

General Terms and Conditions of the Austrian Research Institute for Chemistry and Technology (OFI)

1. General information

- 1.1. OFI's activities are focussed on practical, application-orientated research, development, innovations and inventions. It also organises seminars, industry-specific training and further education events and the exchange of information.
- 1.2. OFI is a non-profit organisation working in the interests of the economy. This aspect is reflected in OFI's General Terms and Conditions (GTC) as follows:
- 1.3. OFI only concludes contracts subject to these "General Terms and Conditions". The General Terms and Conditions of the business partner are hereby rejected. Deviating, contradictory General Terms and Conditions of a business partner shall not be binding on OFI even if reference is made to them in the letter of acceptance from the business partner and OFI does not expressly object to them again upon receipt of the letter of acceptance.
- 1.4. Verbal agreements or ancillary agreements that deviate from or supplement the provisions of these GTC shall only become effective if they have been recognised by OFI as a written confirmation.
- 1.5. The GTC agreed for an initial order shall apply to all future and subsequent orders and contracts.
- 1.6. Insofar as the contracts are concluded with consumers in accordance with KSchG (Employment Protection Act), mandatory legal provisions shall take precedence over these GTC.

2. Subject matter of the contract, contract conclusion and processing times

- 2.1. The subject of a research and development contract as well as of seminars and training events is the service profile offered by OFI. Offers are always non-binding – a binding contract is only concluded upon written acceptance, written order confirmation or the start of performance by OFI.
- 2.2. The client (entrepreneur) can no longer withdraw from a legally binding order that has been placed. If the client cancels the contract with OFI's consent prior to completion of the research or development order, OFI shall be entitled to demand compensation up to the amount of the agreed fee. If research or development services have already been provided, the processing costs incurred shall in any case also be remunerated irrespective of the compensation.
- 2.3. Insofar as the offer or the research and development contract contains a processing deadline or completion dates, these shall only be binding on OFI if their binding nature has been confirmed in writing. Should circumstances and incidents give rise to a situation that makes it evident that binding deadlines and dates cannot be met, OFI shall immediately disclose the reasons for the delay and agree a new reasonable date with the client.
- 2.4. Delays in performance or cancellations due to force majeure and circumstances that are not due to OFI, but which make the provision of services significantly more difficult or impossible - including, but not limited to natural disasters, strikes, lockouts, official orders, even if these occur at suppliers or their subcontractors, as well as all delays caused directly by the client, - shall not be the responsibility of OFI, even in the case of bindingly agreed deadlines and dates. OFI may in any case extend the provision of services by the duration of the delay that has occurred or withdraw from the contract in full or in part due to the part of the contract that has not yet been fulfilled. In the event of such delays in performance or cancellation of the contract by OFI, the client shall not be entitled to assert any claims.
- 2.5. OFI is also authorised to commission subcontractors to process orders.

3. Special rules for research and development work under purchase and work contracts

- 3.1 Insofar as OFI owes the manufacture or delivery of an item corresponding to the state of the art as a research and development result on the basis of an explicit promise, the relevant provisions of the law on sales or contracts for work and services shall only apply in the event of defects in accordance with the following provisions.
- 3.2 If the research and development result achieved by OFI proves to be defective, OFI shall first be given the opportunity to - determine the nature of the research and development result, of the defect and the other circumstances - at their discretion - even multiple times - by repairing or replacement delivery.
- 3.3 If OFI rejects the improvement or the improvement fails at least twice and further improvement is unreasonable for the client, the client may, at their discretion, either withdraw from the contract or demand a lowering of the fee owed (reduction) or compensation. The right of cancellation can only be exercised in the event of a significant defect. It shall lapse if the client does not declare the cancellation no later than 14 days after receipt of the notification of the rejection or failure of the supplementary performance or no later than 14 days after the time at which the unreasonableness of the improvement becomes apparent to the client. OFI shall only be entitled to compensation for damages under the further conditions of clause 10.2 and - if they have refused the improvement - also under clause 10.3.
- 3.4 In the event of a defect of title due to the infringement of third-party property rights, OFI shall only be liable if these rights are applicable in the Republic of Austria, the client uses the research and development result in accordance with the contract and to this extent the third party justifiably asserts a claim and the client has informed OFI in writing of the possibility of claims asserted by third parties before accepting the order. The improvement pursuant to Clause 3.2 shall be carried out in such a way that OFI obtains authorisation for the client to use the research and development result in accordance with the contract or modifies the research and development result in such a way that the affected third-party property rights are not infringed.
- 3.5 The client shall immediately inspect the research and development results delivered by OFI and immediately report any recognisable defects. All claims due to recognisable defects shall only be valid if they are notified to OFI within a period of 14 days from delivery or handover. Non-obvious or hidden defects must be reported by the client immediately after discovery, but at the latest within five working days thereafter.
- 3.6 Claims based on defects shall expire in accordance with clause 11.

