

## **General Terms and Conditions of Contract**

### **1. Scope**

- 1.1. All contracts entered into by HypTec GmbH, Austria, registered in the Commercial Register at the Regional Court for Civil Matters Graz under FN 342766v (hereinafter referred to as "**HypTec**") with Clients for tests, special tests, analyses, examinations or measurements to be performed by HypTec (hereinafter jointly referred to as "**Services**") are based exclusively on these General Terms and Conditions of Contract ("**GTCCs**") and any contract provisions that may appear separately on HypTec's business documents. Any terms and conditions of sale of the Client deviating from these GTCCs shall only apply to the extent that HypTec has expressly agreed to them in writing. It is the responsibility of the respective Client to review these GTCCs prior to HypTec's offer and to resolve any open questions with HypTec before the offer is made.
- 1.2. Once agreed, these GTCCs shall also apply - until revoked by HypTec - to all future contracts.
- 1.3. The latest version of the GTCCs is available on HypTec's website ([www.hypotec.at](http://www.hypotec.at)). Amendments to these GTCCs shall become effective if they have been notified to the Client and the Client does not object to the amendment in writing within 14 days.

### **2. Offers from HypTec**

- 2.1. Unless expressly agreed otherwise in writing, offers from HypTec are non-binding and subject to change. A mutually binding contract shall only come into existence at such time as the Client receives a written order confirmation from HypTec or at such time as HypTec commences the provision of its services. Amendments or addenda to the contract or any ancillary agreements must be made in writing. This also applies to any agreement to waive the written form requirement. Oral declarations, collateral agreements or promises made by HypTec's officers or employees are not binding at any time during HypTec's performance of the contract unless they are confirmed in writing.
- 2.2. By carrying out testing, HypTec does not assume any obligation incumbent on the Client to comply with this or subsequent testing dates.

### **3. Placement of orders and terms and conditions of order**

- 3.1. HypTec shall only be obliged to render the services expressly agreed in the contract with the Client, which it shall provide in accordance with the generally recognised rules of technology. HypTec expressly excludes any liability for the correctness of the laws, guidelines and standards on which the orders are based.
- 3.2. The volume of the contract is specified in writing when the order is placed. Should necessary changes or extensions to the agreed volume become necessary during the proper execution of the contract, HypTec shall be entitled to execute these in accordance with these GTCCs even without a separate written order, provided that the costs do not exceed the last agreed remuneration by more than 15 %. If the changes exceed 15 %, a written agreement is required before the additional services are provided. If the adjustment of the contract volume leads to a cost increase of more than 50 % of the last agreed remuneration, the Client has the right to resile from the contract within three days of being notified of the new costs. In this case, the Client is

obliged to pay for the services rendered up to this point in time in accordance with the agreed remuneration pursuant to section 6.2.

- 3.3. The Client shall provide HypTec with all necessary documents such as drawings, plans, calculations and certificates already when placing its order. The Client must obtain all necessary authorisations and approvals, provide order-related information and make the necessary preparations before commencement of the services. If the service is not to be provided at HypTec's location, the Client must in particular ensure that the test object is accessible. If the Client fails to fulfil these obligations to cooperate despite being set a deadline by HypTec, HypTec shall be entitled to terminate the contract extraordinarily upon expiry of this deadline. In this case HypTec shall be entitled to claim damages for non-performance. This includes, in particular, lost profits and frustrated expenses.
- 3.4. The Client undertakes to ensure that the subject-matter of testing fulfils all technical requirements for safe loading with the nominal pressure of hydrogen gas. Before the start of the test, all relevant preliminary tests (including burst tests, hydraulic cycle strength and pressure tests on the test object) must be completed with a 100 % positive result at the Client's expense. The Client must submit the relevant evidence before the start of the test.
- 3.5. HypTec may assume the correctness of the test bases and oral information provided by the Client or its employees and is not obliged to verify these separately.
- 3.6. HypTec shall determine the method and type of service in its reasonable discretion, unless otherwise agreed.
- 3.7. HypTec is entitled to make copies of the documents provided by the Client, to archive them and to store data of the Client and data arising from business transactions in an electronic data processing programme for its own purposes.
- 3.8. HypTec shall retain the data and information collected during the testing and for the preparation and issue of the test report for a maximum of five years as proof that the test was carried out properly. HypTec shall then irreversibly erase the data.
- 3.9. If test reports or other results of the services provided under these GTCCs are requested in a language other than German, they shall be provided in the form of a court-certified translation. HypTec shall recharge the costs incurred for this to the Client in line with actual expenditure.

