

**General Terms and Conditions of the Hahn-Schickard-Gesellschaft für angewandte Forschung e.V. for Research and Development Services**

Version of 27 November 2002

The **Hahn-Schickard-Gesellschaft für angewandte Forschung e.V. (hereinafter referred to as Hahn-Schickard)** pursues exclusively and immediately non-profit purposes in the field of contract research. These General Terms and Conditions reflect the requirements of such contract research.

**1. Subject of the Contract/Volume of Services**

- 1.1. The volume of the services to be rendered, the objective, the target of research and development, the duration and remuneration etc. are based exclusively on the individual offer and/or the order confirmation given by Hahn-Schickard.
- 1.2. Deviations hereof require an explicit confirmation in writing issued by Hahn-Schickard.
- 1.3. If Client changes its requirements, Hahn-Schickard will submit an appropriately modified offer, provided the requested changes are technically and economically acceptable for Hahn-Schickard. There shall be no obligation to accept the order.
- 1.4. If the requirements for the order need further detailed specification, such a specification shall be prepared in co-operation with Client (specified concept). Client shall not be entitled to inequitably refuse acceptance of this specified concepts. If no consent can be reached, each party shall be entitled to cancel the existing order. The costs already incurred are to be reimbursed to Hahn-Schickard.
- 1.5. If Hahn-Schickard recognises that the objective cannot be achieved with the contents that had been defined or that it cannot be completed within the time frame or with the remuneration agreed, it shall inform Client without delay. In such a case, both parties shall find an agreement on the further procedure. If a fixed price had been agreed and it becomes evident that the scheduled costs will be exceeded by more than 10 percent, Hahn-Schickard shall be entitled to request an adjustment of the price.
- 1.6. Delivery deadlines for Hahn-Schickard shall be extended if problems arise resulting from force majeure or any other obstacles which are not within Hahn-Schickard's responsibility, such as operational disturbances or delays in obtaining supplies.

**2. Delivery**

- 2.1. Hahn-Schickard shall perform the work with utmost care, applying state-of-the-art technology.
- 2.2. Hahn-Schickard shall be entitled to employ third parties as subcontractors for delivering the services.
- 2.3. Each contracting party shall designate for the other party a contact person who will be responsible for all questions and decisions arising from the contract.
- 2.4. The work shall generally be performed on the premises of Hahn-Schickard, unless the parties agree on a deviating arrangement.
- 2.5. Participation of Client constitutes an essential contractual obligation.
- 2.6. All documents which one contracting party makes available to the other one in the framework of the order shall remain the property of the party that provides them. The documents are to be returned at any time, if requested.

**3. Remuneration**

- 3.1. Remuneration shall be based on an agreed fixed price. On special request, the remuneration can also be paid on the basis of the costs incurred, by hourly rates to be agreed. Invoicing can be made on a monthly basis, unless specific terms of payment are agreed in a remuneration schedule.
- 3.2. After reception of the order, Hahn-Schickard shall be entitled to request an advance payment of more than 30 % of the total remuneration, without a specific agreement being required for this.
- 3.3. The value added tax valid at the time is to be added to all prices and payments.
- 3.4. Support services for Client, such as consultancy, training etc., shall be invoiced separately.

**4. Payments**

- 4.1. All invoices shall be settled without deduction within 14 days after invoicing.
- 4.2. If the time for payment is exceeded, Hahn-Schickard shall be entitled to request interests on arrears amounting to 9 % (§ 288 sub-para. 2 BGB (German Civil Code)) above the basic interest rate as defined in § 247 BGB or, after the lapse of the latter, the equivalent replacement.
- 4.3. A set-off on the part of Client shall only be admissible with claims that are undisputed or validly established by court.

**5. Rights of Use, Inventions**

- 5.1. Hahn-Schickard shall grant Client a non-exclusive, non-transferrable right to use the results of work for his own internal purposes within the agreed scope. This right of use shall be granted without restriction of time. The scope of the right of use to be granted shall be based on the offer, the order confirmation or the specification, and otherwise on the underlying purpose of application.
- 5.2. All exclusive rights of use for the results of work, in particular rights of exploitation and the rights of use for scientific purposes, shall remain with Hahn-Schickard.
- 5.3. Any transfer of rights of use to third parties shall require the consent of Hahn-Schickard. The latter shall not unduly refuse such consent.
- 5.4. Should Client request the granting of an exclusive right of use for the results of work to him, this shall be the subject of a separate agreement. Such an agreement shall be generally possible only inasmuch as existing rights of use of third parties for their contribution to the results of work do not constitute an obstacle thereto. If existing property rights or copyrights of Hahn-Schickard are used for the execution of the order and if they are necessary for the exploitation of the research and development results by Client, the latter shall be granted a non-

exclusive right of use against payment which has to be agreed separately, unless no other obligations on the part of Hahn-Schickard are in conflict with this.

## **6. Completion**

- 6.1. Client shall be obliged to accept the work completed in accordance with the contract. This acceptance shall be made either by a written statement or by taking up operation. Otherwise the provisions of § 640, 641a BGB shall apply.
- 6.2. For clearly defined parts of the work, Hahn-Schickard shall be entitled to request written confirmations about the completion of such parts (partial acceptance).

