

General Terms and Conditions for the acceptance of engineering and consulting assignments



I. General provisions

1. The performance of engineering and consulting assignments is subject solely to the following general terms and conditions, i.e. these apply to merchants/entrepreneurs, legal entities, as well as legal entities constituted under public law or public law special purpose entities in term of § 310 subs. 1 of the German Civil Code [BGB].
2. These general terms and conditions also govern all future transactions between the principal and us, to the extent these pertain to an engineering or consulting assignment. The general terms and conditions of the principal are not deemed recognised even if no explicit objection has been made in particular, unless their validity has been accepted explicitly in writing.
3. To the extent no other rules have been agreed, the provisions of the services contract law [§§ 611 et seq. BGB] shall apply to all engineering and consulting assignments.

II. Subject of contract

1. A contract requires our written order confirmation for its inception. The performance explicitly described in our offer letter constitutes the subject of the order.
2. Results are presented in the form of a report with tables and diagrams. The basis of the work is the information supplied by the principal [see measurement programme, sampling work, measuring/process data work].
3. The scope of performance can change depending on the scope and degree of detail/accuracy of the documents provided. If additional work, e.g. in the laboratory, is necessary because analyses/documents are absent, then this will be billed separately.
4. The availability of measuring connections as well as their accessibility is deemed prerequisite. Connections of 2" or more are required for measuring points. If the principal does not have them then the principal is to notify us.
5. The support of plant personnel and the supply of electrical power and compressed air are deemed prerequisite.
6. If for reasons beyond the influence of the contractor, the necessary times at the principal's site change (e.g. plant shutdown, unsuitable operating conditions, etc.), the principal is to reimburse the contractor for the costs incurred thereby.
7. The principal is to assure the suitability and quality of the raw materials.
8. The tests serve to offer initial decision aids. The work offered cannot substitute for pre-planning/implementation planning of the plant (with variation comparisons and cost specifications); these must be performed separately.
9. No guarantee is assumed for processes. No liability is accepted for any defined result.

III. Prices, payment conditions

1. The services rendered are invoiced based on the prices stated in the offer or order confirmation plus the respective VAT applicable. The statutory VAT is not included. It is stated separately in the invoice on the day of billing.
2. In the case of individual orders we are bound by our prices for a maximum of four months after the contract is agreed. After this period has expired, we are entitled to make a reasonable price adjustment if our performance is delayed beyond a period of four months from the date of the contract for reasons that are the sole responsibility of the contract partner or lie within the risk he is obliged to bear.
3. The agreed prices are due and payable immediately after conclusion of the assignment, to the extent not otherwise in particular explicitly agreed in writing. Granting of deferred payment requires an agreement. The contract partner is deemed in default of payment, without further notice

4. from us, if he has not rendered payment within 15 days after the due date. We reserve the right to demand an advance payment or collateral from the principal.
5. If, after the contract has been concluded, a substantial deterioration in the principal's economic conditions becomes known to us, such that the claim for consideration is jeopardised, then our claims shall become due immediately. Such a substantial deterioration in the customer's economic condition is deemed given, esp. if the principal ceases payments, is overindebted, commences insolvency proceedings, or a motion for such proceedings is denied for want of assets. We are entitled then to make further performance dependent upon advance payments or collateral, demand immediate cash payment or rescind the contract without incurring liability.

IV. Retention of title

We retain title to the work product delivered until payment has been rendered in full. After payment ownership is transferred to the contract partner. After transfer of title we have no further obligations to retain the results, unless this has been explicitly agreed in writing.

V. Inventions, industrial property rights, licenses

1. If inventions result in the context of the assignment that could lead to the inception of industrial property rights (patents, registered models, registered designs, trademarks), then the contract partner will be informed in writing. On a case-by-case basis, separate agreements will be concluded as to by whom and where any industrial property rights claims should be filed, who bears the costs and who holds the rights there.
2. The granting of exclusive or non-exclusive licenses of the principal to know-how generated or to work created subject to intellectual property rights or industrial property rights is possible but requires a separate agreement.

VI. Limitations to liability

1. In cases of intentional or gross negligence on our part or that of a representative or agent as well as injury to life, limb or health, we are subject to the statutory liability. Our liability in cases of gross negligence is limited to those claims for damages which are typical for the contract and which may be reasonably expected, to the extent there is no other exceptional case as listed in clause 1 or clause 3 of this section.
2. We are only liable in cases of minor negligence if in breach of material contractual obligations. No liability is accepted in this case for damage that is not common for this type of contract. A material contractual obligation is deemed to be when the breach of duty pertains to a duty compliance with which is penultimate for the proper performance of the contract and compliance with which the contract partner may regularly rely.
3. Tests and computations will be performed with engineering approach and subject to application of scientific diligence in compliance with the recognised engineering practice. No guarantee is given for any defined result.
4. The liability for damages due to erroneous advice is limited to a maximum of EUR 3,000,000.00 (in words: three million euro) per claim, to the extent we are not to be accused of intent or gross negligence.

VII. Data storage/data use

1. We are entitled to store and process test and measurement results for statistical purposes.
2. We are authorised to process or cause to be processed by third parties personal data provided to us in the context of the principal's defined purpose. Storage is only performed for purposes of customer information [newsletter, etc.]. No other transfer will be made to third parties.

VIII. Place of performance, court of jurisdiction

1. The place of performance for all services and payments and exclusive jurisdiction for disputes is Weimar.
2. The jurisdiction of the courts of Weimar applies even if the customer lacks a general domestic place of jurisdiction or if its domicile is unknown at the time suit is filed.

IX. Separability, applicable law

1. Should any of the foregoing provisions be or become invalid or unenforceable, in whole or in part, the validity of the remaining provisions shall remain unaffected thereby. In place of the invalid provision the provisions of statute shall apply, unless in this case a particular contractual provision has been agreed.
2. The entire contractual relationship and all legal relations arising therefrom are subject solely to the law of the Federal Republic of Germany. The UN Sales Convention (CISG) does not apply.

Weimar, 1st of January 2013