

# **General Terms and Conditions**

## **RESEARCH CENTER FOR NON DESTRUCTIVE TESTING GmbH**

### **1. Field of Application**

1.1 These General Terms and Conditions (hereinafter "GTCs") shall apply for all transactions and contracts, especially for research and service contracts, reports, technical expertise and deliveries, for which the Research Center for Non Destructive Testing GmbH (hereinafter "RECENDT") is the contractor.

1.2 RECENDT will legally operate exclusively on the basis of these General Terms and Conditions. These GTCs apply to the present business transactions as well as to all future business processes in connection with statements made herewith in brochures, price lists, advertisements, on packaging, etc., regardless of whether these are in verbal or written form or on the Internet.

1.3 Deviating General Terms and Conditions of the contract partner will not be recognized by us. The contract partner acknowledges this disqualification of validity. RECENDT is not obliged to contradict the GTCs of the contract partner, also not in the case that the validity of the GTCs is stated as an express condition.

### **2. Offers**

2.1 Offers of RECENDT are considered non-binding.

2.2 The nature and scope of the agreed services shall be as specified by the respective offer and these General Terms and Conditions.

2.3 RECENDT is obliged to orderly execute the contracted services according to scientific and technical standards, but is not obliged to bring about a certain result or success.

2.4 If the legal position or situation changes after the conclusion of the contract, this has no influence on the current contractual relationship.

### **3. Conclusion of Contract**

3.1 The contract will be deemed as concluded when RECENDT has sent a written order confirmation or a consignment after receiving an order. A telefax or an e-mail can substitute for the written form. Our delivery slips, resp., outgoing invoices are also valid as order confirmations.

3.2 If an order confirmation of RECENDT contains changes in the order, these are deemed as approved by the Client, provided that he/she does not immediately reject them in writing.

3.3 Details contained in catalogs, brochures and the like, as well as miscellaneous written and verbal statements, are only applicable if reference is explicitly made to them in the written contract, resp., in the order confirmation. All offer and project documents, as well as plans, sketches and other technical data and documentation always remain the intellectual property of RECENDT, as do samples, catalogs, brochures and the like. Any exploitation, reproduction, dissemination, publishing or demonstration may only follow with the express consent of RECENDT. All documents can be reclaimed and are to be sent to RECENDT without delay if the order shall be placed elsewhere.

3.4 Subsequent amendments and additions to the contract, including the GTCs, require written consent to take effect. The same applies to the waiver of the written form.

3.5 Any types of verbal information, ancillary agreements, as well as all other declarations and commitments of RECENDT are void insofar as they are not confirmed in written form as agreed upon by RECENDT management. Verbal information, ancillary agreements, as well as all other declarations and commitments of RECENDT employees are likewise void. RECENDT employees are particularly not authorized to make legally binding declarations, such as commitments about certain delivery dates, prospects of success (of research projects), etc.

3.6 RECENDT shall be free to transfer the awarded contract or parts of it to third parties (subcontract).

### **4. Client's Duties to Inform and Cooperate**

4.1 The Client has to ensure that RECENDT, also without their express request, punctually receives, resp., is provided with all documents and other materials and resources (data, network access, etc.), in whatever form, that are required for the contractual provision of services, and to inform them about all processes and circumstances that are important for the execution of the contract. This also applies to the documents, processes and circumstances, etc., that become known through RECENDT during the fulfillment of the contract.

4.2 For services and preliminary work provided by RECENDT, the Client ensures that the legal positions concerning these services and preparatory work are of such a nature that RECENDT will not be confronted with an infringement of intellectual property rights, know-how rights and editing rights. The Client indemnifies and holds RECENDT harmless with respect to resulting competition law claims, intellectual property rights claims and any other claims, and especially has to compensate RECENDT for all resulting disadvantages, regardless of fault. Corresponding to this, the Client is obliged to immediately inform RECENDT if injury or intellectual property claims or other service protection claims are threatening or will be made.

4.3 The Client ensures that the organizational framework conditions during the fulfillment of the contract at his/her place of business allows, as far as possible, for an undisturbed working environment conducive to the swift progress of the service process.

