

## **General Terms and Conditions for Research and Development Contracts of ISC Konstanz e.V. - Status as of 09.01.2023**

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The International Solar Energy Research Center Konstanz, ISC Konstanz e.V., is a non-profit association and pursues exclusively and directly non-profit purposes. The purpose of the association is to promote basic and application-oriented research and development in the field of the use of solar energy sources, to promote the dissemination of the use of solar energy sources and to promote development cooperation.

### **1. Scope of application**

- 1.1 The following General Terms and Conditions (GTC) apply to all orders in the field of research and/or development that you, as an entrepreneur, legal entity under public law or special fund under public law within the meaning of Section 310 of the German Civil Code ("you" or "client"), place with us, the International Solar Energy Research Center Konstanz, ISC Konstanz e.V. ("us" or "ISC").

- 1.2 Unless our offer expressly provides otherwise, in the case of orders in the field of research and development we only undertake to provide services within the meaning of Section 611 of the German Civil Code and not to produce a work within the meaning of Section 631 of the German Civil Code, i.e. in particular not to bring about a success going beyond the agreed services. For the sale and delivery of movable goods, our separate General Terms and Conditions of Delivery apply, which you can access on our website <https://isc-konstanz.de/cos>.
- 1.3 These GTC shall also apply to all future transactions without the need for a renewed reference. Supplementary or deviating terms and conditions on your part shall only become part of the contract if we have agreed to their inclusion in writing. This shall also apply if we have rendered our performance with knowledge of these terms and conditions.

## **2. Offers, conclusion of contract**

- 2.1 Unless otherwise stated, our offers are subject to change. They are therefore only to be understood as an invitation to submit an offer, so that the contract is only concluded with our declaration of acceptance (order confirmation).
- 2.2 We may declare acceptance of your offer within two weeks, either expressly or tacitly, in particular by providing the agreed services. Insofar as your offer does not contain any significant change, you waive the receipt of our declaration of acceptance (Section 151 of the German Civil Code).
- 2.3 Our cost estimates presuppose an initial analysis of the order and are therefore associated with initial expenses. If the order has not been placed within six months and nothing else has been agreed upon, our cost estimate is therefore to be remunerated according to our respectively valid hourly rate.
- 2.4 We reserve the exclusive property rights and copyrights to all offers, presentations and other work results provided prior to the conclusion of the contract until the conclusion of the contract and full payment of our remuneration. Until this time, the transfer of our work results to third parties requires our express written consent.
- 2.5 If an order is not placed after a presentation, all documents, materials and other items provided by us must be returned to us. These items may also not be duplicated, processed or utilized in any other way. Subject to any confidentiality obligations, we reserve the right to use the presented work results for other projects. If you or third parties acting with your consent use the work results provided by us for the presentation, e.g. by reproducing, processing or otherwise exploiting them, you shall

be obliged to pay at least the remuneration provided for in our offer and, in the absence of a quantified offer, the remuneration customary in the market.

### **3. Scope of Services**

- 3.1 The subject of our order is the work provided for in our quotation.
- 3.2 Unless our offer provides otherwise, we owe only the performance of services within the meaning of Section 611 of the German Civil Code and not the production of a work going beyond these services within the meaning of Section 631 of the German Civil Code.
- 3.3 We process our orders with scientific care and according to the recognized state of the art. Without express written agreement, however, we do not assume any guarantee for the achievement of a specific research and development result or its economic usability.
- 3.4 If, by way of exception, we undertake to provide services under a contract for work and services, we shall prepare the work in accordance with your specifications (performance specification). In this case, you must check yourself whether the requirements stated in your specifications meet your needs. In the case of a separate order and remuneration, we will also advise you on the creation of a specification sheet or create the specification sheet for you. The created requirement specification has to be checked by you and becomes the basis of our order with your confirmation.
- 3.5 If you request changes or additions to our services after placing the order (change request), we will examine the additional effort and the effects on our time planning. We may reject changes if they are not feasible or not feasible in a timely manner with our existing resources; otherwise, we will send you a supplementary offer. The review of change requests and the preparation of supplementary offers shall be remunerated separately. If you accept our offer, our order will be adjusted accordingly; otherwise we will execute the order without taking the change request into account. Agreed delivery periods shall be extended by the number of calendar days on which we had to suspend our work due to the change request, as well as by a reasonable restart period.