4. Transport risk and storage of test material

- 4.1 The risk and costs for the freight and transport of test material and material samples to and from OFI shall be borne by the client, who must organise the transport. Transport must be agreed with OFI in advance. Without exception, test material is only accepted during OFI opening hours. The client shall bear all costs, expenses, fees (including customs, duties), labour costs and personnel expenses associated with the freight and transport of test material to and from OFI. Unless otherwise agreed, destroyed or damaged test material shall be at the free disposal and disposition of OFI. OFI shall keep undestroyed test material for four weeks after completion of the test and, unless otherwise agreed or unless the client has submitted a follow-up request by this time or has not organised the return transport, it shall become the property of OFI without reservation.
- 4.2 If test material or material samples cannot be handed over to the client or another responsible body, an appropriate storage fee may be charged for storage after completion of the tests. Test material that has not been destroyed shall be stored by OFI for four weeks after completion of the test and shall become the property of OFI without reservation, unless otherwise agreed, or unless the client has submitted a request for a follow-up by this time or has not organised the return transport.
- 4.3 Alternatively, the client is obliged, following a corresponding request by OFI, to immediately remove any test material that is not required or to immediately accept returned test material. The costs for transport and logistics shall be borne by the client.
- 4.4 Tests can lead to the destruction of or damage to the test object. OFI accepts no liability for damage to test material that occurs during inspections or tests or damage that occurs during storage.
- 4.5 The client shall bear the burden of proof that defects and damage that have occurred are not due to improper handling or damage during transport.
- 4.6 The client shall bear the burden of proof that defects and damage occurring during the storage of test material and material samples are the fault of OFI.

- 4.7. The client shall be liable for all costs and damages arising from the delivery or provision of an unsuitable test sample (including damaged or incorrectly packaged test samples). Furthermore, OFI shall be liable for the costs/expenses of the return transport or disposal of the test sample as well as for damage and consequential damage to the facilities, equipment and systems used by OFI.

5. Fee

- 5.1. The fee for entrepreneurs is a net fee and is calculated as a fixed price. Alternatively, the contracting parties may also agree a fee based on the actual hourly expenditure, if necessary with a cost cap; the applicable statutory value added tax shall be added to the fee. Any additional costs and expenses (including travelling expenses, interpreter costs, transport and freight charges, customs duties) shall be borne by the client and shall be added to the fee.
- 5.2. The contractual relationship shall be governed exclusively by the fee stated in the order confirmation or in the offer or otherwise agreed.
- 5.3. OFI shall notify and warn the client without delay if it is foreseeable that the research and development objective or result cannot be achieved with the agreed fee. At the same time, OFI will propose an adjustment of the fee to the client. If the fee adjustment is necessary due to circumstances that were neither foreseeable for OFI nor for which it is responsible when the order was placed and no other agreement can be reached with the client, the proposed fee adjustment shall be binding. The client may not assert any (compensation) claims arising from the fee adjustment.

6. Payments

- 6.1. Payments are due in accordance with the agreed payment term or the agreed payment schedule. If no payment plan has been agreed, the due date shall be determined by the due date specified on the invoice. Payments are to be made without deduction to the account (BIC and IBAN) specified by OFI, stating the invoice number.
- 6.2. In the event that no payment plan has been drawn up, OFI shall be authorised to issue invoices on account to the client at cost.
- 6.3. If the client is an entrepreneur, OFI may declare all fee claims - even those that are deferred - as immediately due and payable if the payment schedule has not been adhered to by the client. OFI is also authorised to perform outstanding services only against advance payment or to withdraw from the contract - by setting a reasonable grace period - and to claim damages. The above provisions shall also apply if OFI becomes aware of circumstances that are likely to reduce the payment capacity or creditworthiness of the client.
- 6.4. If OFI is unable to provide its services completely and finally because the client - despite requests and deadlines - has not provided documents within a reasonable period of time, OFI shall be entitled to issue the final invoice.
- 6.5. Services to foreign clients shall only be provided against prior payment in full, unless otherwise agreed. OFI is entitled to demand a security deposit by providing a bank guarantee in accordance with their terms and conditions. The payment and the bank guarantee must be made in euros.
- 6.6. If the payment deadline agreed under clause 6.1 is exceeded, the client shall be deemed to be -even without a reminder from OFI- in default.
- 6.7. OFI shall be entitled to charge entrepreneurs default interest of 9.2% above the base interest rate as well as additional compound interest and default interest of 4% vis-à-vis consumers as defined by clause 1 KSchG. In addition, reminder costs amounting to EUR 40 gross per reminder. Furthermore, the client shall bear all other damages caused by them and incurred by OFI, as well as collection and recovery costs that are necessary and appropriate for legal prosecution, in particular the costs of intervening legal representation.
- 6.8. Offsetting against OFI's claims is only permitted if the counterclaims undisputed and due and OFI agrees to the procedure.
- 6.9. Several joint principals are jointly and severally liable.

