

1. Scope of Order

1.1 The following terms and conditions apply to all services provided by FLAMMIA Engineering & Consulting GmbH, hereafter, also referred to as FLAMMIA (or the author). Diverging, conflicting or in any way supplementary Terms of Service set by the contracting party, (furthermore also named client or customer), which are, thus, differing from the General Terms of Service of FLAMMIA stated here, shall not become part of the contract, unless FLAMMIA has explicitly confirmed their validity in writing. The maintaining of silence shall not be construed as tacit agreement. This shall also apply in the event that FLAMMIA, while having taken note of the existence of a customer's differing Terms of Service, provides services without declaring its reservations. Unless a differentiation is made in the relevant clause of the following General Terms of Service, all consulting/advisory services are carried out on the basis of the legal regulations concerning the right of agency (§§ 675 ff. BGB, e.g. Articles 675 and 667 of the German Civil Code, hereafter referred to as BGB). These Terms of Service do not apply vis-à-vis consumers, § 13 BGB.

1.2. In the occasion that the following Terms of Service include a liability disclaimer, an exclusion or limitation to the liability of FLAMMIA, its legal representatives, various agents or servants, this exclusion or limitation of liability shall not apply to damages arising due to personal injury, injury to life, physical injury or damage to health, e.g. 'harm to life, body or health'.

2. Offer and Subject Matter of Contracting, Period of Performance

2.1 Subject matter to the contract are exclusively such services as intended by FLAMMIA in the written contract.

2.2 If the offer or the consultancy contract detail due dates or a set turn-around/processing time, these are only valid/legally binding if FLAMMIA pronounces them binding – explicitly and in written form. Should FLAMMIA become aware that the binding processing time or the set due date cannot be met, the client will be informed of the reasons for the delay and a suitable adjustment to the previously contractually set due date or processing time shall be agreed upon amongst FLAMMIA and the client.

2.3 Delivery deadlines and contractual obligations are automatically extended for the period in which FLAMMIA examines proposals for amendments by the client, generates proposals for such amendments or in which negotiations between the contractual parties are taking place or the project realisation is on hold on the request of the client.

2.4. Drawings, illustrations, technical specifications, calculations, tools and documents, as well as other technical data and recommendations – this includes the industrial or commercial know-how - made available or accessible to the contractual partner/client in conjunction with the offer remain legal property of FLAMMIA and must be restored to FLAMMIA immediately after the end of the offer period.

The contractual partner, client or recipient of an offer shall be obliged to treat all non-generally known entrepreneurial details of the contractual relationship with FLAMMIA as a commercial secret, and not to disclose these details to third parties even after termination of the contractual relationship.

3. Remuneration, Terms of Payment

3.1 The remuneration due for consulting/advisory services is calculated according to time and effort expended as based on standard unit prices, unless diverging agreements have been made on an individual basis. VAT or Turnover Tax (as according to German law) is respectively added to the remuneration of fee for all services.

3.2 Payment is due monthly a posteriori, e.g. after services have been provided and after issuance of the invoice. Payments are to be transferred to the account specified by FLAMMIA without deductions, while indicating the invoice number.

3.3 The contracting party is only entitled to a set-off against claims by FLAMMIA if the counterclaim is based on undisputed or legally established debts.

3.4 The client can exercise a right of retention only if his counterclaim is based on the same contractual relationship.

4. Rights of Use

4.1 The client shall be granted a non-exclusive, royalty-free right of use for the purpose of application on which the contract is based to inventions generated during the performance of the project as well as to industrial property rights filed by and granted to FLAMMIA for these inventions. The client shall reimburse FLAMMIA an appropriate part of the costs for registration, maintenance and defense of the industrial property rights to be agreed upon between the contracting parties and shall pay, in case of use of the inventions, a comprehensive employee inventor fee, the exact amount of which shall be agreed upon on an individual basis.

4.2 Upon request and in lieu of the right according to Section 4.1, the client shall be granted an exclusive, royalty bearing right of use for the purpose of application on which the contract is based to inventions generated during the performance of the project as well as to industrial property rights filed by and granted to FLAMMIA for these inventions.

