

# General Terms and Conditions

March 2006

Dorfnert Analysenzentrum & Anlagenplanungsgesellschaft mbH (ANZAPLAN)

## § 1 Scope of these Terms and Conditions

1. The following General Terms and Conditions shall govern all transactions of the Dorfnert Analysenzentrum and Anlagenplanungsgesellschaft mbH (ANZAPLAN GmbH) as listed under 2.

2. The following General Terms and Conditions shall govern the transactions of ANZAPLAN GmbH in the sectors Research, Process Development and Analysis.

3. Our contractual conditions only apply to companies as defined by § 310, Section 1 BGB (German Civil Code).

## § 2 Applicability of the Terms and Conditions

1. The transactions of ANZAPLAN GmbH listed under § 1 are carried out exclusively on the basis of these General Terms and Conditions. They shall also apply to all future business relationships without the need for this to be expressly agreed upon. Other Terms and Conditions, in particular those of the contractual partner shall not be valid, even if ANZAPLAN GmbH does not expressly reject them or if delivery is effected in the knowledge of said conflicting terms without expressing opposition hereto.

2. Deviations from these General Terms and Conditions are only effective if confirmed in writing by ANZAPLAN GmbH. Oral agreements have no standing. Any agreements made on behalf of ANZAPLAN GmbH by its representatives must be confirmed in writing by ANZAPLAN GmbH.

## § 3 Offers and Conclusion of Contract

1. Offers issued by ANZAPLAN GmbH are not binding. Declarations of acceptance and all orders become legally binding only after confirmation in writing or by facsimile by ANZAPLAN GmbH. The same applies to amendments, modifications or subsidiary agreements.

2. Statements and performance specifications are only binding insofar as this is expressly agreed in writing by the parties. Statements in catalogues, leaflets, circular letters, advertising, illustrations and price lists, in particular those regarding weight, dimensions, volumetric capacity and physical attributes are not binding between the parties unless they are subject to an explicit contractual agreement between the parties.

3. ANZAPLAN GmbH can accept an offer which it receives within the next 2 weeks which follow.

## § 4 Subject Matter of the Contract

1. Development orders which the contractual partner issues to ANZAPLAN GmbH do not include an obligation on the

part of ANZAPLAN GmbH to bring about a certain contracted result. Development orders in this context are in particular orders whereby the contractual partner specifies to ANZAPLAN GmbH a required product standard or product parameter which he requests and for which ANZAPLAN GmbH is to develop a technical operation or process, in order to achieve the desired product standard or product parameter (e.g. processing of a partly-finished product).

2. As a result of the fact that ANZAPLAN GmbH's contractual partner only provides raw materials or natural products with a particular intended end result, ANZAPLAN GmbH can neither be held liable for a particular outcome with regard to the product standards or product parameters mentioned under 1. and desired by the other party nor guarantee a particular result.

3. Insofar as ANZAPLAN GmbH undertakes scientific project management at the contractual partner's premises or on his behalf, the activities of ANZAPLAN GmbH will be of an advisory nature only. ANZAPLAN GmbH can neither be held liable for a particular outcome in this regard nor guarantee a certain result.

4. For the Analysis sector, ANZAPLAN GmbH shall - under the contract with the contractual partner - provide a statement of expertise. ANZAPLAN GmbH will carry out activities in the fields of analysis of solids (examination of mineral raw materials, of paper, glass and ceramics as well as all other types of raw materials and basic materials), analysis of water (examination of municipal and industrial waste water, surface, ground and seepage water as well as drinking, mineral and bathing water) and environmental analysis (examination of soil and waste products of one type).

## § 5 Methodology

ANZAPLAN GmbH shall carry out the analyses in accordance with recognised technological principles. The contractual partner has no claim on the analysis specifications or test procedures developed by ANZAPLAN GmbH. Something else only applies should ANZAPLAN GmbH be liable for the instructions or processes as a performance item.