7. Retention of title

- 7.1. The client shall not acquire ownership of the research and development results until the agreed fee has been paid in full. In the event of late payment by the client, OFI shall be authorised to prohibit the use of the research and development results.
- 7.2. In the event that the research and development results are resold, the client assigns all rights arising from the resale to OFI with binding effect until the agreed fee has been paid in full.
- 7.3. The client may neither pledge OFI's ownership claims nor transfer ownership by way of security.

8. Research and development results and rights of use

- 8.1. Unless otherwise agreed, the research and development result shall be made available to the client after completion of the order in accordance with the offer. The client shall only acquire ownership of the research and development results and the right of use upon full payment of the agreed fee.
- 8.2. Regarding inventions arising while carrying out the order and the industrial property rights registered and assigned by OFI, the client shall receive a non-exclusive and indefinite usage right free of charge for the application purpose on which the order is based. The client shall reimburse OFI for an agreed share of the costs for the registration, maintenance and defence of the property rights and shall pay a flat-rate employee inventor's fee for use, the amount of which shall be agreed on a case-by-case basis.
- 8.3. Upon request, the client shall be granted an exclusive, payable, perpetual right of use for the purpose underlying its order in place of the right under clause 8.2 to the inventions created during the performance of the order and to the intellectual property rights applied for by OFI and granted to them. This claim must be declared in writing to OFI no later than three months after notification of the invention. OFI shall retain a non-exclusive, free right of use for research and development purposes.
- 8.4. The client shall receive a non-exclusive, royalty-free right of use for the purpose for which the order was placed to the works protected by copyright created during the execution of the order. The granting of an exclusive right of use for the application purpose requires a separate agreement.
- 8.5. Inventions which are jointly achieved by the contracting parties during the performance of the contract (co-inventions) may be used and licensed by each contracting party without any financial compensation. At OFI, usage and licensing by a subsidiary is also possible. The contracting parties shall each bear a share to be agreed of the costs for the registration, maintenance and defence of the property rights concerned. In the case of copyrighted works that are created jointly by the contracting parties during the execution of the order (joint copyright), the first sentence of this paragraph shall apply accordingly.
- 8.6. If OFI's existing intellectual property rights are used during the execution of the order, which are necessary for the client to utilise the research and development results, the client shall receive a non-exclusive and payable right of use to be agreed separately, provided that this does not conflict with any other obligations of OFI or one of its subsidiaries.

9. Property rights of third parties

- 9.1. OFI shall inform the client without delay of any third-party industrial property rights that apply during the execution of the order that might conflict with the agreed utilisation pursuant to clause 8. The contracting parties shall decide by mutual agreement how these industrial property rights are to be taken into account in the further execution of the order.

10. Liability

- 10.1. OFI vouches for the application of scientific diligence and the state of the art, but not for the actual achievement or success of the research and development objective or a specific research and development result. OFI is not liable for the accuracy, completeness and currentness of the content or for the success of the training and further education events.
- 10.2. The liability of OFI, its legal representatives, executives and vicarious agents is limited to intent and gross negligence as well as personal injury. In any case liability shall be limited to the foreseeable damage typical for the contract. The culpability of OFI must be proven by the client. In relation to entrepreneurs, compensation

for consequential damages or pecuniary losses as well as for unrealised savings, loss of interest and damages pertaining to claims of third parties shall be excluded.

- 10.3. OFI's failure to meet agreed deadlines shall not entitle the client to claim damages for delay or other compensation (unless intentional or grossly negligent action is involved or personal injury has occurred) if the client is an entrepreneur, a legal entity under public law or a special fund under public law. Any compensation shall be limited to the direct damage (no consequential damage, financial losses or damages due to production suspension and other delays) and is restricted to the amount of the order fee—a maximum of EUR 25,000 per damage case.
- 10.4. The client shall indemnify and hold OFI harmless against claims and such claims for damages made by third parties due to the use of consulting, testing, research and development results (no protective effect in favour of third parties).

11. Statute of limitations

- 11.1. The claims of the client (entrepreneur) on a contractual basis as well as on the basis of tortious claims shall expire after 12 months from gaining knowledge of the damage.
- 11.2. The statute of limitations for claims for defects shall commence at the time of the agreed or - if no agreement has been made regarding the time of handover - the actual handover of the research and development result. If no serious defects are reported, research and development results shall be deemed to have been accepted no later than 1 month after handover.

