

## **General Terms and Conditions of Business of APWORKS GmbH for Research and Development Contracts to be Carried out by the Company**

### **1 Scope**

- 1.1 The General Terms and Conditions of Business set out below are applicable to all Research and Development orders to be carried out by APWORKS GmbH, unless otherwise laid down in the bid or the order confirmation by APWORKS. In particular, they shall apply with respect to any legal entities under public law and any trust assets under public law.
- 1.2 The General Terms and Conditions of Business of the Principal shall not be recognized unless APWORKS expressly agrees to their application. The General Terms and Conditions of APWORKS shall also be applicable if APWORKS carries out the order without reservation in the knowledge of different conditions, or conditions deviating from these General Terms and Conditions of Business.

### **2 Offer and Processing Time**

- 2.1 The bid submitted by APWORKS as contractor describes the project with reference to the concrete application research, the content and scope, the processing schedule and the research and development goal.
- 2.2 Bids by APWORKS are made subject to confirmation and it is the responsibility of the principal to place an order with APWORKS.
- 2.3 An order from the principal shall be a binding offer that APWORKS can accept by means of a written order confirmation within four weeks of receipt. The contract shall come into force when this order confirmation is received by the principal.
- 2.4 The scope of the work and services to be performed by APWORKS shall be determined in accordance with the order confirmation.

### **3 Documentation**

- 3.1 Any documents such as pictures, drawings, specifications of weights and measures, calculations, etc. that are transferred or made available by APWORKS to the principal shall not be a constituent element of the contract, unless APWORKS expressly includes them in the contract in the order confirmation. APWORKS also retains the right to make modifications to the technical concept underlying the subject-matter of the contract after this point in time, provided that this does not compromise the quality and specification profile of the subject-matter of the contract defined in the contract.

- 3.2 All documents shall remain in the sole ownership of the APWORKS, even if they are handed over to the orderer. They must be treated as confidential and must not be disclosed to third parties or exploited by the principal for their own purposes or for third parties without express written consent by APWORKS and such documents must be returned to APWORKS on request.

### **4 Remuneration**

- 4.1 Remuneration is a fixed price, unless the statement of account is expressly drawn up on the basis of expenditure with an upper cost limit. Value added tax will be added at the statutory applicable rate.
- 4.2 APWORKS shall inform the principal without delay if it becomes evident that the desired result cannot be achieved with the agreed remuneration. In such a case, APWORKS will submit proposals for the ongoing procedure.

### **5 Payments**

- 5.1 In the case of research work, payments shall be made by the principal 30 days after receipt of the invoice for research work. In the case of other work and services, the principal shall make payment without deduction and immediately after receipt of the invoice to the APWORKS account specified on the invoice, and the invoice number must be recorded on the payment transfer. If the principal falls behind with payment, APWORKS shall be entitled to demand penalty interest at the rate of 8% per annum over the relevant valid base rate. APWORKS shall furthermore be entitled to demand higher interest on the basis of a different legal reason and/or to assert further claims for damages.
- 5.2 Offsetting against claims with respect to APWORKS shall only be permissible if the counterclaim is undisputed or has been handed down in a court judgment.
- 5.3 If, after conclusion of the contract, there is a substantial deterioration in the financial circumstances of the principal, or circumstances become known to APWORKS that could endanger the payment of remuneration, APWORKS shall be entitled to refuse to perform its obligations for work and services arising from the contract until the principal has performed his obligations arising from the contract or has provided security for such obligations.

5.4 APWORKS shall be entitled to determine a reasonable period in which the principal shall at the choice of the principal fulfill his obligations to make payment arising from the contract or to provide security for such payments concurrently with the work and services performed by APWORKS. If the deadline for performance has expired without performance APWORKS shall be entitled to withdraw from the contract.

## **6 Completion**

6.1 The order confirmation of APWORKS shall define the completion period and it shall commence at the earliest with receipt of the order confirmation by the principal. In cases of *force majeure* APWORKS shall be entitled to delay completion for the length of time that the event lasts.

6.2 If APWORKS is unable to complete the project as a result of *force majeure* for an extended period of time, but for a period of at least six months, APWORKS shall be released from all its obligations. In this case, the principal shall have the right to withdraw from the contract.