#### **4. Service Dates**

- 4.1 Performance dates and performance deadlines are only binding if we expressly confirm them in writing.
- 4.2 If we realize that we will not be able to meet a binding date or deadline, we will inform you and arrange an appropriate adjustment.
- 4.3 We shall not be liable for the impossibility or delay of performance insofar as they are caused by force majeure or other events unforeseeable at the time of conclusion of the contract for which we are not responsible (e.g. disruptions of operations for which we are not responsible, difficulties in procuring materials or energy, strikes, shortages of labour, energy or raw materials, difficulties in obtaining official permits, pandemics or epidemics, official measures or the non-delivery, incorrect or delayed delivery by suppliers despite a congruent hedging transaction concluded by us). If such events significantly impede our performance or make it impossible and the impediment is not only of temporary duration, we shall be entitled to terminate the contract. In the event of hindrances of temporary duration, the performance deadlines and performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period. If you can no longer reasonably be expected to accept our performance as a result of the delay, you may terminate the contract by immediate written notice.

#### **5. Remuneration**

- 5.1 Our remuneration results from our offer and is understood to be exclusive of the statutory value added tax (VAT). The reduced VAT rate applies to work carried out in the special purpose operation.
- 5.2 All payments are due 10 days from the date of invoice, unless otherwise stated on the invoice.
- 5.3 Offsetting against our claims is only permissible if your counterclaim is undisputed or has been legally established. The same applies to the assertion of rights of retention.

#### **6. Project Management**

- 6.1 The parties will each appoint a project manager (if necessary also a deputy). In addition to the management, the project managers and their deputies are authorized to make all decisions relevant to the project and to issue and receive declarations of intent.

- 6.2 The minutes of project meetings drawn up by us shall become binding on both parties if we send you the minutes and you do not object to them in writing within one week, stating your reasons.

## **7. Cooperation obligations of the customer**

We rely on your cooperation in the execution of your order. This applies in particular to necessary technical requirements, samples and other items and information that we need to carry out the commissioned work. Any disadvantages incurred by you or us due to omitted, delayed, incorrect or incomplete cooperation shall be borne by you.

## **8. Handover of the work results, acceptance, retention of title**

- 8.1 We will transfer our work results to you after completion of the order according to the conditions of our offer. Unless otherwise agreed, we shall provide software only in object code.
- 8.2 Acceptance is only required if we have undertaken to produce a work within the meaning of section 631 of the German Civil Code. Acceptance is also not required if it is excluded due to the nature of the work. However, even if no acceptance is required, we may demand acceptance.
- 8.3 If a service provided by us is ready for acceptance, we shall notify this. We may also demand partial acceptance. Acceptance shall be declared without delay, but no later than one week after receipt of the notification of our readiness for acceptance, and may only be refused due to material defects. Acceptance shall be deemed to have taken place if it has not been refused within one month of delivery and our work does not contain any significant defects, at the latest, however, upon use of our work or payment of our remuneration. In the event of substantial defects, we shall remedy the work within a reasonable period and resubmit it for acceptance. If you are in default with the acceptance or the payment of an accepted work, we may withhold all further services.
- 8.3 We retain ownership of all embodied work results until our remuneration has been paid in full. The rights of use shall also only be transferred upon full payment of our remuneration. In the event that ownership of our work results expires as a result of combination, mixing or processing, it is already agreed now that ownership of the resulting uniform object shall pass to us pro rata until the agreed remuneration has been paid in full. In the event that our work results are resold to third parties, you hereby assign to us all rights arising from the resale until full payment of the agreed remuneration.