## **7. Warranty**

- 7.1. Hahn-Schickard warrants the application of scientific care as well as compliance with the acknowledged rules of technology. No warranty is given for the achievement of the purposes and profits intended by Client.
- 7.2. The warranty period shall be 12 months after acceptance of the work or parts of work. This shall also apply to warranty claims which are not subject to the legal warranty periods.
- 7.3. Client shall be obliged to examine the work/parts of work delivered for obvious defects which can be easily noticed by an average client. A written complaint about such obvious defects shall be sent in writing to Hahn-Schickard within four weeks after acceptance. Defects which become evident only after this period must be reported to Hahn-Schickard within the said period after Client has recognized them. If the obligation to examine and report is not complied with, the work shall be regarded as accepted in consideration of the defect in question.
- 7.4. Hahn-Schickard shall be entitled to remedy defects which have been reported in writing and in reconstructable form within an appropriate period of time. Client shall support Hahn-Schickard in due form in the correction of defects. If the correction fails, Client, at his own discretion and excluding all further claims, shall be entitled to request either a reduction of the remuneration or to cancel the contract. The correction shall be considered to have failed only after Hahn-Schickard has been given sufficient opportunity to perform the corrective work without having achieved the desired result.
- 7.5. Hahn-Schickard shall be entitled to request reimbursement of its costs, if Hahn-Schickard has taken action following a notice of defect and it becomes later evident that there was no such defect.

## **8. Property Rights of Third Parties**

- 8.1. Hahn-Schickard shall notify Client without delay of any property rights of third parties of which Hahn-Schickard gains knowledge and which could be impaired by the use of the research and development results. Hahn-Schickard and Client shall agree by mutual consent whether and in which way rights of third parties which come to their knowledge shall be considered for the execution of the work.
- 8.2. Otherwise Client shall exempt Hahn-Schickard from any claims of third parties for infringements of property rights.

## **9. Confidentiality/Data Protection/Publication**

- 9.1. The parties agree to treat all information confidentially that is provided by one party to the other party and marked as confidential, even beyond the time of the individual order. They shall commit their employees and (sub) contractors to confidentiality by a confidentiality agreement.
- 9.2. This obligation of confidentiality shall not apply to information which can be generally accessed or which has been published.
- 9.3. For specifically defined purposes, Hahn-Schickard shall be entitled to process person-related data disclosed to it in connection with the individual order, observing the provisions of data protection.
- 9.4. Hahn-Schickard shall be entitled to include Client's name into its reference list and to designate Client as reference customer in advertising documentation and the like. All other references to Client as customer shall be agreed with Client. Client shall endeavour to refer to Hahn-Schickard as partner in publications or advertisements.
- 9.5. Inasmuch as the results of work are not subject to confidentiality, each contracting party shall be entitled to publish them for advertising purposes after having obtained the consent of the other party regarding the contents of such publication.

## **10. Retention of Title**

- 10.1. Hahn-Schickard shall retain the title to the delivered results of work until each and every claim of Hahn-Schickard under the contract as well as all other claims resulting from the current business relationship have been fully settled. Client shall have no right to pledge or transfer of ownership by way of security.
- 10.2. If the title of Hahn-Schickard to the result expires because of adjunction, it is agreed that the title of Client to the uniform matter shall pass to Hahn-Schickard on a pro rata basis (invoice value).
- 10.3. In the case of resale Client shall relinquish all in rem rights to Hahn-Schickard.

## **11. Liability**

- 11.1. Hahn-Schickard excludes liability for slight neglect of duty for cases where no essential contractual obligations, no personal injuries of life and health, no warranties or claims on the basis of the product liability law are concerned. In the framework of slight negligence, Hahn-Schickard shall not be liable for damage which has not occurred on the delivery item itself. The same shall apply to neglect of duty on the part of Hahn-Schickard's (sub) contractors. If liability is excluded, this shall also apply to the personal liability of Hahn-Schickard's employees, agents and (sub) contractors.
- 11.2. The liability to pay damages shall be restricted to predictable damage typical for the contract. In all other cases, Hahn-Schickard shall pay damages only within the insurance coverage inasmuch as it is insured against the damage occurred.
- 11.3. Any claims of Client, regardless of their legal cause, shall be subject to a period of limitation of one year, provided the claims are not asserted because of tort. The period of limitation shall start with the date Client obtains knowledge.

**12. Specimens and Prototypes**

- 12.1. If Hahn-Schickard provides specimens and prototypes for testing purposes, Client shall not be entitled to connect, mix or process the items (§§ 947 ff BGB) nor to sell them or make any other dispositions with regard to these items. Neither shall Client have the right to integrate the specimens and prototypes into the development and production process. The items shall only be used in the framework defined by Hahn-Schickard.
- 12.2. The provisions of these General Terms and Conditions shall apply in so far as they can be applied to this subject.

**13. Miscellaneous**

- 13.1. Only the General Terms and Conditions of Hahn-Schickard shall apply to the contract; other conditions shall not become subject of the contract even if Hahn-Schickard does not explicitly object to them.
- 13.2. Additions to and modifications of this contract must be made in writing. This also applies to a possible waiver of this requirement of written form.
- 13.3. If one provision of these Terms and Conditions is or becomes invalid, this shall have no effect on the validity of the other provisions. In such a case, the contracting parties shall agree on valid substitute provisions which come closest to the purpose of the invalid one.
- 13.4. If Client is a businessman or a legal entity under public law, the place of jurisdiction for all disputes shall be Stuttgart. Hahn-Schickard reserves the right to take legal action also at the location of Client.
- 13.5. Place of performance for all contractual obligations shall be the location of the individual Hahn-Schickard institute which has received the order.
- 13.6. All contracts shall be governed by the law of the Federal Republic of Germany and are subject to German jurisdiction. The United Nations Convention on the International Sale of Goods of 11.04.1980 is explicitly excluded.