



General Terms and Conditions (GTC)

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

Introduction

The ILK conducts innovative basic research and research and development work in the fields of cryogenics, refrigeration, air-conditioning, heating, solar, environmental technologies as well as in the materials and measurement technologies associated with these specialist areas, combined with applied research and the provision of engineering services on a privately financed basis for the benefit of individual companies, institutes and public clients. Furthermore, the ILK provides scientific and technical services, in particular the support of projects and processes that have not yet been tested, by transferring basic and in-house research results into practice.

General

ILK's GTC apply exclusively to all contracts. Clients' conflicting regulations do not become part of the contract, even if the ILK has not expressly objected to them. Agreement with the content of the subject matter of the contract does not imply agreement with the respective contracting partner's own general terms and conditions.

1. Offer

ILK's offer describes the task with regard to the specific purpose of application, the specific development project including content and scope of the work as well as the processing period planned by the ILK at the time of submitting the offer. Furthermore, the offer contains the quoted price calculated by the ILK based on the client's requirements known at that point in time. Documents forming part of the quotation, such as illustrations, drawings, weights and measurements, are only approximate unless expressly specified as binding. The ILK reserves the right of ownership and copyright to cost estimates, drawings and other documents; they must not be made available to third parties without ILK's express written consent. If, for example, illustrations, drawings, weights and dimensions are made available to the ILK by the client together with the order, these are treated as confidential.

2. Order placement

If the client's order contains deviations from the quotation, these are only deemed to be agreed after express written confirmation by the ILK. Otherwise, the contract is deemed to have been concluded to the extent that there are concurring declarations of intent. If these two differ on essential points that are part of the core area of the service or work contract, they must be renegotiated until agreement is achieved. This written-form requirement is also deemed observed if submitted by fax or e-mail.

3. Execution of works

- a) If the ILK, in an individual contract with the client, has undertaken to produce a newly created piece of physical work as a result of the works or to bring about a specific research outcome agreed with the client in advance, the ILK is obliged to ensure that the work or the research outcome is designed in such a way that the client can use it for the agreed purpose without the risk of causing damage. If no separate characteristics are agreed, only this usability for the agreed purpose is owed as success.
- b) If the ILK gGmbH undertakes to provide the client with scientific and technical services in specific areas and for a specific time, it is obliged to provide the services in accordance with state-of-the-art scientific findings and with the care customary in the industry. In doing so, the ILK must take the state of the art in science and technology as a basis and incorporate its own findings into the work. For both contracts relating to the scopes of Items 3. a) or 3. b), the ILK accepts no guarantee that any commercial exploitation intended by the client can be realised or that the commercial success sought by the client will actually be achieved. This also applies if the client has informed the ILK of its exploitation intentions without any separate contractual assurances having been given in this respect.
- c) The client will provide the ILK with the information and documents required to carry out the project on loan and free of charge. They shall exclusively be used for carrying out the agreed work and are to be returned to the client after finalisation of the contract.
- d) Insofar as the client does not comply or does not comply on time with his cooperative duties, which are agreed separately in each individual contract, the ILK reserves the right to assert claims for compensation due to default in acceptance, in the case of contracts for work, in accordance with Section 642 of the German Civil Code (BGB) as well as its right to premature termination in accordance with Section 643 of the German Civil Code (BGB).

4. Acceptance, place of performance and place of fulfilment

- a) Lit. b) to e) only apply insofar as acceptance is prescribed by law or contractually agreed.
- b) The client is obliged to accept the service as contractually agreed immediately after its finalisation, however, two weeks at the latest after handover or access, respectively.
- c) An acceptance record shall be drawn upon acceptance and signed by both contracting parties, reflecting the actual condition of the work or the performance of the service at the time of acceptance. The note in a record signed by both parties does not necessarily indicate that the described condition deviates from the contractually owed result or content.
- d) Acceptance may only be refused by the client in the case of evident, serious defects that renders the service or product for further use for contractual purposes impossible. The ILK remedies other defects within the scope of warranty pursuant to Item 7 of these GTC.
- e) If the client does not carry out acceptance or sign the acceptance record without sufficient reason despite a deadline set by the ILK, the acceptance is deemed to have taken place on expiry of the grace period set for this purpose.
- f) The place of performance and fulfilment is ILK's registered office. Any transportation is carried out at the risk and at the expense of the respective client, unless the parties have expressly agreed otherwise. This applies to hazardous materials in particular which are subject to special national or international shipping regulations.

