

# FIBAA General Terms and Conditions

## within the framework of procedures for the award of the FIBAA Quality Seal for Institutional Accreditation: Strategic Management



Status: April, 2020

To simplify the legibility of the general terms and conditions, no gender-neutral differentiation is made in the following. Of course, their meaning is in any case gender-neutral.

### § 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 FIBAA quality requirements are satisfied, taking into account national and international standards, if necessary.
- (2) The quality requirements are derived from FIBAA's Assessment Guide for Institutional Accreditation: Strategic Management (AG INST SM) valid at the time of contract conclusion and from the rules and regulations referred to therein.
- (3) If the quality criteria are satisfied overall, accreditation is awarded for a certain period of time and the FIBAA Quality Seal for Institutional Accreditation: Strategic Management is awarded.
- (4) Established Higher Education Institutions, which display a quality that is substantially above the FIBAA quality criteria, FIBAA may additionally award its FIBAA Premium Seal.
- (5) The FIBAA Accreditation Committee for Institutional Accreditation (F-AC INST) decides on accreditation.
- (6) 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.
- (7) FIBAA is responsible for the correct application of its own procedural rules and conditions and those resulting from clause 1, 3 and 5 during the procedure and in its accreditation reports. FIBAA does not warrant the accuracy of any priority procedural rules and conditions.

- (8) FIBAA is not obliged to check the completeness and correctness of data, information or other services made available 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 *the guidelines on the appointment of experts and the composition of expert panels for accreditation procedures of the German Rectors' Conference*. The responsible FIBAA committee 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 according to the AG INST SM 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 paper form as well as 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. She/he organises and supports the procedure at the HEI side and is available to FIBAA for questions. In particular, she/he informs 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 she/he 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 him as well as his 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 and to what extent the FIBAA quality requirements have been met. The following quality ratings are used:

<b>Quality criteria</b>	<b>Assessment</b>
Does not meet quality requirements	1
Meets quality requirements	2
Exceeds quality requirements	3
Exceptional	4
not relevant	0

- (2) In addition, the experts make recommendations on the further development of the HEI.
- (3) In principle, recognition of external reports in full or in parts is possible after special agreement.
- (4) The experts' 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.
- (5) The responsible FIBAA committee will make a decision after submission of the report and the statement of the HEI.
- (6) The HEI will be accredited without any conditions if the responsible FIBAA committee has come to the conclusion that the HEI has sufficiently fulfilled the quality requirements recorded in the FIBAA's Assessment Guide for Institutional

Accreditation: Strategic Management, or will be accredited with conditions if at least one FIBAA Quality criterion is not met, or will not be accredited (refusal) if none of the above alternatives is acceptable for the responsible FIBAA committee.

- (7) The HEI will be awarded the FIBAA Quality Seal for Institutional Accreditation: Strategic Management for the duration of the accreditation. Under certain conditions the FIBAA Committee awards the FIBAA Premium Seal (see § 8).
- (8) The committee decision enters into force upon receipt of the notification by the HEI.

## **§ 8 – FIBAA Premium Seal**

- (1) For the award of the FIBAA Premium Seal to a HEI, FIBAA requires special requirements in all core areas (chapters in the AG INST SM).
- (2) Every assessment criterion is weighted between 1 and 4. The weighted assessment results are then added together for each of the core areas mentioned in § 7 (1). The results of the core areas are then added together to obtain the total number of points.
- (3) The FIBAA Premium Seal is awarded if in each core subject area the minimum points total stipulated by the responsible committee (60%) has been achieved and if overall the minimum points total stipulated by the responsible committee (65%) has been achieved. In this assessment 100% corresponds to the relevant arithmetic partial result/total result, if every assessment criterion is assessed with „exceeds quality requirements“.
- (4) The FIBAA Premium Seal will not be awarded, insofar as students have not yet graduated from the HEI or as long as the HEI is accredited under the suspensive condition of evidence of the conditions issued. If the HEI was accredited with conditions and if the responsible FIBAA committee has determined that the conditions have been satisfied, the FIBAA Premium Seal will be awarded retrospectively, if all the other conditions are in evidence.

