

GENERAL TERMS AND CONDITIONS

§ 1 - General provisions

The business relationships of Prüf- und Forschungsinstitut Pirmasens e.V. (PFI) with its client are governed by the terms stated in the contract and below. Differing terms and conditions of the client shall only become a component of the contract if they are acknowledged by PFI expressly and in writing.

§ 2 - Job assigned

1. The object of the job assigned is to be set down in writing upon contract award.
2. A job assigned is deemed as accepted unless it is objected to within 10 days after receipt. Ancillary agreements must be confirmed in writing in order to be effective.
3. Changes of the agreed scope of services require the written form.

§ 3 - Execution of the job assigned, default, performance

1. The job assigned is executed based on the respective state of the art as well as the scientific work and findings available to the contractor.
2. The processing of jobs assigned takes place within the period of preparation agreed in the contract. The period for handing in the research results and/or the expert opinion starts upon conclusion of the contract. If PFI needs documents of the client or an advance payment for completing the job assigned, the period shall start to run only after receipt of such documents or payment. If an advance payment or down payment pursuant to § 7 of these terms and conditions is agreed, the period shall start only after receipt of such payment. If the deadline for handing in the result is exceeded, the client may rescind the contract only in case of default of PFI or impossibility of performance at fault of PFI.
3. PFI only shall be in default if it is at fault for the delay. In case of obstacles not at fault of PFI attributable to an event that occurred through no fault of PFI and results in the serious interruption of business, such as for example cases of force majeure, strike and lockout as well as other inevitable events, no default shall occur. The period is extended correspondingly and the client cannot derive any claims for damages from that. If the completion of the job assigned becomes impossible for PFI due to such obstacles, PFI shall be free from its contractual duties. The client shall not be entitled to a claim for damages in this case, either.
4. The client may claim damages for default only if it is proven that PFI acted intentionally or in grossly negligent manner.
5. The completion of the job assigned occurs upon sending the written result of the job assigned (day of postmark) or upon actually making available the result. The letting of use of preliminary reports has no discharging effect and does not constitute a liability.

§ 4 - Storage of material

1. Examination and test materials are disposed of 10 weeks after completion of the job assigned - if technically possible - or otherwise utilised and remain at the free disposal of the contractor in case of need. A longer obligation to store may result due to national or international regulations.
2. The disposal of the examination and test materials as well as the takeover of the costs occurred in this respect is handled pursuant

to the provisions agreed in the contract. The disposal of packaging materials is at client's expense.

3. Test reports prepared within the framework of the job assigned are archived for a period of 10 years at PFI. A longer obligation to store may result due to national or international regulations.

4. One copy of the written elaborations in German language is made available to the client. Further copies or translations are charged separately.

5. After completion of the job assigned and payment of the agreed remuneration, PFI has to return to the client any documents let for execution of the job assigned upon request within 10 weeks. Exceptions result from number 1.

§ 5 - Duties of the client

1. PFI charges a remuneration for its services depending on the time and material required for the handling of each job assigned. Personnel costs are settled pursuant to the actual time used. Irrespective of that, PFI reserves the right to agree lump-sum remuneration.
2. The payment obligation of the client comes into existence upon acceptance of the job assigned by PFI.
3. The client has to ensure that PFI receives all information and materials required for the execution of the job assigned free of charge and in good time.
4. PFI is to be informed of all circumstances which recognisably may be of importance for the execution of the job assigned in good time and without special request.

§ 6 - Contractor's duty to maintain secrecy

1. Methods and procedures developed by PFI within the framework of the job assigned may be used by PFI free of charge (for own purposes). Otherwise, they are due to the client and to be kept a secret at the request of the client.
2. Publications regarding results of the co-operation between PFI and the client shall be agreed with the respective other party if this is required also taking into account the scientific interest of PFI and the public interest in order to achieve effective property rights. After taking the required steps for securing the necessary property rights, there is no longer an obstacle to publishing the work results, unless serious concerns are asserted by one of the contracting parties.

§ 7 - Terms of payment

1. Payments by the client are to be made strictly net without deduction within 14 days after receipt of the invoice. PFI reserves the right to agree separate terms of payment at its own discretion, in particular cash in advance, partial payment, down payment or payment in instalments may be requested.
2. The client shall only be entitled to offsetting rights if its counterclaims are ascertained legally bindingly, uncontested or acknowledged by PFI. If the client is a(n) entrepreneur, merchant, body corporate organised under public law or public separate estate, the same shall apply to exercising rights of retention. If the client is none of the above, the client shall only be entitled to a right of retention if its claims are based on the same legal relationship as its obligations.

