

**General terms and conditions for the carrying out of service as well as research manufacturing assignments by  
IHP GmbH - Innovations for High Performance Microelectronics/Leibniz-Institut für innovative Mikroelektronik  
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The sole and direct purposes of IHP GmbH – Innovations for High Performance Microelectronics/Leibniz-Institut für innovative Mikroelektronik (hereafter: IHP) are non-profit. It carries out research assignments as well as research manufacturing in the field of applied research, breaking for it new ground in terms of technology. The following Terms & Conditions are tailored to such particular aspect.

### **1. Field of application**

1.1 The following Terms & Conditions apply to all further services to be rendered by IHP, which are based on orders having no specific research and development character. Any deviating, conflicting or supplementary conditions put up by the Principal do not become part of the contract, unless IHP consents to their validity in writing.

### **2. Object of the contract, contract validity, scope of services**

2.1 Object of the Service and Research Manufacturing Assignment are the services included in the list of services to be rendered by IHP.

2.2 IHP publishes non-binding capacity forecasts; in this respect, for a contract between IHP and the Principal to be valid, a written confirmation by IHP of the assignment is required.

2.3 If the range of services offered or the Service and Research Manufacturing Assignment include any time limits or deadlines, these are only binding, if IHP has explicitly confirmed their binding character. If IHP concludes that such binding time limit or deadline cannot be met, the causes for such delay are communicated to the Principal, and reasonable time adjustment will be agreed together with the Principal.

2.4 IHP warrants that the service to be rendered by it will be in line with specifications and quality standards agreed. Additional assurances or guarantees regarding the quality of deliveries and service are granted exclusively on the basis of an explicit, written agreement.

2.5 Deliveries will be EXW IHP pursuant to Incoterms 2000.

### **3. Prices and payment terms**

3.1 All prices agreed do not include VAT; packaging, insurance, freight, assembly and further dispatch or transport costs are not included, either.

3.2 Statutory VAT, as is required by the time the services are rendered, has to be added to the prices agreed, and will be shown separately in the invoice.

3.3 Immediately following order confirmation, advance payment of 50pc of the contract price agreed is due. For standing orders, the value of the respective called order is relevant. The remaining sum is payable within 14 days following receipt of invoice. Any deviating agreements need to be held in writing. Payments are to be made without deductions to the bank account of IHP, indicating the invoice no.

3.4 Offset against claims against IHP is only permitted, if the counterclaim is either undisputed or found to be legally binding.

3.5 The Principal can exercise his right to withhold only, if his counterclaim is based on one and the same contractual relationship.

### **4. Results of work generated**

4.1 IHP remains the owner of existing copyright, inventions and further rights on incorporeal goods, (existing proprietary rights).

4.2 Unless explicitly stated otherwise in writing, any inventions made by IHP staff, or by third parties involved by IHP, in the course of carrying out the assignment are the property of IHP.

4.3 Any inventions made jointly by staff of IHP and of the Principal in the course of carrying out the assignment, including any proprietary rights consequentially granted, are owned jointly by both Parties to the contract. Any specific activities regarding such proprietary rights require an arrangement or the conclusion of a separate agreement on each single case. Any Party involved is entitled to use free of charge inventions made jointly, as well as the proprietary rights resulting from them. The Parties involved will decide jointly on granting licences on inventions made jointly and any third Party's proprietary rights resulting from them. If any of the Parties waives their rights to or resulting from the patent, the sole authority of disposal of the respective registration and/or the proprietary rights are transferred to the other Party. In this case, the waiving Party retains a free-of-charge, non-transferable right of use. Paragraph 4.3, section 3 applies accordingly to products falling under copyright act protection, which are created jointly by the Parties to the contract in the course of carrying out the assignment (shared copyright).

### **5. Liability**

5.1 IHP guarantees due scientific care and compliance with the generally recognized rules for good engineering.

5.2 IHP, its legal representatives and vicarious agents are liable to the Principal pursuant to the Product Liability Act, and for breach of duty and tortious act, if caused with intent or by gross negligence. For violating essential contractual duties (main duties), IHP, its legal representatives and vicarious agents are liable also in cases of ordinary negligence. However, such liability is in any case limited to foreseeable damage typically related to such contract.

Such exclusion or limitation does not apply to liability for damage to life, for physical injuries, or for damaged health.

5.3 Beyond that, IHP will not assume any additional liability, unless mandatory and prescribed by the law. Any liability for consequential damage is explicitly ruled out.

