

General Terms and Conditions
for the Fulfilment of Development, Testing and Other Service Contracts
at the Institut für Lacke und Farben e. V.

1. Validity

Our business relationships are governed exclusively by the following terms and conditions.

We shall not be bound by any terms and conditions of the Customer which deviate from these and to which we have not given express written consent, even if we have not expressly objected to them.

2. Object

The Institut für Lacke und Farben e. V. supplies commissioning companies with research, development, testing and analogous services in connection with research into and the development and testing of surface coatings, in particular lacquers and paints.

3. Orders; offers

Our offers are always subject to change. In cases of doubt, the contract shall enter into force only once it has been affirmed in writing by us and, without exception, only in compliance with and in accordance with the content of this affirmation.

Verbal and subsidiary agreements and amendments to the contract shall be effective only once they have been confirmed by us in writing.

Offers and their annexes may not be made accessible to third parties without our consent.

Similarly, we shall observe confidentiality in respect of our customers' orders.

4. Time of performance

The time of performance shall commence no earlier than the date specified in our offer; its length shall be determined by the period of time specified in the offer.

If the time of performance originally agreed proves insufficient for achievement of the contractually agreed objective, the Institut für Lacke und Farben e. V. shall inform the Customer of the revised date for fulfilment of the contract, stating the reasons for the delay.

The Customer is not entitled to enforce sanctions if revision of the time of performance is justified by the specifics of the order.

5. Charge for services

The Institut für Lacke und Farben e. V. calculates its services on a time and material basis, unless a fixed price was agreed when the order was placed.

The Institut für Lacke und Farben e. V. shall inform the Customer as soon as possible if it appears that the desired result cannot be achieved within the agreed cost framework. In such cases, the parties shall conclude a new agreement. If no such follow-up agreement is concluded, the Institut für Lacke und Farben e. V. is entitled to invoice the Customer for the time and materials expended thus far, and to furnish the Customer with the results of its work to date.

6. Date and nature of payments

If no special terms for payment have been agreed, amounts owing must be paid by the date shown on the invoice. If no such date is specified there, payments shall fall due once the Customer takes receipt of the invoice.

Details of the bank account held by the Institut für Lacke und Farben e. V. into which payment must be made in full are specified on the invoice; the invoice number must be quoted when making payment.

The Customer is entitled to set off claims against the invoices of the Institut für Lacke und Farben e. V. only if such claims are undisputed or have been determined by final judgement.

The Customer may exercise a right of retention only if his claim arises from the same contractual relationship.

7. Research results, partial performance, advance information, place of fulfilment

Unless otherwise agreed in the contract, the Customer shall be presented with the findings of the research in the form of a report. The Institut für Lacke und Farben e. V. is entitled to provide partial performance.

If the Customer so desires, advance information may be provided on test results or research and development work. Such information is in no sense binding, as it may have to be amended as a result of further research and development or additional tests.

The place of fulfilment for all services of the Institut für Lacke und Farben e. V. is Magdeburg. This shall apply even if the findings were furnished to the Customer at another location.

8. Rights to the findings

The Institut für Lacke und Farben e. V. shall grant the Customer non-exclusive usage rights in respect of industrial property rights, copyright and know-how which arise in connection with the commissioned research work.

If know-how to which the Institut für Lacke und Farben e. V. was already privy is used in the fulfilment of the order, and if this is required by the Customer to make use of the object of the agreement, the Institut für Lacke und Farben e. V. shall also grant the Customer non-exclusive usage rights in such cases.

In all of the aforementioned cases, the Institut für Lacke und Farben e. V. shall retain a non-exclusive gratuitous usage right in respect of industrial property rights and copyright. The Institut für Lacke und Farben e. V. is entitled to utilise these rights for the fulfilment of other orders and to grant them to third parties within these limits.

On request, the Customer shall be granted exclusive usage rights, with the exception of the respective know-how, against payment.

9. Reservation of title

Title to the object of the agreement is transferred to the Customer only once the agreed payment has been made in full; this applies in particular in the case of rights to the findings of research and development orders.

