

General Terms and Conditions of Business of Zentrum für Brennstoffzellentechnik GmbH (ZBT GmbH)

1 Sphere of validity

- 1.1. These terms and conditions shall only apply to persons who, when the contract is signed, were acting as a business or in a self-employed capacity as well as to legal entities established under public law or public law special funds.
- 1.2. These terms and conditions of business constitute an integral part of the contract for all research and development contracts, contracts for improving products and processes, contracts for the development and construction of prototypes, contracts for testing and technological consultancy support for physical, electrotechnical, chemical and other measurements and analyses as well as for market research and company searches and other economic and technical analyses which ZBT enters into.

2 Scope of performance, Execution

- 2.1. The information contained in the offer, the description of the task in particular, describe the content, scope and period of time in which the sought after objective is to be carried out.
- 2.2. The performances to be rendered shall be defined in the offer (subject-matter of the contract) when the contract is awarded. If the contract awarded differs from the offer on which it is based, the discrepancies shall consequently only apply once they have been expressly confirmed in writing by ZBT.
- 2.3. In so far as it transpires in the course of handling the project that the objective of the work sought after by the parties to the contract can not be achieved, ZBT shall notify the party placing the order (following Client) of this straight away. Should it not be possible to make an adjustment, and if the work is terminated unsuccessfully as a result, the client shall reimburse the handling costs actually incurred up until that point in time to ZBT.
- 2.4. The parties to the contract agree that the success of the project depends upon them working together in a spirit of trust and upon exchanging information on a regular basis. Therefore they undertake to make available to each other the technical and economic information that they have at their disposal, provided that this is necessary to carry out the contract.

3 Handling period of time / Delay

- 3.1. The handling period shall begin on the date stipulated in the contract.
- 3.2. In so far as in the course of the project being handled it should become clear that the intended period of scheduled time is not sufficient, ZBT shall notify the client of this stating the reasons without delay and submit to the client written amendment proposals as a basis for reaching an understanding by mutual consent for extending the handling period.
- 3.3. If ZBT should find himself in default, the client – provided that he can establish that he has sustained damages as a result – can demand compensation for each full week of delay amounting to 0.5%, not however, to exceed a maximum of 5% of the price for that part of the performance which could not be used for the purpose for which it was intended as a result of the delay.
- 3.4. Not only compensation claims by the client for damages on account of delay in performance, but also compensation claims instead of performance in excess of the limits named in Number 3.3 are also ruled out in the event of delayed performance after any period of time set for ZBT to render performance has expired. This shall not apply in cases in which there is compulsory liability, in the event of intent, gross negligence or loss of life, personal injury or physical harm. The client may only withdraw from the contract as provided for by law, provided that ZBT is to blame for the delay in performance. There is no change in the burden of proof to the detriment of the client associated with these regulations.
- 3.5. At the request of ZBT the client shall be obliged to state within a reasonable period of time whether he is going to withdraw from the contract on account of the delay in performance being rendered or whether he is going to insist upon performance.

4 Remuneration

- 4.1. The remuneration shall either be agreed as a fixed price or at cost possibly with a cost ceiling. The rate of value added tax in force at that time shall be invoiced in addition.
- 4.2. If remuneration is to be at cost with a cost ceiling, ZBT shall have to notify the client straight away if he foresees that the objective of the work sought after cannot be achieved within the agreed cost ceiling. Then ZBT shall submit proposals for the subsequent action to be taken.

5 Payments

- 5.1. The invoices are to be presented in accordance with the payment schedule agreed in the contract, otherwise monthly.
- 5.2. The amounts stated in the invoice shall in each case be payable in full immediately or from the date on which a claim for payment is made.
- 5.3. The retention of payments or offsetting on account of counter claims by the client contested by ZBT or which have not been declared final and absolute in a court of law is not allowed.

6 Material samples, special equipment and apparatus

- 6.1. If ZBT requires material samples, special equipment or apparatus which he does not have, to fulfill his contractual obligations, the client shall consequently be obliged to procure these items at his own expense and to forward them to ZBT provided that the contract does not provide otherwise.
- 6.2. Once the contract has been fulfilled, ZBT shall have to return these items, provided that they are not consumables or samples to be recorded, to the client and provided that no other agreement has been made, to provide them at the client's expense.

7 Work results

- 7.1. ZBT shall hand over to the client the results acquired in the work agreed in the contract in the form of a report, provided that nothing has been stipulated to the contrary in the contract.
- 7.2. In development contracts or when constructing prototypes, ZBT shall present the developed item / prototype and a work report with him for acceptance. At the acceptance of the development item / prototypes, an acceptance report shall be drawn up which is to be signed by both parties to the contract. Risk shall pass over to the client with acceptance.

