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## General Terms and Conditions of ITA GmbH

### 1. Scope of Application

The following conditions apply for all research, development and service orders placed at ITA GmbH.

The contract does not include any legal, tax and insurance consultancy.

Our general terms and conditions shall apply exclusively. The general terms and conditions of our contractual partner do not apply.

### 2. Subject Matter of the Contract

- a. Only those works which are described in the written offer made by ITA GmbH or in the written order confirmation made by the customer become subject matter of the contract.
- b. An additional offer has to be made for the services which are not content of the order, but requested after the order confirmation.

### 3. Handling Time

A special handling time and deadlines given in the offer made by ITA GmbH or in the research and development order can be regarded as mandatory only in the case that ITA GmbH has confirmed this explicitly.

### 4. Remuneration

The remuneration will be calculated as fixed price. In each case, value added tax will be added to this fixed price.

### 5. Payments

- a. Unless otherwise agreed 50% of the payment is due upon placing the order and the remaining 50% is due after the completion of the order.
- b. Invoices shall become due for payment within 14 days. Payments have to be made with an indication of the invoice number into the bank account of ITA GmbH, which is stated in the related contract.

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- c. The right to set-off exists only by recognized claims or claims which have been declared final and absolute by a court and only if the claims base on the same contractual relationship.
  - d. The contractual partner has a right of retention only against recognized claims or claims which have been declared final and absolute by a court and only if the counterclaim bases on the same contractual relationship.

## **6. Results of Research and Development, Right of Use**

- a. ITA GmbH and the customer will announce to each other every notification of a service invention, which are based on a mutual contract, by sending the appropriate copies to the other contracting party. In case that the customer is planning on utilizing the inventions, ITA GmbH is going to claim the rights to the inventions without limitation and according to German law, thus transferring the then acquired rights to the customer or a third-party named by the customer to acquire property rights so that he or she can purchase those in his or her name and at his or her costs. In the case that the customer or a third-party named by the customer is not interested in the purchase or the continuation of those property rights, ITA GmbH is free to release the results or claim the rights to them on her name and her costs or in case that the customer has purchased them before, but lost interested in the continuation, assume the rights from them, including the patent utilization which will go over to ITA GmbH or a then owning beneficiary as well.
- b. ITA GmbH and the collaborating ITA are both allowed to use their research results free and unrestricted for their own scientific purposes in research and teaching as far as they do not breach their obligations to respect confidentiality.
- c. In the case that employees of ITA GmbH or ITA were involved in the invention, these employees have to be named as inventor in the invention disclosure. The research and development results are governed by the German Employee Invention Act.

For each invention claimed by the customer, he or she has to compensate the obligations of ITA GmbH based on § 42 (4) ArbNErfG either by paying a flat fee of 12,000€ to ITA GmbH. If any property rights arise from the invention or on the basis of the work of ITA GmbH or ITA separate licensing agreements have to be made.

## **7. Liability**

- a. ITA GmbH ensures the application of scientific and technical care but not the actual achievement of the research and development target.

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- b. The liability of ITA GmbH for negligent breach of secondary obligations considering the legal limitation of liability is limited to those damages arising from injury to life, body and health.
  - c. The customer is liable for all property damages to objects which ITA GmbH left the customer for order processing.

## **8. Regulations for contacts of sale and contracts of work for research and development activities**

- a. If ITA GmbH owes the production or delivery of an object with state-of-the-art technology, which is the result of research and development, in the event of defectiveness of the object the German law for purchase contract and work contract applies in accordance with the following regulations.
- b. In case the research and development result is deficient, ITA GmbH has the opportunity to remedy such defects and deficiencies in the form of supplementary performance according to its own choice either by repairing or by replacement. This might be done several times depending on the circumstances.
- c. In case that ITA GmbH rejects the supplementary performance or that the supplementary performance is not reasonable for the customer he or she can, according to his or her choice, withdraw from the contract, reduce the remuneration to an appropriate level or demand compensation for damages. The right to withdraw can only be exercised, if the damage is significant. The withdraw must be declared within 14 days from the date of the receipt of the notification of rejection or the notification of the failure of the supplementary performance or from the date when the unreasonableness of the subsequent performance becomes apparent for the customer, otherwise the right to withdraw lapses.
- b. If the object is afflicted with a legal deficiency because of the infringement of the protective rights of third parties, ITA GmbH will only be liable, if these rights exist in the Federal Republic of Germany, the customer uses the research and development result as agreed by contract, the authorized third party claims this result and the customer informs ITA GmbH about the claiming of the third party immediately in written form. In such a case the supplementary performance will be implemented in the way that ITA GmbH will obtain the authorization of the contractual use for the customer or will modify the research and development result in that way that the related protective rights of third parties will not be violated.
- c. The customer has to investigate the research and development results without delay. He or she has to make notification of defects immediately. ITA GmbH only warrants for

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recognizable defects only if these defects have been notified within a period of 14 days from the date of delivery or acceptance.

- d. The limitation for the claims for faults of the research and development results complies with the following regulations.
- e. In the context of a framework contract, if the customer pays in advance for the fulfillment of a particular service mentioned in an individual contract with ITA GmbH, and ITA GmbH does not render these services completely, the previously made payments won't be reimbursed; instead the payments will be credited for the customer. These payments will be charged against the obligations of ITA GmbH arising from the further fulfillment of the contract. If the credited amount is not demanded within two (2) years after the date when one of the parties announces the other party that the services are not rendered completely, the claim to offset the payments lapses.