## **§ 9 – Accreditation Deadlines**

- (1) If no conditions are issued, the accreditation period totals six years for initial accreditation or eight years for any subsequent accreditation. The deadline will be extended until the end of the last academic year concerned. If conditions are issued, this period may be reduced.
- (2) If conditions are issued, evidence that they have been satisfied must be provided to FIBAA by the HEI no later than nine months after notification of the decision. This period may be reduced by FIBAA or extended once for three months if an application is made for this by the HEI. If the period was reduced, it may be extended to the normal period in accordance with Clause 1 after evidence has been provided that the conditions have been satisfied.
- (3) If accreditation is refused, the waiting period is one year after notification of the decision. During this period a new application will not be accepted for the same subject of the assessment.

## **§ 10 – Provisional Further Accreditation and Obligation to Notify Changes**

- (1) If the HEI has applied for re-accreditation before the end of the on-going period to FIBAA and if the self-evaluation report required for the implementation of the procedure is available, FIBAA may provisionally extend the accreditation for a maximum of a further twelve months, unless there is obviously no prospect of successfully concluding the procedure.
- (2) The duration of provisional accreditation is to be included in the period in accordance with § 9 (1) in the subsequent re-accreditation.
- (3) If re-accreditation is refused, the provisional accreditation nevertheless remains in existence until the end of the period set.
- (4) If the HEI has not applied for re-accreditation before the expiry of the on-going period to FIBAA because it is ceasing operations overall, the period may be provisionally extended until operations cease if the subject of the assessment does not demonstrate any substantial changes. The necessary staff and material resources must be maintained until the discontinuation. If this regulation is infringed, the provisional accreditation may also be withdrawn with immediate effect.
- (5) If an accreditation is granted by FIBAA, the client is obliged for the duration of the accreditation decision to notify FIBAA immediately of any essential change to the accredited programme(s).

## **§ 11 – Withdrawal of FIBAA Quality Seal and of FIBAA Premium Seal**

- (1) If the conditions are not satisfied, not satisfied promptly, correctly or truthfully by the HEI, the responsible committee has the right to set an appropriate period of grace after a warning and to withdraw the accreditation granted as well as the Quality Seal which has been awarded.
- (2) If there are substantial changes to the structure or profile of the HEI, the responsible FIBAA committee will decide whether the change reduces its quality and whether a new accreditation is therefore required. In this case the existing accreditation will be cancelled immediately with effect until the end of the next semester, insofar as an application has not been made for re-accreditation. FIBAA will decide whether the procedure may be shortened in individual cases.
- (3) FIBAA is obliged to inform the client immediately about the withdrawal or the intention of the withdrawal of an accreditation.

## **§ 12 – Appeals and Opposition Proceedings**

- (1) In accordance with ESG 2.7, the client has the option,
  - a. to lodge a complaint with FIBAA to express his dissatisfaction with the conduct of the proceedings or the parties; or

- b. to lodge an appeal with FIBAA in writing form within a period of one month from the dispatch of the expert opinion if he questions the formal results of the procedure in the decision of the responsible FIBAA committee.
- (2) The FIBAA Appeals Committee deals with the appeal. The final decision on the objection is made taking into account the grounds for the objection and, if necessary, with the involvement of the experts.
  - (3) In case of a negative decision, the additional costs of the appeal procedure shall be paid by the client. The handling of complaints will be charged on an hourly basis at an hourly rate of 180.00 € net.

### **§ 13 – Violation of Obligations, 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.
- (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.

### **§ 14 – 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 twenty 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.

## **§ 15 – 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.<sup>1</sup>

## **§ 16 – Publication of the Decision by FIBAA and Advertising Opportunities**

- (1) After an accreditation decision, FIBAA will publish the following data on its homepage and in EQAR’s Database of External Quality Assurance Results (DEQAR<sup>2</sup>): decision (possibly with all the conditions and deadlines issued), period of accreditation, the report (possibly additionally in an abbreviated form), the names and job titles of the procedural supervisors, all the experts involved and any procedural coordinators instructed by the HEI.
- (2) Any more extensive publication requires the prior revocable consent of FIBAA.
- (3) If accreditation is granted on the basis of the experts opinion by the decision of the responsible FIBAA committee, the client can prove cooperation with FIBAA using the relevant FIBAA logo within the scope of his 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

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<sup>1</sup> <https://www.fibaa.org/nc/en/data-protection-statement-fibaa>.

<sup>2</sup> <https://www.eqar.eu/qa-results/search/by-institution/>



FIBAA. For this he is permitted to use the respective FIBAA logo in equal measure.

- (4) 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.
- (5) 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.

## **§ 17 – 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.

## **§ 18 – 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.

## **§ 19 – 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.