

# General terms and conditions of business of the Papiertechnische Stiftung (PTS) (As of: October 2018)

## 1. Area of applicability

- a) The following terms and conditions apply to all of our business relationships with our customers who are not consumers.
- b) Deviating, conflicting or supplementary terms and conditions of the customer shall not become part of the contract unless PTS agrees to their applicability in writing. This consent requirement applies in all cases, also if PTS fulfils the service without reservation in the knowledge of the general terms and conditions of business of the customer.
- c) As a rule, the provisions of the law relating to service contracts (§§ 611 ff of the German Civil Code - BGB) shall apply to the orders issued by the customers, unless PTS owes the manufacturing or delivery of a service which corresponds to the state of technology as a research and development result or the delivery of a device and/or software under an express agreement. In such a case, the provisions of the law relating to sales agreements (§§ 433 ff BGB) or work contracts (§§ 631 ff BGB) shall apply in accordance with Number 8f.
- d) Should a separate contract have been concluded between PTS and the customer in relation to the order or should such a contract be subsequently entered into, the general terms and conditions of business shall continue to apply alongside the contract which has been separately agreed. In reservation of counterproof, a written contract and its written confirmation shall be necessary for the content of such agreements.

## 2. Subject matter of the contract, performance time

- a) The subject matter of the engagement is the services and work or properties stated individually in the service description and offer letter or contract.
- b) Should a timeframe or date for the service provision be contained in the service description or offer letter and should it become apparent during the performance of the engagement that this agreed performance time will not be complied with, PTS shall notify the customer of the reasons for the delay and agree a reasonable adjustment together with the customer. Should it become apparent that the delay is due to reasons connected to the object itself or for reasons for which the customer is responsible, PTS shall be entitled to unilaterally determine a reasonable extension.
- c) PTS has the right to engage third parties in relation to the provision of services as subcontractors, should it not be able to provide the service itself.

## 3. Remuneration

- a) The remuneration shall be determined in accordance with the agreements contained in the offer letter and will be charged either as a fixed price or as a price in accordance to time and expense. The respectively applicable statutory value added tax will be added to the stated price.
- b) Any travel expenses will be charged as a fixed fee, whereby the sum of 150 EUR will be taken as a basis for each overnight stay and mileage will be charged to the amount of 0,50 EUR per kilometre. Additional costs which go beyond the above must be reimbursed by the customer following the provision of proof by PTS.
- c) Ancillary expenses for delivery, telephone, letters and copying work are included in the agreed remuneration.
- d) Material costs are not included; these will be charged for separately unless otherwise agreed.
- e) PTS will immediately notify the customer if it becomes apparent that the performance objective cannot be attained with the agreed remuneration. Should this not have been foreseeable to PTS at the time of issuing of the engagement and should PTS not be responsible for this situation, PTS shall be entitled to have the remuneration adjusted. PTS will propose a corresponding adjustment to the customer. Should it not be possible to reach agreement in this respect, PTS shall be entitled to unilaterally determine a reasonable adjustment or to terminate the contract at the respective time.
- f) The following applies to PTS events: Cancellations must generally take place in writing and must be received at the latest 14 days prior to the start of the event; otherwise the whole participant's fee will be due. Between 30 and 15 days prior to the start of the event, 50% of the participant's fee will be charged. No costs will be incurred if a replacement participant is provided.

## 4. Payments

- a) Unless expressly agreed otherwise in writing, the remuneration shall be due for payment within 14 days of the invoice date without any deduction. PTS reserves the right to only provide certain services in full or in part in consideration of an advance payment. A corresponding reservation shall be declared at the latest at the time of the order confirmation. The payments must be made to the nominated bank account of PTS without any deduction, stating the invoice number.
- b) On the expiry of the above payment deadline, the customer will enter default. The agreed payment amount will accrue interest during the period of default at the current statutory default interest rate. PTS reserves the right to bring further damages claims due to the payment default.
- c) Reminders will incur fees.
- d) It is only possible to offset against claims of PTS if the counterclaim is undisputed or has been recognised by a court.
- e) The customer can only exercise a right of retention if its counterclaim is undisputed or has been recognised by a court.
- f) In case of defects, the opposing rights of the customer shall however remain unaffected.

