

## **General Terms and Conditions for the Provision of Research and Development Services and other Services of INNOVENT e.V. Jena**

### **1. General, scope of application**

1.1. These terms and conditions (hereinafter referred to as "GTC") shall apply to the entire contractual relationship when used in business dealings, legal entities under public law or special funds under public law, and in the performance of services to scientific institutions.

1.2. The GTCs shall apply exclusively; any conflicting or supplementary terms and conditions of purchase are hereby objected to. This also applies if INNOVENT does not repeat the objection in individual cases despite performance of services or does not perform services again in the knowledge of conflicting conditions of purchase.

1.3. These GTCs shall also apply to future follow-up business without the need for a further separate reference when concluding the follow-up business.

### **2. Conclusion of contract, content of contract**

2.1. The offers of INNOVENT are legally non-binding unless they are expressly designated as "binding offer". The contract comes into effect with the confirmation of order issued by INNOVENT upon the customer's order, with a binding offer already with the customer's order.

2.2. Verbal special agreements have not been made. Employees of INNOVENT are not entitled to make special agreements. Amendments or additions to the contract shall require the approval of the Board of Directors or Executive Director in order to be effective.

### **3. Performance of services, service time**

3.1. INNOVENT provides research and development services for the promotion of innovative ideas within the framework of applied and basic research as well as application-related development services. Here, the focus is on the effort to gain knowledge and the examination of technical implementation possibilities. The contractual relationships have a service character, the work is performed on a scientific level, concrete results depend on the course of the work, the existing and attainable level of knowledge and cannot be predicted with certainty at the time of conclusion of the contract. The results of the R&D services do not require acceptance; the handing over of final reports or comparable milestones do not represent - unless otherwise agreed in individual cases - an acceptance under a contract for work and services, but serve to document the course of the R&D service and the results achieved.

3.2. As far as INNOVENT provides other services not related to research, these services are also provided as general services (e.g. application tests, product improvement), unless specific service successes have been explicitly agreed upon with the customer as being contractually owed under agreement of acceptance dates.

3.2. INNOVENT is entitled to transfer results of the R&D services rendered and other work results to the customer in electronic form, also by e-mail, if necessary while maintaining confidentiality. INNOVENT uses encryption technology for this purpose only at the customer's request.

3.3. As far as INNOVENT sends samples, prototypes or otherwise embodied results of the R&D services, this is done ex works.

3.4. The authority to exploit the work results as defined in more detail in Section 7, shall always be subject to the proper payment of the agreed remuneration.

3.5. If work is carried out jointly or in the presence of employees of the customer at INNOVENT's business premises, the customer will comply with the standards for occupational safety at INNOVENT. In this respect the customer submits to the house rules of INNOVENT.

3.6. Delivery times (e.g. CW) indicated by INNOVENT are internal planning at the time of the declaration. If the customer wishes the binding observance of a delivery time, he must agree to this at the conclusion of the contract. In this case INNOVENT will confirm the binding delivery times in writing. The observance of binding delivery times is subject to our own correct and timely delivery and subject to organisational, technical and commercial obstacles for which INNOVENT is not responsible (e.g. illness of key personnel, technical failure through no fault of INNOVENT, etc.). If delays are due to circumstances which could not be foreseen at the time of conclusion of the contract or which result from the nature of the order (e.g. necessity of multiple attempts with any R&D services), the stated delivery times shall be extended appropriately according to the circumstances.

3.7. If, due to interim results that cannot be calculated in advance, it becomes necessary to change the execution of the R&D services, INNOVENT will inform the customer in due time. If the customer does not immediately object to the changed procedure, it is assumed that he agrees to the changed method of execution.

3.8. If it has been agreed that the Customer is to provide starting materials such as substrates, materials, devices or other basic materials for the performance of services, the proper performance of the agreed R&D services requires the delivery of suitable starting materials in sufficient quantity. The same applies to the provision of information by the customer necessary for the execution of the R&D services. Risks for INNOVENT's employees or the environment, which are known or must be known to the customer and which exist during the processing or use of the provided materials, have to be pointed out to INNOVENT in writing before conclusion of the contract.

