



General terms and conditions (GTC) for examination, teaching and service contracts with the Institute for Medical Education, University of Bern

Valid from 17.09.2020

1. **Scope**
The general terms and conditions (GTC) form the basis for all orders with the Institute for Medical Teaching (IML), University of Bern. The orders are related to the creation, administration, monitoring and evaluation of exams, the creation and production of teaching media as well as customer-specific execution of services. These GTC apply unless otherwise agreed. Agreements that deviate from these GTC must be made in writing.
2. **Offers**
Enquiries for examination, teaching or service provision are summarized in a written offer. The offer contains information about the content and scope of the services to be provided as well as deadline information for fulfilment and the financial framework of the order. Offers are valid for 3 months. After this period has expired, the IML is no longer bound by the offer.
3. **Contract conclusion**
Orders will be binding upon both parties legally signing a contract. Order agreements must be produced in duplicate and signed (one copy for each contractual party).
4. **Pricing details**
All pricing information in offers and order contracts are in CHF and exclude VAT. The sales tax is borne by the client, unless this is explicitly excluded. Price information in foreign currencies is only provided for information purposes and is not binding. The current exchange rates are taken into account when the invoice is issued. Invoices are always based on the fixed price in CHF.
5. **Scope of services**
The deliveries and services provided by IML are guided by the offer or contract agreement including any addenda. IML is responsible for the correct, diligent and skilled implementation of the workflow assigned to it. IML is authorised to make alterations based on new knowledge or technological advancements, to make changes that lead to improvements, provided that these do not result in price increases or a reduction in the quality of the service provided.
6. **Deadlines for service provision**
The deadlines and milestones for service provision shall be mutually agreed taking the individual order into account. Binding agreed deadlines shall be reasonably adjusted as far as possible:
 - a. if the information and documents required by IML to carry out the order have not been provided to IML on a timely basis or if the client requires subsequent, unforeseen alterations;
 - b. if the client does not comply with its obligations, particularly in the event of delayed payment;
 - c. in the event of delayed delivery or errors in the required work equipment;
 - d. in cases of force majeure for which IML is not responsible. In particular in the event of mobilisation, war, civil war, riots or sabotage, accidents, illness, measures taken by public authorities or governmental bodies, fire, explosion, terrorism, natural hazards or other incidents of force majeure.IML cannot guarantee that orders will be fulfilled on time in the event of postponement for reasons for which IML is not responsible. Order fulfilment shall be carried out in accordance operational circumstances at IML.
7. **Payment terms**
The following payment terms apply unless otherwise agreed on an individual order basis:
 - a. For orders up to CHF 10'000.-: 100 % of the order value after the order has been fulfilled, payable within 30 days of invoice.
 - b. For orders above CHF 10'000.-: 50 % of the order value will be paid on confirmation within 30 days of invoice and the final invoice issued after the order has been fulfilled, payable within 30 days of the final invoice.
 - c. In the event of early termination of the order by the client, the client is obliged to pay the IML all costs incurred up to that point against an invoice within 30 days. This also includes costs from obligations entered into by the IML to complete the order up until the first possible termination date for these obligations.
8. **Defaulting on payment**
If the client fails to make the outstanding payments within the specified period despite a reminder, IML has the right to suspend the provision of the agreed services and / or to terminate the contract without notice. Appropriate compensation for services already provided by the IML is still owed.
9. **Confidentiality**
All IML employees undertake to keep the information acquired through the assignment order confidential. In particular, the following apply to examination services:

Candidate information, exam questions / cases / media and results. The examination results are only communicated to the client or, if otherwise agreed, to the examination candidates.
10. **Technical aids and tools**
The IML uses various technical tools to fulfil the order. The options for managing, changing and distributing data as well as the creation, implementation and production of exams, learning media and other services depend on the functionalities of the technical modules used.

It is incumbent on the IML to use the most sensible technical solution based on the order agreement and the order objective, unless something else has been contractually agreed.



11. Use of data
The IML retains the right to use all collected and generated data for internal purposes for quality assurance and the further development of the content of exams, teaching media and services in accordance with the institute's objectives. In addition to the assignment, the IML can use data from candidates, exams and questions / cases / media in anonymous form in consultation with the client for scientific studies / analyses / publications. The consent and use of the data must be obtained from the client in the planning phase of a project.
12. Designation of a responsible person
The client must designate a responsible person, who has the final decision rights regarding details of the order.
13. Availability of support services
Support requests are possible by email or telephone and will be answered within two working days of receipt of the request.
14. Warranty and Liability
The IML warrants that it will perform the services and applications with due care and diligence and in accordance with applicable laws and regulations. The IML applies state-of-the-art standards for software development and software testing, but does not guarantee error free applications at any time.