## **9. Rights of Use**

- 9.1 We grant you a free, simple, non-transferable and non-sublicensable right of use to the work results resulting from the execution of your order for the technical applications agreed upon when the order was placed.
- 9.2 Should you wish to have an exclusive right to use our work results against payment instead of a simple right, you must inform us of this in writing within three months of the handover of our work results. In this case we will send you a written offer. If the exclusive right of use has not already been agreed upon when the order is placed, however, neither you nor we shall be obliged to conclude such an agreement. In any case, we reserve a simple, gratuitous right of use to all work results.
- 9.3 The right to register property rights to our work results lies exclusively with us, so that we generally register any property rights in our own name. However, we are not obliged to register property rights. Should we register property rights as agreed, you shall reimburse us for the inventor's fees of our employees and an appropriate share of our costs for the registration, maintenance and defense of the property rights. If an exclusive right of use has been agreed in accordance with Section 9.2, we shall agree to an application for industrial property rights by you for those countries for which we do not apply for an industrial property right of our own. We may abandon the property rights applied for by us at any time. However, if an exclusive right of use has been agreed in accordance with Clause 9.2, we shall offer you these industrial property rights for takeover before the expiry of the term of protection. In all cases, however, we shall retain a simple right of use to our work results free of charge.
- 9.4 If, in the course of executing an order, inventions are made in which employees, organs or agents of both parties are involved and which cannot be registered for property rights separately according to invention shares (joint inventions), we shall agree on the exploitation of these inventions, the registration, maintenance and defense of property rights and the bearing of costs. Unless otherwise agreed, joint inventions may be used by either party free of charge.
- 9.5 If our work results can only be exploited by using other industrial property rights that we have already registered (background), we will offer you, upon written request, a simple right of use to be agreed separately and against payment for the applications agreed upon when the order was placed.

## **10. Warranty**

If we have undertaken to produce a work, the statutory provisions shall apply in the event of any defects, with the proviso that you must inspect the work results handed over by us without delay and give notice of any defects without delay and all claims due to defects shall become statute-barred after one year, unless longer periods are prescribed by law.

## **11. Third Party Rights**

- 11.1 Unless otherwise expressly agreed in writing, we do not research whether the use of our work results conflicts with the rights of third parties.
- 11.2 If relevant rights of third parties are known or become known that could prevent the use of our work results, the party that learns of these rights will inform the other party. In this case, we will decide by mutual agreement how third party rights that have become known should be taken into account in the further execution of our order. Even in this case, however, we cannot advise on any infringement risks and circumvention solutions. This advice can only be provided by legal and/or patent attorneys, who must be engaged separately by you.

## **12. Liability**

- 12.1 We shall be liable for damages, irrespective of the legal grounds, in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable
- a) for damages resulting from injury to life, body or health,
  - b) for damages resulting from the breach of contractual obligations, the fulfilment of which is a prerequisite for the proper execution of the contract and on the observance of which the contractual partner may regularly rely (essential contractual obligations); in this case, however, our liability shall be limited to the compensation of the foreseeable, typically occurring damage.
- 12.2 The aforementioned limitations of liability pursuant to Section 12.1 shall also apply in favor of our legal representatives and vicarious agents. However, they shall not apply to claims under the Product Liability Act.

- 12.3 Soweit sich aus den vorstehenden Bestimmungen nichts anderes ergibt, haften wir bei Verletzungen vertraglicher und außervertraglicher Pflichten nach den gesetzlichen Vorschriften.

### **13. Statute of Limitation**

- 13.1 All claims based on a breach of contract committed by us shall become statute-barred one year after the date of delivery of our work results, unless the commencement of the limitation period depends on the knowledge of the facts giving rise to the claim in accordance with the statutory provisions and you prove that you only became aware of these facts at a later date. The statutory maximum periods of limitation shall remain unaffected.
- 13.2 The above provisions shall not apply to damages resulting from injury to life, limb or health, nor to our liability for intent and gross negligence, under the Product Liability Act or for breach of fundamental contractual obligations.