3.9. If INNOVENT provides services in connection with the execution of scientific or application-oriented events, the content of the event is generally based on the event description provided in the flyer or on the Internet. However, INNOVENT reserves the right to make organisational and content-related amendments within the framework of reasonableness (change of speaker, change of location, procedure). Registrations of participants are binding to INNOVENT, the conference fee is due upon registration. INNOVENT may, however, cancel the event - with the exception of the reimbursement of already paid conference fees free of charge - within a reasonable period of time according to the minimum number of participants stated, provided that the minimum number of participants is not reached or other urgent organisational reasons considerably impair the execution. Discount entitlements for junior scientists/students and doctoral students are only valid if the participant has not yet reached the age of 30 on the execution date. Discount entitlements must be presented during the execution of the event.

#### **4. Prices and terms of payment, deterioration of assets, offsetting, retention**

4.1. The agreed prices are in Euro - plus value added tax if due - and plus any transport, insurance, packaging and other ancillary costs.

4.2. INNOVENT records - unless otherwise agreed upon in individual cases (e.g. in case of a lump-sum agreement) - the R&D service and material expenses performed internally by its

employees and collects these data as a basis for accounting.

4.3. INNOVENT is entitled to issue partial invoices. This is usually done monthly with the submission of a time statement or other proof of expenditure or, if different billing has been agreed, in accordance with the progress of the work (e.g. in the case of lump-sum agreements).

4.4. The customer has to check invoices of INNOVENT immediately after receipt. Payment made shall be deemed to constitute actual recognition of the expenses recorded. INNOVENT may choose to issue invoices in paper or electronic form.

4.5. Invoices are - unless otherwise agreed in individual cases - due for payment within 14 days of receipt. For events, the participation fee must be paid to INNOVENT at the latest 5 working days before execution of the event.

4.6. Should INNOVENT's R&D services or other services be extended or reduced during the project execution by the customer or after notification by INNOVENT, INNOVENT is entitled to adjust the price at the time of invoicing, subject to the following conditions:

For price increases of up to 10 % of the original value of the affected part of the order, this presupposes that the customer has been informed of this, has not objected to it within a period of 2 weeks, and has been made aware of the significance of a missing objection within the framework of the information. If the originally agreed order value is exceeded by 10% or more, the adjustment must always be agreed in writing.

In this respect, the contract value is the total net amount originally agreed in a confirmation of order or, if the order is authoritative, in a purchase order or in a mutually signed contract for a delimitable R&D activity (project reference) or the partial service concerned, whereby a differentiation between personnel and material costs is not decisive. Possible supplementary agreements or other explicitly agreed price increases for a project-related uniform R&D process or other service process are not taken into account when calculating the 10 % limit.

4.7. A significant deterioration of the customer's financial situation entitles INNOVENT to temporarily stop further work or to make the fulfilment of the contract dependent on advance payment. Significant deterioration of assets is presumed if payment is overdue by more than 45 days.

4.8. Offsetting or retention by the customer is only permitted within the same service relationship (project-related). Offsetting and retention based on facts from other orders with the same customer (cross-project) is objected to. Partial or specific contracts which are provided within a single framework agreement but which can be distinguished from one another shall also be regarded as different contracts, provided that they have different project numbers.

## **5. Warranty for defects, liability**

5.1. The results of the R&D services carried out by INNOVENT are regularly - according to their nature as research and development services - not clear or not fully predictable in terms of content at the time of conclusion of the contract. The responsibility of INNOVENT is therefore limited for the execution of R&D services to the proper observance of methods and standards that correspond to the current state of science and technology. INNOVENT does not assume any responsibility beyond the compliance with the aforementioned standards and methods, unless a separate agreement has been made with the customer, stating concrete partial steps and goals. In particular, INNOVENT does not guarantee that the R&D result can be exploited industrially and commercially, unless the exploitability has become an explicit

part of the contract agreed in writing.

5.2. If INNOVENT hands over development samples or otherwise embodied results of the R&D services to the customer, INNOVENT will inform the customer about identified potential risks in application or handling. However, INNOVENT assumes no liability for technical accuracy. The customer shall exercise special care in occupational safety and health protection to an extent adapted to the quality of the development pattern. Development and substance samples as well as comparable work results are not intended for transfer to general business.

5.3. If INNOVENT has to provide the results of the R&D services to the customer in the form of samples, specimens, substance samples or similar embodied objects, the received objects have to be examined for material defects immediately after receipt, provided that these can be present at all, taking into account section 5.2. Obvious defects must be reported to INNOVENT within 3 working days after receipt. Hidden defects are to be reported immediately after discovery under description of the defect.