4.4 A possible additional expense for RECENDT resulting from the fact that the Client does not or only partially fulfills his/her cooperation obligations, resp., provides incorrect or incomplete information, resp., documents, or that these subsequently change, or that he/she does not create the preconditions for RECENDT to fulfill the contract in due time, shall be borne by the Client and will be calculated according to expenditure. In addition, the delivery and service deadlines will be correspondingly extended. In this case, RECENDT is entitled to charge the Client for all expenditures. If the Client does not or only partially fulfills his/her cooperation obligations, if the execution is delayed or completely impeded by circumstances that lie in the Client's sphere, or if the Client rejects the fulfillment of the contract by RECENDT and does not remove the obstacles despite being requested to do so

after being granted a 14-day grace period, RECENDT can withdraw from the contract and is freed of its contractual duty to perform. In this case, RECENDT retains its claim to full remuneration.

The Client is obliged in any case to compensate RECENDT for any resulting damages, particularly a loss of profit, regardless of the fault of the Client.

4.5 The Client has to ensure compliance to all relevant safety-related, legal or official provisions, requirements or regulations for the implementation or the use of the contract deliverable and indemnifies and holds RECENDT harmless to this effect.

## 5. Prices

5.1 Prices apply ex works, resp., ex stock of RECENDT excluding packaging, loading, shipment costs, insurance and value added tax. If fees, taxes or other duties are charged in connection with the consignment, these are borne by the Client. If the delivery of the goods has been agreed upon, this, as well as a transport insurance desired by the Client, will be separately invoiced. If insurance is taken out upon request of the Client, RECENDT will only act as an intermediary without any responsibility, resp., liability. The packaging (e.g., crates, padding, etc.) is to be disposed of by the Client at his/her own costs.

5.2 For an order that differs from the offer, RECENDT retains the right to make an appropriate price change, resp., price adjustment.

5.3 The prices are based on the service specifications and costs at the time of the non-binding offer of RECENDT, namely without their knowledge of the local conditions. Should the services and/or costs change, resp., increase at the time of delivery – among others, also through knowledge of the local conditions – RECENDT is entitled to accordingly adjust the prices.

5.4 The costs for carfare, daily allowances and lodging will be separately invoiced to the Client. Transit times are considered as working time.

## 6. Delivery

6.1 The term of delivery begins with the latest of the following points in time:

- a) Date of order confirmation;
- b) Date of fulfillment of all the technical, commercial and other requirements the Client is responsible for;
- c) Date on which RECENDT receives a deposit or a security (e.g., guarantee, bank guarantee, etc.) expressly agreed upon before delivery of the goods/service.

6.2. Delivery dates indicated on the order confirmation, resp., in other correspondence of RECENDT, are the prospective delivery dates and are non-binding.

6.3. RECENDT is entitled to carry out partial and pre-deliveries.

6.4. RECENDT is endeavored to observe the binding delivery and service dates as far as possible. If these dates are exceeded, the Client is to set a reasonable, minimum 2-week grace period.

If RECENDT does not fulfill the requirements within the 2-week grace period or does not offer the fulfillment, the Client can – except in the cases of Points 4.4, 6.5 and 6.6 – declare the still outstanding service within 8 days from the time of the expiration of the set grace period. RECENDT is liable for a possible damage resulting from the non-fulfillment or delayed fulfillment only in the case of malicious intent or gross negligence. The amount of compensation for damages is limited to the breach of faith, resp., a lower non-fulfillment or delay damage. The further charging of possible punitive damages or contractual penalties is, in this case, excluded. Other claims based on delivery delays that are not listed under this point are excluded.

6.5 Permissions of third parties that are officially required and needed to execute orders are to be obtained by the Client at his/her own costs. If such permissions are not granted in due time, the rules of Point 4.4 of these General Terms and Conditions shall analogously apply.