If the title of the Institut für Lacke und Farben e. V. to the findings elapses as a result of combining with other goods, the Customer shall cede title to the combined goods to the Institut für Lacke und Farben e. V. in proportion to the invoice value. In the case of resale, the Customer shall cede all rights resulting from the resale *in rem* to the Institut für Lacke und Farben e. V.

10. Guarantee and liability

The Institut für Lacke und Farben e. V. cannot guarantee that the desired research objective shall actually be achieved. The guarantee of the Institut für Lacke und Farben e. V. extends to the exercise of scientific diligence and compliance with the accepted rules of technology. Should the guarantee be called upon, the Customer shall be entitled only to supplementary performance.

The supplied findings and/or goods or samples must be checked for faults immediately. Any defects must be reported in writing without delay, and no later than 2 weeks after receipt of the object of the agreement. If defects which are not immediately apparent are detected during further processing, such work must cease until the Institut für Lacke und Farben e. V. has made its own inspection and has reached a decision.

If complaints are not made in the correct form or by the given deadline, the object of the agreement shall be deemed to have been approved, provided the Customer is a merchant within the meaning of the German Commercial Code (HGB). No claims under guarantee shall be countenanced for defect of title. It is the responsibility of the Customer to verify whether third-party rights have been infringed by the object of the agreement.

The liability of the Institut für Lacke und Farben e. V., its legal representatives and vicarious agents, is restricted to damage or loss caused maliciously or as a result of gross negligence. This limitation of liability does not apply to liability under the Product Liability Act. No liability shall be accepted for consequential damage caused by a defect.

11. Confidentiality

The Institut für Lacke und Farben e. V. shall not make information of a technical or commercial nature available to third parties during the course of the contractual relationship for as long as and to the extent to which this information is not generally known, unless the Customer has waived the requirement for confidentiality in writing.

The Customer shall undertake to observe confidentiality in respect of all information which he has obtained from the Institut für Lacke und Farben e. V. in connection with the fulfilment of the contract. The duty of confidentiality shall survive the termination of the contract. The Institut für Lacke und Farben e. V. and its employees are, however, entitled to publicise scientific findings made in the course of their commissioned research, provided they concern only fundamental scientific findings. Otherwise, the consent of the Customer is required. The Customer is entitled to publicise the findings, quoting their originating source, with the prior approval of the Institut für Lacke und Farben e. V.

If the Customer intends using the commissioned findings, or the fact that he is having research conducted in a particular field, for promotional purposes, then this too shall require the prior consent of the Institut für Lacke und Farben e. V.

12. Termination

If it transpires that the research objective is unattainable, or if it has not been possible to make any significant progress within 6 months of when research commenced, then either party is entitled to terminate the contractual relationship by giving one month's notice to the end of a calendar month. The contractual relationship must be terminated in writing.

In the case of termination, the Institut für Lacke und Farben e. V. must undertake to furnish the Customer with any findings made to date within 4 weeks.

The Customer must undertake to pay the Institut für Lacke und Farben e. V. for any time and materials expended.

13. Declaration on the independence of the test laboratory

The Management and employees of the Institut für Lacke und Farben e. V. are free of any commercial, financial or other influence by third parties, and from any influence on the part of outside persons or organisations on the test results. They are prohibited from accepting any gratuities or gifts of any type whatsoever in connection with their official duties.

14. Legal venue and applicable law

The legal venue for all disputes arising from the contractual relationship with the Institut für Lacke und Farben e. V. is Magdeburg. The law of the Federal Republic of Germany is applicable. The UN Convention on the Sale of Goods does not apply.

15. Severability clause

Should one or more provisions of these General Terms and Conditions of Business prove or become ineffective or unenforceable, the effectiveness of the remaining contractual conditions shall remain unaffected. In such cases, the parties shall substitute the ineffective or unenforceable provision with one whose legal and commercial effect approximates as closely as possible to that intended by the parties with the ineffective or unenforceable provision.