### **14. Confidentiality**

- 14.1 Both parties shall treat all confidential information as confidential for the duration of the order and for a period of 5 years after its termination and shall not disclose it to third parties. All information which is marked as confidential or which is recognisable as confidential under the circumstances shall be deemed to be confidential. Excluded from this is information that was already known or generally accessible to the public before the notification, that becomes known or generally accessible to the public after the notification without breach of this confidentiality obligation or that was independently developed by the contractual partner without breach of this confidentiality obligation.
- 14.2 The parties shall only disclose confidential information insofar as this is necessary for the performance of the assignment (need-to-know) and the employee or agent concerned is subject to a legal or contractual duty of confidentiality.



## **15. Publications**

- 15.1 You are entitled to publish our work results with our written consent. We will grant our consent if interests worthy of protection (such as unpublished bachelor's or master's theses, dissertations or applications for industrial property rights) are not impaired.
- 15.2 If the information is not confidential information under paragraph 14.1, we are entitled to publish the results of our work and to advertise our cooperation if we notify you of the intended publication and you do not object to the publication within two weeks, but no later than after one year.

## **16. Foreign trade law**

- 16.1 Both parties undertake to comply with all national, European, foreign and international regulations of foreign trade law including embargoes and other sanctions.
- 16.2 Should we fail to provide a service or provide it late due to a prohibition under foreign trade law, the non-issuance of a required foreign trade law permit or a delay in the approval procedure, our liability for damages shall be excluded. This shall not apply if we or our representatives or vicarious agents have caused the default in performance intentionally or by gross negligence.

## **17. Cancellation**

- 17.1 Both parties are entitled to terminate the contract with four weeks' notice to the end of a calendar month, but no earlier than six months after conclusion of the contract, if no substantial progress has been made on the project after the expiry of a substantial processing period.
- 17.2 The right of both parties to extraordinary termination of a contract for good cause remains unaffected. Good cause for termination by us exists in particular if you are in arrears with the payment of our remuneration or have not provided a required act of cooperation even after expiry of a reasonable period.
- 17.3 Any termination must be in writing.

## **18. Other Provisions**

- 18.1 Amendments and supplements to a contract must be made in writing to be effective. This also applies to a waiver of the written form.
- 18.2 If you are a merchant, a legal entity under public law or a special fund under public law, the exclusive national and international place of jurisdiction for all disputes concerning our legal relations is Konstanz (Germany). The same applies if you have moved your place of residence or habitual abode out of the Federal Republic of Germany after conclusion of the contract or if your place of residence or habitual abode is unknown at the time our action is brought. In all cases, however, we are also entitled to bring an action at your general place of jurisdiction.
- 18.3 These GTC and all contracts concluded between us shall be governed by the laws of the Federal Republic of Germany, excluding the conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 18.4 Should individual provisions of our contracts be or become invalid or unenforceable in whole or in part, the rest of the contracts shall remain unaffected. The provision in question shall be replaced by the valid and enforceable provision that comes closest to its economic meaning and purpose. The same shall apply accordingly in the event of a loophole.
- 18.5 These GTC shall be interpreted in accordance with German law. The English language version is for information only and does not become part of the contract.

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International Solar Energy Research Center Konstanz, ISC Konstanz e.V.,

Rudolf-Diesel-Straße 15, 78467 Konstanz

Register of Associations: Amtsgericht Freiburg Nr. 380834

Represented by the Board of Directors:

Dr. Kristian Peter, Dr. Radovan Kopecek, Rudolf Harney, Dr. Peter Fath

Sales tax identification number: DE 249 711 603

[www.isc-konstanz.de](http://www.isc-konstanz.de)