

## GTC – Deutsche Institute für Textil- und Faserforschung Denkendorf

**General Terms and Conditions for all services (hereinafter also referred to as orders), such as the performance of testing, research and development orders, as well as for the delivery services, general services, and consulting services provided by the Deutsche Institute für Textil- und Faserforschung Denkendorf (DITF), a foundation under public law subject to the supervision of the Wirtschaftsministerium Baden-Württemberg**

version 1.2 (February 2017)

The Deutsche Institute für Textil- und Faserforschung Denkendorf (hereinafter referred to as DITF) performs orders in the textile sector through its institutes and centers, particularly in the applied sciences and development sector, and it performs testing orders as well. The terms and conditions set out hereinafter are primarily designed for these peculiarities.

### § 1

#### Applicability

The terms and conditions set out hereinafter shall exclusively govern all orders which have been placed with DITF. None of the client's terms and conditions which are either differing from or inconsistent with or supplementary to these terms and conditions shall become part of any respective agreement unless their applicability is expressly assented to by DITF in writing.

The terms and conditions set out hereinafter shall also govern all future transactions between the parties to any respective agreement without the necessity of any notice to that effect.

### § 2

#### Item of Agreement, Lead Time

**(1)** The item, the volume, and the content of any respective order are determined in individual agreements. Modification requests are subject to the explicit written assent and confirmation by DITF.

**(2)** DITF has discretion to choose the manner of completing any respective order.

**(3)** Orders are generally processed in the order of their acceptance and the services are performed according to the available capacity.

**(4)** Insofar as any respective order includes lead times or deadlines, these lead times or deadlines are only binding if DITF has explicitly agreed to treat them as binding. If DITF realizes that any respective binding lead time or any respective binding deadline cannot be met, then it will inform the client about the reasons of the delay and will arrange with the client for a reasonable adjustment.

**(5)** Individual orders are no basis for inferring any pro-mise of a subsequent cooperation or licensing.

### § 3

#### Compensation

**(1)** The compensation for the services shall be calculated on the basis of the prices quoted in any respective individual agreement, or else on the basis of the prices quoted in DITF's offer, or else on the basis of the prices shown in the price list of the respective testing laboratories applicable in each particular case.

**(2)** The prices are quoted exclusive of sales tax. The sales tax will be charged additionally at the rate applicable from time to time in accordance with the tax laws applicable from time to time.

**(3)** Reasonable advance payments may be requested and/or partial invoices equivalent to the value of the already performed services may be issued.

**(4)** DITF will immediately notify the client if it is foreseeable that the sought-for result of any respective order, particularly the research result and development result, cannot be achieved on the basis of the compensation agreed upon. At the same time, DITF will submit to the client a recommendation for an adjustment of the compensation based on DITF's reasonable discretion.

**(5)** The recommended adjustment shall become binding if the adjustment becomes necessary either due to reasons which were not foreseeable for DITF when the order was placed or which were beyond DITF's control and if no other agreement is reached with the client.

#### **§ 4**

#### **Payments**

**(1)** All payments shall specify the respective invoice number and be made to the bank account specified on the respective invoice in full with no deductions within 14 days after the issuance of the invoice.

**(2)** The client shall not set off any debts owing to DITF against any of its own claims unless those claims are either declared to be meritorious by unappealable judicial decision or not contested by us or admitted by us.

**(3)** The client may only exercise a right of withholding any payment owing if its counterclaim arises from the same contractual relationship.

#### **§ 5**

#### **Preexisting Intellectual Property**

**(1)** Each party owns and continues to own its intellectual property (protected and unprotected) existing at the inception of any respective order.

**(2)** Each party grants the other party a gratuitous non-exclusive right to use such preexisting intellectual property to the extent required for the performance of the respective contractual obligations and to the extent that there is no conflict with any right owned by any third party.

**(3)** As soon as any conflict with rights of third parties becomes known, the parties will give each other notice thereof without culpable delay.

#### **§ 6**

#### **Result of Order, Rights of Use, Inventions**

**(1)** The result of any respective order, particularly the research and development result, will be made available to the client after the completion of the order as provided in the offer.

