

FIBAA General Terms and Conditions

within the framework of procedures for institutional accreditation according to the Higher Education Promotion and Coordination Act, Switzerland



Status: 01 May 2024

§ 1 – Main Obligations of FIBAA

- (1) FIBAA is obliged to carry out an assessment procedure by which it is determined whether and to what extent the quality requirements pursuant to the Swiss Higher Education Promotion and Coordination Act (HFKG) as amended are satisfied.
- (2) The quality requirements are derived from the relevant regulations of the Swiss Accreditation Council current at the time of the conclusion of the contract as well as the regulations referred to therein.
- (3) The final decision on accreditation is made by the Swiss Accreditation Council on the basis of the report prepared by the FIBAA expert panel.
- (4) When applying the guidelines and regulations mentioned in clause (1) and (3), FIBAA as a full member of the European Association For Quality Assurance In Higher Education (ENQA) and as an agency listed in European Quality Assurance Register for Higher Education (EQAR) is bound by the European Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) as well as the interpretation and procedural guidelines adopted for this purpose by the aforementioned institutions, at least to the extent that these are mandatory with regard to the membership or listing of FIBAA in ENQA and/or EQAR. Hereby FIBAA may also be subject to higher-level supervision.
- (5) FIBAA is responsible for the correct application of its own procedural rules and conditions and those resulting from clause (1) and (2) during the procedure and in its accreditation reports. FIBAA does not warrant the accuracy of any priority procedural rules and conditions.
- (6) FIBAA does not guarantee that the recommendations of the expert panel in the accreditation report correspond to the final decision of the Swiss Accreditation Council.
- (7) FIBAA is not obliged to check the completeness and correctness of data, information or other services provided by the client, unless there is reason to do so, taking into account the respective circumstances of the individual case or unless the agreement does not expressly cover this.

§ 2 – Experts and FIBAA Project Manager

- (1) The selection of the experts and composition of the expert panels is carried out in accordance with FIBAA's criteria for the appointment of experts in accordance with Art. 13 "Composition of the group of experts" of the Ordinance of the Higher Education Council on Accreditation within the Higher Education Sector. The Swiss Accreditation Council is involved in the process of selecting and composing the expert panel.

- (2) The expert panels are composed according to academic and professional criteria. The client has the option of submitting a written objection to FIBAA stating reasons with regard to the suitability of individual experts. The submission must be made immediately after FIBAA has announced the composition of expert panel, but in any case within two weeks. However, the client has no right of proposal or veto.
- (3) For objective reasons, experts may be replaced by FIBAA.
- (4) FIBAA appoints a responsible person for the procedure (FIBAA project manager) and informs the client about it. He is available to the client as a contact person during the procedure. The FIBAA project manager coordinates the expert panel and organises the accreditation procedure together with the client.
- (5) FIBAA takes appropriate actions to ensure the impartiality and confidentiality of the FIBAA project manager and the review panel.

§ 3 – Procedure

- (1) FIBAA project manager determines the date for the on-site visit in consultation with the client.
- (2) FIBAA project manager determines the interview rounds planned for the procedure (regarding schedule, topics and interviewees) and/or inspection. In case that the location is relevant for the procedure, FIBAA project manager determines this location.
- (3) Dates determined in accordance to § 3 (1) are generally binding. However, FIBAA remains entitled to revoke a fixed date if it is not possible to provide suitable experts or other participants who are absolutely necessary for the specified date and on whose scheduling FIBAA has no influence. In such cases, the regulations of clause (1) and (2) find application in further procedure.
- (4) The client prepares a self-evaluation report on the object of assessment and all other documents relevant for the assessment and, if necessary, encloses attachments or explanations.
- (5) FIBAA provides the client with relevant information, documents and specifications for the preparation of the self-evaluation report immediately after conclusion of the contract.
- (6) Unless a different deadline has been set or the other written regulations stipulate a different deadline, self-evaluation reports with all necessary documents (see § 5) are submitted by the client within one year after conclusion of the contract in electronic form (preclusive deadline).
- (7) If a date for an on-site visit, telephone or video conference for the purpose of assessment has been determined, the end of the period of § 3 (6), unless otherwise agreed, is specified at the latest eight weeks prior to this date. In the case of several scheduled dates, the deadline is eight weeks before the earliest of the scheduled dates, unless otherwise agreed.
- (8) The FIBAA project manager informs the client of the number of additionally required paper copies of the documents pursuant to §§ 3 (4) and 3 (6) or of additionally

required documents. The client also sends all documents immediately upon request, also directly to individual parties involved in the procedure (e.g. experts).

