

# Hohenstein Institute America, Inc. General Terms and Conditions of Business

1688 Westbrook Avenue, Burlington, NC 27215  
Version as of January 2018

## 1. SCOPE

- 1.1 Legal relationships of the Hohenstein Institute America, Inc. (Contractor: "the Contractor") are defined under the terms of the following contractual terms and conditions for commercial business dealings and if permissible for commercial dealings with non-commercial persons.
- 1.2 The contractual conditions also apply to existing business relationships for further and follow-up orders.
- 1.3 Client's ("the Client") differing terms and conditions of business only become a constituent part of the contract if they are recognised by the Contractor expressly and in text form (e.g. email, telefax, sms etc.).

## 2. ASSIGNMENT

- 2.1 The subject of assignment is any manner of expert opinion, testing, investigation (including procurement of testing apparatus and equipment) research work, auditing, inspection or certification (hereinafter referred to collectively as „expert opinion“), i.e. establishment of facts, presentation of empirical findings, determining causes, assessment and review.
- 2.2 The precise expert opinion topic and purpose of use must be defined in text form at the point of awarding the assignment.
- 2.3 The Client has been made aware that an opinion requested by Client directly from Contractor may not be subject to attorney-client privilege and that Client has been advised to discuss with counsel the appropriate party to request the Expert Opinion from Contractor.

## 3. FULFILMENT OF THE ASSIGNMENT

- 3.1 The assignment will be executed by the Contractor impartially and to the best of their knowledge and belief, according to the recognised rules of technology on the basis of the best-available knowledge and technology and using existing knowledge and/or knowledge and experience gained during the duration of the assignment.
- 3.2 Any specific success, in particular any outcome desired by the Client may only be guaranteed on the part of the Contractor on the basis of application of objective and impartial expert knowledge by specialists working for the Contractor.
- 3.3 The Contractor shall be entitled to transfer his expert opinion activities to third parties either wholly or in part.
- 3.4 If, in order to ensure professional completion of the assignment, the involvement of specialists in other disciplines should prove necessary their engagement shall be authorised on behalf of the Client.
- 3.5 In other respects the Contractor shall be entitled to carry out or have carried out necessary and customary investigations and experiments for processing the assignment at the Client's cost and in the light of his own best judgement. Should it transpire in the course of any investigation that for confirmation of measurement result findings an analysis must be repeated or the analysis procedure must be extended to include a repeat run, this shall not be deemed to be an unforeseen event or a costly investigation in terms of time and expense in relation to the purpose of the expert opinion.
- 3.6 If service changes or enhancements compared to the original assignment become necessary during the execution of the assignment, the Contractor may demand the conclusion of a change agreement in text form before any change or enhancement to individual services, in which any questions of reasonable additional remuneration and deadline changes are to be dealt with.
- 3.7 If a set period is agreed for reimbursement of the expert opinion this may not be regarded as agreement of any firm deal.
- 3.8 The expert opinion to be compiled by the Contractor shall be provided to the Client in writing in single copy indicating the specialist responsible for its composition. Additional copies are invoiced separately.
- 3.9 The Contractor's expert opinions reflect only those facts established at the point in time of testing on the basis of the specific instructions provided by the Client or, in the absence thereof, the specifications in the assignment specification form, relevant commercial customs, usages or practices and such procedures as the Contractor deems appropriate on technical, business organisational and/or commercial grounds. The Contractor is under no obligation to indicate facts or values or to report on the latter if these lie outside the specific instructions issued by the Client.
- 3.10 The Client acknowledges that in providing his services the Contractor neither adopts the position of the Client or any third party nor releases the latter from any obligations or in any other way assumes, restricts

or cancels Client obligations vis-à-vis third parties or of third parties vis-à-vis the Client or releases him therefrom in any other manner.

- 3.11 Following completion of the assignment and payment of the remuneration agreed the Contractor shall retain the Client's test material in safekeeping at the Client's risk and in observance of his own customary care. If the Client has not yet collected the documentation and samples three months after acceptance of the expert opinion the Contractor is released from any liability.

## 4. CLIENT OBLIGATIONS

- 4.1 The Client may not issue the Contractor any instruction which might falsify the latter's actual findings or the results of his expert opinion.
- 4.2 The Client shall ensure that the specialist receives free of charge and in good time all information, documentation and test material necessary for completion of the assignment.
- 4.3 A Client wishing to use the results of the expert opinion in the course of any test event is under the obligation to procure the test material on his own responsibility regarding selection of the test material and sending the test material to contractor.