## 9. Limitation

- a. Claims because of breach of duty and unlawful acts fall under the statute of limitation within twelve (12) months. This shall not apply if longer periods apply according to clause 438 paragraph 1 no. 2, clause 479 paragraph 1 and clause 634a paragraph 1 no. 2 first alternative of the German Civil Code and if ITA GmbH is liable because of intent or gross negligence.
- b. In the context of a contract, if an acceptance is designated, limitation of claim of defects begins with the acceptance, otherwise with delivery.
- c. The limitation will be impeded by negotiations between the parties concerning claims or by circumstances giving rise to the claims.

## 10. Title retention

- a. The customer becomes owner of the research and development results upon full payment of the remuneration. Property and the right of use are reserved for ITA GmbH until the payment is made in full. It is not allowed to collateralize or to pledge property or rights of use of ITA GmbH.
- b. The parties agree that if the ownership of ITA GmbH expires through combination, mixing or processing, ITA GmbH will gain pro-rata the ownership of the new homogenous good, until full payment.
- c. In case of resale the customer assigns all the rights with effect in rem arising out of the resale until full payment.

## 11. Non-disclosure

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- a. The parties shall not make mutual disclosed information, which is declared as secret or confidential or in which the need for confidentiality results from the circumstances, accessible to third parties. This applies for technical as well as business information. The parties are not allowed to use them even indirectly or directly without prior explicit consent of the other party. The obligation of confidentiality obtains over the period of the cooperation and furthermore over five (5) years upon termination of the cooperation.
  - b. The confidentiality agreement does not apply to information which are already known by the customer at the time of disclosure and the information which were already published at that time. The confidential agreement does also not apply for the information, which has become known, publicly accessible or obvious after the disclosure but without involvement or fault of the contractual partner. If the Information consists of partial information, which all fall within the scope of these exceptions, the obligation of confidentiality for this information exempts, only if the whole information falls in the scope of at least one of the derogations.
  - c. The obligation of confidentiality applies to technical knowledge as well.
  - d. These regulations apply for the contractual partners as well as for their employees and third parties included by one of the contractual partner.
  - b. The Institut für Textiltechnik der RWTH Aachen University (ITA) is a cooperation partner of ITA GmbH and not a third party in terms of this regulation.
  - c. Each party has to hand back embodied trade and company secrets any time, if required by the other party without holding back any reproductions or other records. Information saved on electronic data carrier has to be permanently erased by the receiving contractual partner. He or she has to inform the other party about the erasure immediately. In the case that an obligation to archive certain documents or information exists, this regulation does not apply for those documents and information.
  - d. The customer agrees that the employees of the ITA who are integrated into the contractual work by ITA GmbH and who are employed by the RWTH Aachen University (RWTH) for scientific work with the aim of their doctorate are allowed to publish the research and development results arising from the cooperation in their academic paper. The customer will be informed in advance about every planned publication. The customer will have the opportunity to comment on the publication within a reasonable period of maximum eight (8) weeks from the time of the handover of the text provided for the publication.

In the case that the publication implies novelty-destroying information or that the publication endangers the confidentiality from No. 11 a) and c) in any other way, the customer has the right to refuse consent to the publication. In such a case the parties will agree upon a

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separate agreement immediately, which regulates the form and the time of an early publication in consideration of the mutual worthy of protection interests.

## **12. Publication, Advertisement**

The customer is only entitled to publish the research and development results with denomination of the originators of the involved institute, with the prior authorization of ITA GmbH. The coordination should be made in such a form that dissertations, diploma theses, master theses, bachelor theses and protective rights applications will not be endangered.

Within the scope of advertising, the name of ITA GmbH may only be used with explicit consent of ITA GmbH.

## **13. Termination**

- a. Because of an important reason, customer and contractor may withdraw from the contract arising out of an order, at any time. For the ITA GmbH such a reason exists in particular if the customer violates its contractual and under the Terms and Conditions given obligations, despite a reminder and a deadline, and thus makes the fulfillment of the assignment impossible or substantially more difficult.
- b. After effective termination, ITA GmbH will deliver the customer the research and development results which have been achieved until the expiry of the period of time within four (4) weeks. The customer is obliged to compensate all the costs to ITA GmbH which occurred until the expiry of the period of time. Personnel costs will be reimbursed in accordance with the respective expenditure of time.
- c. In the case that the termination was given because of the manner of one of the contractual partners, the claims for the compensation of damages shall remain unaffected.

## **14. Other**

- a. Individual offers will be valid for 30 days.
- b. The customer is obliged to procure all the data, documents and information, which are needed by ITA GmbH for the order fulfillment, at his own expense and to provide ITA GmbH with them completely on time.
- c. Additional Agreements, additions and amendments must be made in writing.
- d. The contract arising from the order and the interpretation of the contract are exclusively governed by the substantive law of the Federal Republic of Germany.

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- e. Should individual terms of these General Terms and Conditions be or become invalid, this will not affect the remaining terms. This applies also in case of a gap in the regulation.
  - f. Aachen is the place of trial for conflicts and disputes resulting from the contractual relationship based on the placing of order.