8 Existing know-how and existing proprietary rights.

- 8.1. The contracts named in 1. will not affect the legal situation as it stands at the point in time at which the contract is signed with regard to the industrial proprietary rights of each party to the contract.
- 8.2. The parties to the contract shall undertake to prepare a list of the proprietary rights and applications for proprietary rights necessary to carry out the projects. They must be in possession of this at the beginning of the contract.
- 8.3. If know-how which ZBT already has is used in fulfilling the contract, and the client needs it to use the subject-matter of the contract, he shall receive a non-exclusive, non-transferable right of use free of charge.
- 8.4. If, in fulfilling the contract, ZBT's existing proprietary and copyrights are used, and the client needs them to use the subject-matter of the contract, he shall receive a non-exclusive, non-transferable right of use in return for an appropriate remuneration. The details shall be agreed separately on a case by case basis.

9 New proprietary rights and using them

Provided that nothing has been agreed to the contrary, the following shall apply:

- 9.1. The parties to the contract shall be obliged to claim employee inventions concerning the subject-matter of the contract and made during the term of the contract in full in accordance with the (German) law on employee inventions and to apply for a proprietary right in their own name straight away.
- 9.2. If the employees of more than one party to the contract are involved in inventions (joint inventions), the parties to the contract shall consequently be jointly entitled to these inventions and the proprietary rights applied for and granted. Otherwise that party to the contract whose employees are the inventors (sole inventions) alone shall be entitled to such rights. In the internal relationship between the parties to the contract the entitlement to the inventions shall be divided up in proportion to the actual proportion of the inventions made by their employees.
- 9.3. The parties to the contract shall furnish each other with an assurance that they will keep secret the inventions and applications for proprietary rights until they are published.
- 9.4. Each party to the contract shall bear the costs for proprietary rights he has applied for alone. In all other cases the costs shall be divided up in accordance with the internal proportions.
- 9.5. If a party to the contract does not wish to apply for a proprietary right for an invention covered by this contract, the other party to the contract is consequently to be granted an opportunity to take over the invention straight away free of charge. In the event that it is taken over, the party to the contract concerned shall also have to pay any remuneration which may possibly be payable to the employees of the other party to the contract in accordance with the (German) Employee Invention Act.
- 9.6. The client shall receive a non-exclusive, non-transferable right of use free of charge to ZBT's proprietary rights, copyrights and know-how created in the course of this contract.

- 9.7. With the exception of the know-how, the client shall, upon request, receive an exclusive and transferable right of use to proprietary rights and copyrights for the above named rights created in the work carried out in the contract for the specific application for which the contract has been placed in return for an appropriate remuneration. ZBT shall receive a non-exclusive, non-transferable right of use to proprietary rights and copyrights created in the work carried out in the order.

- 9.8. The parties to the contract shall undertake not to contest either the existing proprietary rights or the new proprietary rights created as a result of this contract.

- 9.9. Each party to the contract shall be obliged to defend the proprietary rights to which he alone is entitled against third party attacks and to take legal action against parties in breach of proprietary rights at his own expense. In the event of joint inventions, the costs are to be borne equally between the parties to the contract.

10 Non-disclosure

The parties to the contract shall assure each other that they shall handle information received from the other party and the know-how and other knowledge created while the contract is being carried out in a confidential manner. Such knowledge shall serve solely for the respective party to the contract's own use as part of the contract. The written consent of the other party to the contract shall be required in each case if such information is to be marketed on a party's own account or if information is to be passed on to third parties. The obligation shall also apply as a matter of principle after this contract has ended.

11 Publications

- 11.1. Provided that no other agreement is to be made, ZBT and his employees are, with the consent of the client, entitled to publish scientific information about the results of the work achieved in the course of this contract, provided that they are based on scientific findings.
- 11.2. As a rule ZBT shall only publish information over and above the results of the collaboration agreed in the contract at the request of the client and this is to be co-ordinated with him.
- 11.3. With the prior consent of ZBT the client shall be entitled to publish the results of the work after the contract has ended, naming ZBT and the author. This shall also apply for corresponding references in advertising.

12 Reservation of title

ZBT shall reserve the title to the subject-matter under development and other work results until all payments relating to the contract have been received, provided that this is legal under the law applicable to the client. If this law does not allow the right of reservation of title, ZBT shall be entitled to reserve and exercise equivalent rights. In this case the client shall be obliged to contribute to such measures.