§ 8 - Copyright protection

1. The client shall be entitled to apply for property rights regarding all copyrightable inventions resulting from research and development jobs. If the client waives to apply for property rights, PFI may apply for property rights. The client has to declare its waiver within 4 weeks after handover of the copyrightable results. The costs of the application for the property

rights and the payment to the inventors corresponding to the German Employee Invention Act are borne by the applicant.

2. In case that the client applies for property rights for any procedure developed within the framework of the work, PFI shall be authorised to use such property right free of charge for own research and development work.

§ 9 - Warranty

1. The contractor warrants that it will execute the work pursuant to these general terms and conditions and the individual agreements in the written contract based on the scientific and technical findings available to it. Any obvious incorrectness of the work result, such as for example typing errors, calculation errors or formal defects may be corrected by PFI at any time also vis-a-vis third parties.

2. As warranty, the client may at first only request gratuitous subsequent improvement of the defective performance.

3. PFI is entitled to carry out a reasonable number of attempts for subsequent improvement, but at least two attempts. If the subsequent improvement fails, the client shall alternatively have a right for cancellation of the contract or reduction of the agreed remuneration.

4. Claims for warranty become time-barred within one year after delivery/acceptance. The warranty period of one year also applies to intangible works (in particular expert opinions and test reports).

5. If the client is a(n) entrepreneur, merchant, body corporate organised under public law or public separate estate, possible complaints have to be notified to PFI in writing immediately after detection of the defects. A preclusion period of seven days applies after delivery of the expert opinion or the test report. Hidden defects are to be claimed immediately after discovery, but in any case, within the statutory warranty period.

6. If the warranty claim is based on intention or gross negligence of PFI, its legal representatives, employees or persons employed in the performance of its obligation, the limitations and restrictions of warranty shall not apply. Further claims, in particular claims for damages, are restricted pursuant to § 10 (Liability) below.

§ 10 - Liability

1. PFI only shall be liable for any damage caused by PFI or its representatives, employees or persons employed in the performance of PFI's obligation intentionally or in grossly negligent manner. In addition, PFI is liable for damage caused by itself to third parties in the case of persons and property damage after examination of the fault and resulting liability. Furthermore, the liability for damage based on injury of life, body or health and for damage based on breach of material contractual duties by PFI, is limited. However, the claim for damages for the breach of material contractual duties is limited to the foreseeable damage typical for the contract.

The liability of PFI shall also be limited to the foreseeable damage typical for the contract in cases of gross negligence if none of the exceptions stated in sentence 2 of this paragraph 1 is given.

2. The exclusions and restrictions of liability above shall also apply to claims in tort to the extent that they concur with the contractual claims. They shall not apply to claims under the product liability law to the extent that it stipulates strict liability.

3. If a third party incurs the damage, the client shall be obliged to indemnify PFI from and against all claims for damages unless the dam-

age was caused by intentional or grossly negligent behaviour of PFI. The same shall apply if the client forwards the results of the job assigned and the third party incurs damage due to that.

§ 11 - Termination

1. PFI may terminate the contract at any time for important reason. Notice of termination is to be given in writing.

2. Important reasons entitling PFI for termination include without limitation:

- Refusal of necessary contribution by the client

- Debtor's default on part of the client

- Dwindling of assets of the client

3. In all other respects, a termination of the contract by PFI and the client shall be excluded unless it was agreed in writing upon contract award.

4. If the contract is terminated for an important reason, PFI shall be entitled to a remuneration for the partial performance rendered until the time of termination.

5. In all other cases, PFI retains the claim for the contractually agreed remuneration but only under deduction of the expenses saved.

§ 12 - Place of jurisdiction and place of performance

1. The laws of the Federal Republic of Germany apply.

2. If the client is a full merchant or if the other requirements of § 38 para. 1 are met, place of jurisdiction for both parties shall be Pirmasens, also for cheque and bill of exchange proceedings. Place of performance also shall be Pirmasens.

3. Even if the client is a non-merchant, Pirmasens shall also be place of performance if the client does not have a general place of jurisdiction in Germany, relocated its residence or usual abode from Germany to another country or if its residence or usual abode is not known to PFI at the time of bringing the action.

4. In case of disputes regarding property rights, the competent court as regards the subject matter which is closest to the seat of the client shall have jurisdiction.

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**Prüf- und Forschungsinstitut
Pirmasens e.V.**