## 5. DUTY OF CONFIDENTIALITY

- 5.1 The Contractor is forbidden to publish, disseminate or use the expert opinion itself or facts or documentation entrusted to him or which has otherwise become known to him in the course of his expert opinion activities. The duty of confidentiality covers all facts not generally known and shall apply beyond the duration of the contractual relationship.
- 5.2 This duty of confidentiality applies to all staff employed at the Contractor's establishment.

## 6. COPYRIGHT, DATA PROTECTION

- 6.1 The Contractor shall retain copyright to the services provided – insofar as these are appropriate in that regard.
- 6.2 Any publication of the expert opinion, its use by way of reproduction and dissemination is only permitted in the context of the contractually defined purpose of use and by acknowledging the Contractor.
- 6.3 If the Client intends to indicate in his product or company advertising the fact of certification by the Contractor of individual products or product groups, either by extracted quotes from the expert opinion concerned or by mentioning the Contractor alone, a prior contractual agreement is required. If no such agreement is made in the expert opinion contract any extract quotation use of the results of the expert opinion, both in the product advertising and in company advertising, is excluded.
- 6.4 The Client is not permitted to amend, edit or use the expert opinion in merely extract form. Any disclosure of investigation reports or expert opinions to official authorities or other public offices is permissible if and to the extent that this is necessary or prescribed under statute in the light of the contractually assumed use or to the extent required by law.
- 6.5 The Contractor stores, processes and also uses personal data for the Client for correct order execution and for their own purposes. The Contractor uses data processing systems for this. The Contractor has taken technical-organisational measures to fulfil data protection requirements, which guarantee data security and data protection procedures. Employees responsible for processing are bound to comply with federal and state data protection laws and to adhere to all data protection regulations.

## 7. PAYMENT – DELAYED PAYMENT

- 7.1 Unless otherwise expressly agreed the fee shall be due and payable thirty (30) days from the date of invoicing or within such longer period as may be agreed upon in text form. Contractor may elect to require the fee agreed upon to be due and payable prior to commencing the assignment. Any balance that is past due shall bear interest at the rate of eighteen per cent (18%) per annum.
- 7.2 Payment instructions, checks and bills of exchange are only accepted following special agreement and charging all collection and discount fees and only as payment.
- 7.3 In the event of failure to observe payment terms the Contractor shall be entitled to enforce all remuneration claims due for payment with immediate effect. This also applies in the event that bills of exchange and checks are not honoured.

7.4 The Client may only offset against Contractor claims only if the Client's counterclaim is undisputed. In the event that Contractor shall bring suit to collect any sum owed by Client, Client shall be obligated to reimburse Contractor for all costs of such suit including Contractor's reasonable attorneys' fees.

## **8. CANCELLATION**

8.1 Client and Contractor may cancel the contract in text form at any time on significant grounds.

8.2 Significant grounds which entitle the Client to cancel are, amongst other things, any infringement of the obligations to provide an objective, independent and impartial expert opinion.

8.3 Significant grounds which entitle the Contractor to cancel are, amongst other things, refusal of necessary collaboration by the Client (in particular as defined in Point 4.2) attempted impermissible influence on the part of the Client on the specialists commissioned with preparation of the expert opinion, use of expert opinion findings and partial results over and above the contractually defined purpose of expert opinion preparation, impermissible reproduction of expert opinions and if, following acceptance of the assignment, the Contractor discovers that he does not possess the necessary expertise to complete the assignment.

8.4 In other respects cancellation of the contract is excluded.

8.5 If the contract is cancelled on significant grounds for which the Contractor is responsible he shall be due any remuneration for partial services provided up to the point of cancellation only to the extent that this is objectively of use to the Client.

8.6 In all other cases the Contractor retains claim to the full contractually agreed remuneration - subject however to deduction of expenses saved. If in any individual case the Client can demonstrate no higher proportion of expenses saved, this is agreed to be 40% of the remuneration for services not yet provided by the Contractor.

## **9. FAILURE TO MEET DEADLINES**

9.1 Any deadline set by the Client for delivery of the expert opinion shall only be deemed agreed if expressly confirmed by the Contractor in text form.

