

## **General Terms and Conditions**

**VDZ Technology gGmbH**

**VDZ Service GmbH**

## **General Terms and Conditions**

### **1 General**

- 1.1 The terms and conditions below shall exclusively apply to traders and legal entities incorporated under public law.
- 1.2 Our services shall be exclusively based on these General Terms and Conditions, unless otherwise agreed in the individual case. These General Terms and Conditions are an integral part of all agreements concluded and shall apply to traders and legal entities incorporated under public law also for all future business relationships, even if this is not expressly agreed once more.
- 1.3 The placement of an order shall be deemed as acknowledgement of these General Terms and Conditions by the customer.
- 1.4 Any general terms and conditions with other content or deviating counter-confirmations of the customer shall not bind us, even if we have not explicitly objected to them. They must be explicitly acknowledged by us in order to become legally valid.

### **2 Offer and Conclusion of Agreement**

- 2.1 All documents related to our offer, such as illustrations, drawings, weight details etc. shall contain binding information unless expressly stated to be non-binding. We reserve property rights and copyrights in catalogues, offers, drawings, cost estimates and other documents; they must not be disclosed to any third party.
- 2.2 The agreement shall be concluded only upon issue of our order confirmation in writing and subject to its content or upon acceptance of the service by the customer. We do not issue an order confirmation for orders with a value of up to 1,000 EURO net. In these cases, the order shall be deemed accepted unless we have rejected the order in writing within 10 working days after receipt of the order.

## **General Terms and Conditions**

2.3 Additions, changes or side agreements shall become valid subject to our confirmation. Sentence 1 shall not apply unless the value of the change of the order exceeds 1,000 EURO net.

### **3 Services, Duties to Cooperate**

3.1 We shall only owe the services contractually agreed with the customer and shall perform these services in accordance with the recognised state of the art and in compliance with the applicable legal provisions and regulatory requirements. In this context, we shall be entitled to have services performed also by a sub-contractor carefully selected and considered suitable by us.

3.2 If we grant a test certificate, this shall not give any statement exceeding the contents of each individual test certificate with regard to quality or usability of the tested item or material.

3.3 The customer shall be obliged to provide us with all correct and complete materials, samples, information, documents and other details required for the performance of the order in time and at its own expense. The customer shall have to make us aware of any circumstances that might be significant for the performance of the order. We shall not be obliged to check whether this information is correct and complete, unless the concrete circumstances of the individual case give rise to this or this check is the very object of the order granted to us.

3.4 If the customer does not cooperate or does not cooperate as contractually agreed, we shall be entitled to invoice it with the extra cost incurred thereby. We explicitly reserve the exercise of exceeding statutory rights.

3.5 We reserve the copyright in the expertises, test reports, test results, calculations, certificates, statements made by us and in all other results of our performance.

### **4 Deadlines, Dates**

4.1 Deadlines for the performance of services shall start to run from the date of the written order confirmation; or, in the case of orders up to a net value of 1,000 EUR, on the 10th working day after receipt of the order. If enquiries with the customer or cooperations of the customer according to clause 3.3 above are required, the deadlines shall not start to run before all issues have been clarified or before all duties to cooperate have been fulfilled completely. If down-payments have been agreed, the deadlines shall not start to run before the first payment has been received.

4.2 In justified special cases, in particular due to operational reasons, we shall be entitled to perform partial services after prior announcement and to invoice them separately.

## General Terms and Conditions

- 4.3 Even in the event of bindingly agreed deadlines and dates and within a delay, we shall not be responsible for any delay in performance caused by force majeure or other events upon which we have no influence and that provably have a considerable impact on the performance of the services owed by us – these events comprise in particular war or war-like conditions, boycott, strike, uproar, sabotage, fire, power cut, explosion, lock-out, failure of IT or of measuring and analysing instruments, complete or partial stoppage or restriction of the operation, restricting measures of any kind imposed by governments and/or authorities. We shall inform the customer immediately about the commencement and the termination of such impediments. In case the impediments are temporary, we shall be entitled to postpone the services by the duration of the impediment plus a reasonable start-up time or to rescind the agreement in whole or in part. The customer shall be immediately informed about the non-availability of the service and any considerations already paid shall be reimbursed immediately. The customer may request us to declare whether we rescind the agreement or will supply within a reasonable deadline. Damage claims shall be excluded.
- 4.4 We may rescind the agreement if our supplier or provider does not supply us in due time or supplies us incorrectly with the good or service ordered by the customer, although we had entered in due time into a (congruent) cover transaction of the same content and if we are not responsible for being supplied with a delay or incorrectly. If self-supply is not made in time or made incorrectly, the customer shall be informed accordingly. If we do not rescind the agreement, we shall be released from our obligation to perform for the period of non-timely or incorrect self-supply.
- 4.5 If no event mentioned in clause 4.3 above exists, the customer shall be entitled to rescind the agreement if deadlines or dates promised are not observed and if a reasonable grace period has elapsed without success. Rescission shall be excluded if the customer is solely or predominantly responsible for this non-observance or if the non-observance of deadlines or dates promised, for which we are not responsible, occurs at a point in time when the customer is in delay regarding acceptance. Any further obligation to pay damages shall be ruled by clause 9 of these General Terms and Conditions.
- 4.6 If the customer is in delay of acceptance or infringes one of its other duties to cooperate, we shall, after lapse of a reasonable deadline, be entitled to request damages in lieu of performance in the amount of 5% of the order sum agreed, irrespective of the option to provide evidence of higher damage. The customer, in turn, may provide evidence that no damage has occurred or that it is considerably lower.