5.4. As far as software is delivered to the customer, INNOVENT does not guarantee that it will work together with the hardware and software components available at the customer. An error in the software delivered by INNOVENT is only present if it is persistent and reproducible. With software, INNOVENT must always first be given the opportunity to rectify the defect. INNOVENT can also remedy the situation by providing instructions to avoid the error or by installing updates. Only after two unsuccessful attempts to remedy the defect due to the same defect do the other defect rights that were suspended up to that point revive.

5.5. If INNOVENT provides the customer with equipment for carrying out tests, the responsibility is limited to the proper functioning of the test equipment as such. In this case, tests and examinations are carried out under the sole responsibility of the customer.

5.6. INNOVENT's liability for damages, whether based on contractual or non-contractual legal grounds, shall be governed by the statutory provisions for liability regardless of fault (e.g. product liability where applicable), for death, personal injury or damage to health, for guarantees given and during the period of default and in accordance with the statutory provisions.

5.7. Within the framework of other fault-based liability outside of section 5.6, INNOVENT is only liable for intent and gross negligence. In the event of gross negligence, liability shall be limited to four times the original order value plus any supplementary agreements, whereby the above values shall be determined on the basis of the respective project from which the damage arose.

5.8. Notwithstanding section 5.7. INNOVENT is legally liable for simple negligence if an essential contractual obligation is violated by INNOVENT. In this case, this liability is limited to the amount of foreseeable damage typical for the contract, whereby the foreseeability is based on the information received. The upper limit is formed by the original order value plus supplementary agreements from the respective project from which the damage occurred.

5.9. The exclusion or limitation of liability also applies to the employees of INNOVENT.

## **6. Funding projects, joint projects**

The contract with INNOVENT is effective under civil law regardless of whether or not public funding can be obtained for the project by the customer. INNOVENT can support the customer within the framework of its possibilities in applying for funding projects.

## **7. Industrial property rights, exploitation, exemption, insolvency**

7.1. INNOVENT remains the owner of all arising rights to the work result, no matter whether they are capable of being protected by intellectual property rights or not, unless a different provision has been agreed upon in individual contracts. In any case, the exploitation is dependent on the proper payment of the remuneration agreed with INNOVENT.

7.2. If the customer has been granted the right of exploitation as well as the right of use or transfer of rights to work results or inventions in individual contracts, this right is limited to the subject matter/field of work of the R&D services or other services specifically described by INNOVENT. If the scope of the transfer of rights or the granting of rights of use is not explicitly contractually stipulated between the parties, INNOVENT always grants rights only to the lowest possible extent, i.e. non-exclusive, limited to a reasonable period of time, not entitling to sublicense, non-transferable and locally limited to the territory of the use intended or foreseeable at the time of the conclusion of contract. Generally usable work results or results obtained as a by-product remain with INNOVENT. INNOVENT may also use them to provide general services to other customers.

7.3. Copyrights remain with INNOVENT together with the right to name the services provided as reference services and to decide on the granting of rights of use in accordance with the contractual provisions and the provisions of these GTCs. INNOVENT owns the copyrights of the event documents. The use of the documents for purposes outside the event requires the prior consent of INNOVENT.

7.4. If the order includes the development or modification of a software, the customer acquires a simple, non-exclusive and non-transferable license for use, unless otherwise agreed. Further development, decompilation or other processing requires the consent of INNOVENT.

7.5. INNOVENT is - unless otherwise agreed upon in individual contracts - not obliged to check the testing and research procedures specified by the customer with regard to possible infringements of industrial property rights when implementing these customer specifications within the framework of the performance of services. If the provision of the R&D service infringes a third party's industrial property right at the destination or place of use of the R&D result specified by the customer and if INNOVENT is held liable for this, the customer shall indemnify INNOVENT to the extent of the claim and compensate INNOVENT for the expenses and damages incurred in connection with this claim (e.g. personnel, costs of legal assistance, etc.).

7.6. The results of solutions developed by INNOVENT by using R&D services will not be checked for possible conflicts with industrial property rights of third parties within the framework of the subsequent application of this solution by the customer in practical terms before handing it over to the customer, unless this has been agreed upon separately and subject to a separate fee. The customer is therefore responsible for the use of the solutions received from INNOVENT with regard to the infringement of third-party property rights during use, application or further development for the purpose and territory intended by the customer. The exemption regulation of the section applies accordingly.