12. Secrecy

- 12.1. Confidentiality obligations shall be concluded in a separate agreement if this is deemed necessary by OFI or the client.
- 12.2. Employees and contractors of OFI as well as the clients shall not use, disclose or utilise business and trade secrets that come to their knowledge in the course of their work outside the scope of order processing.
- 12.3. The duty of confidentiality - for employees and contractors of OFI as well as for clients - shall remain in force even after termination of the contract and the collaboration.

13. Publication, advertising

- 13.1. The client is only authorised after prior agreement with OFI to publish the research or development result - this also applies to the use of extracts - naming the author and the participation of OFI. The coordination must take into account that e.g. applications for industrial property rights, theses, dissertations and other research and development results - this also applies to the use of extracts. The client may only use the company name of OFI for advertising purposes with the explicit consent of OFI.
- 13.2. OFI publications relating to the purpose of the application shall be duly coordinated with the client, insofar as the client has been granted rights in accordance with clause 8.3.

14. Cancellation / withdrawal from the contract

- 14.1. Both contracting parties shall be entitled to terminate the contract with one month's notice at the end of a calendar month if no significant progress has been made after a substantial processing period has expired. Ordinary notice of cancellation cannot be given before the expiry of six months from the start of the contract. Otherwise, there is no ordinary right of cancellation.
- 14.2. Both contracting parties may terminate the contract with immediate effect for cause by registered letter. Important reasons are if the opening of insolvency proceedings against the assets of a contractual partner has been rejected due to a lack of sufficient assets, or if the contractual partner breaches material obligations under the contract, in particular payment obligations (e.g. default on a payment for more than 14 days).
- 14.3. Should the solvency or creditworthiness of the client deteriorate for a longer period than two months after conclusion of the contract or cease to apply altogether, OFI shall be entitled to withdraw from the contract or

adjust the terms of the contract accordingly.

- 14.4. After effective cancellation, OFI shall hand over to the client the research and development results achieved by the end of the cancellation period within four weeks, but only after the client has settled the outstanding due fee. The client shall be obliged to reimburse OFI for the costs incurred up to the expiry of the cancellation period. Personnel costs are reimbursed according to the time requirement. In the event that the cancellation is due to the fault of one of the contractual partners, claims for damages shall remain unaffected.
- 14.5 OFI has the right to cancel an instruction course or further training event at short notice due to an insufficient number of participants. OFI will return any advance payments if no replacement event is held within the next 6 (six) months.

15. Loyalty and non-solicitation agreement

- 15.1. The contracting parties are obliged to mutual loyalty. The client shall refrain from soliciting and employing (independently or as an employee), including via third parties, employees of OFI or its affiliated companies and organisations who have contributed to the processing of the order for the duration of the contract and until one year after the end of the contract. In the event of non-compliance, the client undertakes to pay OFI a contractual penalty in the amount of one gross annual salary or remuneration last received by the employee concerned.

16. Data protection

- 16.1. OFI also collects, stores, processes and utilises personal data of the client exclusively for the purpose of order processing. Data is processed and used exclusively in accordance with the General Data Protection Regulation (EU), the Data Protection Act (DSG) and the associated regulations. Further details can be found in OFI's privacy policy (<https://www.ofi.at/en/privacy>).

17. Severability clause

- 17.1. Invalid provisions of a contract shall not affect the validity of the remaining provisions. If a provision of a contract is invalid, the contracting parties agree to replace it with a valid provision that comes as close as possible to the meaning and purpose of the invalid provision and its economic content. The GTC apply to consumers (pursuant to the Consumer Protection Act) only insofar as they are not subject to mandatory provisions of the Consumer Protection Act BGBl. No. 140/1979, as amended.

18. Choice of law, place of jurisdiction and other matters

- 18.1. Ancillary agreements, amendments and supplements to these GTC must be made in writing.
- 18.2. The place of fulfilment for OFI's services shall be OFI's registered office. The place of fulfilment for payments by the client is Vienna.
- 18.3. This agreement and the entire legal relationship between the contracting parties shall be governed by Austrian law, to the exclusion of its conflict of law rules. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 18.4. For disputes arising from or in connection with a contract, the exclusive jurisdiction of the court with subject-matter jurisdiction for the court district of Inner City of Vienna is agreed (provided the client has its registered office in the EU) - whereby OFI shall also be entitled to bring actions before other courts for which the contractual partner has a statutory place of jurisdiction. For clients outside the EU, it is agreed that charges against OFI may only be brought before the court with subject-matter jurisdiction for Vienna; for charges against the client, the non-exclusive jurisdiction of the court with subject-matter jurisdiction for the court district of the Inner City of Vienna is agreed.