**(2)** Testing results relate only to those submitted laboratory samples which have been labeled as tested. They are only legally binding when they bear DITF's stamp and have been signed in handwriting by a person authorized to act on behalf of DITF. Unused testing materials will either be returned to the client at the client's expense or disposed of by DITF on the client's behalf and expense. Without prior consultation with the client, reference samples will be destroyed after two years following the completion of the respective order, and documents and raw data will be destroyed after 10 years following the completion of the respective order unless otherwise agreed with the client.

**(3)** For the application purpose its order is based upon, the client receives a right which is non-exclusive and free of any charges to use those inventions which were created during the performance of the order, developed in direct connection with the respective order, and which are directly related to the item of the respective contract, and to use the intellectual property rights registered by and granted to DITF with respect to those inventions upon payment in full of the compensation due to DITF. The work results shall not be disclosed to any third parties without DITF's prior written permission unless DITF's permission to disclose the work results to certain third parties is incidental to the purpose of any respective individual agreement. DITF will not unreasonably withhold its permission. The client shall pay to DITF a share to be agreed upon of the cost of registering, maintaining, and defending the intellectual property rights, and it shall pay an employee inventor compensation when those intellectual property rights are used the amount of which shall be agreed upon in each particular case on the basis of the sales of the developed product made by the client.

**(4)** Instead of the rights provided under section 6.3 hereof, the client may, upon request and for valuable consideration, receive an exclusive right to exploit the inventions possibly created during the performance

of any respective order and the rights registered by and granted to DITF with respect to those inventions for the application purpose its order is based upon. Such a request shall be made to DITF in writing no later than within three months following the disclosure of the respective invention. DITF may retain a right to use that invention which is non-exclusive and free of any charges. In any case, DITF will retain a right to use such inventions for development and research purposes which is non-exclusive and free of any charges.

**(5)** The client receives a right which is non-exclusive and free of any charges to use the copyrighted products, databases, and know-how created during the performance of any respective order for the application purpose its order is based upon. An exclusive right to use any of the above for the application purpose can only be assigned by a separate agreement.

**(6)** Inventions jointly achieved by the parties to any respective contract (co-inventions) during the performance of any respective order may be used and licensed by either party to such contract without paying any financial compensation. The parties to any such contract shall each bear a share to be agreed upon of the cost of registering, maintaining, and defending the respective intellectual property rights. In case any such invention is made use of, the share to be borne should be based on the benefits obtained from such use. The client shall pay a prorated employee inventor compensation when using any such invention the amount of which shall be agreed upon in each particular case on the basis of the sales made by the client through the use of the respective invention. Section 6.5 clause 1 hereof shall apply analogously to copyrighted products which have been jointly created by the parties to any respective contract (co-copyrights) during the performance of any respective order.

**(7)** If any already existing intellectual property rights of DITF are used during the performance of any respective order which the client needs to exploit the result of the respective order, then the client will receive a non-exclusive right to use those intellectual property rights for valuable consideration to be separately agreed upon provided that there is no conflict with any other obligations of DITF.

## **§ 7**

### **Intellectual Property Rights Owned by Third Parties**

**(1)** DITF's liability to the client for the infringement of intellectual property rights is governed by the provisions hereinafter. DITF shall only be liable if such intellectual property rights are protected in Germany. DITF's liability is additionally subject to the requirement that either general or consulting services were contracted for and that DITF fails to disclose without culpable delay intellectual property rights it gains knowledge of during the performance of any respective order which might prohibit the use agreed upon under section 5 hereof, or that research or development services were contracted for on the basis of a sales contract or on the basis of a work and labor contract. Lastly, DITF's liability is subject to the requirement that the client notifies DITF without culpable delay of any claim based on intellectual property rights asserted against the client by any third party and that it proceeds as agreed with DITF when dealing with those claims and when pursuing its rights; if either of those requirements is not met, then DITF is discharged of its obligations. If intellectual property rights owned by third parties are infringed upon and if the client is, therefore, entirely or partially prohibited from using the ordered item by unappealable judicial decision, then DITF will at its expense choose to either

**a)** procure the right to use the ordered item or

**b)** design the ordered item such that it is free of intellectual property rights or

**c)** replace the ordered item by another item of equivalent efficiency not infringing upon any intellectual property right or

**d)** take the ordered item back against reimbursement of the price minus a reasonable compensation for the use made of the ordered item until then.