13 Liability for defects in the performance

- 13.1. All those parts or performances which show a quality defect within twelve months from delivery as a result of circumstance existing prior to the passing of risk, and which are subject to his equitable judgment, are to be repaired or new parts delivered free of charge at the choice of ZBT. ZBT is to be notified straight away in writing when such defects are noted. Claims based on quality defects – regardless of the legal reasons on which they are based, shall become time-barred in twelve months. This shall not apply for a defect in a building or for things for a building and these have caused the quality defect. Notwithstanding Sentence 1 above, the statutory periods for claims asserted under the (German) Product Liability Act as well as in the case of intent or malicious acts shall apply. Replaced parts shall become the property of ZBT.
- 13.2. No liability is accepted for damage caused as a result of natural wear and tear.
- 13.3. Moreover, no liability is accepted for damage caused by the following reasons:
 - unsuitable or improper use
 - incorrect assembly and / or start-up by the client or third party
 - if the delivered item is operated incorrectly or negligently in particular with regard to the operating instructions supplied
 - excess loads
 - If unsuitable working materials or replacement materials are used
- 13.4. After reaching an agreement, the client has to allow ZBT the necessary time and opportunity to carry out all the repairs or to supply replacements appearing necessary to ZBT in his equitable judgment; otherwise ZBT shall be exempted from liability for defects. Only in urgent cases in which operational safety is jeopardised, of which ZBT is to be notified immediately, or if ZBT is in default with rectifying the default, will the client be entitled to rectify the defect himself or have it rectified by a third party and to demand the reasonable reimbursement of his costs from ZBT.
- 13.5. Provided that the complaint is to be regarded as being justified, ZBT is to bear the direct costs arising from the repair or delivery of a replacement part, the costs of the replacement part itself including shipping as well as reasonable costs for dismantling and installation. All other costs shall be borne by the client.
- 13.6. ZBT shall be absolved of his liability for the consequences arising if modifications or repair work is carried out improperly and without the prior consent of ZBT, by the client or third parties for example.
- 13.7. The client shall only be entitled to further claims, in particular to the right to the reimbursement of losses not incurred on the delivered item itself when the goods or performance is defective, only if Number 14.5 of these terms and conditions is applied as appropriate. No other compensation claims for damages shall be admitted.

14 Rights of the client to withdraw from the contract or to reduce the purchase price as well as other liability by ZBT

- 14.1. The client may withdraw from the contract if it is finally impossible for ZBT to transfer risk over to the client. The same shall apply if ZBT is incapable of rendering performance. The client can also withdraw from the contract in those cases in which when placing an order for identical items, it becomes impossible to deliver the full quantity of the items and he has a justified interest in rejecting a quantity of the items which is less than the total quantity. If this is not the case, the client may consequently reduce his counter-performance as appropriate.
- 14.2. If there is a delay in performance within the meaning of Number 3., the right to withdraw from the contract or to compensation for damages shall only exist in accordance with the proviso of the regulation therein.
- 14.3. If impossibility occurs during default in taking delivery of the goods or as result of the client being to blame, he shall consequently continue to have an obligation to render a counter-performance.
- 14.4. The client shall moreover be entitled to withdraw from the contract if ZBT allows a reasonable subsequent period set for him to rectify or repair a defect for which he is to blame within the meaning of the terms and conditions of delivery to elapse fruitlessly. The client shall also be entitled to withdraw from the contract in other cases in which a repair or replacement by ZBT is unsuccessful.
- 14.5. Further claims to the reimbursement of losses of any type, and to be more precise even those losses which have not been incurred on the delivered item itself shall only exist if
 - the conduct of ZBT has been at least grossly negligent
 - in the event of loss of life, personal injury and physical harm
 - in the event of a culpable breach of important contractual duties, in so far as achieving the objective of the contract is jeopardised, with regard to foreseeable damage typical for the contract
 - in cases in which there is liability in the event of the delivered item having defects, personal injury or damage to property to items used privately in accordance with the Product Liability Act.
 - if features which are expressly assured are lacking, if the very objective of the assurance was to shield the client from losses not incurred on the delivered item itself
 - In the event of defects which were maliciously concealed or the absence of which was guaranteed by ZBT.
- 14.6. Moreover additional rights, in particular those to serve notice of termination, to reduce the purchase price or to compensation for damages are excluded.

15 Miscellaneous, Place of jurisdiction

- 15.1. The risk of transporting machinery, equipment, test materials, work pieces, samples and such like to and from ZBT shall be borne by the client. If the dispatch of the items is delayed by the client, the risk shall pass over to the client from the day on which the items are ready for dispatch.
- 15.2. Amendments or supplements to the contract as well as side agreements must be confirmed in writing by ZBT.
- 15.3. The place of fulfilment for all reciprocal obligations shall be ZBT's main place of business.
- 15.4. The place of jurisdiction is Duisburg.
- 15.5. The agreements between the parties to the contract shall be governed by German law.