6.6 If the following circumstances that hamper or delay the observance of a stipulated delivery, resp., completion date occur, the delivery, resp., service deadline is at any rate extended by the duration of these circumstances: work conflicts and all circumstances independent of the will of the parties such as, e.g., fire, mobilization, confiscation, embargo, prohibition of money transfers, insurrection, lack of transportation means, general lack of supplies, curtailing of energy consumption, as well as problems not of their own fault with the energy supply, delivery delays on the part of the supplier of RECENDT, as well as technical difficulties that lie in the character of the contract and make the execution for RECENDT or the suppliers of RECENDT impossible or unacceptable or lead to defects that impair the services owed. The Client has to set a reasonable grace period after the discontinuation of the reason. If lasting hindrance occurs, the Client has the right to withdraw from the contract. If the mentioned circumstances exist, the warranty and damage claims, as well as the right to dispute the contract due to error, are excluded.

6.7 The circumstances stated in Points 4.4, 6.5 and 6.6 are to be immediately documented by the contract partners in written form and sent in written form to the other respective contract partner.

6.8 If the purchased delivery item is exported, the contract partner of RECENDT is obliged to provide for the necessary export and customs authorization and the like at his/her costs. RECENDT is not liable for the legitimacy of the export of the delivery item. Should expenditures or costs – of whatever type or for whatever legal reason – arise for RECENDT through the shipment, transport or export of the delivery item, the contract partner indemnifies and holds RECENDT harmless to this effect.

## 7. Receiving

The Client of RECENDT is not allowed to refuse the receiving of deliveries and services. This also applies to the presence of minor defects.

## 8. Transfer of Risk and Place of Performance

Use and risk are transferred to the Client upon dispatch of the delivery ex works, resp., ex stock, namely irrespective of the pricing (such as, e.g., post-paid, CIF and the like) stipulated for the delivery. This also then applies if the delivery takes place in the scope of an assembly or if the transport is executed or organized, resp., led by RECENDT.

Transport is always carried out – also in the case of partial deliveries – at the cost and risk of the Client.

## 9. Assembly and Erection

For the assembly and erection, the following stipulations apply, unless otherwise agreed in writing:

9.1 The Client has to take over at his own costs and to punctually supply:

a) all earth-moving, construction and other ancillary work outside of the scope of RECENDT, including the required skilled and unskilled employees, building materials and tools,

b) the required equipment and materials necessary for the assembly and erection, such as scaffolding, lifting devices and other appliances, fuels and lubricants,

c) energy (compressed air, electric power supply, etc.) and water at the point of use, including the connections, heating and lighting,

d) enough large, suitable, dry and lockable rooms at the assembly site for the storage of machine parts, devices, materials, tools, etc., and proper working and break rooms for the assembly/erection personnel, including sanitary facilities as are appropriate in the specific circumstances; moreover, the Client has to take measures to protect the property, resp., possessions of RECENDT and the assembly/erection personnel at the construction site that he/she would take for the protection of his/her own property, resp., possessions.

e) protective clothing and safeguards that are required as a result of special circumstances of the assembly site.

9.2 Prior to commencing the assembly work, the Client has to provide on his/her own accord the required information about the location of concealed electricity, gas and water lines or similar installations as well as required structural data.

9.3 Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly/erection and any preparatory work must have advanced to such a degree that assembly/erection can be started as agreed and carried out without interruption.

9.4 If assembly, erection or commissioning is delayed due to circumstances for which RECENDT is not responsible, the Client shall bear the reasonable costs incurred for idle times and any additional travelling of RECENDT or the erection personnel (incl. labor costs for the provided assembly/erection personnel).

9.5 The Client shall attest to the hours worked by the erection personnel towards RECENDT at weekly intervals, as well as the completion of assembly, erection or commissioning.

9.6 Acceptance is deemed to have taken place as soon as the delivery/service has reached the sphere of the Client. If, after completion, RECENDT demands the acceptance of the delivery, the Client has to carry this out. If this does not occur, acceptance is deemed to have taken place. Acceptance is not deemed to have been effected if a test phase has been scheduled in the offer of the contract partner and this has been accepted on the part of RECENDT in the course of acceptance, namely for the agreed duration of this test phase. After its expiration, the delivery/service is considered as accepted.