9.2 If a deadline is agreed between Client and Contractor for delivery of the expert opinion this period shall commence upon conclusion of the contract or receipt of the samples on a laboratory working day. If the Contractor requires documentation from the Client for preparation of the expert opinion or if payment of an advance is agreed the period allowed for the deadline only commences following receipt of the documentation or the advance.

9.3 The Contractor shall only be deemed to be in arrears if he is responsible for the delay in delivering the expert opinion. In the event of obstacles to delivery for which he is not responsible, such as for example force majeure, illness, industrial disputes and lockouts resulting from an event involving no blame and leading to grave operational disruptions delayed delivery shall not apply. The period for delivery shall be extended in such cases by the duration of the hindrance. If as a result of such obstacles to delivery provision of the expert opinion is totally impossible for the Contractor he shall be released from his contractual obligations. In this event also the Client has no claim to damages compensation.

9.4 In addition to delivery the Client may only demand damages compensation if intent or gross negligence is demonstrated on the part of the Contractor.

## **10. GUARANTEE**

10.1 No guarantee is assumed for the economic benefits of the results of the assignment.

10.2 Initially the Client may only demand cost-free rectification of a deficient expert opinion.

10.3 This requires that a period of grace of appropriate duration be set, but not less than the duration of the term for delivery originally agreed however.

10.4 If there is no rectification within an appropriate time or if rectification fails the Client may demand a cancellation (withdrawal) of the contract or a reduction in the fee (abatement).

10.5 Defects must be notified to the Contractor immediately and in text form; otherwise the guarantee claim shall lapse.

10.6 Claims as a result of supplying a deficient expert opinion are time-barred after one year. The statute of limitations period commences at the point of receipt of the expert opinion by the Client.

## **11. LIABILITY**

11.1 Expert opinions are prepared on the basis of information, documentation, quality requirements and/or samples provided by the Client and are for the exclusive use of the Client. The latter shall draw necessary conclusions from the expert opinion on his own responsibility. Neither the Contractor nor his senior staff, employees or subcontractors are responsible to the Client or third parties for any manner of actions taken or omitted on the basis of such expert opinions, including faulty tests based on imprecise, false, incomplete or misleading information provided by the Client.

11.2 Advice by the Contractor is only given in relation to the documents and information submitted by the Client.

11.3 The Contractor is not liable for delayed, partial or incomplete services if this derives directly or indirectly from events beyond the control of the Contractor.

11.4 The Contractor's liability is limited to gross negligence and intent. Irrespective of the degree of blame the Contractor is only liable in respect of such damage as arises as a result of infringement of obligations essential to achievement of the purpose of the contract. For all damage not caused intentionally or through gross negligence the damages claim shall be restricted to reasonably foreseeable damages typical for this type of contract.

11.5 The damages exclusion includes, to the extent legally permissible, all claims of whatever nature by the Client against the Contractor, his employees, representatives, vicarious agents and assistants arising from the expert opinion contract or implementation thereof.

11.6 The Contractor shall not be liable, insofar as legally permissible, for indirect or consequential losses, in particular not for lost profit, loss of business, loss of a business opportunity, reduction in company goodwill including costs in connection with any product recall. Furthermore the Contractor shall not be liable, insofar as legally permissible, for any losses, damages or costs which the Client might incur as a consequence of any third party claim (in particular in the event of enforcement of product liability claims).

11.7 In the event of any liability on the part of the Contractor liability to the Client for claims as a result of losses, penalties or expenses of whatever nature and magnitude irrespective of the grounds on which incurred shall under no circumstances exceed a total amount in the sum of the fee which the Contractor has received for the specific services giving rise to the claim.

11.8 All claims in connection with the specific inspection/production site assessment service - with the exception of any such claims resulting from injury to life, physical injury, injury to health and/or in the event of grossly negligent or intention cause of damage - are limited to the fee for five (5) man days.

11.9 In the event of damage claims the Client must notify this to the Contractor in text form within 30 days from the point in time of discovery of the circumstances giving rise to the claim. In any event damage claims arising from infringement of obligations on the part of the Contractor are time-barred after 12 months dating from receipt of the expert opinion by the Client.

## **12. LEGAL VENUE AND APPLICABLE LAW**

12.1 This agreement shall be construed under the laws of the State of North Carolina.

12.2 Any legal action brought under this agreement shall be commenced in either the State or Federal Courts of Alamance County, North Carolina.

12.3 Invalidity of individual contract provisions does not affect the validity of the remaining content of the contract.

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