



General Terms and Conditions

Institut für Luft-und Kältetechnik gemeinnützige Gesellschaft mbH (ILK)

(Institute of Air Handling and Refrigeration, non-profit company of limited liability)

Introduction

The ILK conducts innovative basic research and Research and Development in the fields of cryoengineering, refrigeration, air conditioning, heat engineering, solar technology, environmental technology and the materials and measurement technology used in these fields, along with applied research and the provision of engineering services freely funded and commissioned by industry for the benefit of individual companies, persons or groups of persons. In addition, the contractor provides scientific and technical services, in particular the management of as yet untested projects and processes.

General

1. Fundamentals

The General Terms and Conditions of the ILK have exclusive validity for each and any contract. Conflicting regulations on the part of clients are deemed not to be part of the contract, even if the ILK has not expressly challenged them. The acceptance of contractual objects shall not mean agreement with the General Terms and Conditions of the respectively other contracting partner.

2. Place of performance, place of jurisdiction, applicable law

a) The place of jurisdiction is Dresden if the client is a qualified merchant or does not have a general place of jurisdiction in Germany or removes his place of residence or usual place of abode after conclusion of a contract. The ILK is also entitled to take legal action at the court responsible for the client's place of residence or branch of his business.

b) This contract is subject to the Law of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.

3. Other provisions

Subsidiary agreements and amendments to the contract must be made in writing in order to be effective. Such have not been made by the parties or shall be deemed invalid upon the present contract coming into force. Should any provision included in these General Terms and Conditions or in any other agreements made between the contracting parties be or become invalid, the validity of the remaining provisions of the agreement made between the parties is not affected. In such cases, the parties undertake to replace the invalid provision with a substitute arrangement that corresponds as closely as possible to the economic purpose of the invalid provision.

Contractual performance

1. Tender

The tender supplied by the ILK describes the commissioned assignment with regard to its specific intended application, the specific development project, the content and scope of the work and the amount of time required. A price is also quoted. Documents that accompany the tender, such as illustrations, drawings, and details of weights and measurements, are only authoritative as estimates, unless they are expressly designated as binding. The ILK reserves all copyright and proprietary rights to quotations, drawings and other documents, and these must not be made accessible to third parties. Any illustrations, drawings, weights and measurements to which the client obtains access in connection with an order from the ILK must be treated as confidential.

2. Commissioning of assignments

If the client's assignment contains deviations from the tender, these are only deemed to be agreed after the granting of express written confirmation by the ILK. The requirement regarding the written form is also satisfied by remote data transmission, fax and e-mail.

3. Conduct of the commissioned work

a) The ILK undertakes to perform the services for the client with the customary scientific care and attention to the best of its ability on the basis of state-of-the-art science and technology, using the knowledge and experience that it already has and that it obtains during the period of collaboration. The ILK does not provide any guarantee whatsoever that the economic success intended by the client will ensue or that such success can be achieved at all.

b) The client undertakes to supply the ILK with the information and documentation necessary for the conduct of the project on loan and free of charge. These are to be used exclusively for the conduct of the agreed work and are to be returned to the client after completion of the assignment.

c) If the client does not carry out its agreed duties in the co-operative arrangement, these duties being agreed and specified in each individual contract, or does not do so on time, the ILK reserves the right to claim compensation for default in taking delivery in accordance with § 642 BGB [German Civil Code] and to use its right to premature termination of the contract in accordance with § 643 BGB.

4. Acceptance

a) After completion of the assignment, the client is obliged to accept the work performed on the basis of the contract without delay or, at the latest, two weeks after presentation or receipt.

b) An acceptance protocol signed by both contracting parties must be drawn up concerning the inspection, in which any defects found by the client must be noted.

c) Acceptance can only be refused by the client if there are very serious defects that make the further utilisation of the service or product impossible. Other defects are to be rectified by the ILK under warranty.

d) If the client fails to conduct the acceptance inspection or to sign the acceptance protocol without sufficient reason despite a deadline being set by the ILK, acceptance is deemed to have taken place upon expiry of a subsequent extension of the deadline.

e) The place of performance is the place of business of the ILK. Any transport is performed at the risk and at the cost of the respective client, unless the parties have expressly agreed otherwise. This especially applies to hazardous material that is subject to specific national and international shipping regulations.