7.7. INNOVENT is entitled to produce image and sound recordings within the framework of the execution of events and to use them for documentation and advertising purposes without any time and space restrictions. This does not refer to the explicit representation of individual persons in picture and sound, but is intended to show the character of the event (group pictures of at least 2 persons).

## **8. Secrecy, non-solicitation protection, contractual penalty**

8.1. Beyond the use agreed upon with the customer, the customer shall not disclose to third parties or use in any other way outside the agreed upon use any know-how, business or trade secrets of INNOVENT in the sense of § 17 UWG or other confidential information provided by INNOVENT in the framework of the contract and project implementation or obtained by INNOVENT on the occasion of contract and project implementation.

8.2. If the customer culpably breaches the obligation under 8.1, a contractual penalty to be measured by the value of the information disclosed or used shall become due for payment to the amount of at least EUR 5,000.00 and up to EUR 100,000.00. INNOVENT will determine the amount of the contractual penalty in individual cases at its own discretion. If the fairness of the exercise of discretion is in dispute, the competent court shall exercise the provision alternatively. The assertion of claims for damages with crediting of the contractual penalty remains unaffected.

8.3. During the term of the contract and for a period of 12 months after the completion of the contract, the customer undertakes not to entice away any employees of INNOVENT, to employ them within the previous or a comparable field of activity or to employ them in any other way directly or indirectly, whether for the employee's own or a third party's account, or to acquire their work performance or to promote such efforts of third parties. In the event of a breach of this obligation, a lump-sum compensation of EUR 10,000.00 shall be due for payment. The customer shall be entitled to prove that no damage or considerably less damage has been caused.

## **9. Publications**

In the case of scientific publications or other publications on research results that have been obtained due to or with the help of INNOVENT's R&D services, the customer has to explicitly refer to the cooperation with INNOVENT. INNOVENT is entitled to present the results of the R&D services in scientific publications and papers, taking into account the confidentiality interests of the customer.

## **10. Term of contract, premature termination**

10.1. The contract for R&D services can be terminated by INNOVENT before the end of the agreed contract period with a notice period of 4 weeks, if it becomes apparent during the contract period that the desired research objective cannot be achieved either with the initially agreed methods or with such alternative methods that correspond to the agreed cost framework or that can be presented within the framework of the price adjustment option. The same applies if the research objective cannot be fully or partially achieved within the contractual period for technical reasons and no agreement on an extension can be reached. In this case INNOVENT may liquidate the proportionate costs incurred.

10.2. It is expressly permitted that the termination may also relate only to parts of the overall project, unless the remaining partial services are of no interest to the customer.

## **11. Miscellaneous, Choice of law, Arbitration proceedings**

11.1. Customer data and the data of the participants in events are stored and processed electronically, as far as this is necessary for the proper handling of the business relationship. We also use the stored information for promotional information subsequently for business

processing, unless the customer or participant objects.

11.2. Uniform place of performance for the mutual contractual obligations is the registered office of INNOVENT / Jena.

11.3. The law of the Federal Republic of Germany shall apply, excluding the UN Convention on Contracts for the International Sale of Goods. The choice of law clause also applies to the following arbitration agreement in section 11.4.

11.4. Disputes between the parties arising out of or in connection with the contract, including its validity, regardless of the legal basis, shall be exclusively and exclusively decided by an arbitration tribunal, excluding the ordinary course of law. The Arbitration Tribunal shall apply the Rules of the German Institution of Arbitration, including the Rules for Expedited Procedure. The Arbitration Tribunal shall meet in Berlin and shall be composed of one arbitrator who must be qualified to hold the office of judge under German law.

11.5. The transfer of rights and obligations from this contract requires the consent of INNOVENT to be effective.

11.6. Should one or more provisions be invalid, the validity of the remaining provisions and of the contract as a whole shall not be affected. If the ineffective provision can be distinguished textually from another effective part of this provision, so that the effective part remains understandable in itself by deleting the ineffective part, this effective part shall remain in force, unless this leads to a content contradictory to the intended purpose due to the ineffectiveness of the other part.

As of 16 September 2016