§ 4 – Project Support on the Part of the Client

- (1) The client appoints in turn a contact person and representative for the procedure. This contact person is deemed to be authorised by the client towards FIBAA for all contractual matters. They organize and support the procedure at the HEI side and is available to FIBAA for questions. In particular, they inform the FIBAA project manager about potential interviewees for the interview rounds (see § 3 (2)) within the sphere of influence and knowledge of the client.
- (2) The client guarantees that they will leave from anything that could endanger the independence of the FIBAA project manager and the experts. This applies in particular to offers of employment or other cooperation in research and teaching, as well as to offers to accept orders on one's own account.

§ 5 – Documents, Annexes, Further Details

- (1) Documents as proof of accreditation prerequisites (cf. § 1) or relevant for assessment with regard to these prerequisites are to be submitted with the self-evaluation report. If online resources (e.g. learning or training platforms, e-examination concepts, webinars, etc.) are part of the didactic concept, the client ensures that the FIBAA as well as the experts can already access the respective resources from the provision of the self-evaluation report in order to be able to form a complete picture of their functionality and scope as well as their didactic use and benefit.
- (2) The FIBAA project manager may request further documents or information from the client at any time and within a reasonable period of time if such documents or information may be relevant for assessment with regard to the subject matter of the contract. If a deadline is set, this is decisive for the question of the timeliness of the submission.
- (3) The client shall support the experts and FIBAA in their work and provide them with access to all necessary information and material resources. The client is obliged to inform FIBAA immediately of any changes which are relevant for the experts' opinion.
- (4) At the request of FIBAA, the client shall expressly confirm in writing the correctness and completeness of the documents submitted by them as well as their information and oral declarations.

§ 6 – On-Site Visit

- (1) The client participates in the on-site visit and appoints an additional authorised representative who organises and supports the on-site visit at the intended location and who is available for questions in advance as well as on the day of each on-site visit.
- (2) During the on-site visit, the client ensures that separate confidential discussions can take place with the parties involved in the procedure and among the members of the review panel.

- (3) In certain cases it is necessary for certain persons to participate in the on-site visit. This will be announced to the client in good time beforehand.

§ 7 – Assessment, Accreditation Report and Decision

- (1) The expert panel will assess whether the quality standards set by the Swiss Accreditation Council are met by the client . The following assessments are possible with regard to the quality standards:
- Fully met: there are quality assurance policies and mechanisms in place that are fully and coherently implemented and allow the client to assure the quality of its activities;
 - largely met: no significant deficiency is identified in the quality assurance concepts and mechanisms and in their implementation;
 - partially fulfilled: Concepts and mechanisms for quality assurance exist only for certain sub-areas or exist in their entirety, but show significant deficiencies or considerable weaknesses in their implementation;
 - not fulfilled: with regard to the quality assurance system, there is a lack of central concepts and mechanisms. The commissioning party is not able to ensure their implementation and the quality of its activities.
- (2) With regard to quality development, the evaluators can formulate recommendations. However, if a quality standard is only partially met or not met, the evaluators must propose one or more conditions.
- (3) A condition is the correction of a significant deficiency that the higher education institution must make or a requirement condition that it must fulfil in order to continue to hold accreditation. A requirement must always relate to a quality standard. The higher education institution must be able to fulfil the requirement within a specified period of time (usually a maximum of 24 months).
- (4) If the experts believe that any deficiencies in the quality assurance system of the higher education institution cannot be remedied within a reasonable period of time, they propose the refusal of accreditation.
- (5) The expert group's accreditation proposal is based on an overall assessment of compliance with the quality standards.
- (6) After completion of the on-site visit, the expert's report and an accreditation application are prepared by FIBAA or the expert team. The report is submitted to the client electronically for comment within a reasonable period, that is determined by the FIBAA project manager. Failure to comply within the deadline constitutes a waiver by the client of the right to comment. The expert opinion shall then be deemed to have been accepted.
- (7) If the experts recommend the Swiss Accreditation Council to refuse accreditation the responsible FIBAA project manager will inform the client about the possible refusal of accreditation upon submission of the experts' report.
- (8) If the experts, taking into account the statement in accordance with § 7 (2), recommend the refusal of accreditation, the client has the option to express to FIBAA whether

