

## **GENERAL TERMS AND CONDITIONS PRÜFINSTITUT HANSECONTROL GmbH**

### **1. General information / Scope of application**

1.1 The following General Terms and Conditions (hereinafter referred to as “Terms and Conditions”) apply to all orders made to Prüfinstitut Hansecontrol GmbH (hereinafter referred to as “Testing Institute”). The Testing Institute does not accept any terms and conditions of the Client which conflict with or deviate from these Terms and Conditions, unless it expressly agreed to these in writing.

1.2 These Terms and Conditions shall apply to all future transactions with the Client resulting from ongoing business relationships up until the point they are revoked by the Testing Institute.

### **2. Placement of orders**

2.1 All agreements made between the Testing Institute and the Client for the purpose of executing orders must be recorded in writing. Any amendments and additions to the respective contract must also be made in writing. If the Client places an order, the contract shall be valid only once the Testing Institute issues a written order confirmation.

2.2 Proposals made by the Testing Institute are non-binding unless the Testing Institute expressly declared otherwise in writing.

2.3 The Testing Institute reserves full proprietary rights and copyrights to illustrations, drawings, calculations, software and other documents; the Client may use test reports, calculations, illustrations, etc. produced by the Testing Institute as part of the order only for the purpose for which they are prescribed in accordance with the agreement. The test reports, calculations, illustrations and other documents may be reproduced and/or published and/or inexpediently disclosed for/to third parties only in full and with the express written consent of the Testing Institute.

2.4 If the Client does not give specific instructions regarding the scope of the test regulations to be used when placing the order, the Testing Institute shall use reasonable discretion to carry out the tests in accordance with the respective general state of science, technology, and generally valid and accepted standards. In such a case, the Testing Institute shall provide information on the standards under which the test will be carried out. The Client shall immediately inform the Testing Institute in writing if testing is to be conducted in accordance with other standards.

### **3. Prices / Terms of payment**

3.1 Unless otherwise agreed in writing, the list prices which the Testing Institute provides on request and which are valid on the day of placing the order shall apply. Services that go beyond mere testing activities, such as repairs and modifications made to any materials handed over to the Testing Institute, shall be charged separately based on the cost of labour and materials.

3.2 Unless otherwise agreed in writing, the Testing Institute prices are also subject to the applicable VAT.

3.3 Upon receipt of the invoice, the invoice shall be paid in full within 14 days of the date of invoice, unless of course another due date for payment has been agreed in writing.

3.4 The Testing Institute reserves the right to demand adequate advance payment before executing the order.

3.5 Objections to invoices issued by the Testing Institute may be raised in writing only within 28 days of receipt of the invoice. Upon expiry of this period, the invoice amount shall be considered accepted.

3.6 If the Client defaults on payments, the Testing Institute is entitled to charge interest at the rate of 9 percent per annum above the base interest rate specified by the European Central Bank. The right to assert further claims for compensation for damages remains reserved.

3.7 In the event the Client requests subsequent changes, the Testing Institute reserves the right to adjust the price as well as to claim reimbursement for occupied measurement stations and/or stopped machines due to the change in the order.

3.8 The Client shall be entitled to the right of set-off only if its counterclaim has been found legally binding, is uncontested or has been recognized by the Testing Institute in writing, or where it is bound to a synallagmatic contract in relation to the principal claim. The Client is entitled to exercise a right of retention only if the aforementioned requirements are fulfilled.

#### **4. Execution of orders and execution time**

4.1 The execution times determined by us shall commence only after all technical questions have been clarified and the Client has fulfilled all commitments. Unless otherwise agreed or arising from the contractual relationship, the execution time stipulated by the Testing Institute is always non-binding.

