates are entitled.

### **13. Industrial property rights and copyrights**

All industrial property rights and copyrights and joint copyrights to the results, calculations, representations etc. created by IBU within the scope of the contract remain the property of IBU.

### **14. Liability**

14.1 The liability of IBU for damage or futile expenditure – irrespective of the legal grounds – arises only if the damage or futile expenditure

- a) has been caused by IBU or one of its vicarious agents by culpable breach of such an obligation the fulfilment of which makes the proper execution of the contract possible in the first place and which the customer may normally expect to be able to rely on (material contractual obligation), or
- b) is attributable to a grossly negligent or intentional breach of duty by IBU or one of its vicarious agents.

14.2 If IBU is liable under to clause 1 a) for the breach of a material contractual obligation without gross negligence or intent, the liability for damages will be limited to the foreseeable, typically occurring damage. In this case, IBU will in particular not be liable for the client's loss of profit that is not foreseeable and does not typically occur, nor for indirect consequential damage that is not foreseeable. IBU will not be liable for indirect damage incurred by the client due to the assertion of contractual penalty claims by third parties. If the service provided lacks a guaranteed characteristic, liability will only be assumed for such damage

where absence was the subject of the guarantee.

14.3 The liability of the IBU for slight negligence is limited:

- in the case of property damage and financial loss covered by an insurance policy taken out by the client, to the disadvantages associated with claiming on the insurance policy for the client;
- to an amount of €1,000,000.00 per loss event, provided that the foreseeable, typically occurring damage is covered.

14.4 The above limitations of liability set out in clauses 1 to 3 do not apply where the liability of IBU is mandatory under the provisions of the Product Liability Act or if claims are asserted based on injury to life, limb or health.

14.5 Any further liability for damages than that provided for in clauses 1 to 4 are excluded – irrespective of the legal nature of the claim asserted. This also applies, in particular, to damages claims arising from culpa in contrahendo under Section 311(3) BGB, breach of contract under Section 280 BGB or tort claims under Section 823 BGB.

14.6 In particular, IBU is not liable for any disadvantages suffered by the client in connection with the non-granting, restriction or expiry, invalidation or withdrawal of the permission to use an EPD with the IBU marks or the publication of the said measures.

### **15. Third party rights**

15.1 The client is responsible for ensuring that the information it supplies does not infringe any third-party property rights.

15.2 If claims are made against IBU by third parties for this reason, the client must indemnify IBU and hold it harmless against these claims on first request. IBU is not entitled to enter into any agreements with third parties, and in particular to agree on a settlement, without the client's consent.

15.3 The client's obligation to indemnify also applies to all expenses incurred by IBU as a result of or in connection with the claim by a third party.

15.4 The limitation period is ten years, calculated from the conclusion of the contract.

### **16. Termination**

16.1 This contract may be terminated by either party for cause if good cause exists.

16.2 IBU may terminate this contract in particular for cause if the contractual circumstances of the client deteriorate significantly after the conclusion of the contract, an attempt at compulsory enforcement against the client was unsuccessful, the client has ceased making payments, insolvency proceedings have been opened against the assets of the client or have been rejected for lack of assets.

16.3 If the contract is terminated for cause, IBU's claim to remuneration remains unaffected. The IBU must, however, take into account any expenses saved as a result of the cancellation of the contract or which it acquires or maliciously refrains from acquiring through the use of its labour elsewhere.

16.4 If the contract is terminated for cause without IBU being responsible for the reason for such termination, IBU may demand 10% of the order sum as liquidated damages without further proof; however, these liquidated damages will be set off against any further monetary claims as minimum damages. IBU reserves the right to prove higher damage as well as the right of the client to prove that no damage or significantly lower damage was incurred.

### **17. Final provisions**

17.1 This contract is governed by substantive German law to the exclusion of the UN purchasing law (CISG).

17.2 The place of jurisdiction for all disputes arising from and in connection with this contract is Berlin.