## 10. Payment

10.1 The payments shall be made in keeping with the agreed conditions of payment. Unless specific conditions of payment

have been agreed upon, 30% of the price shall be due upon receipt of the order confirmation, and a further 20% after half of the delivery period has lapsed. The rest of the owed payment is due within 30 days after presentation of the final account. Discount payments require a separate agreement. Payments of the Client are considered as made as of the time the sums are deposited in the account of RECENDT in the agreed currency.

10.2 In the case of partial invoices, the corresponding partial payments are due upon receipt of the respective invoice. This also applies to billing amounts resulting from subsequent deliveries or other agreements beyond the original contract sums, regardless of the stipulated terms of payment for the main delivery.

10.3 Payments have to be effected in cash without any deductions to the paying office of RECENDT in the agreed currency.

10.4 If liabilities from earlier deliveries and services exist, these shall be paid in the order of their creation.

10.5 Discount agreements completely cease to be effective as soon as a delayed payment occurs (also with partial payments), resp., if all other outstanding claims also have not been settled at the latest upon receipt of the discounted invoice amount.

10.6 The Client is not permitted to offset charges against the demands of RECENDT for any possible counterclaims arising from any title whatsoever. The Client is moreover not entitled to withhold payments due to warranty claims or other counterclaims.

10.7 If the Client is in arrears with stipulated payments or other services from this or other contracts, RECENDT can, without prejudice to their other rights,

a) postpone the fulfillment of their own commitments until this payment or other services are effected and use an appropriate extension of the delivery deadline, and/or make the total outstanding sum due immediately, and charge a default interest of 8% above the basic interest rate as of the due date;

b) announce the withdrawal from the agreement after allowing a 14-day grace period. Upon demand of RECENDT, the Client has to return the already supplied goods to RECENDT and to provide compensation for an eventual reduction in the value of the same, as well as reimburse RECENDT for all expenses they incurred in connection with the execution of the contract. In addition, the Client is obliged to pay damages.

c) In any case, RECENDT is entitled to invoice preliminary legal costs, especially late payment charges and lawyer's fees.

## 11. Protection of the Intellectual Property of RECENDT

11.1 The Client is obliged to ensure that reports, assessments, organization plans, designs, drawings, calculations and the like, which are created by RECENDT in the scope of the contract, will only be used for contractual purposes announced by and objectively discernible for RECENDT.

11.2 All rights – also those first arising from the performance of the contract – particularly intellectual property, copyright, know-how and editing rights, remain with RECENDT. This especially applies also to the inventions and related know-how of RECENDT and their employees.

11.3 For copyright-protected works and services of RECENDT, the Client receives, unless otherwise agreed, usage rights within the meaning of § 24 Paragraph 1 Sentence 1 of the Copyright Law upon receipt of the full payment of the compensation owed. The circulation of the contracted service through the Client to third parties for the use by these requires the express written consent of RECENDT. In any case, a liability of RECENDT to third parties will not be established as a result.

11.4 The usage of the contracted services of RECENDT for advertising purposes requires the consultation and written consent of RECENDT.

## 12. Duty of Secrecy, Data Protection

12.1 The Client is obliged to maintain secrecy about all matters that become known to him/her in connection with the contractual relationship, unless a contract partner releases the other from this duty of secrecy or statutory obligations to disclose are in conflict.

12.2 RECENDT is authorized to allow personal data entrusted to them in the scope of the specific function of the contract to be processed or to be processed by third parties (e.g., a data processing company). In addition, the provisions of the Data Protection Law 2000 in the respectively effective version apply. The Client also has to comply with the duty to inform those affected, resp., to register in the Data Processing Register, provided that nothing else was agreed upon in express written form.

## 13. Warranty and Liability

13.1 It shall be expressly stated that no warranty or liability whatsoever will be taken over by RECENDT for the achievement of certain research and development goals and R&D results.

13.2 The warranty period amounts to 24 months. The presumption of § 924 of the Austrian General Civil Law Code does not apply. A removal of a defect by RECENDT, in respect to parts of the delivery, resp., service of RECENDT that are not affected by the defect, has no legal implications concerning the duration of the period; in particular, the warranty period of those parts is not extended through the removal of defects.