6.3 Compliance with the projected completion period by APWORKS assumes punctual and proper performance of all contractual obligations of cooperation by the principal at his cost, i.e. in particular the submission of all necessary documents and approvals. If delays are incurred from the sphere of the principal in performance of the obligations of cooperation affecting him, the completion period shall be reasonably extended for APWORKS, however at least by the duration of the delay.

6.4 If APWORKS establishes that the projected completion timeframe is not adequate, it must immediately inform the principal – giving the reasons – and submit proposals for modifications in writing that are intended to form the basis for a mutually agreed extension of the completion period.

## **7 Research and Development Results**

7.1 The research and development results shall be made available to the principal after completion of the project in conformity with the purchase order.

7.2 All research and development findings resulting from the execution of the project and the know-how are the sole property of APWORKS. However, the principal shall be granted a non-exclusive right of use in the research and development findings resulting from the execution of the project and in the know-how without remuneration and for a period of ten years. The granting of an exclusive right of use shall require a separate agreement with APWORKS.

7.3 If existing industrial rights and copyrights already held by APWORKS (background industrial rights) are required for execution of the project and are required by the principal to exploit the research and development findings, the principal shall be granted a non-exclusive right of use in such rights without remuneration and restricted to a period of 10 years under an agreement to be concluded separately, unless other obligations of APWORKS shall preclude such agreement.

7.4 APWORKS shall grant the principal a non-exclusive right of use in the inventions resulting from execution of the research and development order in conformity with the specification for the project, and in the industrial rights (foreground industrial rights) registered by or granted to APWORKS, restricted to a period of ten years. The principal shall reimburse APWORKS with a proportion to be agreed of the costs for registration, maintenance and defense of the industrial rights, and the statutory employee invention remuneration to be paid for use by APWORKS.

7.5 On request, the principal shall be granted an exclusive right of use restricted to a period of ten years for the application defined as underlying his order, instead of the right in accordance with item 7.4 in the inventions that have come into being and in the industrial rights registered or granted. The request shall be made in writing to APWORKS at the latest three months after submission of the development result. APWORKS shall retain for its own purposes a non-exclusive right of use without remuneration.

## **8 Opposing Industrial Rights of Third Parties**

8.1 APWORKS shall inform the principal immediately it becomes aware of any industrial rights held by third parties that could be infringed through the use of the research and development results. APWORKS and the principal shall decide by mutual agreement whether rights of third parties it becomes aware of should be taken into account in executing the project and if so in what manner.

8.2 If an industrial right held by a third party is infringed, APWORKS shall either mediate the necessary licenses to the principal or provide a modified development article or parts thereof such that the infringement is eliminated. The principal shall not be entitled to any claims extending beyond this.

## **9 Warranty**

- 9.1 APWORKS shall guarantee the application of scientific diligence and maintenance of the recognized rules of engineering, but shall not guarantee the actual achievement of the research and development goal.
- 9.2 APWORKS shall be authorized to remedy any defects that occur. APWORKS shall be entitled to make such remedy subject to the principal paying for a proportion of the remuneration that is reasonable with reference to the defect. APWORKS shall be entitled to refuse to effect the remedy if this would entail a disproportionate level of costs. If the remedy has failed twice or APWORKS refuses to undertake such remedy, or if APWORKS does not effect the remedy within a reasonable period of time defined by the principal, the principal shall be entitled at his choice to reduce the remuneration or to cancel the contract. The right of the principal to cancel the contract shall be excluded if the material defect is insignificant. Any additional warranty claims shall be excluded.
- 9.3 The warranty is limited to twelve months after handover of the research and development results. This shall also be applicable for warranty claims that are not subject to the statutory warranty periods.

