

WESSLING GmbH General Terms & Conditions

§ 1 General information

1. These General Terms and Conditions apply exclusively to entrepreneurs within the meaning of § 14 BGB (German Civil Code), corporate bodies under public law and special funds under public law.
2. Our offers, contracts, services and other legal actions are based exclusively on these terms and conditions. They shall therefore also apply to all future business relations, even if not expressly agreed on again. These terms and conditions shall be deemed accepted on receipt of the service at the latest.
3. Deviating, conflicting or supplementary general terms and conditions of the customer shall only form part of the contract if and to the extent that we have expressly consented to their application. This consent requirement shall apply under all circumstances, for example, even if the customer refers to its GTC in the course of the order and we do not expressly object to this.

§ 2 Conclusion of the contract, subject-matter of the contract

1. Our offers are subject to confirmation and are non-binding. This shall also apply if we have provided the customer with technical documentation (e.g., drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents – also in electronic form – to which we reserve rights of ownership and copy-right.
2. The order of the service by the customer shall be deemed a binding offer of contract. Unless otherwise stated in the order, we shall be entitled to accept this offer of contract within 10 working days of receiving it.
3. The acceptance may either be declared in writing (e.g., by confirmation of the order) or by performing our service for the customer.
4. If, after conclusion of the contract, the customer requests changed or additional services (changes to services), we shall provide a non-binding offer for the desired change to the services. Our commissioning shall be based on this offer in accordance with clauses 2 and 3 above.
5. Unless expressly agreed, orders placed shall not oblige us to provide information, advice or similar statements.
6. Unless expressly agreed, the scope of our duties shall not extend to checking that the documents submitted to us by the customer are correct, complete and in due and proper form.

§ 3 Test reports

1. Insofar as we provide analytical services, the test reports shall generally be sent to the customer by e-mail, if necessary with an electronic signature. For this, the client shall provide us with an e-mail address. The customer shall check the respective mailbox for incoming mail and inform us if the test report is not received within the usual period of time. We shall also be free to send test reports by other means, e.g., letter, fax, etc.

2. In the case of a conformity assessment, measurement uncertainties shall be indicated in test reports if and to the extent that this is required by legal regulations or test procedures. If the customer wishes measurement uncertainties to be indicated in other cases, this shall require express commissioning.

§ 4 Use of subcontractors

Unless expressly agreed otherwise, we shall be entitled to employ qualified or otherwise suitable third parties to fulfil our contractual obligations. This shall apply in particular to the commissioning of accredited or notified laboratories. However, the customer may exclude certain parameters from this arrangement.

§ 5 Prices and terms of payment

1. Our prices shall be subject to the statutory value-added tax applicable on the date of invoicing.
2. If our supplies and services extend over a period of more than one month, we shall then be entitled to issue invoices for instalments or part payments as the project progresses.
3. If payment is delayed, we shall then be entitled to make any further deliveries to the customer on advance payment terms only, to call in all outstanding invoice amounts, and to demand cash payment or a security deposit.
4. For customers who are not domiciled in Germany, the invoiced services shall not include taxes or charges such as value added tax, deductions at source or import duties. Payments due from the customer shall be made strictly net without any deduction of taxes or duties.
5. The customer shall only be entitled to rights of set-off or retention to the extent that its claim has been legally established or is undisputed. In case of defects in the delivery, the customer's counter rights shall remain unaffected, in particular in accordance with § 12 of these GTC.

§ 6 Price changes

1. We shall be entitled to adjust the prices payable on the basis of the contract at our reasonable discretion to the development of the costs decisive for the price calculation. A price increase shall come into consideration and a price reduction shall be made if the costs for the procurement of the goods ordered increase or decrease due to price changes on the part of our suppliers or if our energy costs or personnel costs change. Increases in one type of cost may only be taken into account for a price increase to the extent that they are not offset by any decreases in costs in other areas. In case of cost reductions, we shall lower the prices to the extent that these cost reductions are not fully or partially offset by increases in other areas. In exercising our reasonable discretion, we shall choose the respective dates for any price change in such a way that cost reductions are not taken into account on the basis of criteria that are less favourable for the customer than cost increases, i.e., cost reductions shall have at least the same effect on

the price as cost increases.