13.3. An alleged defect is – in regard to other limitation of all compensation claims – to be claimed, for open defects, within 8 days of the delivery, resp., service, resp., for hidden defects, within 8 days of being recognized, in writing under concrete description of the type of defect. During the delivery, resp., during the acceptance, the delivery/service is to be examined for defects that can be recognized without great effort, resp., for integrity. Possible reclamations are, in view of other limitation of all compensation claims, to still be stated in writing at the delivery, resp., acceptance, but in any case still be stated before the countersigning of any delivery documents on these, and are to be claimed at RECENDT within 8 days under concrete description and complete documentation.

13.4 The Client is responsible for verifying that a defect attributable to RECENDT exists. For any fault whatsoever, the reversal of the burden of proof according to § 1298 of the Austrian General Civil Law Code applies in any case.

13.5. According to their choice, RECENDT provides a warranty through improvement, price reduction or replacement. A reasonable time limit for fulfilling their warranties is given. The claim of the Client to have the defects removed by a third party, resp., to a compensation for the associated costs only

exists if, after an acceptance of the defect by RECENDT, a 14-day grace period set by the Client after the expiration of this reasonable deadline for removing the defects, with a registered letter under the simultaneous disclosure of third-party costs, passes without fulfillment. A claim to a possible damage due to delay – no matter how it occurs – cannot be invoked.

13.6 All ancillary costs (such as, e.g., installation and removal, transport, disposal, travelling and transit time) arising in connection with the removal of the defects are borne by the Client. For warranty work in the company of the Client, the required laborers, lifting devices, scaffolding and small items, etc., are to be provided at no cost.

13.7 If a product is manufactured on the basis of construction specifications, drawings, models, dimensional data, patterns or other specifications of the Client, the warranty, resp., liability of RECENDT is limited to the execution done in accordance with the information of the Client. An examination of the Client's information, resp., an inspection of the services and products during the provision by the Client will not be conducted by RECENDT, resp., RECENDT takes on no responsibility, resp., liability whatsoever for the information, resp., services and products of the Client and the consequences resulting from them. In these cases, the Client has to indemnify and hold RECENDT harmless in regard to an infringement of the property rights of third parties.

13.8 The warranty is excluded in the following cases:

- non-compliance with the installation, operation or maintenance instructions, especially assembly and erection not effected by RECENDT, insufficient equipment, non-compliance with the installation requirements and implementation and user conditions, excessive use of the parts beyond capacity indicated by RECENDT, negligent or incorrect treatment and use of unsuitable operating materials, negligent or improper use or insufficient maintenance;
- non-compliance with the official admission requirements,
- defects resulting from the material provided by the Client,
- damages resulting from the treatment by third parties, atmospheric discharges, power surges or chemical influences,
- wear and tear which is also unavoidable during proper and adequate use according to regulations (natural wear),
- improvements or changes not made by RECENDT or done without the approval of RECENDT.

13.9. A possible warranty claim can first be invoked after the complete payment of the service/delivery according to the stipulated terms of payment. The provisions 13.1 to 13.8 also apply to that effect for any responsibility for defects resulting from other legal reasons.

13.10. The damage compensation of the Client lapses within 2 years from the delivery, regardless of the recognition of the damage, resp., the damaging party. Damage compensation is excluded in the cases of Point 13.8. Any liability for faulty instructions of the Client in the sense of Point 13.7 is likewise excluded. A liability for RECENDT arising from damage compensation only exists in the case of malicious intent, resp., gross negligence. The liability is limited to the amount of half of the contract sum. Compensation for consequential damages and pure financial losses, as well as loss of profits, loss of interest payments and for damages resulting from claims of third parties against the Client is excluded. Liability for unforeseeable damages is altogether excluded.

13.11 If commercial EDP programs are used for service provision, RECENDT does not assume any warranty, resp., liability for consequential damages from program errors, resp., other software errors.