- (a) the client withdraws the application so that the experts' report is not submitted to the Swiss Accreditation Council for decision. FIBAA then informs the Swiss Accreditation Council of the withdrawal of the application,
 - (b) the experts' report and their statement on the report are to be submitted to the Swiss Accreditation Council for the final accreditation decision. Subsequently, a withdrawal of the application is no longer possible. The right to appeal (see § 8) remains unaffected.
- (9) The self-report submitted by the client, the accreditation report and the accreditation application are submitted by FIBAA to the Swiss Accreditation Council.
- (10) The Swiss Accreditation Council makes the final accreditation decision and issues a corresponding accreditation decision.
- (11) FIBAA publishes the expert opinion (accreditation report) and the accreditation decision on its homepage and in the EQAR database "Database of External Quality Assurance Results (DEQAR)"¹.

§ 8 - Appeal procedure and request for reconsideration

Pursuant to the HFKG, an appeal against any decision of the Swiss Accreditation Council may be lodged with the Federal Administrative Court, P.O. Box, 9023 St. Gallen, within 30 days of notification.

The administrative procedure allows an application for reconsideration to be made at any time. This also applies to all decisions of the Swiss Accreditation Council. In this case, the request for reconsideration must be submitted to the Swiss Accreditation Council, Effingerstrasse 15, P.O. Box, 3001 Bern.

§ 9 - Breaches of duty, liability, withdrawal

- (1) FIBAA excludes the liability for slightly negligent violation of obligations, unless damages from life, body or health injury or guarantees are affected. Furthermore, the liability for the violation of obligations, the fulfilment of which is essential for the proper execution of the contract and on the observance of which the customer may regularly rely, remains unaffected. The same applies to violations of obligations by vicarious assistants.
- (2) In case of doubt, liability for material damage and pecuniary loss is limited to the damage typical for the contract and foreseeable for the contracting parties at the time of conclusion of the contract.
- (3) Insofar as the liability of FIBAA for damages is excluded or limited in accordance with the above provisions, this also extends to the personal liability of the organs, experts, employees, representatives and vicarious assistants of FIBAA and also applies to all claims arising from unlawful acts (§§ 823 ff. BGB – German Civil Code).
- (4) FIBAA also assumes no liability for errors or negative evaluation results or votes due to late or not submitted, incomplete or faulty self-evaluation reports, documents or information of the client.

¹ <https://www.eqar.eu/qa-results/search/by-institution>.

- (5) If the client is in default with the acceptance of the services (in particular the on-site visit) or with his information or cooperation duties – in particular the duty to provide, create or adapt information and materials in accordance with § 5 – not, not in time or not in due time –, properly or truthfully, FIBAA is entitled to invoice the additional expenses incurred thereby, if this still appears to be reasonable, or to demand the agreed remuneration for the services not rendered as a result of the delay or inadequate cooperation and to terminate the procedure without being obliged to provide subsequent performance. Further legal claims are expressly reserved. The rights of FIBAA pursuant to sentence 1 shall be preceded by a reminder and setting of a time limit by FIBAA, insofar as a reduction in damages can be achieved by this.