The request shall be made in writing addressed to FLAMMIA, at the latest three months after the client's notification of the invention. FLAMMIA shall insofar retain a non-exclusive, royalty-free right of use for its commercial advisory purposes, research and development.

4.3 The client shall be granted a non-exclusive, royalty-free right of use for the purpose of application on which the contract is based to copyright protected works, databases, and know-how created during the performance of the project/the contractual relationship. The granting of an exclusive right of use shall require a separate agreement.

4.4 Inventions jointly achieved by the contracting parties during the performance of the project (joint inventions) may be used and licensed by each contracting party without any financial compensation. The contracting parties shall each bear a to be agreed upon portion of the costs for registration, maintenance and defense of the industrial property rights in question. In the case of copyright protected works jointly created during the performance of the contract (joint authorship) Section 4.4, sentence 1 shall apply correspondingly.

4.5 If during the implementation of the contract already existing industrial property rights or copyrights of FLAMMIA are used which are required for the client's commercialization/commercial exploitation of the result of advisory services by FLAMMIA or the research and development project, then the client shall be granted a non-exclusive, royalty-bearing right of use under a separate agreement unless other obligations entered into by FLAMMIA preclude this.

5. Property Rights of Third Parties

5.1 FLAMMIA shall immediately notify the client of any third party industrial property rights of which it becomes aware during the performance of the contract and which could preclude the client's use agreed pursuant to Section 4. The contracting parties shall decide in joint consultation how such industrial property rights shall be taken into consideration in the further performance of the project.

5.2 In the case of infringement of third party industrial property rights FLAMMIA shall be liable under the provisions of Sections 6.2 and 8.6, sentence 1 if it has violated its obligation to notify the client. Notwithstanding the liability under Section 8, the client shall have no further claims against FLAMMIA.

6. Liability

6.1 When providing its due services FLAMMIA is liable and shall be responsible for applying scientific care and for complying with generally accepted scientific and technological state-of-the-art standards, but not for actually achieving any set goal.

6.2 The liability of FLAMMIA, its legal representatives and agents in the case of violation of obligations and tort shall be limited to intent and gross negligence. Only in case of violation of essential contractual obligations (cardinal obligations) FLAMMIA, its legal representatives and agents shall also be liable in case of slight negligence. In any case, liability shall be limited to the foreseeable, contractually typical damages.

6.3 Should FLAMMIA fail to provide due services, fail to realize the performance as agreed upon or fail to do so at the time due or in the manner agreed upon, then the client may only demand compensation in lieu of performance if the client has unsuccessfully set an appropriate deadline for fulfillment of the services in question by FLAMMIA; including the statement that he, the client, would otherwise reject acceptance transfer or delivery of the performance, work results or services provided by FLAMMIA after the passing of that deadline.

6.4 The client is contractually obliged to secure all data developed, transmitted or supplied by FLAMMIA, its various agents or servants, or employees at least once a day, in order to ensure that the effort FLAMMIA has to put forth in case such data is lost stays within reasonable limits. So far FLAMMIA or its various agents, or employees should be responsible for data loss, FLAMMIA can only be held liable for the damage occurring while the client followed the essential contractual duty set out above.

7. Warranty

7.1 The warranty period set out by FLAMMIA is limited to one year, unless diverging agreements have been made in individual cases.

7.2 Any liability as according to the Produkthaftungsgesetz (German Product Liability Law) shall remain unaffected. In so far as products, services (or the result of advisory, developmental, technological or research labour) have been sold, for which a manufacturer's warranty ensues, the client or contractual partner is obliged to direct his claims for warranty at the manufacturer first.

8. Special Provisions for Services Based on Sale or Service Contracts

8.1 Insofar FLAMMIA owes manufacture, performance or delivery of work results corresponding to the generally accepted state-of-the-art in technology or science, the relevant provisions for sales contracts (Kaufrecht) and contracts for work and services (Werkvertragsrecht) shall only be applicable subject to the following rules and regulations.