5. Date of delivery, processing time

The delivery of the agreed service shall take place on the delivery date specified in the contract, unless special delays in the scientific-technical processing occur which were not foreseeable at the time of concluding the contract. Early delivery is permissible. As soon as the ILK recognises that the agreed processing period is not sufficient, the client will be informed of this in writing without delay and by giving reasons. At the same time, proposals for changes will be made as the basis for a mutually agreed extension of the processing period.

6. Payment

At its own discretion, the ILK is entitled to demand advance payments prior to the commencement of order execution or a contract performance guarantee common in banking. Delays in the provision of the advance payments or the security will result in scheduled delivery dates being extended by the corresponding period. Invoices are due for payment within 14 days of the invoice date. If payment deadlines are not met by the client, the ILK is entitled to charge interest on arrears at the statutory rate in accordance with Section 288 para. 2 German Civil Code (BGB), currently 9% above the respective base rate. Offsetting against ILK's claim is only permitted if the counterclaim is undisputed or has been legally established.

7. Warranty and liability

- a) ILK's warranty basically covers the application of proven scientific knowledge and due care customary in the industry as well as compliance with the recognised rules of technology unless the ILK expressly guarantees certain properties or work results. In the event of a warranty claim, the ILK will rectify faulty work free of charge within a reasonable period of time or, if this is impossible or only possible at disproportionate expense or if it fails, it will produce new work. In all other respects, Item 3a, clause 2 applies. The warranty period is twelve months from the transfer of risk, unless expressly agreed otherwise.
- b) Liability on ILK's part for whatever legal grounds shall only be assumed if the damage
 - has been caused by culpable violation of a substantial contractual duty in a way that jeopardised the achievement of the contractual purpose,
 - or is due to gross negligence or intent on the part of ILK's vicarious agent or legal representative. The ILK shall be held liable, if a deliberate or negligent breach of duty by a vicarious agent or legal representative has caused damage to the body, health or limb of a person. In this respect, liability is limited to € 1.5 million.

- c) If the ILK is liable pursuant to Item 7b) for the breach of a material contractual duty without gross negligence or intent, liability is limited to the extent of the damage that the ILK typically had to expect at the time the contract was concluded on the basis of the circumstances known to it at that time.
- d) The limitation of liability pursuant to Item 7c) applies likewise to damage caused by gross negligence or intent on the part of ILK's employees or agents who are not directors or members of managerial staff.
- e) In the cases of Items 7c) and 7d), the ILK is not liable for indirect damage, consequential damage or loss of profit, even in the case of gross negligence. The limitations of liability under Item 7b) also apply mutatis mutandis in favour of ILK's employees or agents.
- f) With a view to the fact that the ILK is recognised as a non-profit limited liability company pursuant to Section 55 German Fiscal Code (AO) and deviating from statutory regulations, it is expressly agreed that liability per claim for personal injury and property damage is limited to an amount of € 1.5 million. The ILK maintains liability insurance coverage up to that amount. Should the client, in an individual case, desire higher coverage in the event of a damages claim, the parties will agree on a regulation in a separate agreement, which will also depend on the amount of the additional liability insurance premium resulting from that.

8. Term of contract, termination

- a) The respective contract shall enter into force upon being signed and will stay in force, unless terminated prematurely or for any other reason, until the development project has been finalised.
- b) If the client terminates the contract prematurely, if such is possible at all, the ILK can demand the agreed remuneration immediately. However, the expenses saved by the ILK as a result of the termination will be deducted. It shall be at the client's discretion to provide proof to the ILK that higher expenses were saved.
- c) To the extent that the contract relates to research and development work in the area of privately funded research, which is carried out for the further development of existing scientific technologies or for the development of new scientific technologies that have not yet been researched or tested, the ILK has a right of early termination and thus a right to terminate the contractual relationship if, after the work has commenced, it becomes apparent that the contract cannot be carried out for reasons that are beyond ILK's control or that it would only be possible to continue the contract at disproportionately high expense. In such a case, the ILK is entitled to pro rata remuneration in relation to the premature termination of the contract, as well as compensation for the expenditure incurred to the ILK up to that point. In this case, neither the client nor the ILK is entitled to any further claims.

