

# GENERAL TERMS AND CONDITIONS FOR PRODUCT TESTS

IBO - Österreichisches Institut für Bauen und Ökologie GmbH. Version 5/97

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## 1. BASIC PROVISIONS

### 1.1. Scope of Application

The General Terms and Conditions in hand are deemed the basis of contracts entered into by IBO – Österreichisches Institut für Bauen und Ökologie GmbH (hereinafter referred to as the "IBO" for short) and the contractual party (hereinafter referred to as "Test Applicant" or "Client"). They govern the process of product testing, the acquisition of the IBO test mark and the use of the test mark by the Test Applicant.

These Terms and Conditions shall apply until a new version of these General Terms and Conditions is handed over to the Client by the IBO and in as far as the contract parties have not agreed on a provision to the contrary expressly and in writing. In as far as these General Terms and Conditions and any supplemental provisions contain no such regulation, the pertinent ÖNORM standards shall apply in case of doubt. This version of the "General Terms and Conditions" replaces all previous ones.

Test items for a product test may be all products manufactured by the Client and services, concepts, plans etc. offered by him, which will be referred to hereinafter as product, as "product to be tested" in special cases or "tested product" after the test has been successfully completed. Individual items or samples of the products to be tested that are handed over to the IBO in the course of a test will be referred to as "test item" in the following.

### 1.2. Purpose of the Product Test

The object and the purpose of the building biology product test are the testing of the product to be tested according to the criteria of the IBO and the summarising of the result in a test report and an overall assessment. When the overall assessment is positive, the tested product is awarded the test mark by the IBO and the Test Applicant is authorised to refer to it and to promote it as "IBO tested".

Products that have been awarded the test mark of the IBO are specially emphasized by the IBO in the framework of its public relations and advisory work. The respective test report will be made available to the IBO advisory service.

### 1.3. Place of Jurisdiction

The place of jurisdiction for the event of non-compliance with the contractual provisions and/or disputes shall be Vienna. Austrian substantial law shall always apply.

### 1.4. Data Protection

The Client gives his consent to all data that regard him and become known in the framework of this contractual relationship

being processed with automation-supported systems.

Furthermore the IBO is entitled to utilise data for purposes of research on its own.

## 2. TEST TYPES

There are submission, initial and subsequent tests. All test types are subject to charges. By placing the order, the Client accepts the criteria of the IBO for the execution of the test as well as its result. So the Client also waives any appeals against test assessments that have been made.

### 2.1. Submission

Before the initial test, the IBO makes a decision about the eligibility of the product for testing in the framework of a standardised submission procedure. The information made available by the Client is examined and checked for completeness in the process. On the basis of this information, the approval for the initial test is assessed and the necessary test measures and the test duration are estimated in a cost estimate. The submission will be processed after the Test Applicant has filed his application.

After the information material that was made available by the Test Applicant with his application has been examined, the IBO prepares a product-specific list of questions that are to be answered by the Test Applicant as soon as possible (within a period of max. 3 months, however) and as extensively as possible. In the framework of the standardised submission procedure, no detailed questioning is possible due to the tightly calculated prices. Meetings in connection with the list of questions that take longer (with a total duration of over 30 minutes) will be invoiced separately on the basis of the scale of fees for architects (hereinafter referred to as GOA for short).

After the Test Applicant has answered the list of questions, the IBO assesses the eligibility of the product for building biology testing – according to the criteria of the IBO – and so the approval for the initial test for the purpose of obtaining the test mark of the IBO or for notification of rejection. When the IBO regards a product as eligible for testing, the documents and/or expert opinions that are necessary for the initial test and that have to be made available by the Test Applicant in addition, and the test items to be supplied are examined, and a cost estimate and a time schedule for the execution of the product test are prepared. Only the IBO decides whether a product is assessed as eligible for testing or not, and the Test Applicant has no legal claim in this connection.

## 2.2. Initial Test

The initial test can be started at the earliest when the following conditions are fulfilled:

- determination of eligibility for testing and preparation of quotation by the IBO in the framework of submission;
- written order confirmation of the IBO;
- receipt of all documents listed in the quotation;
- compliance with all technical, commercial and financial conditions (for example: advance payment).

After the initial test has been successfully completed, the Test Applicant is awarded the test mark of the IBO for his product for a period of two years.

## 2.3. Subsequent Test

When an initial test has been successfully completed (with a positive result), annual subsequent tests are scheduled for the following years. A subsequent test always comprises the same test measures as the initial test, but its scope and the expenses involved are less (however, this only applies when no or only minor alterations were made on the product).

## 3. TEST PROCEDURE

### 3.1. Guidelines

The test procedure and the preparation of the test reports are carried out according to internal IBO guidelines that are accepted by the Client when he places his order.

The test may comprise the following partial areas: building physics, toxicology, ecology, electrostatic characteristics, product information and guidelines for use, biomedical test methods, aesthetic factors and other factors that are relevant for the individual product. The test report summarises the results of the individual tests in an overall assessment.

