

ÖTI- Institut für Ökologie, Technik und Innovation GmbH

General Terms and Conditions

1) General

- a) The following General Terms and Conditions shall apply to all current and future contractual relationships on the basis of which services (test and classification reports, certifications, trainings, inspections, monitoring, type examination certificates, expert opinions, consulting services, and other services will be provided) and/or deliveries between ÖTI - Institut für Ökologie, Technik und Innovation GmbH, hereinafter referred to as "ÖTI", and the "Contractor" will be exchanged. Moreover, these General Terms and Conditions shall apply to the entire business relationship with the Contractor, i.e. also to future contractual relationships between the parties. Deviating terms and conditions of the Contractor shall be valid only if ÖTI has agreed thereto in writing and duly signed the same.
- b) After transmission of an enquiry and/or purchase order by the Contractor defining the contents of the service to be provided or delivery to be made and expressing the Contractor's willingness to conclude a contract the contract shall be concluded by the related acknowledgement of order (acceptance). The contract can also be concluded by acceptance via phone or by actual performance (real acceptance) provided that the enquiry and/or purchase order expresses the Contractor's will to bind itself and is defined as to its content and provided that this way of conclusion of contract is in line with the parties' will.
- c) Upon conclusion of the contract the Contractor expressly agrees to all provisions stated in the General Terms and Conditions.
- d) ÖTI shall not be obliged to examine power of representation on the part of the Contractor.
- e) ÖTI is an accredited testing institute. The extent of accreditation will be adapted to the state of the art and to standards. Daily updates of accredited procedures can be retrieved from www.oefi.biz. In general, tests are subject to the quality assurance system as defined by ISO 17025.

2) Scope of performance

- a) In principle, the scope of deliveries and/or services of ÖTI is defined in writing by the acknowledgement of order and, in addition, results from the information and items (testing material, documents, etc.) sent by the Contractor for performance of the contract. The Contractor shall always fulfil those duties for no charge ("freight paid") and in a timely manner. If this is not possible or reasonable, the items to be tested shall be made freely accessible to ÖTI.
- b) Information on test results that is given orally or over the phone shall be non-binding and shall be made in writing to be valid.
- c) The agreed services shall be provided in accordance with the acknowledged state of the art. Interpretation of standards and regulations shall be at the professional discretion of ÖTI.
- d) Prior to provision of other services (e.g. blanket purchase orders, serial tests, test series, research orders, trainings, etc.) ÖTI shall prepare an offer and/or issue an acknowledgement of order on a case-by-case basis. Conclusion of a contract shall be subject to Clause 1 (b).
- e) In the absence of other written agreements title to information and items shall pass to ÖTI upon delivery of the same. ÖTI shall also decide on proper storage and disposal in compliance with the law.
- f) The Contractor shall timely inform ÖTI of all events and circumstances that may be significant to the purpose and performance of the order. In particular, the Contractor shall provide all information about specific properties of the testing materials that are potentially capable of endangering safety of the staff of ÖTI or third parties. In this context the Contractor shall also take all necessary measures to protect third-party rights.
- g) The Contractor shall obtain official permits or consents of third parties that are necessary for performance of the contract at his own cost and shall send the same to ÖTI in advance without being requested to do so.
- h) All necessary services that go beyond the content of the contract shall be invoiced separately by ÖTI.

3) Prices

- a) Unless stated otherwise, all stated prices shall be net prices (exclusive of value-added tax). All prices in Austria, within the EU and

third countries shall be subject to applicable VAT regulations. Contractors from the EU area outside Austria shall submit a valid VAT number together with the purchase order; otherwise VAT shall be payable in addition to the price for the performance.