5.4 No liability is assumed for breach of proprietary rights of any third Party during the use by the Principal of results generated by IHP, unless IHP had been aware of such breach by the time of transferring these results, and has, with intent or by gross negligence, failed to inform the Principal about this.

### **6. Defect claims**

6.1 The service owed has to be in line with the service description and the scope of services agreed.

6.2 IHP does not assume liability regarding the commercial usefulness of its service rendered according to the purpose of use pursued by the Principal.

6.3 If the service provided by IHP appears to be defective, IHP will at first be given an opportunity to remedy such defect – depending on the character of the defect and all further circumstances also several times – by providing supplementary service, which according to choice can be rework or substitute delivery. For such purpose, the Principal has to concede to IHP an appropriate limit of time, considering the particular circumstances of a single case of a service or research manufacture assignment in a Research and Development Institute.

6.4 If IHP refuses to render supplementary service, if supplementary service fails, or if it cannot be reasonably expected from the Principal, the Principal may choose either to withdraw from the Contract, or to claim the lowering (reduction) of remuneration owed, or to claim damages. Such right to withdraw can only be exercised in case of a grave defect. It expires, if the Principal does not declare withdrawal within 14 days, by the latest, following notification on such refusal or the failure of supplementary service, nor declares withdrawal within 14 days, by the latest, following the moment that unacceptability of supplementary service has become clear to the Principal. IHP is liable to pay damages only on the basis of the further preconditions, as set forth in paragraph

6.5 The Principal is obliged to examine with no delay the service delivered by IHP, and to notify any defects immediately. Any claims resulting from discernible defects can only be alleged, if they are reported to IHP within 14 days following delivery.

6.6 Claims resulting from defects lapse according to paragraph 7.

## **7. Statute of Limitation**

7.1 Claims resulting from defects as to quality and defects in title are subject to 12-month limitation, unless prescribed otherwise by the law.

7.2 Limitation of claims resulting from defects starts from the time of delivery.

7.3 Negotiations between the Parties on claims or circumstances being the basis for such claims lead to limitation being suspended. However, such suspension ends, if one of the Parties to the Contract does not fulfil within 4 weeks time the desire of the other Party to continue these negotiations.

## **8. Retention of title**

8.1 In cases involving ownership transfer to the Principal as part of the service owed, the Principal will acquire title only after full payment of the price agreed. No property of IHP must ever be pledged or assigned as security.

8.2 In the event that ownership of IHP expires as a result of merger, intermingling or working up, it is already now being agreed that ownership to the merged entity arising in such case is, until full payment of remuneration agreed, transferred to IHP according to the proportional value (invoice value).

## **9. Confidentiality**

9.1 During and for a 5-year period following conclusion of the assignment, the Parties to the Contract will not make accessible to any third Party any technical or commercial information that was mutually disclosed to each other and declared confidential. However, this does not apply, if the information was already known to the other Party or to the public domain, or was generally accessible prior to the disclosure, or became known to the other Party or to the public domain, or became generally accessible after the disclosure through no help or no breach of the other Party to the Contract, or which corresponds with information disclosed or made accessible to the other Party to the Contract by a third party authorized to do so, or developed independently by an employee of the other Party to the contract, who did not have knowledge of the information disclosed.

9.2 Authorized third Parties within the meaning of this clause are IHP's subcontractors being entrusted by it to provide particular parts of the service, and who are bound to confidentiality.

## **10. Termination of contract**

10.1 Unless agreed otherwise in writing, contracts can be terminated by the end of each month with 30 days notice, but not prior to 6 months following the commencement of the contract.

10.2 Termination of contract for compelling reasons remains unaffected.

10.3 After termination becoming effective, IHP will hand over to the Principal within 4 weeks all results achieved prior to expiry of the period of termination. The Principal is obliged to remunerate to IHP all costs arising to the latter till the end of the period of termination. Personnel costs are paid for according to time expenditure. In the event that termination was caused by the fault of one of the Parties to the Contract, any claims for damages remain unaffected

## **11. Miscellaneous**

11.1 Any side agreements, alterations and amendments need to be held in writing.

11.2 Place of performance for services to be provided by IHP is the registered address of the corporation.

11.3 The laws of the Federal Republic of Germany apply, with the CISG United Nations Agreement on the International Purchase of Goods being excluded here.

11.4 Should a provision or several provisions be or become, either in part or completely, ineffective, the validity of the remaining provisions remains unaffected. The same applies in the event of a regulatory gap.

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