2. We shall notify the customer of any price change in writing without delay. In all other respects, § 315 BGB shall remain unaffected.

§ 7 Delivery and passing of risk

1. The delivery time shall be as set out in the agreement with the customer. The agreement of a delivery time shall not lead to the agreement of a transaction for delivery on a fixed date. In the absence of such an agreement, the usual market lead times shall apply. We shall be entitled, however, to perform the contractual service earlier. The start of the delivery period shall always be conditional upon punctual receipt of all the samples, documents and parts to be provided by the customer and of the required permits and authorisations, as well as upon due clarification and approval of plans.
2. If we fail to deliver within the period specified under § 7 para. 1, the customer shall then be required to allow us a reasonable amount of time for supplementary performance. The period shall begin on the day on which we are given due notice by the customer.
3. The onset of our delay in delivery shall be determined in accordance with the statutory provisions. However, a reminder by the customer shall be required in each case.
4. The place of performance shall be the location of our business establishment. In the event of delivery or dispatch, the risk shall pass to the customer upon handover to the forwarding agent, carrier or other person designated to undertake the shipment. The customer shall bear the costs of transfer to a place other than the place of performance.
5. In the case of drilling and subsurface engineering contracts, the customer shall be required to provide us with plans of underground installations in due time before the start of the work, and if there is any suspicion of the presence of ordnance and explosives, to provide us with clearance from the explosive ordnance disposal squad. If this is not done, we shall procure these documents if possible and charge an appropriate fee for this as well as claim for out-of-pocket expenses. In the case of drilling and sounding work, the risk shall pass to the customer – most notably the legal duty to maintain safety – on notification of termination of the work and, at the very latest, on inspection and acceptance of the work.

§ 8 Force majeure

1. In cases of force majeure, we shall be released from the obligation to deliver for the duration and to the extent of the effect. Force majeure shall be any event beyond our control that prevents us from fulfilling our obligations in whole or in part, including fire damage, floods, strikes and lawful lockouts, unexpected pandemics or epidemics, and operational disruptions or official decrees which are not attributable to us. Supply problems and other disruptions to performance on the part of our suppliers shall only be deemed force majeure if the supplier is itself prevented from providing the service owed due to an event described in sentence 1. 2.

2. We shall notify the customer without delay of the onset and cessation of the force majeure and do our utmost to remedy the force majeure and limit its effects as far as possible.
3. The customer shall be entitled to withdraw from orders affected by force majeure if the force majeure continues for more than twelve weeks from the agreed delivery date.

§ 9 Rights of use, rights to documents

1. The customer may only use the survey reports or test results produced in the course of the contractual relationship, including all tables, calculations and other details, for the intended purpose as agreed in the contract. Any disclosure to third parties exceeding this scope, any other type of use, any change of wording or abridgement may only be undertaken by the customer strictly subject to our consent. Any publication or reproduction for advertising purposes shall most notably be subject to our prior consent in any given case.
2. The documents supplied to us for execution of the order shall become our property. In any case, they may be held on our files until at least the end of the sixth calendar year after payment of the final invoice and then destroyed.

§ 10 Reservation of title

The items supplied under the contract, which most notably include survey reports and test results, shall remain our property until such time as the agreed charge and the receivables which have accrued in connection with the contractual relationship have been paid.

§ 11 Acceptance

1. Formal acceptance of our performance shall only be required if this has been agreed with the customer.
2. In all other cases, our service shall be deemed accepted in accordance with the contract through the designated use of our work performance, at the latest on payment of the agreed remuneration.

§ 12 Warranty

1. The services which we provide meet with generally accepted standards of good engineering practice, and our analyses comply with generally recognised codes of laboratory practice, in each case with due regard for statutory requirements and official legislation. Unless agreed otherwise, we shall choose the method of analysis in any given case. We may depart from the stipulated method insofar as the alternative course of action is expedient and technically necessary.
2. Should the subject-matter of a contract fail to demonstrate the agreed properties and condition or be otherwise flawed, the statutory rights of the customer shall then be as set out below. Our statements about the properties and condition of the subject-matter of a contract shall not constitute guarantees from which further rights may arise.
3. We shall be liable for material defects and defects of title in accordance with the provisions of the German Civil Code (BGB) for the contract for services, however, the customer shall first assert the rights to subsequent performance.