**(2)** DITF is exempt from any liability if the client modifies the ordered item or installs any additional component or attaches the ordered item to any other item or appliance thus infringing on intellectual property rights owned by third parties.

**(3)** Just as little is DITF liable for any infringement of intellectual property rights owned by third parties with regard to an ordered item which has been made on the

basis of drawings, developments or other information supplied by the client. In that case, the client shall indemnify DITF from all third party claims.

**(4)** The client has no additional or other claims if intellectual property rights owned by third parties are infringed upon. In particular, DITF will neither compensate any consequential damages such as loss of production or loss of use nor lost profits. This does not apply to the extent that liability for damages which are typical for any respective contract and thus foreseeable is mandatory under the applicable law in cases of intentional or grossly negligent misconduct or if essential contractual duties are negligently breached and only ordinary negligence is involved. The client's right to rescind any respective contract remains unaffected.

## **§ 8**

### **Liability**

**(1)** DITF will perform the agreed upon work with scientific diligence and on the basis of the generally accepted standards of science and technology; it does not warrant, however, that the results sought-for as part of the research and development work are actually achieved. Unless otherwise provided above, DITF shall be liable according to the provisions of statutory law if the client claims damages caused by intentional or grossly negligent misconduct including intentional or grossly negligent misconduct by DITF's representatives or vicarious agents. If DITF is not alleged to have breached any respective contract intentionally, then the damages to be compensated by it shall be limited to the foreseeable, typically occurring damages.

**(2)** DITF shall be liable according to the provisions of statutory law if it culpably breaches an essential contractual duty; in that case, the damages to be compensated by it shall be limited to the foreseeable, typically occurring damages, however.

**(3)** The liability for any culpable injury to life, body, or health shall remain unaffected; the same shall apply to the mandatory liability under the German Product Liability Code (Produkthaftungsgesetz).

**(4)** Any liability is disclaimed unless provisions to the contrary have been made above.

**(5)** The period of limitation for warranty claims shall be 12 months as of the passing of risk.

**(6)** The period of limitation in the case of a recourse against the supplier according to sections 478 and 479 of the German Civil Code (BGB) shall remain unaffected; that period of limitation is five years as of the delivery of the defective item.

## **§ 9**

### **Special Provision for Research and Development Work on the Basis of Sales Contracts or Contracts for Work and Labor and for Other Deliveries and Services**

**(1)** To the extent that DITF is obligated to make or deliver an item or to achieve a research or development result on the basis of an explicit promise to that effect, defective performance of such obligations is governed by the pertinent provisions of the law on sales contracts or on contracts for work and labor, subject, however, to the limitations under the sections hereinafter, unless the provisions under section 7 hereof apply.

**(2)** If the item delivered by DITF or the research and development result achieved by DITF turns out to be defective, then DITF shall, as a first step, be granted the opportunity even repeatedly, depending on the nature of the defect, of the research and development result, and of the other circumstances to remedy the defect through subsequent performance at their choice either by subsequently curing the defect or by replacing the item.

**(3)** If DITF refuses such subsequent performance or if such subsequent performance fails to cure the defect or if the client cannot be reasonably expected to grant an opportunity for subsequent performance, then the client may at its choice either rescind the contract or demand that the agreed upon compensation be lowered (reduction) or claim damages. The right of rescission may only be exercised if the defect is serious. It expires if the client fails to declare the rescission at the latest within 14 days after having received the notice of refusal or failure of subsequent performance or at the latest within 14 days after the unreasonableness of the subsequent performance becomes apparent for the client. DITF shall only be liable to pay damages pursuant to subsections 8.1 through 8.4.

**(4)** The client shall examine the item delivered by DITF or the research and development result achieved by DITF without culpable delay and give notice to DITF of any defect without culpable delay. Claims based on

noticeable defects are nonexistent unless DITF is notified thereof within 14 days following delivery.