The statements in the test report are prepared to the best of IBO's knowledge, considering all pieces of information made available to the IBO. Product-specific information refers to the data and documents made available by the Client, also considering the test certificates of state-authorized test agencies strived for by the Client, and/or the test items sampled by the IBO. The IBO obtains the information for the test procedure exclusively from the Client. Contacts with third parties, such as supplying companies, have to be realised by the Client. However, if the Client requests that the IBO contacts third parties, this will be carried out against reimbursement of expenses (according to GOA).

### 3.2. Test Items

Test items requested are to be made available to the IBO carriage-free and free of charge. At the IBO's request, the Client has to enable a free taking of samples at regular points of sale and points of storage of the product.

Test items that have been handed over become the property of the IBO and the IBO may use them freely and without any restrictions. If the test can only be carried out on items that remain the Test Applicant's property, the IBO accepts no liability for damage caused on the test items in as far as it is not to be attributed to gross negligence on the part of IBO. The IBO

accepts no liability for damage that is typical of the performance of the test or is necessary for it in particular.

### 3.3. Obligation of Secrecy

In as far as this is requested by the Client, the IBO undertakes to treat the order and the information obtained in the course of the performance of the order confidentially, especially information about operational and commercial matters of the Client, and to oblige all of its agents to fulfil this obligation as well.

The IBO shall be entitled to use the knowledge obtained from the above-mentioned test for publications in the interest of science or of the general public at all events as the IBO sees fit. Should the test result be negative, neither the product name nor the manufacturer's name or the dealer's name will be mentioned as a matter of course.

Information that is contained in a completed positive test report is not subject to the obligation of secrecy.

### 3.4. Advertising Guidelines

The use of the fact of a test procedure being carried out by the IBO for advertising purposes, such as with the wording "Our product has been / is being tested according to building biology principles" is not allowed. The use of the IBO and its testing work for advertising purposes is only allowed after the test has been completed and the test mark has been awarded by the IBO (see Section 4).

### 3.5. Early Termination of the Test

The IBO is authorised to rescind the contract when the Client fails to fulfil his obligations of cooperation, especially the supplying of all documents, specimens, samples and permits, necessary for the test despite having been set periods of grace.

When individual partial test reports have been completed at the time of a possible termination of the test, these reports will be handed over to the Client and invoiced completely. For partial tests that have not been completed, the Client shall pay two thirds of the contract sum.

If the IBO is in default with a test, the Client shall be entitled to rescind the contract after expiry of a period of grace of a term of the originally agreed time limit to the exclusion of any and all claims for compensation. In this case, the exact amount of all works performed up to then shall be invoiced.

### 3.6. Positive Test Result

When the product complies with the testing guidelines of the IBO, the test is finalised with a test report. This report comprises the award of the test mark and the results of the individual tests that have been carried out as well as the summarizing overall assessment.

## **4. IBO TEST MARK**

### **4.1. Use of the IBO Test Mark**

When the test has been successfully passed, the IBO test mark is awarded for the product for the period of one year (two years after the initial test). During this period of time, the Client shall be entitled to use the IBO test mark for the product that has been tested.

In connection with the right to use the test mark, the Client is authorised to refer to the product as "TESTED BY THE AUSTRIAN INSTITUTE FOR HEALTHY AND ECOLOGICAL BUILDING". The statements on the use of the test mark apply accordingly to this wording in the following. The wording "recommended by the IBO" must not be used for purposes of advertising.

The term of validity of the permit depends on the annual subsequent tests performed by the IBO. In the framework of his business dealings, the Client may use the IBO test mark only for the product that has been tested. The Client is expressly prohibited from using the IBO test mark for products that have not been tested in such a way that might result in them being mistaken for other products.

Suitable specimen copies of the advertising material that are used in each case shall be handed over to the IBO.

Assistance of the IBO with the preparation of advertising materials in connection with the use of the test mark will be realised against reimbursement of expenses (according to GOA).

### **4.2. Right to Publish**

The results of the test and a brief summary prepared by the IBO may be published by the Client only with the complete wording, the name of the IBO and the year in which the test was carried out. The publication of parts and/or extracts has to be marked as such and the previous written consent of the IBO must be obtained for it. Interested third parties must be given the opportunity to examine the test report for FREE when the Client uses the test mark, the test report or the respective summary or quite generally any statements in connection with the test in his business dealings.

The provisions of Section 4.1 apply accordingly to the use of the test report for advertising purposes in addition. The use of expired test reports for purposes of advertising is not admissible.

### **4.3. User Fee**

The condition for the use of the test mark, of the test report and a wording such as "the product has been tested by the IBO" for purposes of advertising is the annual payment of a user fee. The amount of the user fee is graduated according to the number of products tested for the Client and is fixed by the IBO once a year.

## **5. QUOTATION, PRICES AND PAYMENT**

### **5.1. Quotations**

Quotations of the IBO are subject to changes.

The prices that are indicated depend on the time of preparation of the quotation and remain binding for 3 months.

### **5.2. Additional Test Measures**

If it is found out in the course of the test that additional partial tests which were not foreseeable at the time when the quotation was prepared are absolutely necessary, the IBO will prepare a supplemental quotation without delay. In this event, the Client may accept the amendment to the order or cancel the test under payment of the testing expenses that have accrued up to then.