#### **4. Test item failure**

- 4.1. In the event of a test item failure after at least 60 % of the scheduled runtime has been reached, the full total price of the test order will be invoiced.

#### **5. Deadlines and dates/delay**

- 5.1. Deadlines and dates agreed by contract are based on estimates of the scope of work based on the information provided by the Client. These time indications are only binding if they have been expressly confirmed as "binding" by HypTec in writing. Delays shall not entitle the Client to assert any claims, irrespective of their legal basis.

- 5.2. If the provision of a service is delayed due to circumstances beyond HypTec's control (e.g. operational disruptions, strikes, force majeure, transport obstacles, failure to cooperate or insufficient cooperation on the part of the Client, etc.), HypTec is entitled either to resile from the contract or to extend the deadlines accordingly. HypTec disclaims all liability for claims by the Client for warranty, avoidance on the grounds of error or damages due to such delays. This provision shall also apply if the aforementioned circumstances occur at a time when HypTec is already in default. In such case, HypTec shall inform the Client of the circumstance causing the delay.
- 5.3. In the event of rescission of the contract, HypTec is entitled to invoice partial services already rendered at the agreed prices.

## 6. Terms of payment

- 6.1. Invoicing for the services provided by HypTec takes place after completion of the order with the handover of a report and is due immediately for payment. For orders with an execution period of more than 3 weeks, the remuneration for the services provided by HypTec is due in three instalments as follows:
- **First instalment:** 30 % of the order amount is due immediately and without deduction when the order is placed.
  - **Second instalment:** 30 % of the order amount is payable when 50 % progress on the project is reached. HypTec shall provide the Client with written notification of the progress of the project.
  - **Third instalment:** The remaining 40 % of the order amount is due on completion of the project and handover of the agreed services.
- 6.2. Subject to the provisions in section 4.1. of these GTCCs, if the order is cancelled prematurely for any reason whatsoever, HypTec shall be entitled to charge a lump sum of 30 % of the remaining order amount in addition to the services already rendered.
- 6.3. All payments must be made within 14 calendar days of invoicing strictly net, to the account specified by HypTec. All amounts are quoted net plus the legally applicable rate of value added tax, if applicable.
- 6.4. If the Client defaults on a due payment, HypTec is entitled to withhold the contractually owed services or resile from the contract after issuing a written reminder and setting a reasonable grace period. In addition, HypTec is entitled to demand interest on arrears in accordance with Section 456 UGB [*Austrian Business Code*].
- 6.5. The Client undertakes to reimburse HypTec for the costs and expenses actually incurred as a result of its default in payment and necessary for the appropriate legal action. Without prejudice to any obligation on the part of the Client to reimburse costs under the obligation to reimburse costs under civil procedure rules, the Client's reimbursement obligation includes in particular extrajudicial costs, reminder costs, the costs of a debt collection agency and the costs of intervening lawyers, insofar as such were expedient.
- 6.6. Any objections to invoices must be asserted in writing and within 7 calendar days of receipt of the invoice. After expiry of this period, invoices are deemed to be approved.

- 6.7. The Client shall not be entitled to set off any claims whatsoever unless they have been adjudicated with *res judicata* effect by a court of law or expressly acknowledged in writing by HypTec.
- 6.8. HypTec is also authorised to send invoices to the Client in electronic form. The Client expressly agrees to HypTec sending invoices in electronic form.

