

**Standard terms and conditions
for the processing of research projects and developmental tasks and for testing and drafting of expert's reports of
Forschungsinstitutes für Leder und Kunststoffbahnen gGmbH (FILK)**

§ 1 – General

All legal relationships between Forschungsinstitut für Leder und Kunststoffbahnen gGmbH (Contractor) and the customer are determined by the contract and these Standard Terms and Conditions. Sale offerings are directed to both Consumers and Business Customers (as defined below). For the purpose of these Standard Terms and Conditions, (i) a “Consumer” is any individual entering into the contract for a purpose not related to his or her business, trade or self-employed professional activity (Sec. 13 of the German Civil Code), and (ii) a “Business Customer” is an individual, company or partnership vested with legal capacity who enters into the relevant contract in the conduct of its business or its self-employed professional activity (Sec. 14 (1) of the German Civil Code). They also apply to Business Customers for all future business relationships even if they are not expressly agreed again. Our terms and conditions are considered agreed, if there is no objection in writing immediately after receipt. Any opposite and/or divergent terms and conditions of the customer shall not apply, unless we have expressly agreed to their validity in writing. Any opposite and/or divergent terms and conditions of the customer will also not be part of the contract, if the contractor does not expressly object or carry out an unreserved delivery.

Individual agreements in the written contract or the written order confirmation are prior to these Standard Terms and Conditions. Verbal promises by our representatives or other auxiliary persons require the written confirmation by us. Insofar as the following conditions do not contain any other regulations, the provisions of the service contract law apply to the research and development orders.

§ 2 – Order

1. Subject matter of a contract may be the processing of research projects and developmental tasks as well as any kind of testing services and expert's reports such as fact-finding, assessing and examination of leather, coated textiles, collagen, plastics and components etc (defined as “contractual services”).
2. The topic of research, testing and expert's report and its intended use shall be defined in text form when placing the order.
3. Orders are only binding for the contractor, if the contractor has confirmed the order in written or started with the execution.

§ 3 – Price and payment

1. The calculation of prices is based on the offers made by the contractor and the determined scope of services. Prices are binding and for business customers excluding statutory VAT. The prices of the contractor apply ex works excluding packaging, freight, customs duties etc.
2. Invoices are to be paid unless otherwise agreed in the agreed currency within 14 days from the date of invoice without deduction. After that, arrears occur without further reminder. The contractor is entitled towards business customers to demand from the due date interests in the amount of 9 percentage points above the base interest rate of German Federal Bank. Towards consumers is the interest rate 5 percentage points above the base interest rate of German Federal Bank. The contractor reserves the right to claim further damage caused by delay against the customer.
3. Bills of exchange or cheques will only be accepted in exceptional cases and 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.
4. The customer shall have a right of set-off or retention only where a claim is uncontested, undisputed or already established in law. The customer may only exercise a right of withholding any payment owing if its counterclaim is linked synallagmatic. If the purchaser is a business customer, he is only authorized to exercise a right of retention if its counterclaim arises from the same contractual relationship.
5. The claims of the contractor for payment shall become statute-barred divergent to § 195 German Civil Code (BGB) within five years. The beginning of the limitation period applies to § 199 German Civil Code (BGB).

6. Are reasonable doubts about the solvency of the customer the contractor may demand advance payment or provision of a security. The contractor is entitled, to withdraw the contract if the customer files an application for the opening of insolvency proceedings over his assets, has submitted an affidavit according to § 807 Civil Procedure (ZPO) or the insolvency proceedings on his assets were opened or the opening was rejected for lack of mass. For this case § 10 lit. 2 of this terms and conditions applies.

§ 4 – Execution of the order

1. The contractor observes the application of scientific care as well as compliance with the generally accepted rules of technology, but cannot guarantee the achievement of research and development targets.
2. The processing of the order is carried out within the period stipulated. This period shall commence upon closing of the contract, respectively upon receipt of the order and receipt of the research subjects. 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. Time sheets and delivery terms shall only be binding if stated to this effect if and when the contractor confirms these in writing.
3. The contractor will only be in delay if he 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 lock out, the contractor is not in delay. 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 the contractual services due to such events, the contractor is no longer bound to the contractual obligations. Also in this case the customer is not entitled to damages.
4. The order is deemed to be completed by posting of the required written results (date of the postmark or day of sending by electronic mail).
5. The materials subject to examination and experiments will be disposed or send back at the cost of the customer 3 months after the works have been delivered or the written results/expert's report have been handed over unless otherwise agreed on behalf of the contract.
6. Test reports, written results or expert's reports that have been compiled while processing the order are archived by the contractor for 5 years.
7. The customer will be hand out one copy of all written results and documents. Further copies will be invoiced separately.

§ 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 contractual services, the customer shall inform the contractor about all circumstances that are evidently important for furnishing the services in due time and without being specifically requested to do so.
3. If the client violates this obligation he is obliged to pay the additional work of the contractor. This is calculated flat rate per day with 1% of the contract sum.