## § 6 Dangerous Samples

If the samples or materials provided to ANZAPLAN GmbH contain special risks or dangers (e.g. explosive, radioactive, carcinogenic or other) the contractual partner must draw attention to the risks and dangers by means of appropriate labelling of the samples and materials and, in addition, making a written note in the order.

## § 7 Dates and Terms

1. The dates and terms stated by ANZAPLAN GmbH shall be non-binding, unless otherwise expressly agreed in writing.

2. Dates for completion of the transaction start from the conclusion of the contract, not, however, before receipt and clarification of all necessary materials and documentation or granting of any official licenses.

2a. Should the contractual partner be in acceptance default or culpably infringe other participatory rights, then ANZAPLAN GmbH is entitled to demand compensation for the damage that has arisen inclusive of any additional expenditure. The right to further-reaching claims remains intact.

2b. Given that the requirements of Paragraph 3 are on hand, the risk of accidental loss or accidental deterioration of the performance passes over to the contractual partner at the time when he is in default in acceptance.

3. ANZAPLAN GmbH cannot be held responsible for delays in performance resulting from force majeure or circumstances which make it considerably more difficult or impossible for ANZAPLAN GmbH to deliver - these include industrial breakdowns, strike, lockout, shortage of labour, shortage of transport, official regulations affecting ANZAPLAN GmbH or its suppliers, even if dates and terms were expressly agreed upon. In the case of such delays, ANZAPLAN is entitled to prolong the term for the period during which the situation remains in force and for a reasonable period thereafter.

## § 8 Pricing

1. The prices stated in ANZAPLAN GmbH's quotations are only binding for the period during which the quotation retains validity.

2. Any prices quoted by ANZAPLAN GmbH do not include applicable sales, use, excise and similar taxes, if any, and are exclusive of freight, carriage and packaging, insurance and other ancillary costs.

## § 9 Payment

1. Unless otherwise agreed, sales invoices shall be due immediately and payable net (i.e. without discount) within 14 days from the date of invoice. The statutory provisions on consequences of a default in payment apply. Written agreement must be on hand for discounts to be deducted.

2. Payment is deemed to have been made only when ANZAPLAN GmbH has full access to the funds. Money orders, cheques and promissory notes shall only be accepted subject to payment by the

contractual partner of all processing and discounting fees.

3. The contractual partner is only entitled to offset or withhold payment in cases where the counter-claim is not disputed or has been finally assessed by a court. Moreover, he is only entitled to exercise a right of retention given that his counter claim is based on the same contractual relationship. The contractual partner agrees that ANZAPLAN GmbH may offset accounts receivable against accounts payable.

4a. If the contractual partner is in default with an instalment, then ANZAPLAN GmbH is entitled to declare the entire account receivables as being immediately due and payable.

4b. Should the contractual partner make false statements about his financial situation or should his financial circumstances deteriorate following conclusion of contract to the extent that his credit standing - on the basis of objective, bank-like aspects - has substantially worsened and realisation of ANZAPLAN GmbH account receivables is very much at risk, then ANZAPLAN GmbH is entitled to declare the rest of the outstanding payment obligations as being immediately due and payable. This also applies to the acceptance of bills of exchange and cheques.

4c. Given the actual deterioration in the credit standing of the contractual partner, then ANZAPLAN GmbH is entitled to withdraw from the contract.

#### § 10 Warranty

1. ANZAPLAN GmbH shall be liable for defects for one year after delivery of the goods to the contractual partner. If the parties have agreed to acceptance after inspection/ technical approval, the warranty period starts from completion of this acceptance procedure.

2. Notifications of defects will only be recognised if made in writing to ANZAPLAN GmbH within the warranty period.

3. If the contractual partner gives timely notice of a defect, ANZAPLAN GmbH can at its discretion repair or exchange the defective goods. In the case of a slight breach of contract, in particular slight defects, the contractual partner shall not have the right to withdraw from the contract.

4. All liability for defects is excluded, if the defect was caused by the contractual partner by inappropriate and/or unsuitable treatment of the services or if the latter

were, at least, responsible for the said defect.