13.12 The product liability of RECENDT is limited to those cases in which the product liability law (Federal Law Gazette No. 99/1988) prescribes a liability. For material damages suffered by an entrepreneur, any liability to all of the companies involved in the manufacturing and sales is excluded.

#### **14. Termination of the Contractual Relationship, Withdrawal from Contract**

14.1 The services of RECENDT are considered to be completed after the delivery, resp., sending of the end report, if applicable, also test report or the final presentation and the like; or, in the case of personnel services, training sessions and the like, immediately after the performance of the agreed services.

14.2 Cancellations by the Client are only possible with the written consent of RECENDT. If RECENDT agrees to a cancellation, they have the right to charge a cancellation fee amounting to 30% of the order value not yet invoiced, in addition to the services provided and the costs incurred.

14.3 RECENDT is entitled to prematurely dissolve the contractual relationship for an important reason that makes further cooperation unacceptable (extraordinary termination), particularly

- a) if a bankruptcy or settlement proceeding is opened regarding the assets of the contact partner, or if a request for the introduction of a bankruptcy proceeding is denied due to insufficient assets;
- b) if the contract partner issues a non-permissible notice of cancellation, or
- c) if the agreed non-disclosures or if the due dates, especially payment dates after the setting of a deadline, are not completely observed.

#### **15. Loyalty**

The parties to the contract obligate themselves to reciprocal loyalty. They will not hire away staff or employ, including by way of third parties, staff of the other party to the contract who have worked on the realization of the projects, during the duration of the contract or for 12 months after the end of the contract. A party to the contract in violation of this clause is obliged to pay contractual penalty in the amount of one annual salary of the employee.

#### **16. Error**

The challenge of the contract concluded between RECENDT and the Client due to error or laesio enormis is excluded.

#### **17. Reservation of Title**

17.1 RECENDT reserves the title to all materials delivered/transferred by them until the complete fulfillment of all financial commitments by the Client. The Client has to fulfill the required formal requirements to safeguard the retention of title. In case of seizure or other claim on the part of a third party, the client is obliged

to claim the right of title of RECENDT and to inform RECENDT immediately.

17.2 The Client is entitled in the scope of regular business activities to resell and process the retained item. All other directions, such as pledge or ownership transfer, are not granted. A reselling may only occur under retention of title, unless it happens against immediate payment during the transfer, whereby in this case the proceeds obtained by the Client have to at least amount to the remuneration to be paid to RECENDT and the retention of title of RECENDT extends to the proceeds obtained for the retained item amounting to the remuneration they are entitled to.

17.3 Herewith, the Client now assigns to RECENDT, for the purpose of safeguarding their claims, all claims he/she has from the sale of the retained goods, also if these were processed, remodeled or altered, together with the securities granted, and RECENDT accepts the assignment. The charges resulting out of this are borne by the Client. Upon demand, the Client has to announce to RECENDT the ceded claim along with its obligor, to provide all of the information and documentation required for the dunning of the claim, and to verifiably inform the garnishee about the ensuing assignment of claim. The Client is further obliged to undertake all actions and to make all declarations that are necessary for the effectiveness of the assignment of claim. Upon the request of RECENDT, the compliance with the formal requirements of the Client is to be verified.

#### **18. Sending of E-Mails**

The Client declares his/her express consent to be informed by RECENDT via e-mail, also after the end of the contractual relationship, about events and services through newsletters or other information texts.

#### **19. Miscellaneous**

If individual provisions of this contract are or become ineffective, the remaining provisions of this contract shall not be affected. The contracting parties shall co-operate as partners in order to find a provision which comes as close as possible to the ineffective provisions.

#### **20. Final Provisions**

20.1 The contract partners have agreed upon the factually competent court of Linz as the place of jurisdiction, whereby RECENDT is entitled to institute legal proceedings at other courts, provided that a different place of jurisdiction is given.

20.2 Austrian law applies for all disputes, whereby the application of the UN commercial law is explicitly excluded.

20.3 The office of RECENDT is deemed as the place of fulfillment for the provision of services/delivery and payment, namely also if the transfer or service provision occurs at a different location.