(5) Claims based on defects are subject to the limitation periods provided under subsections 8.5 and 8.6.

### **§ 10 Retention of Title**

(1) Title to the result of any respective order and to the rights mentioned under sections 6.2, 6.3, 6.4 and 6.6 hereof shall only pass to the client upon payment in full of the agreed upon compensation. DITF's ownership rights and rights of use shall neither be pledged nor be transferred as a security.

(2) The contracting parties agree now, already,

that, if DITF's title expires through processing, confusion or attachment, a value based (invoice value) share in the title to the thus created integrative item passes to DITF until the agreed upon compensation has been paid in full.

(3) As a provision for the case that the result of any respective order is resold, the client does now, already, assign a value based (invoice value) share in all of its rights arising from any such resale to DITF in a manner effective towards all third parties until the agreed upon compensation has been paid in full.

### **§ 11 Nondisclosure**

(1) For a period of five years following the completion of any respective order, the contracting parties shall not make any technical or business information mutually disclosed to one another and classified as confidential accessible to any third party. This shall not apply to information which has been known to the respective other party or to the public or which has been generally accessible before it has been disclosed or which has without any contribution or fault by the other contracting party become known to the public or generally accessible after having been disclosed or which is identical with information that has been disclosed or made accessible to the other contracting party by an authorized third party or which has been independently developed by an employee of the other contracting party who had no knowledge of the disclosed information. The burden of proof is on the contracting party claiming the notoriety of any such information.

(2) None of DITF's subsidiaries and affiliated companies shall be treated as third parties in terms of this provisi-

on. Just as little shall any of DITF's subcontractors assigned to perform subservices during the performance of any respective order and committed to confidentiality by DITF count as third parties.

(3) DITF may file away copies of documents made available to DITF for inspection and which are relevant for the performance of the respective order.

(4) The contracting parties agree not to make any use themselves of the information classified as confidential regarding the equipment for making models or to let any third party make use thereof, and they particularly agree not to make/install or run any such products/equipment themselves or have any third party do so without the written permission by the respective other party.

### **§ 12 Publication, Promotion**

(1) After prior consultation with DITF, the client is authorized to publish the result of the order, particularly the research and development result, provided that the originator and DITF are mentioned in the publication. Such consultation shall be held to make sure that legitimate interests of DITF, such as dissertations, diploma theses or applications for the registration of intellectual property rights are not adversely affected. The client shall not use the name of DITF or of the respective institution or center without their respective permission.

(2) The client's agreement to publications by DITF relating to any respective application purpose shall be timely sought if the client owns exclusive rights to the result of any respective order.

### **§ 13 Notice of Termination**

(1) Each contracting party may terminate any respective order without cause subject to a notice period of three months thus making the order expire at the end of the month in which the notice period expires. Such a termination without cause shall not be permitted prior to the expiration of a six month period following the effective date of any respective agreement.

(2) Each contracting party may prematurely terminate any respective order for cause.

(3) After each effective termination, DITF will surrender the result of the respective order achieved by the expiration of the notice period within eight weeks. The client shall reimburse to DITF the cost incurred until

the expiration of the notice period. Labor cost shall be compensated on the basis of the amount of time spent working. The foregoing applies without prejudice to either party's right to claim damages if the termination is caused through the other contracting party's fault.

**(4)** All license and user agreements expire automatically if a petition for the opening of insolvency proceedings over the client's property and assets is filed. The client is liable to pay all license fees and employee inventor compensations outstanding at that time.

#### **§ 14**

##### **Miscellaneous**

**(1)** Any ancillary agreement, modification, and amendment shall be made in writing.

**(2)** The place of performance of DITF's services and of the client's payment is Denkendorf.

**(3)** The laws of Germany shall apply, the applicability of the United Nations Convention on the International Sale of Goods (CISG) is opted out, however.

**(4)** The exclusive place of jurisdiction – even for summary draft enforcement proceedings and summary check enforcement proceedings - shall be at Denkendorf if the client is a merchant without prejudice, however, to DITF's right to resort to any court of legal jurisdiction.

**(5)** Should individual or several provisions hereof be or become invalid in part or in full, then the validity of the other provisions shall not be affected thereby.