4.2 Delays in execution caused by force majeure or due to unforeseen events and other circumstances beyond the control of the Testing Institute, such as operational breakdowns, strikes, lockouts, difficulties in procuring energy, official orders, late deliveries by suppliers, etc., shall not comprise part of the delay for which the Testing Institute is responsible. The execution time agreed upon shall be extended for the duration of the disruption. If the delay lasts longer than three months, the Testing Institute and the Client are entitled, after a reasonable grace period, to withdraw from the contract in regard to the unfulfilled part of the contract. Claims for damages are excluded in this case. The Testing Institute shall inform the Client of any delays arising from these circumstances as soon as possible.

4.3 If the Testing Institute defaults and the Client then specifies a reasonable deadline for the Testing Institute, the Client reserves the right to withdraw from the contract after the unsuccessful expiration of this deadline. The Client is entitled to claims for damages due to non-performance only in the amount of the foreseeable damage which typically arises if the delay was caused intentionally or by gross negligence.

4.4 The Testing Institute is entitled to partial deliveries insofar as this does not conflict with the Client's recognizable legitimate interest.

#### **5. Shipping / Transfer of risk**

5. If in exceptional cases the Testing Institute has committed itself to carry out the delivery, including return delivery, of certain items, the Client shall bear the costs and risk of delivery from the testing lab or ex warehouse. Only at the express request of the Client shall the delivery be covered by transport insurance; the Client shall also bear any costs incurred in this regard.

#### **6. Industrial property rights**

6.1 Unless expressly agreed otherwise in writing, the Testing Institute is generally the owner of all industrial property rights to the delivered objects and certificates, including any software supplied, insofar as the industrial property rights are the result of the Testing Institute's activities. The Client is not entitled to grant licenses or sublicenses.

6.2 The Testing Institute shall be liable only for the products, certificates, etc., supplied being free from industrial property rights of third parties which conflict with the agreed usage or the usage by the Client that the Testing Institute is aware of within the domestic territory.

## **7. Third-party rights**

7.1 The Client is responsible for ensuring that no third-party rights exist to all material provided to the Testing Institute, for example, proprietary rights, rights of lien, copyrights, patent rights and/or other rights of use, in particular any industrial property rights which stand in the way of the Testing Institute's contractual use of these materials. If claims are brought against the Testing Institute on the basis of such rights, the Client shall immediately indemnify the Testing Institute from all third-party claims and any legal defence costs.

7.2 Should the Testing Institute request changes be made to the tested material, the Client shall carry out the review itself to determine whether the rights of third parties, in particular industrial property rights, are violated. The Testing Institute shall not be liable for such violations of law unless it is aware of these third-party rights. The Client shall also indemnify the Testing Institute from any third-party claims.

## **8. Warranty**

8.1 The Client may assert its warranty rights – also in the case of service contracts and work performance contracts – to have the Client immediately examine the Testing Institute's delivered results and properly provide notice of defects without delay; hidden defects must be reported immediately after their discovery (Section 377 of the German Commercial Code – HGB). Notifications of defects shall be made in writing or by email, specifying the defect. If these requirements are not observed, the Client shall lose its right to assert rights with regard to warranties for defects.

8.2 In the event that a defect exists for which the Testing Institute is responsible, the Testing Institute reserves the right to either remedy the defect or deliver a replacement at its own discretion. If the Testing Institute is not prepared to remedy the defect/provide a replacement delivery or not able to, in particular if the appropriate deadlines are delayed for reasons for which the Testing Institute is accountable, or if the remedying of the defect/replacement delivery fails in any other way, then the Client shall be entitled, at its discretion, to withdrawal from the contract or demand a reduction of the purchase price.

8.3 Furthermore, the Client may assert claims for damages due to default or non-performance of service contracts and work performance contracts for non-fungible goods only where there is a major defect in the product/project for which the Testing Institute is responsible, and this defect substantially compromises the usability of the product/project or if the defect is due to a breach of established engineering practice. In this case as well, subject to the provisions outlined below, the Testing Institute shall not be liable for damages that do not arise from the work result itself, in particular not for loss of profit or other financial loss of the Client.

