

General Terms and Conditions

for the performance of works and services by **ofi** Technologie & Innovation GmbH
(hereinafter called **ofi**)

1. General matters, scope of activities

The activities of **ofi** comprise testing, examination, measuring, inspection, consulting, expert opinions, awarding of quality labels, certification, licensing, planning, research and development in particular in the following areas: plastics, paints, varnishes and coatings, sports technology, medical products, civil engineering, packaging, food analysis, adhesive technology, environmental and ecological technology, etc., as well as trade with measuring and testing equipment and with components of such equipment.

2. Performance of works or services ordered

2.1. The scope of work or services performed by **ofi** has to be set out in writing at the time of placing the order. Any changes of or supplements to the scope of works or services ordered have to be in writing in order to be legally binding.

2.2. All orders accepted by **ofi** are performed according to the recognised rules of technical knowledge.

2.3. **ofi** does not assume any responsibility whatsoever for the correctness of the guidelines, regulations, or standards which are the basis for testing.

2.4. If, in the context of performing works or services ordered, **ofi**, for any reason whatsoever, is unable to carry out certain activities, **ofi** reserves its right to contract out these activities to selected, highly qualified expert institutions. In such cases the customer shall be informed of this fact.

3. Duties of the customer

3.1. The customer shall provide free of cost and in due time any information and products (e.g. test items, records) needed for performing the works or services ordered. If this is impossible or unadvisable, the customer shall assure that the objects to be tested are freely accessible to **ofi**. The customer shall inform **ofi** in due time and without further request by **ofi**, of any occurrences and conditions that may be relevant for the purpose and the performance of the works or services ordered. In particular, such information shall include all data about the specific characteristics of the test item which could endanger the safety of **ofi** or third parties.

3.2. As far as testing outside **ofi** is required, the customer shall provide access to the relevant sites. In particular the customer shall take all measures necessary to protect any rights of third parties.

3.3. The customer shall obtain all permissions by public authorities or consent by any third parties required for the scope and fulfilment of the works or services ordered at his or her own expense and submit corresponding proof.

4. Liability for damage to test items, liability on the part of the customer

4.1. **ofi** shall not be liable for any damage to the test items as far as it is not due to gross negligence on the part of **ofi**. In particular **ofi** shall not be liable for damage that is typical for or necessarily caused by the performance of the test or which typically or necessarily occurs during testing.

4.2. The customer shall be liable for any damage resulting from, based upon, or arising out of, an unsatisfactory provision of the test item or violation of any of the customer's obligations according to Section 3 of these General Terms and Conditions and shall indemnify, defend and hold harmless **ofi** for and in respect of any and all claims made by third parties against **ofi**.

5. Warranty/damages

5.1. **ofi**'s warranty shall be limited to the works or services explicitly ordered and the test items provided. If the test items are part of an entire plant or a serial production **ofi** shall not warrant for the functioning of the entire plant or for certain characteristics of the goods produced in serial production, particularly not during a longer period, unless this is explicitly covered by the order. Results in test reports shall relate exclusively to the examined test items.

5.2. **ofi** shall not be liable for measuring and testing equipment that has been acquired by purchase as well as for components of such equipment. Any claims relating to warranty for measuring and testing equipment that has been acquired by purchase as well as components of such equipment shall be subject to separate agreements.

5.3. With the exception of personal injury, **ofi** shall not be liable for damage except in the case of gross negligence. Liability for damages shall be limited to the maximum amount of EUR 70 000 per order. Any liability for loss of profit shall generally be excluded.

6. Terms of payment/costs

6.1. The net fees shall be payable immediately after receipt of the invoice. **ofi** reserves the right to demand an appropriate deposit due to the scope of the works or services ordered. In case of payment in arrears, the customer shall be

obligated to remunerate the collection costs of Kreditschutzverband von 1870 according to the Regulation on Charges of Collection Institutes of the Austrian Federal Ministry for Economic Affairs, Federal Collection of Statutes BGBl. No. 141/1996 as amended.