5. Delivery date, duration of work

The agreed service is to be delivered at a delivery date set out in the contract. Early delivery is deemed to be agreed. If the ILK recognises that the work needs more time than agreed, the client is to be informed without delay in writing, stating reasons. At the same time, proposals for changes are to be made as the basis for reaching a mutually acceptable extension of the deadline.

6. Payment

It is customary for reasonable down payments to be agreed. These become due in accordance with an agreed payments schedule. If no such payments schedule exists, the date of the invoice or the date of demands for payment are effective. Invoices must be paid within 14 days from the date of invoice. If the client fails to comply with payment deadlines, the contractor is entitled to claim default interest at an annual rate of 8% above the current discount rate of the German Federal Bank (Deutsche Bundesbank). The demand from the ILK can only be set off if the counter-demand is undisputed or its legal force has been confirmed.

7. Warranty and liability

a) The ILK's warranty extends only to the application of established scientific knowledge and customary care and attention and to compliance with recognised technical norms, unless the ILK has expressly assured particular characteristics of the results of the work. In warranty cases, the ILK undertakes to rectify defective work free of charge within a reasonable period of time or, should rectification prove impossible or possible only with unreasonable outlay or attempts at rectification fail, the company undertakes to do the work again. In any case, section 3a, sentence 2, shall apply. The warranty period is for 12 months from the date of acceptance.

b) Regardless of the legal basis, the ILK can be held liable only if the defect:

- was caused by culpable violation of an essential contractual obligation (cardinal duty) in a way that endangers the fulfilment of the purpose of the contract, or
- is due to gross neglect or intent, or
- is a result of a negligent breach of duty on the part of the ILK itself, or
- has caused injury or damage to life, body or health of a person as a result of an intentional or negligent breach of duty on the part of a vicarious agent or legal representative.

c) If the ILK is liable for the violation of an essential contractual obligation in accordance with section 7b) without the occurrence of gross negligence or intent, its liability is limited to the scope of loss or damage that the ILK could typically expect to arise on the basis of the circumstances known to it at the time the contract was concluded.

- d) The limitation on liability set out in section 7c) applies equally to loss or damage resulting from gross negligence or intent on the part of employees or persons commissioned by the ILK who are not managing directors or senior managers. The limitation on liability set out in section 7c) applies equally to loss or damage resulting from gross negligence or intent on the part of employees or persons commissioned by the ILK who are not managing directors or senior managers.
- e) In cases covered by sections 7c) and 7d), the ILK is not liable for indirect damage, consequential damage or loss of profits. The limitations on liability set out in section 7b) apply accordingly to the benefit of employees and persons commissioned by the ILK.
- f) For each incidence of loss or damage, liability for personal injury or material damage is limited to a maximum sum of EURO 1.5 million. Insofar as the client deems a higher amount to be necessary in a particular case, the parties will make an arrangement in a separate agreement as to the extent to which the client will share in paying the resultant increased insurance premiums.

8. Duration of the contract, termination

- a) The contract concerned comes into force upon signature and remains in force until the end of the development project, provided it is not prematurely terminated or ended in any other way.
- b) If the contract is prematurely terminated by the client, the client is obliged to compensate the ILK for any costs which are proven to have arisen up to the termination of the contract and which have resulted directly from this contract, including the costs resulting from obligations from which the ILK cannot unbind itself. Insofar as the ILK is not able to use its freed capacities elsewhere, it is entitled to charge for the work performed up to the termination of the contract in accordance with the remuneration regulations and to charge proportionate stand-by costs that may have accrued in individual cases. The client is at liberty to prove to the ILK that these costs were not incurred at all or were only incurred in part.
- c) Insofar as the commissioned work concerns research and development in the field of industry-commissioned research that is being conducted for the further development of existing technologies or for the development of new, as yet unresearched and untested scientific technologies, the ILK reserves the right to early termination of the contract and hence the right to end the contractual relationship if, after the commencement of work, it is found that, for reasons that lie beyond the scope of the ILK or have their origins there, the commissioned work is not practicable or can only be continued at disproportionate expense. In such cases, the ILK has the right to claim part-payment and the refunding of work carried out by the ILK up to that point. No other claims can be raised by either the client or the ILK.
- d) If the contract is terminated prematurely, the ILK will hand over to the client the result of the development work obtained so far.

