

# General supply, service and payment conditions

## 1. Scope

The following conditions shall be valid for all current and future offers made by us and contracts concluded by us. „We“ is to be understood as Testo Industrial Services GmbH. The orderer's contractual conditions shall not be recognised.

## 2. Conclusion of contract

- 2.1 Our offers shall be subject to change. Client orders shall only be binding for us insofar as we provide confirmation or comply with them by performing services or delivering goods. Supplementary verbal agreements shall only be binding if we confirm them in writing.
- 2.2 Our employees are not permitted to make supplementary verbal agreements or make verbal promises that go beyond the content of the written contract or the General Terms and Conditions to our disadvantage.

## 3. Prices

- 3.1 Our prices for services are net prices; the valid value added tax in each case shall be added to this. Maintenance and repair times as well as long disassembly and assembly work shall be invoiced separately on an hourly basis. If material and/or labour costs change between conclusion of the contract and performance of service, we shall be entitled to adjust our prices accordingly.
- 3.2 Delivery prices shall be from the Kirchzarten plant excluding packaging and transport and excluding the valid value added tax in each case.

## 4. Payment terms

- 4.1 Our invoices for inland goods and services shall be payable immediately and in full.
- 4.2 If the invoices are not paid within 20 days (payment deadline), the buyer shall come into default.
- 4.3 If the payment deadline is exceeded, we shall invoice interest at 8% above the basic interest rate while reserving the right to assert further damages.
- 4.4 Prompt payment shall be based on the receipt of payment at the point of payment given.
- 4.5 The presentation of bills of exchange requires our approval. All charges and costs shall be at the buyer's expense. The buyer shall bear the risk for timely presentation and disputing of payment.
- 4.6 If our contractual claims are endangered due to the orderer's inability to make payment we shall be entitled to make processing of all orders of the orderer dependent upon advance payment or security and to withdraw from the contract upon expiry of an appropriate period of time. This shall not be valid if the danger for us was recognisable before the conclusion of the contract. In the event of late payment, we shall also be entitled to immediately demand all claims from the business relationship.
- 4.7 The orderer shall only be entitled to set our claims off against counter claims that are undisputed or legally effective. Any right of retention by the orderer from previous or other business transactions as part of the current business relationship is excluded. An exception to this is the right of retention due to counter claims that are undisputed or legally effective.

## 5. Delivery time and time of performance

- 5.1 Delivery time and time of performance shall only be binding for us if they are expressly agreed in writing.
- 5.2 The time of surrender of the subject-matter of performance for dispatch or the communication of the notification of readiness for dispatch of the subject-matter of performance shall be definitive for compliance with the agreed delivery time and time of performance.
- 5.3 If we are not able to comply with the agreed delivery deadline for reasons that we not able to affect (breakdowns, strikes, lockouts, energy supply difficulties, delays in the supply of essential raw and basic materials, etc.), we shall increase the agreed delivery deadline appropriately. We shall inform the orderer of this immediately. The orderer is not entitled to withdraw in the above-mentioned cases.
- 5.4 If it is not foreseeable in such cases that we can deliver the goods within 2 months, both contracting parties shall be entitled to withdraw from the contract. The same shall be valid if the reasons for delay still exist 2 months after our communication. If the reasons for delay were recognisable at the time of conclusion of the contract, then we shall not be entitled to withdraw from the contract.
- 5.5 In the event of delayed delivery our liability for simple negligence shall be limited to 5% of the value of the goods.
- 5.6 Partial deliveries shall be permitted insofar as this is acceptable to the orderer.

## 6. Transfer and acceptance of risk

- 6.1 In the case of goods and services, risk for the accidental loss or deterioration of the subject-matter of performance shall transfer to the orderer as soon as the goods or services are handed over for transportation or upon acceptance of performance. This shall be valid independent of whether dispatch from the place of performance is successful or who bears the transport costs. If the orderer falls into default of acceptance, risk shall transfer as early as communication of the notification of readiness for dispatch/completion of services.
- 6.2 If a formal acceptance is agreed, this is to take place within 8 days. Both parties can consult an expert at their own costs. A formal acceptance can also take place in the absence of one party if the date is agreed and the other party was invited in sufficient time. In this case the result of the acceptance of the other party is to be communicated immediately.
- 6.3 If no formal acceptance is required, the performance shall be considered accepted a maximum of eight calendar days after receipt of a written communication regarding the completion of work. The same shall be valid if the orderer has used our performance for more than six working days.