## 5. Rights and rights of use in relation to results, reservation of ownership

- a) Work related knowledge is all knowledge which was already present or which is acquired during the performance of the orders and services in accordance with these general terms and conditions of business, in particular know-how, inventions, copyright protected results, protected and non-protected programs, procedural knowledge and strategies, methods and techniques.
- b) Work results are all reports and their contained results which relate to the engagement which are created during the performance of the services and fulfilment of the order.

- c) The performance result will be handed over to the customer in accordance with the service description following completion of the order.
- d) The rights in relation to the work results and products, as well as the rights to which the customer is entitled which were created in connection with the performance of the order will not be transferred to the customer until full payment of the agreed remuneration has taken place. (Reservation of ownership) The work related knowledge shall remain the property of PTS. In relation to the work related knowledge, the customer shall receive a non-exclusive right of use which shall be unlimited in terms of time and space and which shall be fully and finally settled by means of the agreed remuneration for the purpose of use which forms the basis of the engagement which it has issued. The property of PTS may not be pledged or handed over / provided as security.
- aa) The customer is entitled to use the work results which have been handed over to it regardless of the reservation of ownership. Should the customer not yet have paid the agreed remuneration in full, it is not permitted to resell the work results.
- bb) In all cases, PTS shall be entitled to a non-exclusive right of use which shall be unlimited in terms of time and space and free-of-charge in relation to the work results or the ancillary copyright created by PTS alone or together with the customer for research purposes or for use within the framework of the tasks of PTS which are stated in its articles of association.
- cc) Should property rights (patents, utility samples etc) which need to be registered or which are capable of being registered arise in the course of the service provision, the customer and PTS shall reach a mutual position in an agreement to be concluded separately concerning ownership, the costs of registration, maintenance and protection of the property rights and the payment of the employee invention remuneration.
- dd) Should the customer request the granting of exclusive rights in relation to the work results, a separate agreement must be concluded in this respect.
- e) Should ancillary copyright which has already been created by PTS be used during the service provision, the customer shall receive a non-exclusive right of use in relation to this which shall be fully and finally settled by the agreed remuneration, provided that PTS is entitled to carry out an assignment.
- f) The customer shall be obliged not to attack any ancillary copyright which exists or is created within the framework of the order or service or which is assigned to a subsidiary company.

## 6. Third party property rights

Should it become apparent in the course of the performance of the order by PTS that conflicting third party property rights must be taken into account in the course of the service provision or when using the work results in the future, PTS and the customer shall take a decision by mutual agreement as to how the said property rights will be taken into account in the subsequent performance of the order. The contracting parties shall be obliged to immediately inform the respective other contracting partner of such rights, once they themselves become aware of these.

## 7. Non-disclosure

- a) The contracting partners shall be obliged not to disclose their mutual facts of a technical or commercial nature which are designated as confidential to third parties. This non-disclosure obligation shall continue to apply for (3) year following completion of the order. Such facts and circumstances which are already publicly known or become publicly known during the performance of the order without the contracting parties, their employees or vicarious agents being responsible for such or which must be disclosed due to mandatory orders of the authorities or a judge or due to mandatory legal regulations are not deemed to be confidential.
- b) Secret know-how which is provided by PTS and/or the customer and which belongs to PTS or the customer must be treated in the same manner as one's own operating secrets. In particular, this may not be disclosed to third parties and may only be made accessible to the employees and vicarious agents who necessarily come into contact with this during the performance of the order and have undertaken to maintain secrecy accordingly. Otherwise, the customer shall be obliged to maintain the strictest secrecy within its business operation.

## 8. Liability

- a) The customer shall be responsible for the transportation of sample materials to the testing location in accordance with the respective transportation regulations. Should the sample materials carry risks in accordance with the regulations pertaining to hazardous substances, the customer must label the packaging accordingly or place a note in the order and also attach the necessary safety regulations to the materials. Should the customer fail to do so, it shall be liable for any damage caused by its sample materials.
- b) PTS shall only incur liability for intent and gross negligence on the part of its legal representatives and vicarious agents for losses connected to injury to life, body and health. In case of a breach of essential contractual obligations (cardinal obligations), PTS shall also incur liability in case of simple negligence on the part of its legal representatives and vicarious agents. Thereby the liability shall be limited to losses which are foreseeable and typical of the contract.
- c) PTS guarantees that it will fulfil the obligations it has entered into under this contract in accordance with the current state of scientific knowledge and experience and in compliance with recognised rules of technology and using primary materials with the standard of care that is usual in its own matters.
- d) PTS does not provide any guarantee concerning the technical or commercial usability of its work results.
- e) In case of a breach of the contractual obligations which PTS has entered into, a claim to damages in lieu of performance can only be brought against it if a reasonable deadline for supplementary performance was unsuccessfully set.
- f) In case that PTS must fulfil obligations under sales agreement or work contracts, the relevant statutory regulations shall apply in accordance with the following clauses:
- aa) PTS shall be granted a reasonable deadline to provide supplementary performance at least twice with the setting of a reasonable