## **7. Warranty**

- 7.1. The Client is obliged to inspect HypTec's work or services immediately after performance. HypTec must be notified in writing of any defects found or capable of detection without delay, but at the latest within seven calendar days of delivery of the expert opinion, test report or similar, failing which HypTec shall not be liable. Latent defects must be reported in writing immediately after their discovery, but at the latest within seven calendar days and in any case within the warranty period. A notice of defects does not entitle the Client to withhold invoice amounts, whether in whole or in part. HypTec reserves the right to claim any costs incurred in the event of unjustified notices of defects.
- 7.2. The Client's warranty claims shall be limited to remediation or replacement at HypTec's discretion. HypTec is entitled to make at least two attempts at remediation or replacement. If a remediation or replacement is not successful within a reasonable period of time or appears commercially unreasonable, the Client shall be entitled to resile from the contract (redhibition) or abate the contract price. The Client shall have no right to rescind the contract (redhibition) in the case of non-material or irreparable defects. In such cases, an appropriate abatement of the price shall be applied, taking into account the extent and impact of the defect.
- 7.3. The warranty period is 12 months. It shall not be extended or interrupted by remediation, replacement or attempts at remediation.
- 7.4. If the Client fails to give notice of defects in due time in accordance with section 7.1, claims for warranty, for damages due to the defect itself and for mistake as to the absence of defects in the item are expressly excluded. This shall not apply to defects caused by HypTec intentionally or through its crass gross negligence.

## **8. Liability**

- 8.1. HypTec shall only be liable to the Client for losses caused to the Client intentionally or through its gross negligence. For all other forms of fault, claims for damages are hereby excluded or limited to the minimum prescribed by law, insofar as this is legally permissible. The burden of proof for the existence of intent or gross negligence shall lie with the Client.
- 8.2. The limitation of liability under section 8.1 does not apply to claims arising from the Austrian Product Liability Act [*Produkthaftungsgesetz* or PHG] and for personal injury.
- 8.3. HypTec shall not be liable for lost profits or other indirect losses.
- 8.4. HypTec shall not be liable for delays or the non-realisation of orders for reasons lying beyond its control (e.g. *force majeure*, epidemics, operational disruptions, technical defects, strikes, etc.). Claims of the Client for damages are excluded in such cases.

- 8.5. In all other cases of delay for which HypTec is responsible and in the event of non-performance or performance which falls short of contract obligations, HypTec's liability shall be limited to the respective order value.
- 8.6. Any claims for damages against HypTec shall lapse 18 months after the claimant gains knowledge of the damage and the damaging party, but no later than 5 years after delivery.
- 8.7. The Client shall be fully liable, regardless of fault, for damage caused by explosions, other malfunctions or test item failures of the test items provided by it (e.g. hydrogen tanks) to HypTec's systems, equipment or other objects or to HypTec's personnel.

## **9. Final provisions**

- 9.1. Changes to the Client's master data must be reported to HypTec without delay.
- 9.2. The Client is obliged to comply with the relevant statutory provisions in connection with the Parties' contract relations. This applies in particular in respect of anti-corruption and money laundering laws as well as antitrust, labour and environmental protection regulations.
- 9.3. Unless otherwise expressly agreed in writing, the legal relations between HypTec and the Client shall be governed by the laws of the Republic of Austria, excluding its conflict of law rules and excluding the Vienna UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Sales Convention).
- 9.4. Jurisdiction for all legal disputes arising from or in connection with these GTCCs, contracts subject to them and all contracts between HypTec and the Client is vested in the court with subject-matter jurisdiction in 8403 Lebring. However, HypTec shall be entitled to assert an action against the Client alternatively before the court having subject-matter jurisdiction at the Client's principal place of business.
- 9.5. Should any of the foregoing provisions be or become invalid, void or unenforceable, this shall not affect the validity of the remaining provisions hereof. In such case, the invalid, void or unenforceable provision shall be interpreted, reinterpreted or replaced from the outset of its invalidity, voidness or unenforceability in such a way that the commercial objective pursued by it is achieved in the best possible way. The foregoing also applies to any gaps in the contract.