8.2 Prices are quoted "ex works" or "ex warehouse." (Whereby the works or warehouse may be that of a third party.) i.S.d. Incoterms 2000.

In the event that FLAMMIA agrees to accept in addition the application of the INCOTERMS issued by the International Chamber of Commerce in Paris (ICC) or individual provisions of INCOTERMS in contracts with foreign contractual partners or customers, then such agreements are exclusively related to INCOTERMS 2000, and the German version or the German translation shall be decisive.

8.3 In the event of services provided based on a contract for work and services FLAMMIA can demand the implementation of partial acceptances, delivery or transfer for delimitable and on an individual basis commercially exploitable or usable components of the work result, services or performance provided. The final partial acceptance equals the final acceptance, delivery or transfer of the entire work result, performance and services due in the project/contract concerned. Completed partial acceptances previously carried out are not affected by the success of the final acceptance. Services, performances, deliveries or transfers are considered accepted, unless the acceptance is refused within 7 working days (excluding Saturday, Sunday, and holidays) after the date of delivery to the receiving department, with the customer expressing his reservations concerning the acceptance of such received performances in writing and specifically naming the faults, or respective reasons for the refusal. Services, performances, deliveries or transfers are also considered accepted as soon as such services, performances, deliveries or transfers are exploited, used commercially or in a production process. Acceptance may not be refused as a result of insignificant or non-essential defects or deficiencies, which are not a major detriment to the functionality of the work result (e.g. the result of such services, performances, deliveries or transfers). Such minor defects or deficiencies shall be resolved within the framework of the warranty.

8.4 Should the result of goods produced or delivered, services rendered or the result of research and development work generated by FLAMMIA prove to be defective or faulty, then FLAMMIA shall first be given the opportunity to supplementary performance - depending on the nature of the services, the result of the research and development, the defect and other circumstances, also repeatedly - and at its discretion either by means of remedying the defect or through substitute delivery. In the case of a legal defect of title, concerning an infringement of third party intellectual property rights rectification, subsequent performance, or the remedying of the above-mentioned defect, will be provided in such a way that FLAMMIA either elicits permission to enjoy the said rights from the third party or modifies the result of services in such a way that the affected property rights of the third party in question are no longer infringed upon.

8.5 Should FLAMMIA reject supplementary performance or if supplementary performance cannot be achieved or the client cannot reasonably be expected to accept supplementary performance, then the client may either choose to terminate the contract or demand reduction of the fee owed (reduction) or damages. The right to termination may be exercised only in case of a serious defect. This right to termination lapses if the client does not declare the termination of the contract within 14 days after receiving notification of rejection or failure of supplementary performance or at the latest 14 days after the date at which it is recognised that the client cannot reasonably be expected to accept supplementary performance.

8.6 The client shall immediately examine the result of services supplied by FLAMMIA and report any defects found without undue delay. FLAMMIA only warrants for recognisable defects if it has been notified thereof within a period of 14 days from the date of delivery or transfer.

8.7 All claims for compensation made by the customer due to deficiencies or defects or other shortcomings are subject to the terms set out in clause No.8.4 and No.8.5. FLAMMIA has taken out business and product liability insurance amounting to a maximum of 5.000.000EUR.

8.8 Any claims based on warranty rights expire if a service or work result provided by FLAMMIA is altered, maintained, repaired by the client, his various agents or employees or a third party, unless the client is able to prove that the afore mentioned alterations are not the cause of the reported deficiency or defect that the claim is based on.

8.9 In the case of a legal defect of title concerning an infringement of third party intellectual property rights FLAMMIA shall only be liable if such rights apply in the Federal Republic of Germany, and if the client uses the result of FLAMMIA's services in a manner consistent with the contract and if the third party, thus, uses the result rightfully, and if a court decision based on infringement by the client of third party intellectual property rights is rendered against the client, and if the client has immediately notified FLAMMIA in writing of the claims asserted by such third party. Supplementary performance under Section 8.2 will be carried out by FLAMMIA by either obtaining a contractual authorisation for the client's use or by modifying the result of the research and development that the relevant third party intellectual property rights are no longer infringed.