- b) If in the course of shipping export or import duties or other charges become payable, they shall be borne by the Contractor. If preparation of expert opinions or carrying out of tests involve travel expenses or accommodation costs, they shall be calculated as incurred and/or according to statutory provisions. In addition to the costs of services and/or goods the Contractor shall bear ancillary costs of supply of material and of third-party services, e.g. postage, costs of transport, disposal and storage or other special costs, insurance, customs duties, stamp duties. Ancillary costs shall also include expenses which result from a special situation of an examination and exceed normal wear and tear of equipment.
- c) The prices agreed in the acknowledgement of order (plus VAT and ancillary costs) shall be the basis for calculation of deliveries and/or services.
- d) Services which depend on time and/or are to be accounted for according to time required, such as expert opinions, on-site establishment of facts, audits, etc. shall be accounted for according to time actually spent on it. Hourly rates shall be billed for every started fifteen minutes. Travel times shall be invoiced separately.
- e) For express tests a 50% surcharge on time rates and testing fees shall be invoiced.
- f) Expenses incurred in connection with preparation of a cost estimate which leads to no purchase order shall be invoiced.
- g) If a test order is revoked, reduced or if a test is discontinued by mutual consent, the Contractor shall bear the costs of services provided by then on a pro-rata basis well as cash expenses and ancillary costs.

4) Terms of accounting and payment

- a) As a rule, payments shall be owed by the Contractor of ÖTI. In the absence of a contractual agreement invoices shall be issued according to the services actually provided by ÖTI. If other invoice recipients are advised the Contractor shall continue to be the debtor.
- b) Prior to commencement of performance ÖTI may request an advance on costs and issue invoices on account.
- c) Invoices shall be payable without deductions and charges within fourteen days of receipt. Bank remittances shall be accepted as means of payment. Payments by collection-only cheques and bills of exchange shall be excluded.
- d) If the Contractor is in default of payment ÖTI shall be entitled to claim default interest as defined by Section 352 Austrian Business Code [UGB]. The Contractor undertakes to refund all costs of dunning, collection, and investigation, both his own and those of *Kreditschutzverband von 1870* [Creditors' Protection Association] or the costs of a lawyer called in.
- e) Complaints of the Contractor about invoices issued by ÖTI shall be made after receipt of the invoice in writing including a reason within a preclusion period of fourteen days (of receipt by ÖTI). If the Contractor makes no written complaint within the said period the invoice shall be deemed accepted by the Contractor.
- f) Withholding of payments on grounds of counterclaims of the Contractor shall be excluded.
- g) Setting off claims of ÖTI against counterclaims of whatsoever nature shall be excluded.

5) Rescission

- a) ÖTI shall be entitled to rescind the contract subject to the following prerequisites:
 1. Performance of the contract is made impossible by circumstances for which the Contractor is responsible.
 2. The Contractor fails to fulfil his co-operation duties and a duty of advance performance, if applicable, despite being granted a grace period.
 3. After insolvency proceedings have been opened or opening of insolvency proceedings has been rejected for lack of assets the Contractor's enterprise is not continued or ÖTI faces severe economic disadvantages. If the Contractor's enterprise is continued ÖTI may rescind the contract after six months. After re-

scission ÖTI shall be entitled to reimbursement of all costs incurred until that time.

4. In events of force majeure ÖTI shall be entitled to postpone the agreed service by the duration of the impediment plus a reasonable start-up period or to rescind the contract in full or in part. No liabilities, in particular no claims for damages, shall arise therefrom vis-à-vis the Contractor.

5. Strike, embargoes, war, blockades, export and import bans, business interruptions and any other circumstances which make performance of the contract considerably more difficult or impossible shall be equivalent to force majeure, irrespective of whether such circumstances exist at ÖTI's or subcontractors' as defined in Clause 6.

b) If ÖTI rescinds the contract ÖTI shall be entitled to reimbursement of all costs incurred until that time.