§ 6 – Confidentiality and competition protection

1. The contractor is bound to professional secrecy. The contractor shall not disclose the written report or the expert report itself or any facts or documents or research results, that the contractor was entrusted with in the course of his 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. The confidentiality obligation does not include facts, (i) which are generally known to the public, (ii) were known to the contractor prior to the order or (iii) were disclosed to the contractor by a third party without a commitment to confidentiality or (iv) are required by court, law or other governmental authority to be disclosed. The customer has to prove that the facts or documents were previously unknown to the contractor.
2. The contractor is entitled to use those scientific methods and procedures that he has developed during the processing of the order, for his own purpose free of charge.
3. The professional secrecy applies to all staff members of the contractor. The contractor shall ensure that all of his 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 the work results or research results without prior consent of the customer.
5. The customer is also subject to secrecy for information provided as secret by the contractor.

§ 7 – Copyright protection and patent application

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 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. The same applies to other work results of the contractor.
3. The contractor is the copyright holder of the works in accordance with copyright law. The works produced by the contractor are basically only intended for the contractor's own use. The rights of use are only passing over after full payment of all claims to the contractor arising from the business relationship. At the exploitation of results, the contractor may request to be named as originator unless otherwise agreed.
4. Transfers the contractor rights of use to his contract results in each case only the simple right of use is transferred unless otherwise expressly agreed. The transfer of rights of use requires a special agreement. Rights of use are only transferred to these contract results, which the customer accepts as being in accordance with the contract. Contract results, which will be left only for viewing or selection or otherwise for processing the order as non-final order results are excluded. The latter must be returned to the contractor within 2 weeks of receipt.

§ 8 – Warranty

1. As far as the contractor owes as a research and development result due to an express commitment the manufacture or delivery of a prior art item/result, the customer can only demand under warranty free remedy of the defective performance. If the contractor does not remedy the defect in due time or if the remedy fails three times or the remedy is unacceptable to the contractor, the customer shall then only be entitled to withdraw from the contract or demand a reduction of the contract price. The right of withdrawal can only be exercised if there is a significant defect and it expires, if the customer resigns not later than 14 days (i) upon receipt of the notification of the refusal or failure of the supplementary performance or (ii) of the time in which the customer becomes aware of the unacceptability of the supplementary performance. Omits the customer, who is a business customer, an immediate investigation or he does not object to an identified or detectable defect immediately in text form, he loses his warranties with regard to identified and/or detectable defects. If the customer is a consumer, he has to indicate obvious defects to the contractor within 2 weeks after the occurrence of the defect in written. Otherwise, the warranty rights expire, except the defect was fraudulently concealed or a guarantee was given.

§ 9 – Liability

1. The liability of the contractor, his employees, agents and vicarious agents for contractual breaches and of duty and tort is limited to intent and gross negligence. This does not apply in case of injuries to life and limb or health of the customer as well as for claims for damages due to an injury of substantial contract obligations and the compensation of occurred damages. Liability in case of injury of substantial contract obligations is limited to the contract-typical and regularly foreseeable damage. Liability in case of delay in delivery is for every completed week of delay limited as part of a lump-sum compensation for default to 0,5% of the delivery value, maximum not more than 5% of the delivery value.
2. The warranty period is one year beginning with receipt of the contractual services at the customer. This also applies to claims for damages of the customer except in cases of intent, gross negligence or injuries to life and limb or health of the customer. The period of limitation in the case of a delivery recourse according to §§ 478, 479 German Civil Code remains unaffected.
3. There is no liability for that the results are economically and technically usable and free of protective rights of third parties. As far as opposing property rights become known, the contractor informs the customer immediately. There is no obligation to do a research.

§ 10 – Termination

1. 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 he does not have the necessary expertise or technical requirements. A claim for damages of the client is excluded in such a case.
2. If the contract is terminated by the contractor for good cause, the contractor is to compensate for the partial service rendered up to the time of termination. In such a case, the customer is obliged to pay to the contractor 30% of the total order amount as flat-rate damages plus expenses already incurred by the contractor. If the contract has already been started by the contractor, the customer has to pay 50% of the total order amount as flat-rate damages. The customer can prove that the contractor suffered less or no damage. The contractor is allowed to prove a higher claim for damages or compensation.
3. In all other cases, especially in the event of extraordinary termination by the customer or ordinary termination by a party, the contractor retains the right to the contractually agreed fee, but only after deducting saved expenses. If the contract is terminated by one party before start of execution without the contractor being at fault for this the customer is obliged to pay to the contractor 30% of the total order amount as flat-rate damages plus expenses already incurred by the contractor. If the execution has already been started by the contractor, the customer has to pay 50% of the total order amount as flat-rate damages. The customer has to prove that the contractor is at fault in terminating the contract and that the contractor suffered less or no damage. The contractor is allowed to prove a higher claim for damages or compensation.
4. A termination is possible for both parties giving six months' notice to the end of any year.

§ 11 – Place of performance and jurisdiction

1. Are both contracting parties are business customers the place of business of the contractor is agreed as place of jurisdiction and place of fulfillment. The same occurs if the customer (i) does not have a general place of jurisdiction in Germany, (ii) relocates after the conclusion of the contract his domicile or habitual residence from within Germany, or (iii) his domicile or habitual residence at the time of filing of the action is unknown or (iv) it is a patent dispute.
2. Should any of the above clauses be or become ineffective, this will not affect the validity of the remainder of the contract. In place of the ineffective conditions such regulations should be agreed which come closest to the economic purpose of the contract, with due regard for mutual interests.
3. The law of the Federal Republic of Germany shall apply.

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Forschungsinstitut für Leder und Kunststoffbahnen gGmbH