## **10 Liability**

- 10.1 APWORKS shall have unrestricted liability for intentional wrongdoing and gross negligence.
- 10.2 For simple negligence, APWORKS shall only be liable – apart from in the case of injury to life, the body or health, if significant contractual obligations (cardinal obligations) are breached and shall be limited to the typical contractual and predictable damage, maximally to an amount of Euro 250,000.00 for each claim event, however to a maximum amount of Euro 500,000.00.
- 10.3 Liability for indirect and unpredictable damage, loss of production and use, loss of profits, lost savings and financial loss due to claims by third parties is excluded in the case of simple negligence unless the liability conditions under item 10.2 are applicable.
- 10.4 A more extensive liability than included in these General Terms and Conditions is excluded irrespective of the legal nature of the claim being asserted.
- 10.5 The liability restrictions under items 10.2, 10.3 and 10.4 do not constitute a warranty for a statutory defined liability independent of fault (e.g. pursuant to the Product Liability Act) or liability arising from a warranty independent of fault.
- 10.6 If the liability of APWORKS under items 10.2, 10.3 and 10.4 is excluded or restricted,

this is also applicable to the personal liability of its managers, employees, representatives and agents.

## **11 Reservation of Ownership**

- 11.1 The principal shall only acquire ownership and rights of use in the result once the agreed remuneration has been made. Property of APWORKS shall not be pledged or used as security for a debt (contractor's lien). If a third party nevertheless acquires rights in the subject of the contract, the principal shall herewith assign all rights thereby vested in the subject-matter of the contract to APWORKS. The principal shall immediately inform APWORKS if the subject-matter of the contract is subject to pledge, seizure or any other disposal in favor of a third party.
- 11.2 If the ownership of APWORKS in the result is extinguished on grounds of cooperation, it is hereby agreed that the principal shall transfer his ownership in the uniform subject-matter to APWORKS.
- 11.3 If the principal has disposed of the subject-matter of the contract to a third party, the principal hereby assigns in advance all rights arising out of the resale with real effect to APWORKS. APWORKS accepts such assignment in advance.
- 11.4 If the obligation of the principal to make payment is subject to full or partial delay, the principal becomes overindebted or suspends payments, or if an application is made for the commencement of composition or insolvency proceedings, or if such an insolvency would have to have been made, APWORKS shall be entitled to withdraw from the contract and to demand the return of all subject-matter of the contract still under reservation of ownership and to take possession of such subject-matter immediately. APWORKS shall also be entitled to assert immediately any additional rights arising out of reservation of ownership. The same shall be applicable for any other significant deterioration in the commercial circumstances of the principal.

## **12 Confidentiality**

Any technical or commercial information that has been mutually communicated and declared to be confidential shall not be disclosed to third parties by APWORKS and the principal for the duration of the contractual relationship and following its completion. This provision shall not be applicable to information that is generally accessible, nor to any information that APWORKS or the contractor have stated in

writing need not be subject to a requirement of confidentiality.

actual, legal and commercial spirit of the contractual discussions.

APWORKS, June 2016

### **13 Publications and Advertising**

- 13.1 With prior approval by APWORKS, the principal shall be entitled to publish the research and development results subject to publication of the appropriate copyright notice. Any agreement should ensure that e.g. dissertations, degree theses or applications for industrial rights, should not be compromised.
- 13.2 APWORKS publications relating to the application and for which the principal claims exclusive rights pursuant to 7.5 shall be agreed with the principal in good time.
- 13.3 The principal shall only use the results for purposes of advertising in conjunction with the APWORKS name with the express consent of APWORKS.

### **14 Notice of Termination**

- 14.1 The principal and APWORKS shall be entitled to service notice of termination on the contractual relationship with immediate effect, if no material progress has been achieved after expiry of a period of at least six months since the commencement of work.
- 14.2 After the notice of termination has been served, APWORKS shall forward to the principal all results that have been achieved to date within the period of four weeks. The principal shall pay remuneration to APWORKS for all the costs that have been incurred up to that point.

### **15 Miscellaneous**

- 15.1 Supplementary agreements, amendments or addenda must be made in writing. This shall also be applicable to any change to this clause requiring the written form.
- 15.2 The place of fulfillment for work and services of APWORKS shall be the registered office of the company. The place of fulfillment for payments of the principal shall be Munich.
- 15.3 The applicable law shall be the law of the Federal Republic of Germany as applied to German nationals. The exclusive place of jurisdiction shall be Munich.
- 15.4 Should any one of the above provisions or any part of any provision be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected. In such a case the parties shall seek to replace the void and/or illegal and/or unenforceable provision or provisions with effective provisions coming as close as possible to the sense, spirit and commercial purpose of the General Terms and Conditions of Business overall and to the