

# General Terms and Conditions for the Laser Centre Hanover e.V. (LZH)

## 1. Scope of application

- 1.1 The LZH exclusively and directly pursues charitable objectives. It carries out contract research in the area of applied research and develops new technologies. The following General Terms and Conditions regulate the legal relationship between the LZH and its clients in regards to research and development contracts, as well as the supply of LZH constructions.
- 1.2 The research and development contracts and the supply to the LZH are carried out exclusively based on these Terms and Conditions, if no deviating arrangements have been explicitly agreed upon in writing between the LZH and the client in individual cases. The client's general terms and conditions or conditions for purchase will not be recognised by the LZH, even if the LZH does not explicitly object.
- 1.3 If not regulated differently or specifically in the respective research and development assignment, the service will be provided on a service contract basis in accordance with §§ 611 ff. BGB (German Civil Code). In this case, the LZH is therefore only obliged to proceed in accordance with the rules of science and technology in regards to research and development assignments.
- 1.4 These Terms and Conditions apply to all current and future business relationships between the LZH and the client, if the client acts in accordance with § 14 BGB (German Civil Code).

## 2. Conclusion of Contract

- 2.1 If the LZH does not explicitly state otherwise, all offers by the LZH remain subject to confirmation.
- 2.2 Contracts between the LZH and the client are realised through written contract awards or client orders based on offers made by the LZH and a consequent written declaration of acceptance, or through a written acceptance of the order by the LZH.
- 2.3 The LZH's offer describes the scope of the work in regards to the specific purpose, content and scope of the work, the time needed for completion, as well as the research and development goal.

## 3. Fixed dates and deadlines

- 3.1 Unless otherwise agreed between the parties, the time needed for completion, or the fixed dates stipulated in the offer or in the research and development contract are non-binding fixed deadlines and dates that are not of a forward transaction nature.
- 3.2 If the LZH realises that any agreed and binding process times or fixed dates cannot be met, the LZH will notify the client of the reasons for the delay and will agree adequate adjustments with the client.
- 3.3 The abidance by agreed deadlines and fixed dates requires the timely submission of all required documents, permissions and authorisations to be provided by the client, as well as adherence to the agreed payment requirements and other obligations of the client. If these requirements are not met, the agreed deadlines and fixed dates will be adjusted accordingly.
- 3.4 Claims by the client against the LZH due to delays or impossibilities are excluded, as long as the contractually agreed deadlines and fixed dates have not been met due to circumstances for which the LZH is not responsible. This especially applies to force majeure and other events, for which the LZH cannot be held accountable, such as business disruptions of all kinds, transport delays, traffic disruptions, adverse weather conditions etc. In such cases, the agreed deadlines and fixed dates will be adjusted or adjourned accordingly.

## 4. Compensation and terms of payment

- 4.1 The agreed compensation is quoted plus the legally applicable value added tax. In case of delivery, the client will be invoiced for transport and shipping costs separately.
- 4.2 The LZH will inform the client immediately, should it become apparent that the target research and development results cannot be achieved with the agreed compensation. At the same time, the LZH will suggest a compensation adjustment to the client. If the contractual parties cannot agree on an adjustment of the compensation, and if such an adjustment is necessary for reasons, which were not foreseeable by the LZH at the time of placing the order, nor reasons that the LZH can be held accountable for, the LZH may exceptionally terminate the contract for important reasons. Incidentally clause 13.3 applies.
- 4.3 All payments are to be made within 14 days of receipt of invoice without deductions directly to the LZH. Bank charges that may apply are to be met by the client.
- 4.4 Any offsets of counterclaims by the client are only valid, if these are uncontested or legally binding.
- 4.5 The client is only entitled to practice his right to refuse or withhold payment, if his counterclaim is based on the same contractual relationship.
- 4.6 In the case of a delay in payment, the LZH is entitled to calculate interest on arrears in the amount of 9% above the base interest rate of the European Central Bank (ECB) starting from the payment due date.

## 5. Rights to research and development results

- 5.1 The research and development results will be made available to the client after completion of the task in accordance with the offer or the research and development contract.
- 5.2 The client will receive a non-exclusive indefinite right of use for the contractually agreed purpose for any inventions stemming from the research and development contract and for any proprietary rights that may have been registered or granted to the LZH in regards to the inventions. The client will reimburse a share of the costs for registering, maintaining and defending the proprietary rights to the LZH, which is to be agreed between the contractual parties for each individual case. The client will pay any employee inventor bonuses due by law or in accordance with LZH regulations for the use of inventions.
- 5.3 Should the client wish to obtain exclusive rights of use for any inventions that have arisen, or for any proprietary rights that have been registered or granted to the LZH, the parties will enter a separate written agreement in regards to the amount of the license fee to be paid by the client and any employee inventor bonuses. The client shall declare such a request to the LZH in writing at least three months after having been notified of the invention. In such cases, the LZH will retain a non-exclusive, indefinite and gratuitous right of use for research and development purposes.
- 5.4 The client will receive a non-exclusive, indefinite right of use for the contractually agreed purpose for any copyright protected research and development results and know-how that arise during the execution of the project, after paying the agreed compensation. The granting of any exclusive rights of use requires a separate written agreement.
- 5.5 Should existing proprietary rights or copyright of the LZH be used for the execution of the project, and should these be required by the client for the utilization of the research and development results, the parties will conclude a separate written

agreement in regards to this, including the amount of license fees to be paid by the client.