8.4 Unless otherwise agreed, the warranty period is twelve (12) months, beginning with the transfer of risk. The statutory provisions for the provision of services remain unaffected. These terms are statutory periods of limitation and also apply to claims for compensation from

consequential harm caused by a defect, unless claims deriving from prohibited actions are enforced.

## **9. Liability**

9.1 Irrespective of the legal basis and in accordance with and subject to the following provisions, the Testing Institute shall – in principle – be liable only in the event of intent or gross negligence.

9.2 In accordance with statutory provisions, the Testing Institute shall be liable for ordinary negligence only in the event of death, injury, or impaired health. Furthermore, liability for the breach of obligations whose fulfilment is necessary for the proper execution of the contract and whose fulfilment the Client may rely regularly shall also remain unaffected. In the event of a slightly negligent breach of contractual obligations, the Testing Institute shall be liable for damage that is foreseeable and typical of the type of contract only up to the amount of the agreed order value for the respective delivery or service, unless the Client, when placing the order, informs the Testing Institute in writing of a higher risk of damage. Limitations of liability also do not apply if the Client asserts claims for damages on the grounds of a failure to fulfil an assured characteristic.

9.3 The Testing Institute shall therefore not be liable for damages not caused to the work result itself; in particular, the Testing Institute shall not be liable for loss of profit or other financial loss of the Client.

9.4 The Testing Institute shall be liable for the loss of test samples from the Testing Institute's laboratories or warehouses only in cases of gross negligence.

9.5 Insofar as the Testing Institute's liability for claims for compensation is excluded or limited in accordance with 9.1 to 9.4, this shall also apply to all other claims made, including claims for fault in the formation of contract, breach of secondary obligations, in particular for claims of tortious product liability (§§ 823 et seq. of the German Civil Code). This provision, however, does not apply to claims arising from the German Product Liability Act.

9.6 Insofar as the Testing Institute's liability is excluded or limited, this shall also apply to personal liability of staff, employees, co-workers, representatives and vicarious agents.

9.7 Any claims made by the Client against Testing Institute are subject to a limitation period of one year, starting from the beginning of the statutory limitation period, insofar as claims arising from tortious product liability (§§ 823 et seq. of the German Civil Code) are not affected.

## **10. Language for test reports**

The Testing Institute shall define the default language to be used in the test report to be prepared, unless another arrangement is expressly agreed in writing.

## **11. Place of jurisdiction and performance**

11.1 The place of jurisdiction shall be Hamburg as long as the Client is a commercially registered merchant or is not headquartered in Germany. The Testing Institute, however, reserves the right to file suit against the Client in the court where its registered office, subsidiary or its habitual residence is located.

11.2 Unless otherwise agreed in writing, the place of performance is Hamburg.

## **12. Amendments to the General Terms and Conditions / Right to make amendments**

The Testing Institute is entitled to unilaterally change these Terms and Conditions, provided this is necessary to eliminate any disturbances of equilibrium that may subsequently occur or to adapt these Terms and Conditions to any changes in statutory or technical framework conditions. Notification of any amendments to the provisions shall be sent to the Client at its last known email address. An amendment shall become an integral part of the contract if the Client does not send an objection to us in writing or in text form within six weeks of receiving the notification of the inclusion of the amendment in the contractual relationship.

### **13. Applicable law / Severability clause**

13.1 The legal relationship between the parties is subject exclusively to the law of the Federal Republic of Germany; the UN sales law does not apply (UNCITRAL/CISG).

13.2 Should individual provisions of the contract or of these Terms and Conditions be invalid, this shall not affect the validity of the other provisions. The parties undertake to replace invalid or unenforceable provisions with valid or enforceable provisions which correspond as closely as possible to the commercial purpose of the invalid or unenforceable provision.

13.3 In the event of discrepancies between the English and German version of the respective terms and conditions, the German version prevails.

As of: 01/08/2018