

General Terms and Conditions for Training and Schooling

1. General Comments

1.1. For contracts between BFTS and the Customer, these “General Terms and Conditions for Training and Schooling” shall apply exclusively in the version valid at the time in question, subject to the “General Terms and Conditions of Trading”. They are available to the customer for downloading under www.bfts.biz or may be ordered in writing from BFTS in their versions valid at any given time. Any deviating or contradictory conditions of the Customer’s cannot be or become part of any contract with BFTS.

1.2. The following “General Terms and Conditions for Training and Schooling” apply, subject to the provision of any explicit deviating written special regulations, in particular to all training and schooling measures offered by BFTS for the scanner systems and software products that itself sells.

1.3. The written form (“in writing”) in the sense of all BFTS-General Contractual Conditions is guaranteed exclusively by the sending of the original of the document in question, which is to be provided with the original signature(s) of the contractual party (parties), where appropriate, mutually. Oral agreements, telefax copies and any exchange of information by electronic means are at all times non-binding. In particular, the written form requirement itself may only be waived in writing.

1.4. Any alterations, side agreements or assurances pertaining to the following stipulations require the written form in order to become effective, as well as the explicit written consent of BFTS. Oral agreements, telefax copies, e-mails etc. are non-binding due to their failure to fulfil the written form requirement (cf. Fig. 1.3)

2. Scope of Performance and Object of the Contract

2.1. The training measures offered by BFTS are oriented towards the performance descriptions contained in the offers valid at any given time and any training documentation, e.g. “*Operator Training*” (Basic operating, simple set ups and test) and “*Sales Training*” (simple operational functions in daily service).

2.1.1. The BFTS *Operator Training* consists of the following periodically recurring services: hardware control, software functions, measuring configurations, size definitions, adjustment of the measuring software to the Customer’s requirement. The maximum number of participants is 4.

2.1.2. The BFTS *Sales Training* consists of the following periodically recurring services: software function, size definitions, palpitation training. The maximum number of participants is 8.

2.1.3. Minor deviations from the performance descriptions contained herein that do not restrict the core of the services owed under the terms of this contract remain the prerogative of BFTS. Separate training topics may be agreed upon in writing between BFTS and the customer additionally, individually and in writing. BFTS is not liable for the success of the training.

2.2. The transportation, accommodation and catering for the BFTS members of staff for the duration of the training courses at the Customer’s are to be paid for by the Customer and will be invoiced separately.

2.3. The Customer must, at its own expense, ensure that the technical requirements for the implementation of the schooling and training measures by BFTS on its premise are given. These technical requirements consist in particular of the regular provision of one INFOOT scanner per 4 persons, a beamer, flip-chart, rooms, desks, writing materials, printed manuals, cleaning materials and landmarks on the customer’s premises.

The Customer commits itself, before the implementation of the training and schooling measures by BFTS, to taking action to secure all the data on its EDP systems against loss of data, so that no damage is suffered by BFTS. Should this obligation not be adhered to, the Customer shall be liable to pay compensation to BFTS.

2.4. After implementation and conclusion of the training and schooling measures the participants will be issued with a certificate of attendance, or, if specifically requested in writing, a certificate from BFTS.

3. Offers, Prices, Registration

3.1. All offers, price lists and other data pertaining to the performance are subject to confirmation. The prices for the training performances are oriented towards BFTS’s up-to-the minute price list valid at the given time.

Written offers compiled by BFTS shall be subject to a price maintenance agreement lasting for a period of 14 working days after receipt of the offer in question. The offers compiled by BFTS shall be sent to the Customer in both the written form and, for example, as an e-mail attachment in .pdf-format.

Performances that are not included in the offer and which do not become a part of the contract will be invoiced separately by BFTS. This applies in particular to travel costs and to costs for catering and accommodation.

3.2. All agreements, offers and orders pertaining to the contract and the implementation thereof are to be fixed in writing between BFTS and the Customer. Oral agreements and e-mails are non-binding declarations that can only become effective upon being fixed in writing and signed by both parties, unless these stipulations expressly provide for a different manner of proceeding. The order is awarded by the Customer in writing on the basis of an individual offer submitted by BFTS. The details in the offer do not constitute a guarantee of qualities in the sense of § 443 BGB (Civil Code).

3.3 The Customer registers for training events with BFTS in writing on the basis of a written offer subject to the terms of Figure 3.1.

4. Conclusion of Contract

The contract between BFTS and the Customer only comes into existence when a written confirmation of receipt of the registration has been issued by BFTS.

5. Rescission, Change of Dates

5.1. The Customer is entitled to declare its rescission from the training event at any time before the training begins. Such a declaration of rescission must be made in writing.