8.10 Claims due to defects shall be statute-barred in accordance with the provisions of Section 9.

9. Statutory Limitation of Liability in Time

9.1 Any claims by the client based on breach of duty and tort shall be statute-barred within 12 months. This shall not apply where legislation stipulates longer respites (e.g. for structures §§ 438 s.1. No. 2 (BGB), rights of recourse (regress claim § 479 No.1 (BGB) and construction defects § 634 a No.1 or alternatively No.2.1 (BGB) German Civil Code) or FLAMMIA is liable due to intent or gross negligence and in case of fraudulent concealment of a deficiency.

9.2 Should delivery or acceptance of the result of FLAMMIA's advisory services or of services in research and development be agreed upon, the statute of limitations on claims due to defects pursuant to Section 9.1 shall commence upon acceptance, otherwise upon delivery or transfer of the afore mentioned services or their results.

9.3 Negotiations between the contracting parties over claims or over circumstances giving rise to such claims shall suspend the statutes of limitation. The suspension/suspensive effect shall end if one of the contracting parties has not complied with a request of the other contracting party to continue said negotiations within four weeks.

10. Reservation of Proprietary Rights/Reservation of Title

10.1 The customer shall only be granted ownership to the result of services, research and development provided by FLAMMIA as well as to the right of use according to Sections 4.1, 4.2, 4.3, and 4.5 after full payment of the fee/remuneration agreed upon. Ownership and rights of use held by FLAMMIA may neither be given in pledge, or mortgaged nor transferred as security.

10.2 In the event that FLAMMIA's ownership of the results of its services, research and development lapses as a result of combining, commingling, or processing, it is already hereby agreed in advance that the (co-) ownership to the combined homogeneous object or uniform body of work created in such a case shall, until full payment of the agreed fee/remuneration, be proportionally assigned (invoice value) to FLAMMIA.

10.3 In the occasion of a resale, sub-sale or onward sale to a third party of services or results of the research and development rendered by FLAMMIA, the client shall cede all rights in rem to such onward sale to FLAMMIA until full payment of the agreed fee/remuneration.

11. Data Confidentiality

11.1 The contractual parties will not make any data or information pertaining to the other contractual partner, especially not data that was declared confidential and secret, accessible for the duration of the contract and for a period of five years after the end of said contract. This does not apply for information, which was accessible to the other contractual party or to the public before transmission or which was commonly accessible or became known to the other Party or to the public after transmission without participation or fault of the other party, or which corresponds to information having been disclosed or made accessible by an authorised third party or which have been developed independently by an employee of the other party without prior knowledge of the previously disclosed information.

11.2 Third parties, as pertaining to these regulations, are not subcontractors of FLAMMIA, which have been entrusted with rendering partial deliveries and services in the context of the contract by FLAMMIA and which are liable to maintain confidentiality.

12. Termination

During the agreed duration of the contract ordinary termination is impossible. The right to extraordinarily terminate the contract for an important reason remains untouched.

13. Miscellaneous Provisions

13.1 Supplementary agreements, amendments and other additional agreements pertaining to these General Terms require written form. The same applies concerning alterations to these clauses.

13.2 Place of fulfillment for services of FLAMMIA is Stuttgart, unless something else has been agreed upon in the order in writing. Place of fulfillment regarding payments of the client is Munich. The only court of jurisdiction vis-à-vis traders, legal entities or special funds under public law is Munich.

13.3 The law of the Federal Republic of Germany applies under exclusion of the provisions of the convention of the United Nations concerning the contracts for international sales law (CISG).

13.4 Should one or more of the aforementioned provisions be or become ineffective, invalid or unenforceable as a whole or in part, the legal validity of the remaining provisions remains untouched. The same applies in case of a legal loophole in these provisions. In its place a regulation shall take effectiveness, which most closely approximates the economic intent of the contractual partners at the time of the signing of the contract and the purpose of the original provision.