§ 10 - Remuneration, Due Date, Exclusion of Offsetting

- (1) Unless otherwise agreed, the client bears the advance payment obligation.
- (2) The fee agreed for the performance of the procedure in principle only applies to the performance of the assessment and examination procedure.
- (3) All invoices are paid without deduction of discount and free of charges in accordance with the agreed payment plan, otherwise within fourteen days of receipt of the invoice by bank transfer. The costs of the transfer are borne by the client.
- (4) If FIBAA is entitled to several claims against the client, FIBAA determines the debt to which the payment is credited.
- (5) The client is only entitled to possible set-off rights if his counterclaims have been legally established, are undisputed or have been acknowledged in writing by FIBAA. The same applies to the assertion of rights of retention. Sentences 1 and 2 only apply to such set-off claims which are not synallagmatically opposed to the claim of FIBAA against which they are objected.
- (6) If it becomes apparent after conclusion of the contract that the claims of FIBAA against the client are at risk due to the client's lack of ability to pay, FIBAA is entitled to perform outstanding services only against advance payment or provision of security and to withdraw from the contract after the unsuccessful expiry of a deadline set for this purpose.

§ 11 - Data Protection

- (1) FIBAA processes personal data exclusively within the scope of the General Data Protection Regulation (“GDPR”) as well as within the scope of the provisions of Art. 95 of the GDPR in conjunction with Art. §§ 11-15a Telemedia Act (“TMG”).
- (2) The Foundation for International Business Administration Accreditation (FIBAA), Berliner Freiheit 20-24, 53111 Bonn, Germany is controller with regard to personal data. Lawyer Georg Baumann, Eichholzer Str. 80, 50389 Wesseling, Germany (dsb@fibaa.org) acts as data protection officer. FIBAA's privacy policy is published online on the FIBAA website.²

§ 12 –Advertising Opportunities

- (1) If accreditation is granted on the basis of the experts opinion by the decision of the FIBAA committee, the client can prove cooperation with FIBAA using the relevant FIBAA logo within the scope of their online advertising appearance. Furthermore, the client is entitled during the entire accreditation period to advertise with the fact that the assessment has been carried out by FIBAA. For this they are permitted to use the respective FIBAA logo in equal measure.
- (2) After the final expiry of the period of validity, continued advertising and the use of the FIBAA logo or the relevant FIBAA Quality Seal is expressly forbidden.
- (3) In view of the special breach of faith incurred by FIBAA through continued advertising beyond the period of validity, the contracting parties agree a flat-rate compensation/contractual penalty of 10,000€ net. FIBAA will inform the HEI in advance through a warning setting a deadline, insofar as this still appears proportionate.

§ 13 - Code of Conduct and Anti-Discrimination

FIBAA and its appointed experts declare that they do not discriminate directly or indirectly, in particular on the basis of ethnic origin, religion and belief, disability, age, sexual identity or gender.

§ 14 – Contract, Exclusion of Repayments

- (1) The contract enters into force upon signature of both parties.
- (2) The repayment of already made advanced and partial payments is excluded.

§ 15 - Final clauses

- (1) Changes, collateral agreements and supplements, as well as quality agreements or the assumption of guarantees require a written confirmation of FIBAA to be effective. This also applies to any cancellation or amendment of this clause.
- (2) If individual provisions of these terms and conditions are or become invalid, this does not affect the validity of the remaining provisions. In this case, the contracting parties replace the invalid provision by another provision which comes closest to the economic purpose of the invalid provision in a permissible manner, while compulsorily observing priority procedural conditions and reasonably safeguarding the interests of both parties. If this is not possible, both parties may withdraw from the contract. In this case, FIBAA is only entitled to a claim for partial remuneration and reimbursement of all previous expenses contrary to § 14 (2).
- (3) Conflicting or deviating conditions of the client are only binding for FIBAA if they are expressly acknowledged in writing form.
- (4) Only the law of the Federal Republic of Germany applies to all proceedings, their execution and the resulting claims. This also applies if the higher education and

education laws of other states are taken into account in certain proceedings. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

- (5) Place of jurisdiction for all proceedings is Bonn. For cross-border services, the registered office of FIBAA is the exclusive place of jurisdiction for all disputes arising from the contractual relationship. However, FIBAA reserves the right to sue the client at his general place of jurisdiction or to bring an action before any other court which is competent on the basis of the EuGVVO.