#### § 11 Industrial Property Rights

1. All rights to drawings, designs, plans, blueprints and reports provided or manufactured by ANZAPLAN GmbH, in particular patents, copyright and inventor's rights are the sole property of ANZAPLAN GmbH. All documentations such as catalogues, sample books etc. which are made available to the contractual partner remain the property of ANZAPLAN GmbH and must be returned on request.

2. The contractual partner is permitted to use trademarks, trade names and other marks and property rights only with prior written permission from ANZAPLAN GmbH and only in the interest of ANZAPLAN GmbH.

3. The contractual partner is responsible for ensuring that industrial property rights of third parties are not infringed as a result of its delivery of materials or instructions regarding form, dimensions, colours, weights, etc. The contractual partner shall indemnify ANZAPLAN GmbH against all claims by third parties resulting from the infringement of the aforementioned industrial property rights, including all court fees and other costs.

#### § 12 Limitation of Liability

1. In the case of slight breach of duty, ANZAPLAN GmbH's liability, including that of its agents and legal representatives shall be limited to average, product-specific, foreseeable, typical, direct and immediate damages. ANZAPLAN GmbH shall further not be liable for breach of any non-essential obligations under the contract due to slight negligence.

2. The above shall not impair claims by the contractual partner on the basis of mandatory statutory provisions (e.g. German Product Liability Act "Produkthaftungsgesetz"). Further, the above shall not apply to damage to the life, body and health of the contractual partner which is attributable to ANZAPLAN GmbH.

3. The contractual partner's claims for damages based on a defect shall become statute-barred one year after delivery or acceptance, if acceptance was agreed upon. This does not apply in cases of gross negligence on the part of ANZAPLAN GmbH or in the event of personal injuries of the contractual partner which are attributable to ANZAPLAN GmbH.

4. ANZAPLAN GmbH shall by no means be liable for materials, component parts, goods, freight instructions, processing specifications and similar provided by

the contractual partner, unless expressly agreed upon otherwise in writing. ANZAPLAN GmbH shall not be obliged to examine the foregoing items with regard to their conformity with product liability laws and/or the provisions of the German Civil Code or other legal provisions. In such cases the contractual partner shall fully indemnify and hold ANZAPLAN GmbH harmless against all claims from third parties.

#### § 13 Data Protection

Within the existing limits of data protection legislation, ANZAPLAN GmbH shall be permitted to store and process personal data pertaining to the contractual partner.

#### § 14 Nondisclosure

Both parties shall treat confidentially and refrain from disclosing all data and information pertaining to the business of the other which are neither generally accessible nor common knowledge. Each party is however entitled to use results gained lawfully under the terms of the agreement for the purpose of his business. The parties shall pass on this obligation to their employees. Unless otherwise agreed in writing, results shall be disclosed exclusively to the contractual partner.

#### § 15 Governing Law, Place of Jurisdiction, Severability Clause

1. This business relationship and all legal dealings between ANZAPLAN GmbH and the contractual partner shall be governed by the laws of the Federal Republic of Germany without regard to conflict of law principles or the UN Convention on the International Sale of Goods (CISG).

2. For all disputes arising from the agreement where the contractual partner is a company or public legal entity or a public law trust the exclusive jurisdiction shall lie with the court in whose area of jurisdiction ANZAPLAN GmbH has its head office. ANZAPLAN GmbH however has the right at its own discretion to bring action against the contractual partner at his business address.

3. The exclusive place of performance for all claims arising from the agreement as far as allowed by statutory laws shall be 92242 Hirschau, Germany.

4. If any term of these Terms and Conditions or a term of any other agreement should be invalid or become so, this shall not affect the validity of the remaining terms or agreements. In this case, ANZAPLAN GmbH and the contractual partner shall replace the invalid term with a legally valid term whose contents come as close as possible to the economic purpose of the invalid term.

DORFNER ANALYSENZENTRUM UND ANLAGENPLANUNGSGESELLSCHAFT MBH (ANZAPLAN)

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