In case of non-payment, default interest to the amount of 1% per month will be charged. The customer shall furthermore be obligated to cover, in addition to the reminding expenses, all and any costs, expenses, and cash outlays which **ofi** has to pay in pursuit of its claim irrespective of their legal cause.

6.2. Objections to **ofi**'s invoices shall be made in writing and substantiated within a preclusive period of 14 days after receipt of the invoice. If **ofi** does not receive a written objection from the customer within this period, the invoice shall be considered to be approved by the customer.

6.3. Notwithstanding Section 7 **ofi** shall be entitled to retain the test item until full payment of the due fee.

7. Safe-keeping/disposal of/obligation to take back test items

7.1. After fulfilment of the works or services ordered, **ofi** shall be entitled to keep the test item for the warranty period if it is part of a serial production.

7.2. The customer shall be obligated to accept the test item and remove it without delay if this is requested by **ofi**; in case of delays **ofi** shall be entitled to have the test item stored or store it itself on **ofi**'s premises at the expense of the customer. In the latter case, the customer shall pay an adequate storage fee.

7.3. **ofi** shall furthermore be entitled to arrange for a professional disposal of the test item at the expense of the customer once the tests are finished, if the test item is part of a serial production.

8. Right to withdraw

8.1. **ofi** shall be entitled to withdraw from the order if

- a. punctual performance of the works or services ordered is impossible due to default on the part of the customer.
- b. the customer is in breach of his or her obligation to cooperate, particularly according to Section 3, or is in breach of his or her obligation to effect prepayment despite an appropriate extension of deadline.
- c. bankruptcy proceedings are legally opened on the assets of the customer or an application to open such proceedings has been dismissed for lack of sufficient assets.

8.2. If **ofi** withdraws from the order according to Section 8.1., **ofi** is entitled to a refund of all expenses accrued before such withdrawal.

9. Secrecy/copyright

9.1. **ofi** commits itself to observe secrecy in regard to the works or services ordered and to the knowledge achieved by performing said works or services, particularly in regard to internal matters of the customer's company or business as long as this does not conflict with any statutory duty to inform public authorities. **ofi** will also impose such obligation on all its vicarious agents.

9.2. **ofi** reserves its copyright as well as any ancillary copyright in all expert opinions, test results, calculations, photographs, photo documentations and the like that have been drawn up or made by **ofi**. In this regard, **ofi** shall not be obligated to deliver any further detailed documents (either electronically or as hard copies) or any documents that have not been included in works or services performed (such as expert opinions, test reports, etc.). **ofi** shall be allowed to copy for its files any written documents/records received for inspection and which are of importance for the performance of the works or services ordered.

9.3. The customer, taking into account the provisions of Section 9.2, shall only use for the purpose specified therein, and without any changes or modifications, the offers, test results, reports, analyses, calculations, expert opinions, drawings, data carriers, photographs, photo documentations and the like that have been drawn up or made in the course of performing the order either by **ofi** or by a subcontractor performing works or services ordered on behalf of **ofi**. The aforementioned documents may only be made available to third parties, either free of cost or against payment, if the full wording of the aforementioned documents is given, if **ofi** is expressly named as the author and if **ofi** has given its written permission. This shall not create any liability on the part of **ofi** towards third parties.

10. Place of jurisdiction, governing law, miscellaneous

The place of payment and performance shall be Vienna. Any disputes arising hereunder shall exclusively be settled before the competent court of law in Vienna. Any works or services ordered made under these General Terms and Conditions shall be subject to Austrian law exclusively. Any term or provision of these General Terms and Conditions which is invalid, unenforceable or impracticable shall be ineffective to the extent of such invalidity or unenforceability or impracticability without rendering invalid any of the terms and provisions of these General Terms and Conditions.

Date: October 2008