## **General Terms and Conditions**

### **5 Prices**

- 5.1 We shall invoice our services at the prices agreed with the customer and in accordance with the expenses incurred at the rates usual at the time of placement of order. Statutory VAT (if any) shall be added to our prices.
- 5.2 We reserve the right to increase the prices accordingly if after conclusion of the agreement, an increase in cost incurs due to reasons for which we are not responsible, in particular due to price changes by sub-contractors for third party services. In addition, we reserve the right to increase our prices accordingly, if events in the meaning of clause 4.4 above lead to an increase of our expenses.

### **6 Payment Conditions**

- 6.1 Unless explicitly otherwise agreed, payment shall be due upon receipt of the invoice and shall have to be made net (without deductions) within 30 days from the invoice date. All bank transfer costs have to be paid by the ordering party.
- 6.2 In case of delay, which shall occur in the event of non-payment within the deadline mentioned in clause 6.1 above, we shall be entitled to request interest at a rate of 9 percentage points above the base rate valid at the time. Our right to claim further damages shall not be affected thereby.
- 6.3 Cheques shall only be accepted on account of performance.
- 6.4 All our claims shall fall due for payment immediately, if the payment conditions are not met without there being a legitimate reason for this or if we become aware of a considerable deterioration in the economic circumstances of the customer after conclusion of the agreement. In that event, we shall be entitled to perform still outstanding services against advance payment or provision of security only. If advance payments or securities have not been made or provided also after lapse of a reasonable grace period, we shall be entitled to rescind the agreement in whole or in part. For that case we reserve a right to claim for damages.
- 6.5 We shall be entitled to offset payments of the customer against earlier debts even if the customer's note to payee states otherwise and will inform the customer of the manner of such offsetting. If costs and interest have already arisen, we shall be entitled to offset the payment first against the costs, then against the interest and finally against the primary claim.
- 6.6 The customer may not exercise any right of set-off unless its counter-claims have been affirmed in a court judgment, are undisputed or acknowledged by us. The customer shall only have a right of set-off if and to the extent its counter-claim arises from the same contractual relationship.

## General Terms and Conditions

### 7 Confidentiality

We commit ourselves to keep the documents and information provided to us by the customer in connection with the placement and performance of the order strictly confidential and to disclose them to those persons only who cooperate in performing our services. In addition, the confidentiality guidelines shall be applicable in their version current at the time and available in the Internet under [www.vdz-online.de](http://www.vdz-online.de).

### 8 Warranty

8.1 In case of defective performance, we may choose to remedy any defect ourselves (subsequent fulfilment) or deliver a good free of defect as a replacement (replacement delivery). We shall be entitled to make up to two attempts to remedy the defect.

8.2 If we fail to remedy the defect by subsequent fulfilment or replacement delivery or if we have no success within a reasonable period of time, the customer may request reduction of compensation with regard to the defective service or rescind the agreement.

8.3 The customer must complain to us in writing on recognisable defects without undue delay, however, at the latest, six days after performance of the service. If the customer does not report a defect within this period of time, the service shall be deemed free of defects and accepted as being in compliance with the agreement. Defects which cannot be detected within this deadline despite careful inspection must be reported to us in writing immediately after discovery. If a defect is not reported in time, no warranty shall apply.

8.4 Warranty claims directed at us inure only to the customer itself. They may not be assigned. The assignment of a claim for money shall not be affected hereby.

### 9 Liability

9.1 Damage claims of the customer with the exception of damage claims for the injury to life, bodily injury or injury to health or the breach of essential contractual rights and duties (so-called cardinal duties) – are excluded to the extent that they are not caused by intent or gross negligence committed by us or one of our legal representatives or vicarious agents. In cases of gross negligence as well as of culpable breach of cardinal duties, our liability for damages shall be restricted to foreseeable and typically arising damage. In such cases, the liability shall be restricted in amount to a sum of 1 mio. EURO, as a maximum. This equals our insured maximum liability amount.

9.2 The provisions in clause 9.1 above shall have no effect on a potential liability as manufacturer under the German Product Liability Act (Produkthaftungsgesetz)

9.3 The afore-mentioned provisions shall apply to all damage claims irrespective of their legal basis.

## General Terms and Conditions

### 10 Limitation Period

Claims for defects or other contractual claims for breach of duty shall be limited in time to 1 year after the beginning of the statutory limitation period. This does not apply to claims for defects that become limited due to statute after 5 years or a longer period

### 11 Copyright, Rights of Use

Unless otherwise agreed in the individual case and after complete payment of the compensation agreed, we shall grant to the customer a simple right of use regarding our services protected by a copyright, to the extent required for the contractual use of our services. The transfer of any service to third parties and the use of such a service beyond the contractually agreed purpose shall be subject to our prior written consent. This consent shall not be required if the transfer of the service to a third party, e.g. an authority, is required in accordance with the purpose agreed.

### 12 Miscellaneous

- 12.1 Place of jurisdiction for all claims arising out of the business relationship (including actions filed with regard to cheques and bills of exchange) as well as all disputes arising between the parties – also in connection with cross-border services – shall be Düsseldorf. However, we reserve the right to sue the customer at any other legal place of jurisdiction.
- 12.2 The relationships between the contractual parties shall be governed solely by the law of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 12.3 Place of fulfilment for all services/payments shall be Düsseldorf.
- 12.4 Irrespective of the rule in clause 8.4 above, the customer may assign its rights and duties arising out of this Agreement subject to our written consent only. The assignment of a claim for money shall not be affected hereby.
- 12.5 Should individual provisions of the above terms and conditions or parts thereof be invalid, this shall have no effect on the validity of the other provisions. Any invalid provision of these terms and conditions shall be replaced by a provision which reflects most closely the economic intent of the invalid provision. The same shall apply to any lacuna.

Status: 9 September 2020