

General Terms and Conditions for Empa Services (Empa Services GTC)

1. General

These General Terms and Conditions (GTC) regulate the completion, content and settlement of services between Empa and the Contractual Partner.

Alternative or additional regulations are valid only if agreed in writing and signed by both Empa and the Contractual Partner.

2. Conclusion of contract

The offer made by Empa to the Contractual Partner shall be regarded as an application. As soon as the Contractual Partner accepts the offer, the contract shall become valid. Empa shall send the Contractual Partner written confirmation of the contract.

3. Nature and scope of services

The services to be provided by Empa shall involve either

consulting, whereby Empa shall provide advice and support for the Contractual Partner regarding technological and scientific matters and provide its expert opinion

or

studies, such as tests of the Contractual Partner's materials, devices and procedures, improvements based on these tests, analytical studies and damage investigations.

The scope of services to be provided by Empa shall be determined by the offer and confirmation of the contract, including any annexes.

4. Reporting

4.1 The results of a service shall usually be summarised in a report. The report shall usually be written in German. If the Contractual Partner wishes to receive the report in another Swiss language or in English, it must notify Empa of this in writing before the latter starts its work.

4.2 Translations into any language other than those listed above are subject to special agreement. The associated extra costs shall be charged to the Contractual Partner.

5. Test materials/samples

Before Empa starts its work, the Contractual Partner must expressly instruct the latter as to whether or not the Contractual Partner wishes to receive back the test materials/samples provided (test materials, products, devices, etc.) after Empa has finished its work. If the Contractual Partner does not give any such express instructions, Empa shall be entitled to use these test materials/samples as it sees fit or to destroy them one (1) year after having finished its work. The Contractual Partner shall bear all transportation costs of test materials/samples (to and from Empa) and any test material/sample disposal costs incurred by Empa.

6. Deadlines

Agreed deadlines for providing a service are valid except in cases of force majeure. The deadlines apply only on condition that the Contractual Partner provides Empa punctually with the documents or test materials/samples required for the services to be provided.

7. Advertising using Empa reports

The use of Empa reports for any advertising purposes, including mere reference to the report, must be approved by Empa and is subject to a fee. This permission may be subject to conditions or constraints. Within the scope of the advertising authorisation given, Empa shall be released from its confidentiality obligation. Further details are provided in a special Empa information sheet ("Instructions for the use of Empa test reports for advertising purposes and when publishing their contents")

8. Confidentiality

8.1 Empa and the Contractual Partner undertake to treat as confidential both parties' commercial and business secrets that are revealed to them during the execution of the contract or made accessible to them in any other way, and not to pass contractual documents on to third parties. This duty of confidentiality applies for three (3) years after the start date of the relevant contract.

8.2 All information and data contained in the report pursuant to Section 4 is exempt from this obligation. The Contractual Partner is entitled to use such a report for its own purposes without any duties of confidentiality. On the other hand, Empa is obliged to treat such a report as confidential for an indefinite period of time, unless doing so is in serious breach of the public interest or of statutory provisions. In such a case, Empa is entitled to notify the responsible authorities.

9. Intellectual property

9.1 Any knowledge and skills provided by Empa (specifically, IP rights, know-how, analysis, methods, etc.) that it already possessed before the start of the contract shall remain Empa's exclusive intellectual property. Unless agreed otherwise, the knowledge and skills provided by Empa can be used by the Contractual Partner within its field of application, non-exclusively and free of charge, provided that this is necessary for the Contractual Partner to implement the results obtained.

9.2 The results contained in the report pursuant to Section 4 are the joint property of the Contractual Partner and Empa. These results can be used by the Contractual Partner within its field of business.

9.3 Empa is entitled to use these results, subject to its confidentiality obligation, within its teaching, research and development activities.

9.4 If the results can be patented, Empa and the Contractual Partner shall enter into a separate agreement concerning the modalities of the patent application, the allocation of costs, their respective rights of use, and appropriate compensation for Empa if the Contractual Partner exploits the patent commercially.

9.5 If, in providing its services, Empa makes new discoveries in the field of analysis (in particular, measuring techniques, sample preparation and evaluation methods), these shall remain Empa's property.

10. Publication

Empa is entitled to publish the results obtained by agreement with the Contractual Partner.

11. Duties and Rights of Cooperation of Contractual Partner

The Contractual Partner undertakes to provide Empa, punctually and in full, with all documents and information and any test materials/samples necessary for the provision of the services required. While maintaining commercial and business secrets of Empa as well as Empa's safety instructions, the Contractual Partner is entitled to claim access to the relevant laboratories in order to be present during the implementation of testing and calibrations.

12. Standards to be observed

When establishing the contract, the Contractual Partner must inform Empa of the standards that the latter must observe while providing its services. In the absence of this information, the services shall be executed pursuant to the provisions of Swiss law - specifically, the provisions of the Swiss Association for Standards (SN Standards).

13. Payment

13.1 Unless agreed otherwise, Empa's fee for the contractually agreed services shall be proportional to the time taken to execute them. The respective valid Empa hourly rates apply. The hourly rates apply to work carried out during normal business hours. For urgent work that must be carried out outside normal business hours by agreement with the Contractual Partner, a 50% surcharge shall be levied.

13.2 If there is a fixed price, this shall be based on the fundamentals known when the contract is concluded, and provided that all preconditions agreed at that time are fulfilled. If these fundamentals or prerequisites change, Empa is entitled to demand that the contract and the agreed fixed price be amended accordingly.

13.3 Empa is entitled to demand an advance payment before starting work. It is understood that the agreed fees do not include any ancillary expenses (e.g. taxes and fees). Unless agreed otherwise, all ancillary expenses shall be charged to the Contractual Partner. 75% of the valid hourly rates must be paid for travelling time.

13.4. Empa invoices must be paid within thirty (30) days of the invoice date. Offsetting is not permitted.

14. Material warranty and warranty of title

14.1 Empa guarantees that it shall execute the services to be provided carefully and using the latest scientific knowledge and technology. For testing, measuring and analytical services, the test results shall always refer only to the test materials/samples provided by the Contractual Partner/examined by Empa. Empa does not guarantee that the test results shall be the same for other deliveries of the same material, substance etc.

14.2 The warranty is valid for one (1) year. Empa must be notified in writing of any defects within ten (10) days after they occur or are detected. Genuine defects shall be repaired by Empa. Empa does not, however, provide any warranty of title.

15. Liability

15.1 Empa is liable for any damages resulting from unlawful intent or gross negligence, subject to the limitations stipulated in the following paragraph.

15.2 Empa expressly refuses to accept any further liability, whatever its legal basis, particularly for minor negligence, indirect damages and consequential damages, insofar as this is legally permissible.

16. Recruitment of employees

For the duration of the contract, neither party is permitted to recruit the other's employees except by mutual written consent.

17. Final provisions

The place of performance is one of the Empa sites (Dübendorf, St. Gallen or Thun), depending on where the contract is fulfilled.

The place of jurisdiction is the competent court for **Dübendorf (Switzerland)**.

Only **Swiss law** applies.