The IML makes no warranties other than as set forth in the GTC or the contract. The maximum liability claims for serious and grossly negligent errors (including the loss and unintentional distribution of data and media) are generally limited to the respective order volume. Liability claims against the IML can only be made by the client. The IML is not liable to examination candidates or third parties. The right to correction and elimination of errors in the event of:

- Examination services

Evaluations:

If significant and serious errors occur in an examination evaluation, which are clearly the sole fault of the IML, the evaluation will be repeated free of charge.

Exam administration / creation:

If there are significant and serious errors in the examination administration / preparation (of examination documents) that are clearly the sole fault of the IML, the IML will create new examination documents free of charge.

Examination execution:

If significant or serious errors occur in the execution of the examination, which are the sole fault of the IML, the IML provides the tools and / or its support for a repeat examination free of charge.

Question management:

If significant and serious errors occur in the management of the questions, which are clearly the sole fault of the IML, the IML will correct these errors free of charge.

Candidate management:

If there are significant and serious errors in the candidate administration that are clearly the sole fault of the IML, the IML will correct these errors free of charge.

- Media (data carriers, mouldages, models etc.):

In the event of errors or damage that occurred during the production or shipping of media, the IML assumes responsibility for correcting the error or replacing damaged media. If media are impaired in their usability by new standards or security settings, the IML does not guarantee a replacement or to adapt the medium.

- Video productions:

Claims for adjustments and/or corrections will not be considered once the client has accepted the completed video productions.

- Courses / lectures / workshops / usability tests:

If courses / lectures / workshops / usability tests that are clearly the result of the sole fault of the IML cannot be carried out on the agreed date, the IML will seek an alternative date in consultation with the client. If no alternative date can be found, no invoice will be issued for the planned service.

- Evaluation

If errors occur in the data collection, in the statistical evaluation or in the preparation of the report, which are clearly caused by the sole fault of the IML, the IML will deliver the correction free of charge.

A product or service is deemed to have been accepted if no objection has been raised within five working days after delivery. The client has no further claims for compensation.

15. Jurisdiction and applicable law
The agreed orders shall be subject to Swiss law. Bern shall have jurisdiction.
16. Modification of the Terms & Conditions
IML reserves the right to amend the General Terms & Conditions at any time. IML shall inform customers appropriately and in advance of any changes to the General Terms & Conditions. If the changes are to the customer's disadvantage, the customer may prematurely terminate the contract before the effective date of the change without suffering financial consequences. Failure to cancel shall be deemed acceptance of the changes.

Special Terms and Conditions for Electronic Tools Provided by the IML

17. Copyright of questions/cases/media
 - a. The client gives a binding guarantee that they own the right to utilise all questions/cases/media.
 - b. All questions/cases/media are fundamentally allocated to the organisation (client) and may only be made available to other organisations on behalf of the client.
18. Availability and reliability of electronic tools provided by the IML
For web-based applications, the IML guarantees an availability of 95%, measured over a time period of 6 months. In the event of an outage during a working day (Mon-Fri) IML shall ensure that the online applications become available within 24 hours. Outages at weekends and on public holidays will be remedied on the next working day. The following are expressly excluded from this availability assurance:
 - a. Necessary maintenance work which results in a disruption of service for longer than five minutes. Users will be notified in advance of extended maintenance work.
 - b. Interruptions caused by attacks by third parties. In this case, IML is entitled to take the servers offline for security reasons until the situation has been clarified and the appropriate measures have been carried out.
 - c. Interruptions that do not fall under IML's sphere of responsibility (e.g. power, server or network outages).
 - d. Interruptions as a result of force majeure
19. Back up of electronic data
Backups of electronic data are made solely for the purposes of system restoration in the event of complete failure or data loss.
20. Distribution and use of electronic tools
The IML makes its electronic tools available to the customer by appropriate distribution channels (i.e. download from IML or other servers) or communicates the necessary login-credentials to the customer. The electronic tools may only be used by the customer themselves and for the purpose agreed upon in the contract. Any distribution of software applications or login-credentials to third parties or use for purposes other than stated in the contract are explicitly forbidden.
21. Effect of terminating collaboration on questions/cases/media
 - a. Upon termination of the collaboration by the client, the client shall cease to use the electronic tools provided by the IML at the end of the contractual period.
 - b. Should IML completely cease further development and operation of the electronic tool, the client can continue to operate it if desired. The client will be provided with the programme code for this purpose after a licence agreement has been signed.
 - c. The questions/cases/media will be deleted from the item pool or other electronic storage after a reasonable period of time (approx. 6 months) and archived on a storage medium (e.g. CD/DVD). The costs of archiving will be charged on a time and materials basis and will be invoiced when the storage medium is sent to the respective client. The client can reject the archiving of its data in writing. There will then be no back-up made.
 - d. The client can release the questions/cases/media to be used by all users and to be left in the item pool or other electronic storage. IML's experts shall decide upon the further usage of the released contents.
22. Exclusion of persons and content
 - a. IML has the right to exclude individual persons who fail to abide by the agreed rules from using its electronic tools.
 - b. IML has the right to exclude content that is ethically or morally problematic.