Up until 14 days before the beginning of the training event, the rescission is free of charge. Decisive for the determination of the time of the rescission is the date on which the written declaration is received by BFTS. In the event of a rescission at a later date, BFTS will charge 50% of the total price for the training event for which the Customer had registered. Should the Customer fail to turn up for the event for which it had registered without any notification or discontinue the training event prematurely, BFTS shall be entitled to charge the Customer the full fee for the training event. In both events the Customer retains the right to prove that the costs incurred by BFTS as a result of its rescission or failure to turn up are less than that.

5.2. In the event of a rescission from the contract on the part of BFTS, should it not be possible to implement the training or for any other important reasons, the parties will endeavour to agree upon a new date for the implementation of the event. Should such an agreement not be arrived at between the parties, BFTS shall refund to the Customer any fees that have already been paid for the services agreed upon. Beyond this, no further-reaching claims may be raised against BFTS. BFTS reserves for itself the right to rescind from the contract on important grounds, in particular for organisational reasons or if the trainer should fall ill. Any costs or expenditure incurred by the Customer will not be refunded by BFTS, and neither will any other possible claims that may arise in connection with the rescission from the contract be met.

6. Payment Modalities, Payment Transactions

6.1. On the day of the issuing of the invoice, the turnover tax, which is not quoted on the offers and cost estimates of BFTS, will be declared separately on the invoice at the rate valid on the day in question and become a part of the total amount.

6.2. BFTS is entitled to demand 100% payment in advance for the services which it is required to perform. BFTS is further entitled to demand sureties in advance. It is, however, possible to agree in writing the following, for example:

The participation fees are due for payment by the Customer within 14 days after receipt of the written confirmation of registration without any deductions. The payment is to be made within a period of 10 banking days by being credited accordingly to the account stipulated in the registration confirmation. Decisive for the question of whether the deadline has been adhered to is the date of the incoming payment to an account held by BFTS. BFTS specifically reserves the right to enforce damages resulting from any delays. The granting of discounts requires a separate written agreement.

6.3. Off-setting or the exercising of a right of retention is only permitted against counter-claims from the same contractual relationship that are either undisputed or have been established in a court of law.

7. Commercial Protected Rights, Copyrights, Trademarks

7.1. The sole rights of ownership and copyright for all illustrations, drawings, letters of tender, calculations and any other documents used by BFTS for training purposes are held solely by BFTS and the creator of the document in question. The customer is fundamentally not permitted to pass these on to third parties or grant said third parties access to such material. BFTS will take both civil and criminal law steps against any violations of this stipulation.

7.2. The software used by BFTS for training measures and all schooling materials, documentation and other suchlike materials (e.g. presentations, manuals and software components) are protected by copyright. They may neither be removed from the training rooms, nor copied either in part or in their entirety, nor made use of in any way whatsoever that has not received prior written approval. Rights of exploitation to software products exist, subject to rights explicitly granted to the Customer by BFTS in writing, only to the extent required for the performance of the services agreed upon contractually and for the duration of said services.

In the event of any damage to products/goods or the violation of any commercially protected rights and copyrights BFTS expressly reserves the right to enforce claims for compensation of its own as well as claims for compensation against third parties.

No materials or other documents provided by BFTS for training purposes may be used for manufacturing purposes. Neither may, when selling goods or services, any product descriptions used by BFTS be used. This applies especially to any BFTS trademarks (in particular the trademark INFOOT). It is above all not allowed to use such product descriptions and trademarks on the products themselves or their packaging, or in any related printed matter and advertising materials without the prior written permission of BFTS. For each individual case of the usage of such trademarks contrary to the stipulations of the contract, BFTS is entitled to demand a contractual penalty amounting to 10% of the total attendance fees.

7.3. Should any third parties raise any claims against the Customer on the grounds of any violation of commercial rights or copyrights on the part of the latter in connection with usage of the documents and other materials listed under Figures 7.1. and 7.2., the Customer must notify BFTS in writing without delay. In such an event, BFTS reserves the right to make use of all out-of-court and other defence measures at its disposal in order to defend its rights. The Customer will support BFTS in this. Should the written notification not be issued, BFTS may demand a contractual penalty amounting to 5% of the total attendance fee for every day on which said notification is missing.

8. Liability

8.1. Inasmuch as nothing to the contrary is to be derived from the General Contractual Conditions of BFTS, BFTS shall be liable for violations of contractual and extra-contractual duties in accordance with the relevant statutory stipulations.

