



## **General Terms and Conditions for the German Institute for Refractory and Ceramics, GmbH (DIFK, Deutsches Institut für Feuerfest und Keramik, GmbH)**

### **I. General stipulations and scope**

1. Our terms and conditions are exclusively valid for all our services and all contracts concluded with us. Terms and conditions of the employer which contradict or deviate from these terms and conditions will not be recognized by us unless we have already given our express consent to their validity in writing. Our terms and conditions are also valid whenever we, in full knowledge of the terms and conditions of the employer which contradict or deviate from our terms and conditions, provide services to the employer without violating the contradictory or deviating terms and conditions.

In current business relationships, our terms and conditions also apply to all future contracts and provision of services.

2. All agreements that are to be concluded between us and the employer for the purpose of carrying out this contract are stipulated in this contract in writing.

3. Our terms and conditions only apply to enterprises within the sense of § 14 of the German Civil Code and to legal entities within the scope of public law.

### **II. Offers, prices, and terms of payment**

1. Provided it is not stipulated otherwise, we adhere to the prices received in our offer or cost estimate six weeks following the issuance of the offer or cost estimate. For all other orders, the prices considered to be agreed upon are the valid prices from our list of services at the time at which we accepted the order.

2. All prices are in Euros, with the value added tax to be paid by the employer in the appropriate amount as stipulated by law and calculated separately.

3. Modifications in the order made afterwards entitle us to calculate the actual additional costs incurred, and potentially even oblige us to reduce the costs billed.

Should a test or examination not be completed for reasons furnished by the employer, compensation at least 50% of the agreed upon price will be billed.

4. Our due net invoice should be paid within 30 days of its issuance and transferred to our account without any additional shipping and handling or other charges, provided it is not stated otherwise upon confirmation of the order. Should the amount due not be in our account at the date stipulated, interest fees for this delay will be due at the rate of 8 percent of the original amount to be paid.

In the event of payment by check, our claim to payment is only fulfilled once the bank of the employer has paid the check.

If the amount is greater than 5000 Euros, we have the right to request a down payment or payment in installments. Provided it is not expressly stipulated otherwise, the payment plan will be as follows:



- 1/3 of the amount of the order upon acceptance of the order;
- 1/3 of the amount of the order upon completion of 50% of the order;
- 1/3 of the amount of the order upon completion of the order.

5. The employer is entitled to a delay in payment only when his counterclaims are substantiated by legal stipulations, unchallenged, or recognized by us in writing. Moreover, the employer may only make use of a delay in payment when his counterclaim involves the same contractual relationship.

### **III. Employer obligations**

The employer must see to it that we are provided free of charge and in a timely fashion with all the documents necessary for the fulfillment of the contract without our making a separate request. He is obliged to inform us in a timely fashion and without our making a separate request about all circumstances which may be significant for the execution of the order.

Samples or specimens which contain hazardous substances are to be designated as such by the employer in accordance with the Ordinance on hazardous substances [Gefahrstoffverordnung]. The employer is obliged to place at our disposal free of charge and in a timely fashion all instructions regarding the dangers and handling of the test substances, insofar as these are known.

### **IV. Trademark rights**

1. We retain the property rights and copyrights of all test results, test reports, reports, bills, and other such documents issued by us.
2. Test results, test reports, and reports may be reproduced, published or duplicated without our prior consent in unchanged and unabridged form and content with stipulation of the source.

### **V. Fulfillment of the order**

1. The orders that we accept will be processed in accordance with the state of the art as well as of the scientific work and knowledge at our disposal at the time of the acceptance of the contract.
2. The test material should be sent by the employer with freight paid. We have the right to have the test material completely at our disposal.
3. The scope of the work required for the fulfillment of the order should be stipulated upon issuance of the order. We will carry out the testing at our own discretion. Insofar as it is required for proper fulfillment of the order, we retain the right to extend or shorten the testing.
4. The deadlines for the order are non-binding unless an issuance or delivery date is expressly agreed upon in writing. Should such a deadline be agreed upon, it will begin with the date contained in the confirmation of the order, but not before, however, the type and scope of the services have been unambiguously stipulated and all documents and test materials required for the fulfillment of the order have reached the contractor. The deadline has

been met once the concluding or test report has been sent to the employer before the deadline has expired. In the event of the report being sent by post, the day on the postage stamp will be determinative; if sent by fax or email, the date on the dispatch protocol.