## 7. Retention of ownership

- 7.1 The good sold shall remain our property until full payment of our claims from the business relationship with the orderer.
- 7.2 Retention of ownership shall also cover products created by processing, mixing or combining our goods with other items. We shall thus acquire a co-ownership share in the proportion of the value the goods subject to reservation (invoice value) to the value of the other items. If one of the items can be viewed as the main item, the orderer shall transfer to us co-ownership in the proportion of the value the goods subject to reservation (invoice value) to the value of the other items. The orderer shall store the new item with regard to the co-ownership share for us at no extra cost. If the goods subject to reservation have already been sold on as a component of new goods, the assignment of future claims agreed in Clause 7.3 shall only be valid to the invoice value of the goods subject to reservation.
- 7.3 The orderer is entitled to dispose of the goods subject to reservation in the course of regular business dealings provided it is not in default. Pledges or assignment as security shall not be permitted. Claims resulting from resale or other legal grounds (insurance, unlawful act) shall be transferred immediately by the orderer to us as security. The orderer is authorised to collect the resulting claims for our invoices in its own name until revocation. Upon our request, the orderer shall declare such assignment, and submit to us any required information.
- 7.4 Third-party access to retention of title and resulting claims in accordance with Clause 7.3 are to be immediately communicated to us by the orderer via registered mail.
- 7.5 Insofar as the realisable value of the securities to which we are entitled to according to the preceding terms exceeds our claims by more than 10%, we shall be obliged to release them to the extent of the excess value.

## 8. Claims for defects

- 8.1 Should the goods delivered by us or services provided arising from contracts for work prove to be defective, the orderer's claims for defects shall be in accordance with the legal requirements with the stipulation that the orderer can initially only demand rectification of the defects. We shall either replace the goods/services about which complaint has been made or carry out rectification work at our own discretion.
- 8.2 If an attempt to rectify a defect fails, the orderer can reduce the remuneration without previously setting a deadline or in the event of more substantial defects withdraw from the contract.
- 8.3 The warranty for defects for goods delivered and services provided by us arising from contracts for work shall be 12 months after the transfer of risk.
- 8.4 The warranty for defective used goods is excluded providing there is no other individual agreement. Cases in which we have assumed a guarantee or maliciously concealed a defect shall be excluded.
- 8.5 If the orderer itself has intervened, made changes or conducted maintenance work on the equipment, it shall bear the onus of proof for the fact that the defect is not due to this.
- 8.6 No warranty shall be assumed the case of services provided arising from the service contract.
- 8.7 Claims for damages shall remain unaffected in accordance with the stipulation of Clause 9.

## 9. Liability

- 9.1 We shall be liable for damages that are the result of culpable violation of essential contractual duties in accordance with legal provisions. In the event of minor negligence we shall only be liable for typical and foreseeable damages and as far as legally permissible only up to the contract value of the respective services which caused the damage. However, the maximum amount shall be € 500,000.00 (five hundred thousand Euros) or, if the value of the services which caused the damage is higher, up to the price of the services which caused the damage.
- 9.2 In all other cases we shall be liable if damages are caused by our legal representatives or vicarious agents as a result of an intentional act or gross negligence.
- 9.3 In the case of assumption of a guarantee and damages arising from injury to life, limb or health, we shall be liable in accordance with the stipulations of the legal provisions.
- 9.4 Liability in accordance with the stipulations of the German Product Liability Act shall remain unaffected.
- 9.5 Otherwise claims for damages resulting from breach of duty shall remain excluded.

## 10. Final provisions

- 10.1 Other modifications or additions to a contract shall require the agreement of both parties in writing. The requirement of written form can only be waived in writing.
- 10.2 Both contracting parties agree that all rights and obligations of the contract partners in connection with this agreement shall be subject to German law. The UN Convention on Contracts for the International Sale of Goods of 11.04.1980 is excluded.
- 10.3 Insofar as legally permitted, the sole place of jurisdiction for all disputes shall be Freiburg im Breisgau or the general place of jurisdiction of the orderer at our discretion.
- 10.4 If individual conditions or parts of this contract are ineffective, the remaining conditions and parts of the contract shall remain in force. Unless replaced by mandatory legislative provisions, the ineffective condition shall be replaced by a regulation that closest reflects the economic substance of the ineffective condition. The same shall apply in the event of a gap.

August 2022, Kirchzarten

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