## 6. Conflicting third party proprietary rights

6.1 The LZH will inform the client immediately of any third party proprietary rights known to him, or that he may become aware of, which could be breached by using the research and development results. However, liability for the freedom of third party rights will not be accepted. The LZH and the client will mutually decide, whether and in what way any known third party rights will be considered in regards to the execution of the agreed tasks.

6.2 As part of the fulfilment of the contract, the LZH will aspire to achieve research and development results that are free from third party proprietary rights. But the LZH is not obliged to carry out proprietary rights research in regards to conflicting third party proprietary rights. The LZH is willing to carry out proprietary rights research, as long as the client stipulates the search criteria and takes on the costs for such proprietary rights research. If the LZH or the client are or become aware of third party proprietary rights, which conflict with the fulfilment of the respective contract or the research and development results, the parties will notify each other of such immediately. The parties will agree on further proceedings, and they will especially mutually agree, whether a license should be acquired for the proprietary rights, or whether the execution of the contract should be planned in such a way, so that it avoids breaching any proprietary rights. In the case of breaches of proprietary rights through appliances or methods, which have been built or used under special instruction from the client, the client will exempt the LZH from all third party claims upon first request.

## 7. Delivery conditions for constructions

7.1 Unless explicitly agreed otherwise with the client, all deliveries of constructions take place at the expense and risk of the client. The risk of accidental destruction of or damage to the constructions is transferred to the client, as soon the delivery has been handed to the person carrying out the transport, but at the latest when it has left the facilities of the LZH. This also applies when a prepaid carriage delivery has been agreed. Should the construction be ready for shipping and if such a delivery is delayed for reasons, for which the client is responsible, the risk will be transferred to the client at the time of indicating readiness to ship.

7.2 If there is a delay to the client accepting the delivery, or should he breach any other obligations to co-operate, the LZH is entitled to store the construction at the expense and risk of the client without prejudice to any other rights. In this case the indication of readiness to ship is also considered to be equal to shipping.

7.3 Correct and timely self-delivery shall be reserved. The LZH will inform the client immediately in regards to non-availability of various delivery goods and in the case of a cancellation will immediately pay an appropriate reimbursement to the client.

## 8. Performance quality, warranty claims for purchase and works contract related research and development activities

8.1 Unless explicitly stipulated otherwise in the respective contract or agreed specifically, the LZH is only obliged to proceed in accordance with the respected rules of science and technology, including applying scientific diligence, in regards to research and development assignments.

8.2 The LZH does not principally guarantee the composition of research and development activities. Service descriptions especially do not come with a composition or service guarantee.

8.3 If the assignment focuses on a subject in the area of scientific research and development – scientifically orientated, experimental or theoretical works are carried out in order to obtain new information on previously unknown scientific principles, phenomena or facts – the LZH cannot be liable for expectations on target results linked to the subject actually occurring as part of the scientific process. This means that the LZH does not guarantee certain research results and does not guarantee their economic usability.

8.4 If the LZH is committed to produce a work performance or to deliver an item of best available technology as a research and development result based on an explicit agreement in the respective contract, the respective statutory regulations of the purchasing or works contract in regards to deficits in accordance with the following paragraphs will apply.

8.5 If the research and development results provided by the LZH show deficits, the LZH will firstly be given the opportunity to remove any deficits – depending on the type of research and development result, the deficit and other circumstances – through a supplementary performance, at the LZH's option through subsequent improvement or replacement delivery. If two attempts of subsequent improvement fail, the client is entitled to define an appropriate grace period for removing the deficits. He shall explicitly state in writing that he reserves the right to cancel the contract and/or demand compensation, should another failure occur.

8.6 Should the LZH decline the supplementary performance, or should the supplementary performance also fail or be unacceptable during the grace period, the client may either cancel the contract or may request a mitigation of compensation owed (decrease). Compensation or refunds for futile efforts due to possible deficits are paid by the LZH in accordance with the limits defined in clause 10.

8.7 Upon delivery from the LZH, the client will carry out an analysis and objection obligation in accordance with § 377 HGB (German Commercial Code).

8.8 The period of limitation for all warranty claims in regards to purchase and works contract related research and development activities shall be 12 months and shall start at the time of delivery or acceptance.

In the case of wilful intent or culpable negligence of the LZH, of maliciously concealing deficits, in the case of any injury to persons, as well as for guarantees, legal warranty periods apply, also in regards to claims in accordance with the product warranty law.