### **5.3. Additional Expenses**

Visits to companies and factories as well as consultations outside the scope of the test order (such as consultation for the preparation of advertising material) will be carried out against reimbursement of expenses.

### **5.4. Advance Payment**

One third of the contract sum becomes payable when the order is placed. When the agreed advance payment is not made by the Client within four weeks after written order confirmation, the IBO is entitled to rescind the contract.

### **5.5. Period of Payment**

The period of payment is 10 days net.

## **6. SUPPLEMENTARY PROVISIONS**

### **6.1. Penal Provisions**

The use of the IBO emblem, the IBO test mark or the test report contrary to the contract shall bring about the payment of a contractual penalty (fine) to the amount of 50,000 Austrian schillings, which becomes payable to the IBO by the Client within 14 days after receipt of a written request. In the event of repeated actions contrary to the contract, the contractual penalty shall become payable for every violation of the contract. With regard to all this, it shall be irrelevant whether the action that was contrary to the contract is to be attributed to a fault on the part of the Client. However, the Client may avoid the contractual penalty by showing proof of the fact that it was not within his sphere of responsibility (see also Section 6.2).

Notwithstanding this, the IBO shall be entitled to put this right at the Client's expense; namely in a way that seems useful for the IBO for the purpose of informing the relevant group of consumers, when inadmissible statements in connection with the name of the IBO, its emblem or the test mark are published. Any damage claims or actions for injunction shall remain unaffected thereof.

In the event of misuse, the IBO may revoke the test mark any time.

### **6.2 Use of the Test Mark by Third Parties**

The following will be designated as partners of the Client for short below: business partners and vicarious agents involved in

the sale and/or use of the product, but in an extended sense professional associations, interest groups and work groups, corporate and technical journals as well as employees, agents and advertising agencies too.

All provisions on the contractual use of the IBO test mark, the wording "IBO tested" and the use of the test report for purposes of advertising by the Client shall also apply to his partners. The Client undertakes to oblige his partners to fulfil all obligations that result from the provisions on use according to contract specified here as well. In particular, he shall notify the partners of the guidelines for use according to the contract in a suitable manner (such as in the form of these General Terms and Conditions).

The Client accepts liability for the use of the testing work of the IBO and the IBO test mark by his partners according to contract. The penal provisions shall also be applied to the Client when the use contrary to the contract is to be attributed to the Client's partners.

In all of the above-mentioned cases, the Client is obliged to notify the IBO of the exact name and address of the parties that act in violation of the contract and to do everything in order to investigate the act that was contrary to the contract without reserve. Section 6.1 shall apply fully.

### **6.3. Alteration of the Test Item**

The Client undertakes to notify the IBO of intended alterations of the product and/or the production process in time, but at the time of launch at the latest.

For alterations that are carried out while a test is being performed, the test expenses will be recalculated. If the alteration is carried out before the next subsequent test, they have to be recalculated as well.

However, if the character of the test item is altered substantially from the point of view of the IBO, any tests that are in progress will be stopped at the Test Applicant's expense, and a new application has to be filed.

### **6.4. Liability and Warranty**

The Client assumes liability for all damage caused to the IBO as a result of an incorrect product declaration regarding the structure, composition and usability of the test items or non-compliance with other obligations, especially approvals issued by public authorities and the consent of third parties, and shall indemnify and hold harmless the IBO with regard to claims of third parties.

Warranty claims and other claims for compensation from the test procedure and the test reports are expressly excluded.

No other rights than the right to use the test mark may be derived from the test carried out by the IBO and the test report issued in this connection. The test carried out by the IBO and the test reports prepared in this connection are not intended to replace relevant test certificates issued by state-authorized testing agencies or tests prescribed by public authorities and approvals.

Note according to the product liability act: The IBO accepts no responsibility for any technological damage or production-related damage resulting from the proper or improper use of the

tested product. This applies to the interpretation and application of the test report accordingly. The listing of any risk potentials is carried out on the basis of the information that was at the disposal of the IBO at the point in time when the test was carried out. For this reason, this list can – like it is generally the case with scientific work – never be complete. The IBO accepts no liability for any kind of consequences resulting from the non-consideration of any cause of damage. The recommendations for consumers have to be weighed regarding their suitability for the specific application by the consumers themselves. Any liability on the part of the IBO regarding conclusions drawn on the basis of the publication of extracts of the test report, of incomplete parts or of parts that were taken out of context is excluded.

The Client takes note of this information and shall take it into consideration when using the test report for public use. He shall point this out explicitly in case of any publications, if applicable.

### **6.5. Complaints**

Complaints have to be submitted to the IBO in writing four weeks after receipt of the test report at the latest. The payment obligations remain unaffected thereof.

### **6.6. Copyright**

Quotations and projects as well as the respective drawings, dimension drawings, descriptions and questionnaires are the intellectual property of the IBO and must not be copied or made available to third parties without the IBO's consent. They can be demanded back any time and have to be returned to the IBO at once when no order is placed.