

General Terms and Conditions
for the processing of research projects and developmental tasks and
drafting of expert's reports
of the Research Institute of Leather and Plastic Sheeting gGmbH, Freiberg
(Forschungsinstitut für Leder und Kunststoffbahnen gGmbH, Freiberg) hereafter
referred to as contractor

§ 1 General

1. The legal relationship between the Research Institute of Leather and Plastic Sheeting gGmbH Freiberg (FILK) and its customers is solely based upon the following terms and conditions and individual contractual agreements.
Deviating terms and conditions of the customer shall only become valid and part of the contract if FILK explicitly agrees to them in writing.

§ 2 Order

1. Subject matter of a contract may be the processing of research projects and developmental tasks as well as any kind of expert's report such as fact-finding, assessing and examination of leather, artificial leather etc.
2. The topic of research and expert's report and its intended use shall be defined in writing when placing the order.
3. The acceptance of an order as well as any oral agreements, confirmations or sub-agreements shall not be valid until confirmed in writing by the executive of the contractor.

§ 3 Price and payment

1. Prices of the contractor shall be agreed ex works, excluding packaging, freight, customs etc. VAT as currently applicable is to be added. The calculation of prices shall be based on the contractor's offers and the scope of service the contractor defines.
2. In case of individual contractual provisions for services, these provisions shall apply.
3. Payments shall be made in the agreed currency due net within fourteen (14) days from date of invoice unless otherwise agreed. After that the customer shall be in default without further reminder.
4. In the event of default of payment by the customer, the contractor shall be entitled to interest of 8 percentage points above prime rate of German Federal Bank and to any further damages resulting from the default.
5. Bills of exchange or cheques will only be accepted by ways of exception and on account of payment. They shall be valid payment when they are cashed. Bank service charges shall be borne by the customer.
6. The customer is entitled to offset counterclaims against our payment claim only to the extent that said counterclaims are undisputed or recognized by declaratory judgement.
7. The Customer is entitled to retain payment due to any non-conformity until the contractor has decided on the validity of the customer's claim and only if the customer provides adequate security.
8. The customer is not entitled to retain payment due to non-conformity of a contract other than the one the payment claim arises from.

§ 4 Performance

1. The contract will be performed on the basis of state of the art and the knowledge of scientific papers and findings.
2. The processing of the order is carried out within the period stipulated. The period shall commence upon closing of the contract, respectively upon receipt of the order. In case the contractor needs certain documents from the customer or in case advance payment has been agreed on, the period shall commence with receipt of the required documents or the advance payment.
In the event of expiration of the time limit the customer is only entitled to damages or to withdraw from the contract in case of default or impossibility of performance by fault of the contractor.

3. The contractor will only be in default if it is responsible for the delay in delivery of the contractual services. In case the delay results from events the contractor is not responsible for, such as, but not limited to, force majeure, illness, strikes or lockout, the contractor is not in default. The time limit for delivery of the contractual services shall then be prolonged accordingly. The customer is not entitled to any damages in this case. In the event of final impossibility of performance due to such events, the contractor is no longer bound to the contractual obligations. The customer is not entitled to damages.
4. The customer may only claim damages due to default in case of intent or gross negligence of the contractor.
5. The order is deemed to be completed by posting of the required written results. The date of the postmark applies.
6. The materials subject to examination and experiments will be disposed of after twelve (12) months after the works have been delivered or may as well stay in the contractor 's possession for its own use.
7. The parties shall contractually agree on the way of disposal of the materials and on the party liable for the costs of the disposal.
8. The contractor shall archive the test reports that have been compiled while processing the order for five (5) years.
9. The customer will be handed out one copy of all written results and documents. Further copies will be invoiced separately.
10. After completion of the order and receipt of full payment, the contractor shall return all the documents it has received from the customer for the purpose of execution of the order.

§ 5 Customer duties

1. The customer shall ensure that the contractor gets all necessary information and documents (such as drawings, calculations, correspondence, existing research results etc.) in due time and free of charge.
2. If the contractor has been requested to furnish an expert opinion, the customer shall inform the contractor about all circumstances that are evidently important for furnishing the opinion in due time and without being specifically requested to do so.