- deadline, also multiple times depending on the circumstances.
- bb) The right of rescission can only be claimed in case of significant defects.
- cc) The customer must immediately inspect the work results handed over by PTS and must raise an immediate complaint in writing. Claims due to recognisable defects shall only exist if these are notified to PTS within 7 working days of handover, unless a shorter deadline is provided for by law. Should the defect become apparent at a later time, the customer must provide immediate notification of the defect in writing. Should the customer fail to make this defect notification, liability on the part of PTS for defects which are not notified, not notified on time or not notified correctly shall be excluded in accordance with the statutory regulations.
- g) In case of a breach of third party property rights, PTS shall only incur liability in case of an infringement of its notification obligation if such property rights exist in the territory of the European Union, the customer uses the work results in accordance with the contract and PTS is immediately informed in writing of the claims which are being brought. PTS has the right to a second tender, whereby it can fulfil this either by the work results being modified in such a way that the relevant third party property rights no longer being breached or obtaining permission from the third party for the customer to use the work results in accordance with the contract.
- h) The limits of liability shall also apply in case of breaches of obligations and in favour of persons whose fault is the responsibility of PTS in accordance with the statutory regulations.

## 9. Limitation period

Claims of the customer shall be time barred within 12 months where permitted by law. Claims of the customer due to defects in the cases set out in § 438 Paragraph 1 Number 1, § 438 Paragraph 1 Number 2 and § 634 a Paragraph 1 Number 2 of the German Civil Code (BGB) shall be excluded from the above.

## 10. Publications

- a) PTS and the customer shall be obliged not to publish the work results without the agreement of the other party or to make these accessible to third parties, should the results be subject to non-disclosure in accordance with Number 7 of the general terms and conditions of business. The agreement concerning publication must take into account that undergraduate dissertations, bachelor theses and MA dissertations, as well as property right registrations must not be impaired.
- b) The work results may not be used or duplicated in a legal dispute in full or in part without the written agreement of PTS.
- c) PTS and the customer shall be obliged to issue the agreement or rejection within four (4) weeks of receipt of the request which contains the necessary concrete information. Should no agreement or rejection take place within this deadline, the agreement to publication shall be deemed to have been issued. The request should contain the content of the publication, as well as a notice concerning the deadline and the consequences of the fruitless expiry of it. The agreement may not be refused without good reasons.
- d) Should the work result which has been handed over be published, the customer must name the author and PTS.

## 11. Minimum wage

- a) PTS hereby provides the customer with an undertaking that it complies with the statutory regulations under the German Minimum Wage Act (MiLoG) and the German Employee Lending Act (AentG). In particular, PTS pays its employees the statutory minimum wage and complies with the reporting and documentation obligations.
- b) In case of a breach by PTS of the regulations under the MiLoG, PTS shall release the customer from all claims which are brought against it under guarantor liability in accordance with § 13 MiLoG and § 14 AentG.

## 12. Other

- a) Ancillary agreements, alterations or additions to the contact, as well as legally binding declarations and notifications shall require written form (for example email, letter, fax). This also applies to any omission of this text form requirement. Statutory form requirements and further proof, in particular in case of doubts concerning the legitimacy of the declaring party shall remain unaffected.
- b) The place of performance for all obligations under the general terms and conditions of business shall be the place of business of PTS in Heidenau, Germany.
- c) Should the requirements of § 38 of the German Code of Civil Procedure (ZPO) be present, Dresden in Germany shall be deemed to be the exclusive place of jurisdiction for all disputes in connection with these general terms and conditions of business.
- d) The substantive law of the Federal Republic of Germany shall apply to the contractual relationship, to the exclusion of the reference norms under international law, as well as the United Nations Convention governing the International Sale of Goods (CISG).
- e) Should one or more provisions be or become ineffective in full or in part, the validity of the remaining clauses shall not be affected thereby. The same shall apply in case of any loopholes.