9. Secrecy

- a) Business or company secrets that are entrusted by the client to the ILK or with which the ILK becomes acquainted in the course of co-operation will be used only for the fulfilment of the contract and they will neither be used nor divulged to others during or after the contractual relationship. This applies also to companies that are associated with the ILK in accordance with § 15 AktG (Aktiengesetz/German Companies Act).
- b) Any technical information, in particular intentions, experience or designs to which the ILK gains access in the course of the contractual co-operation, or which the ILK receives from the client, will be used by the ILK only within the context of this cooperation and will be treated as confidential and not divulged to any third party either during or after the period covered by the contract. This obligation does not apply to information that can be proven to:
- have been known prior to the commissioning of the assignment
 - have been rightfully received by the ILK from third parties
 - have been in the public domain prior to the commissioning of the assignment or
 - have entered the public domain later without violation of the obligations set out in this contract.
- c) Publications by the ILK about the research findings require the written consent of the client. The client will not unreasonably refuse to grant its consent.

- d) The ILK will oblige its employees and third parties whose involvement is necessary for the conduct of the work to observe such obligations.

10. Trademark rights, copyright and rights of use

- a) In conducting R & D, the ILK will strive, as far as possible, to achieve development results that are not affected by the trademark rights of third parties.
- b) If the ILK knows of trademark rights held by third parties that constitute an obstacle to the development results, it must inform the client immediately upon becoming aware of this circumstance and await the client's decision on their utilisation or nonutilisation. Inventions created by the ILK prior to the R & D work conducted under this contract and subject to trademark rights that have been registered or approved, must also be declared in good time, if they are used in the development results.
- c) The results of the R & D work, in particular the knowledge gained by the ILK in the course of the commissioned assignment and written, saved or otherwise recorded in reports, descriptions, experimental procedures, models, devices or equipment are to be placed at the client's disposal after completion of the assignment.
- d) The ILK claims unlimited rights to inventions arising during the conduct of the assignment, and will register its trademark rights nationally and internationally. These trademark rights, including 10b) are to be offered to the client with the aim of granting a licence.
- e) If the ILK does not wish to register its trademark rights concerning an invention nationally or internationally, does not wish to pursue the registration of trademark rights, or to retain trademark rights that have already been approved, the client must be informed of this without delay and, provided there are no fundamental objections, it must offer the invention, the registration of trademark rights or the approved patent to the client. In such case, this offer must be made early enough for the contracting party to undertake the necessary measures to protect these rights, in particular to claim precedence. The ILK is granted non-exclusive rights of usufruct free of charge for statutory purposes, without the right to issue sublicenses.
- f) Insofar as the results of the R & D work are protected by copyright, the ILK grants the client a non-exclusive right to the application purpose it is based on that is limited in terms of time, locality and content and that may, until further notice, be sublicensed, to use these results for the purpose underlying the assignment - in particular to duplicate, distribute, or exhibit these results or to alter and process them. The ILK is granted exclusive rights of usufruct free of charge for statutory purposes, without the right to issue sublicenses.
- g) In cases that fall under section 10, subsection e), the client will pay the ILK the legally required amount for inventions by employees from the time of the invention's utilisation. The amount to be paid is to be agreed by the parties. In addition, the client is obliged to bear the costs of the trademark rights in those countries in which the client wishes to obtain patent protection.

11. Publication/publicity

The client is entitled to publish the results of the R & D carried out under the contract with the prior consent of the ILK and citing the ILK. Agreement on publication should take account, in particular, of pending trademark rights, forthcoming doctoral theses and diploma dissertations. The utilisation of the results of the contract for publicity purposes requires the express consent of the ILK.

Last reviewed: October 2008