## 9. Reservation of proprietary rights

9.1 The LZH reserves the proprietary rights for all research and development results and any delivered constructions until all compensation due to the LZH by the client stemming from the business relationship has been paid in full. The LZH's property may not be pawned nor assigned by way of collateral.

9.2 In the case that the ownership of the LZH on the research and development results or the delivered constructions expires due to association, dilution or processing, it is agreed now, that the ownership in regards to the consistent item, which has arisen in this case, will be transferred to the LZH until full pro rata (invoice value) payment of the agreed compensation has been made.

9.3 In the case of a resale of the research and development results or the delivered constructions, the client will surrender all rights stemming from the resale to the LZH until payment in full of the agreed compensation has been made with real effect.

9.4 Upon request of the client, the LZH is obliged to release the guarantees the LZH is entitled to in accordance with the above regulations at the LZH's option insofar as their realisable value exceeds the claims to be guaranteed by 20%.

## 10. Liability

10.1 Unless explicitly stated otherwise or specifically agreed in the respective contract, the LZH is only obliged to apply scientific diligence, as well as to adhere to generally accepted rules in regards to technology, but is not obliged to actually achieve the research and development goals.

10.2 Subject to the regulations in clause 10.3, the LZH is liable to compensation amounts on any legal grounds in accordance with the following regulations:

- a. ~~MS~~LZH's liability for damages, which have deliberately or grossly negligently been caused by the LZH, is unlimited in terms of the amount;
- b. LZH is liable to a limited amount in regards to foreseeable, typically occurring damages for slight negligent breaches of essential duties according to the contractual obligations (cardinal duties). The term of cardinal duties hereby describes such duties in an abstract manner, whose fulfilment is essential for the orderly execution of the contract and on whose compliance the contractual partner should be able to rely;
- c. All further liability for damages is excluded, especially liability for negligent breaches of non-critical duties in accordance with the contractual obligations or liability without default.

10.3 The above-mentioned liability limitations do not apply to cases of mandatory legal liability (especially in regards to the product liability law), when taking over a guarantee or in the case of culpably caused bodily injuries.

10.4 The client is obliged to make adequate arrangements for damage prevention and damage control.

#### **11. Confidentiality**

11.1 The contractual parties will treat technical or business information that has been exchanged and is deemed to be of a confidential nature with utmost confidentiality for the duration of the contract and for five years after ending the contract and will not share it with third parties.

11.2 The above mentioned confidentiality obligation does not apply to information which was known or generally accessible to the other contractual third party or to the public, or which was passed to or became generally accessible to the public after notification without contribution or fault of the other contractual party, or if it corresponds to information that was made available to the other contractual party by an authorised third person, or which was developed independently by an employee of the other contractual party, who did not have access to the notified information.

11.3 A third party, in regards to this regulation, does not apply to subcontractors of the LZH, who may be utilised by the LZH for partial services in regards to contractual fulfilments, and who have been bound to confidentiality by the LZH accordingly.

#### **12. Publications**

12.1 Only after prior consultation with the LZH, the client is entitled to publish the research and development results whilst naming the author. The consultation is to consider that possible damage to, for example, dissertations, theses or proprietary rights registrations is avoided.

12.2 Publications by the LZH, which are in regards to the respective agreed purpose, and for which the client has requested exclusive rights in accordance with clause 5.3 shall be agreed with the client in due time.

#### **13. Termination**

13.1 Both contractual parties are entitled to an ordinary termination of the contract with a notice period of one month at the end of the calendar month, if, after a considerable period of time needed for completion for at least six months, no significant progress has been made; the termination may therefore be pronounced for the first time after the expiry of six months since the start of the contract. In all remaining cases an ordinary termination of contract is not permissible.

13.2 The right of the contractual parties to an extraordinary termination of the contract for important reasons remains unaffected.

13.3 After the termination, the LZH will hand over all research and development results, which have been achieved up until the termination taking effect, to the client within a period of four weeks. The client is obliged to pay all costs due to the LZH up until the coming into effect of the termination. Personnel costs

are to be compensated as expenditure of time. In the case that the termination is based on a fault by one of the contractual parties, damage claims remain unaffected.

#### **14. Final clauses**

14.1 Any deviations from these Terms and Conditions require the written form. This also applies to changes to the provision for the written form.

14.2 The place of execution and the exclusive place of jurisdiction for all disputes between the contractual parties resulting from the contractual relationship is Hanover, should the client be a general merchant, a corporate body in accordance with public law or a public law special property.

14.3 The privity of contract between the LZH and the client is exclusively subject to the law of the Federal Republic of Germany, whilst excluding international civil law reference provisions and the Vienna UN convention on contracts for the international sale of goods (CISG).

14.4 Should individual stipulations of these Terms and Conditions be or become invalid, the validity of the remaining stipulations will not be affected.

**Status: October 2014**