6) Liability

a) ÖTI shall be liable for damage only in the case of grossly negligent behaviour; bodily harm shall be excluded. The duty to pay compensation shall be limited at a maximum amount of EUR 20,000 per order. Liability for lost profit or loss of production shall be generally excluded. In particular, ÖTI shall not be liable for damage which is typically or necessarily related to provision of the services and/or occurs in the course thereof.

b) Liability on the part of ÖTI shall exclusively refer to the services agreed in the acknowledgement of order (e.g. measurement results and expert statements) but not to other services and circumstances of whatsoever nature. If the content of the service concerns testing of a serial product or of a part of an overall plant or system ÖTI shall assume no liability for certain properties of the serial products or for functioning of the overall plant or system unless those issues are an express subject-matter of the order.

c) Claims of the Contractor for compensation shall become time-barred within six months of obtaining knowledge of the damage and of the party who caused the damage, and in any case three years after ÖTI provided the services or made the deliveries.

d) ÖTI shall assume no liability for accuracy of the guidelines, provisions and/or standards underlying the tests.

e) The Contractor shall be liable for all damage caused by defective provision of goods to be tested or due to non-compliance with obligations pursuant to Clause 2 of the General Terms and Conditions.

f) The Contractor shall indemnify and hold harmless ÖTI from and against any claims of third parties. This shall also apply to passing on of documents and information prepared by ÖTI in the course of provision of services.

7) Subcontractors and group companies

a) ÖTI reserves the right to instruct selected and qualified subcontractors or group companies to carry out tests. By placing the order the Contractor gives his express consent thereto.

b) With regard to the subcontractor ÖTI shall be liable vis-à-vis the Contractor only for fault in selecting the subcontractor. In such a case ÖTI may assign claims for damages and comparable claims against the subcontractor to its Contractor in fulfilment of its own liabilities vis-à-vis its Contractor.

8) Disposal of test material

a) Disposal of test material shall be effected in accordance with the applicable waste management concept. Test material shall be kept safe against a charge only upon prior contractual agreement. ÖTI reserves the right to keep the samples safe for the duration of the warranty period.

b) Disposal of infectious samples shall be subject to a separate agreement to be made between the parties.

c) Prior to disposal any affixed labels which hint at the Contractor shall be obliterated by ÖTI.

d) ÖTI shall assume no liability whatsoever for any transport damage.

9) Intellectual property rights

a) Services of ÖTI shall be protected by copyright. ÖTI shall continue to hold the copyright and all proprietary rights to its services.

b) The Contractor shall be allowed to use the documents (offers, test results, reports, analyses, calculations, expert opinions, drawings, data carriers, photos, etc.) and information prepared by ÖTI or a subcontractor only for the contractually agreed purpose. Moreover, they shall be made available to third parties only in their full wording and upon the written consent of ÖTI. This shall establish no liability of ÖTI vis-à-vis third parties.

c) ÖTI shall not be obliged to surrender detailed documents (in electronic form or hard copy) and/or records which were not included in the completed works (expert opinions, test reports, etc.). ÖTI shall be allowed to make copies for its own files of written documents which are made available to ÖTI for inspection and which become significant to performance of the order.

d) Preparation of excerpts or publications and passing on of documents or information about services agreed in the contract by the Contractor to third parties shall require ÖTI's prior written consent.

e) All modifications of, amendments to or falsifications of documents or information not authorised by ÖTI shall be prosecuted according to relevant provisions of civil and criminal law.

f) As a rule, ÖTI shall be authorised to use the results obtained in the course of provision of contractual services for no charge and anonymously to further research unless contrary rules impair the rights of third parties.

10) Non-Disclosure Agreement

ÖTI is obliged to maintain secrecy about data, results and information which ÖTI obtains in the course of its testing and certification activities for the Contractor. This applies, in particular, to operational and business matters of the Contractor. ÖTI undertakes to impose this duty on subcontractors, if any. ÖTI shall be entitled to store and process personal or business data of the Contractor in compliance with statutory provisions on data protection. Moreover, ÖTI shall be entitled to transfer to third parties data and other information of the Contractor to the extent that ÖTI is obliged to do so under statutory provisions.

11) Severability Clause

If any provision of these General Terms and Conditions is ineffective, incomplete or unenforceable, this shall not affect the effectiveness of the remaining provisions.

12) Place of Jurisdiction

The place of payment and place of performance of all services shall be Vienna. The court in Vienna having jurisdiction over the subject matter shall have jurisdiction over all disputes which arise out of the contract. Austrian law shall apply exclusively. Applicability of UN Sales Law shall be excluded. The language of the contract shall be German.

Vienna, May 1st, 2016

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