8.2. BFTS shall be liable for compensation – regardless of the legal basis – only in cases of wilful intent or gross negligence. In cases of simple negligence, BFTS shall only be liable for damages resulting from injury to life, body or health, plus damages resulting from the violation of an essential contractual duty (“cardinal duty”); in such a case BFTS’s liability is restricted to the replacement of such damages that are typically foreseeable. As a general rule, these do not include cases of indirect or consequential damage, in particular lost profits or damages incurred by third parties. On principle, BFTS explicitly shall not be liable for such damages.

8.3. The restrictions to liability under Figure 8.2. do not apply inasmuch as BFTS shall have maliciously concealed a defect or have assumed responsibility for the quality of the goods. Claims resulting from the Product Liability Act shall remain unaffected by this.

8.4. BFTS's liability for loss of data for which it is responsible is restricted to the expenditure for the recovery of the data, which would typically have been necessary had the Customer regularly undertaken data security measures appropriate to the degree of risk (cf. Fig. 2.3) and is restricted exclusively to those costs that would have been incurred for the reconstruction of lost data in such cases.

8.5. Other compensation claims held by the Customer not covered by Figure 8 are excluded, inasmuch as the statutory regulations do not contradict this. In particular, BFTS shall not be liable for any errors in information that has not been obtained from BFTS and is imparted either orally or in writing during the training events, or for any errors in documents or data carriers handed over that do not originate from BFTS.

8.6. The above restrictions on liability also apply to the personal liability of the employees, representatives and bodies of BFTS.

9. Confidentiality

9.1. “Confidential information” is all information and documents of the other party in the given case that are marked as confidential or which can be judged from the circumstances to be confidential, in particular information pertaining to company processes, business relationships and know-how.

9.2. BFTS and the Customer agree that silence is to be maintained pertaining to confidential information. This obligation shall continue to exist for a period of 5 years after the contract has ended.

9.3. Exempt from this obligation is such confidential information that can be proven to have been known to the recipient at the time of the conclusion of the contract or which is made known subsequently by a third party, without any violation of confidentiality agreements, legal prescriptions or official ordinances. Also exempt is information that is publicly known at the time of the conclusion of the contract or which is subsequently made publicly known, inasmuch as this does not result from a violation of this contract. Equally exempted is information that is required to be disclosed on the basis of statutory obligations or on the order of a court of law or official body. Inasmuch as this is permitted and possible, that party which is the recipient of the information required to be disclosed will inform the other party in advance and give it an opportunity to take action against the disclosure.

9.4. BFTS and the Customer will only grant access to confidential information to those consultants who are sworn to professional secrecy or can be proven to have had the confidentiality stipulations of this contract imposed upon them in writing. Furthermore, the parties will only disclose such confidential information to those members of its staff who need to possess knowledge thereof in order to be able to implement this contract and to swear these members of staff to continue to maintain secrecy after they have left the company, to the extent allowed by the stipulations of labour law.

9.5. Every culpable violation against these obligations will have as a consequence a contractual penalty amounting to 20% of the total attendance fees. Farther-reaching claims held by the injured party shall not be affected by this.

10. Choice of Legal System, Court of Jurisdiction, Miscellaneous

10.1. In the event of any deviations from the regulations in any other contracts that have already been concluded between the parties, then the stipulations of this contract shall take precedence. The BFTS General Sales and Supply Conditions apply as a general rule.

10.2. The Customer is fundamentally not allowed to transfer any claims held against BFTS under the terms of this contract to any third parties. Any transfer of claims to third parties can only follow with the prior written consent of BFTS.

10.3. Each contractual party may only offset undisputed or legally established claims held against the other contractual party.

10.4. With respect to these "General Terms for Training and Schooling", and indeed all legal relationships between BFTS and the Customer, the laws of the Federal Republic of Germany shall apply excluding all international and supranational (contractual) legal systems, in particular the UN purchasing laws (CISG).

10.5. If the Customer is a businessman in the sense of the commercial code, a legal entity under public law or a special fund under public law, the exclusive – also international- court of jurisdiction for all disputes arising from this contractual relationship is the legal domicile of BFTS in Cologne, Germany. BFTS is, however, also entitled to file a suit at the Customer's usual court of jurisdiction.

10.6. Should any individual stipulations of these general business conditions be partially or in their entirety ineffective, the remaining stipulations shall retain their full effectiveness. In place of the ineffective stipulations such new regulations shall come into effect that come as close as possible to the economic purpose of the contract whilst paying appropriate attention to the interests of both parties.

10.7. With their signatures, the parties agree to the exclusive applicability of the above General Terms and Conditions for Training and Schooling.

The parties acknowledge with their signatures that the above Terms and Conditions for Training and Schooling are for reference only. Terms and Conditions for Training and Schooling are valid exclusively in the German-language version.

Company name/stamp: _____

Place / Date / Signature