§ 6 Professional secrecy

1. The contractor is bound to professional secrecy. The contractor shall not disclose the expert report itself or any facts or documents or research results, that the contractor was entrusted with in the course of its performance of the order, to others without consent of the customer, or take own advantage of it. The professional secrecy does not include facts and matters of common knowledge.
2. The contractor is entitled to use those scientific methods and procedures that it has developed during the processing of the order, for its own purpose free of charge.
3. The professional secrecy applies to all staff members of the contractor. The contractor shall ensure that all its staff members abide by their duty to professional secrecy. In case the contractor consults external experts during its performance the contractor shall ensure that those experts commit themselves to professional secrecy as well.
4. The contractor is not entitled to publish any of its work results or research results without prior consent of the customer.

§ 7 Industrial property

1. The customer is entitled to apply for any industrial property right that arises out of the contractual performance of the contractor. In case the customer waives his right for application, the contractor may have the right of the industrial application of its invention. The customer shall declare his waiver within four (4) weeks after delivery of the results capable of being legally protected. The costs for the application and payment to the inventors according to the German Employee Invention Act are borne by the applicant.
2. In case the customer applies for a patent of a procedure that has been invented during the performance of the contract, the contractor may use this right for its own purposes in regards to research and development free of charge.

§ 8 Warranty

1. The contractor warrants that the required services will be performed on the basis of all scientific and technical findings and expertise the contractor knows of.
2. The contractor provides warranty in the form of remedy of defective performances and services.
3. If the contractor does not remedy the defect in due time or if the remedy fails three times, the customer shall then only be entitled to withdraw from the contract or demand a reduction of the contract price.
4. The customer shall notify the contractor in writing about the deficiency promptly after having noticed the deficiency. The warranty period commences with delivery of the required research results or expert opinion and expires after 12 months.
5. Only in case contractually warranted characteristics of the required performance are missing, the customer is entitled to damages according to the regulations of § 9.

§ 9 Liability

1. The contractor shall be liable for damages occurred to the delivery object itself. In case the damage was caused due to ordinary negligence, the extent of liability is limited to what might typically and reasonably be foreseen. Damages that do not occur to the contractual object itself shall be deemed as not typically and reasonably predictable.
2. The contractor shall be liable for damages, which do not occur to the delivery object itself - for any legal reason whatsoever - only in cases of a) intention b) gross negligence on the part of the owner/ the agents or executive employees c) culpable injury to life, body, health d) fraudulent misrepresentation. In case of culpable breach of essential contractual duties, the contractor is also liable for any gross negligence and for ordinary negligence, in the latter case limited to those damages that might typically and reasonably be foreseen. Damages that do not occur to the contractual object itself shall be deemed as not typically and reasonably predictable.
3. More extensive claims for damages are excluded.
4. The warranty claims of § 8 remain - in accordance with this provision - unaffected.
5. Any and all claims of the customer, that are not subject to § 634a German Civil Code, shall be time barred after a period of 12 months. The limitation period commences with delivery of the research results or expert opinion.

§ 10 Termination

1. The contractor shall be entitled to terminate the contract for significant reasons at anytime. The termination shall be in writing.
2. Significant reasons include, but are not limited to
 - customer's refusal of his necessary collaboration
 - customer's default
 - insolvency of the customer
 - the contractor recognizes after having accepted the order that it does not have the necessary expertise.
3. A termination of the contract for other reasons is excluded unless otherwise agreed by the parties.
4. In case of termination of the contract for cause, the contractor is entitled to compensation for the parts of the work already performed until the termination.
5. In all other cases of termination the contractor shall be entitled to the total contract price less the saved expenses.

§ 11 Place of performance and jurisdiction

1. Place of performance is Freiberg.
2. In case the customer is a registered trader, a corporate body under public law or special fund under public law, the exclusive place of venue shall be the place of the head office of the contractor.
3. The same place of venue applies in case the customer does not have a general place of jurisdiction or has permanently gone abroad after placing the order or in case his residence is unknown.
4. In case of a patent litigation the nearest court to the customer' residence having competent jurisdiction shall be the place of venue.

§ 12 Miscellaneous

1. The contract shall come into effect when both parties have signed it. It is valid until both parties have fulfilled their contractual duties.
2. The inoperativeness of one or several provisions of these General Conditions does not affect the validity of the remaining provisions. In such case a provision is applicable which meets best the legal and economic aim of the inoperative provision.

Freiberg, March 2011

Research Institute of Leather and Plastic Sheeting gGmbH

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