9. Confidentiality

- a) Lit. b) to e) shall apply only insofar as no individual confidentiality agreement has been concluded.
- b) The ILK will use the client's business or trade secrets which have been entrusted to it or which are disclosed to it on the occasion of the cooperation exclusively for the implementation of this contract and will neither exploit them nor disclose them to others for the duration of and for a period of three years after the termination of the contractual relationship. This also applies to companies that are affiliated with the ILK within the meaning of Section 15 of the German Stock Corporation Act.
- c) The ILK will use technical information, in particular intentions, experience or designs, which become accessible to it within the framework of the contractual cooperation, or which the ILK receives from the client, only within the framework of the cooperation and will also treat it confidentially for a period of three years after the end of the contractual term and not disclose it to any third party. This obligation does not apply to information which verifiably:
 - was already known before an order was placed,
 - was lawfully obtained by the ILK from third parties,
 - was already generally known when an order was placed or
 - subsequently becomes generally known without any breach of the obligations contained in this contract.

- d) Publications by the ILK about the research results require the client's written consent. The client may refuse this consent for good reasons only.
- e) The ILK will oblige its employees and third parties whose involvement is required to carry out this work accordingly.

10. Property rights, copyrights and rights of use

- a) During the execution of R&D work, the ILK will endeavour to yield, to the extent possible, a development result free from third parties' property rights.
- b) If the ILK is aware of third-party industrial property rights that conflict with the development result, the ILK must inform the client of this immediately after this becomes known and must obtain the client's decision on their exploitation or non-exploitation. Inventions made by the ILK prior to the start of or independent of the content of the agreed R&D work and any industrial property rights applied for or granted on the basis of these, to the extent they are intended to be used in the development result, must also be disclosed in good time.
- c) The results of the R&D work, in particular the findings made by the ILK during the execution of the contract and recorded, stored or otherwise saved in records, descriptions, test arrangements, models, equipment or installations, shall be made available to the client in a suitable form after completion of the contract.
- d) The client can make unlimited use of inventions that arise during the execution of the order and register them in his own name for industrial property rights domestically and abroad. The client shall bear any inventor's remuneration incurred in this respect. To the extent that the results of the R&D work are protected by copyright, the client grants the ILK a non-exclusive, royalty-free right, unlimited in terms of time, place and content, to use these results for statutory purposes of its own research and development.
- e) Should the client not wish to register an invention for an industrial property right domestically or abroad, not wish to pursue an application for an industrial property right or not wish to maintain an industrial property right that has been granted, the client must notify the ILK of this without delay. Provided there are no fundamental objections to the contrary, the invention, the intellectual property application or the granted patent will be offered to the ILK. In any case, this must be done in good time so that the ILK can take the necessary measures to safeguard the rights, in particular to claim priorities.
- f) In the cases of Item 10 e), the ILK will reimburse the client for the statutory employee-invention remuneration. Moreover, the property rights expenses for the property rights assumed by the ILK shall be borne by the ILK.

11. Publication/advertising

After prior accordance with the ILK, the client is entitled to publish the R&D results arising from the contractual relationship with an ILK reference. Such accordance should be reached in particular with regard to ongoing applications for industrial property rights, dissertations and theses. The use of the R&D result for advertising purposes requires ILK's express consent.

12. Place of jurisdiction, applicable law

- a) The place of jurisdiction is Dresden if the client is a registered merchant or does not have a general domestic place of jurisdiction or moves its domicile or usual place of residence out of the country after conclusion of the contract. The ILK is also entitled to take legal action before the court that has jurisdiction for the client's place of residence or branch office.
- b) The contract is subject to the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention and CISG) is excluded.

13. Miscellaneous provisions

Ancillary agreements and amendments to the contract must be made in writing to be effective and have not been made by the parties or are cancelled with the conclusion of the present contract. Should a provision contained in these General Terms and Conditions or in other agreements concluded between the parties be or become invalid, this shall not affect the validity of the other agreements concluded between the parties. In such a case, the parties shall be obliged to agree on a provision that comes as close as possible to the economic purpose of the invalid provision. The client accepts ILK's General Business Principles insofar as it does not itself have a comparable Code of Conduct.