5. Should the agreed upon deadline not be met, the employer may only withdraw from the contract or make a claim on compensation or damages in the event of a delay or an inability on our part.

6. We are considered to be late when we are responsible for a delay in the fulfillment of the order. Should the fulfillment of the order be delayed due to events that could not have been avoided through appropriate caution, such as acts of God, strikes, roadblocks, technical disturbances, sabotage, breakage, fire, water damage, delay in the delivery of essential parts, and so forth, the deadline will then be extended according to the length of the disturbance together with an appropriate recuperation period. This is also valid in the event of the illness of one of the employees entrusted with the fulfillment of the order, insofar as this employee is entrusted with special tasks for the fulfillment of the order that cannot be taken over and fulfilled by another employee. Upon the occurrence of an event of this nature, we are committed to immediately sending the employer news of the occurrence with a prediction of the potential delay it will cause.

7. Provided that no other storage periods of these goods are stipulated, we have the right to destroy all unused test material as well as that test material used for the samples prepared for examination after a period of 12 months. Should the employer desire a storage period extending beyond twelve months, we have the right to request monetary compensation for such a wish. During the storage period, we are only obliged to exert the same caution and care that we would in the preservation of our own items. Should the employer want to have the test materials sent back to him, he must make this request to us in writing within 3 months after the issuance of the order. Returning the goods will be at the risk and cost of the employer.

8. Proper disposal of the sample and test materials will be performed by us once the storage period deadline has expired. The employer will be responsible for paying for the costs involved in this disposal; these costs will be calculated separately and are not a part of the testing costs.

9. The employer will be liable for all damages which stem from the hazardous composition of the test materials. The employer will be liable for all damages that occur due to the test materials, especially during their transport as well as during their disposal. With the pickup of the test materials for the purpose of testing, there occurs no exchange of property. The employer remains the owner of the test materials even after the completion of the commissioned tests, and is the party responsible for waste disposal in accordance with ordinances on waste disposal.

## **VI. Test results**

Test results will be conveyed to the employer by means of a written, originally stamped and signed testing report. This information is valid as a certification of the work done. Other information and explanations are non-binding.

## **VII. Guarantee**

1. Should the employer desire further service due to some shortcoming or deficiency, we will choose either to improve or re-perform the service.

2. Should the employer desire damages or compensation instead of the service or carry out the service himself (self-performance), failure to improve the service will only occur after the second failed attempt at improvement. Legal cases of dispensability of deadline will remain unaffected.
3. Should improvement or re-performance of the service only be possible at a disproportionate cost, inconvenient for us, or fail, we may refuse improvement or re-performance. The employer's legal rights to reduction, withdrawal, or compensation will remain unaffected.
4. Claims on this guarantee by the employer will expire in 12 months unless we are guilty of gross negligence or fraudulent intent, or unless it is a matter of claims in connection with grave bodily harm.

### **VIII. Liability**

1. Our liability is excluded provided the damage does not occur through malice aforethought or gross negligence, or the damage does not involve a wilful violation of essential contractual obligations. Our liability is also inapplicable to unforeseen damages atypical for contracts.
2. In the event of a wilful violation of essential contractual obligations, our liability for damages is restricted to those amounts in accordance with foreseeable, typically contractual damages.
3. Liability due to grave bodily harm will not be affected by the aforementioned liability exclusions and restrictions. This also goes for the obligatory liability in accordance with the Product Liability Law [Produkthaftungsgesetz] as well as for liability in the event of taking over a guarantee or the warranty of a piece of property.
4. Provided our liability is excluded or restricted, this also goes for the personal injury liability of our employees, contractors, co-workers, representatives, and assistants.
5. The employer's rights from sections V. 5. and VII in this contract are not affected by the stipulations of section VIII.

### **IX. Place of fulfillment, jurisdiction, and applicable law**

1. The exclusive place of fulfillment for all legal disputes that may arise from this contractual relationship, including within the framework of exchange or check procedures, is the court with jurisdiction in Höhr-Grenzhausen, our business headquarters. We are, however, entitled to file suits against the employer within this same area of jurisdiction.
2. The applicable law in this contractual relationship between the parties is the law of the Federal Republic of Germany.
3. Should individual stipulations in this contract completely or partially be or become invalid, or should this contract possess a gap that needs to be filled, this situation will not affect the validity of the remaining stipulations.