Failing this, the customer shall be entitled to the other rights arising from defects (self-remedy, withdrawal, price reduction, compensation for damages). With reference to the subject-matter of the contract, we shall choose whether to rectify a defect or make a new product.

4. The limitation period for warranty claims shall be 1 year from acceptance, unless a longer limitation period applies by law, e.g., in case of fraudulent concealment of a defect (§ 634a para. 3 BGB), in case of assumption of a guarantee of quality or in case of contractual liability for damages resulting from injury to life, body or health due to intentional or negligent breach of duty on our part, on the part of one of our legal representatives or our vicarious agents.
5. Liability for material defects is excluded if the customer has changed or modified the subject-matter of the contract, unless the customer can prove that said changes or modifications were not the cause of the defect.

§ 13 Liability

1. Insofar as these GTC including the following provisions do not stipulate otherwise, in case of a breach of contractual and non-contractual obligations, we shall be liable in accordance with the statutory provisions.
2. Regardless of the legal grounds, in case of intent and gross negligence we shall be liable for damage within the scope of fault-based liability. In case of simple negligence, subject to statutory limitations of liability (e.g., diligence one usually employs in one's own affairs; minor breach of duty), we shall only be liable for
 - a) damage resulting from injury to life, limb or health,
 - b) damage resulting from the breach of a material contractual obligation (obligation whose fulfilment is a prerequisite for proper performance of the contract and compliance with which the contractual partner regularly relies and may rely); in case of a slightly negligent breach of material contractual obligations, our liability shall be limited to the amount of the typically foreseeable damage up to a maximum amount of € 5 million. If the client wishes to have a greater sum of liability exceeding the € 5 million limit, the latter may then take out and pay for liability insurance with a higher indemnity limit. No liability shall be accepted in any case for indirect and consequential loss and damage.
3. The limitations of liability resulting from para. 2 shall also apply to third parties as well as to breaches of duty by persons (also in their favour) for whose fault we are responsible in accordance with statutory provisions. They shall not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed, or for claims of the customer in accordance with the Product Liability Act.
4. We shall not be liable for any damage caused by any incorrectness or incompleteness of the information provided to us or by the absence of documents. In cases where a third party suffers damage from our services as a result of incorrect, incomplete or lacking information to be provided by the customer, the customer shall exempt us from any claims for damages.

§ 14 Sample materials

1. The customer shall guarantee that the sample materials do not pose any risks to our employees or to our property. If there are safety and/or health concerns in connection with sample materials due to known or suspected toxic substances or contaminants, the customer shall be obliged to advise our employees of these dangers and to disclose all the relevant information on hazards, handling, origin, type and nature of the sample materials and the composition of the sample materials when placing the order.
2. The customer shall be liable for all costs and damages incurred by us, our employees or other representatives due to failure to meet this obligation, regardless of whether they occur during transport, analysis, disposal, inspection or when taking samples.
3. The customer shall bear the cost and risk of delivering sample materials to our place of business. In cases where samples are collected by a forwarding company on our instructions, the risk shall remain with the customer and shall pass to us only upon our receipt of the samples. The fee which we charge for the collection of samples (according to the contract specification/quotation) shall apply to uninsured transport of samples. Insured transport shall be possible as a general rule for an extra charge.
4. The customer shall be liable for ensuring that transport of the samples is admissible and that the samples are properly and securely packed. Particular scrutiny shall be required to ensure compliance with the regulations on toxic waste and hazardous substances.
5. Sample materials delivered by the customer shall be accepted on condition that they have been correctly packaged and duly labelled in accordance with our instructions and the statutory requirements. In cases where there are safety and health concerns around sample materials due to known or suspected toxic substances or contaminants, the delivery of these samples shall be strictly subject to our agreement.
6. The customer shall remain the owner of the sample materials and shall be deemed the producer of waste as defined by waste legislation. The customer hereby assigns to us the right to make decisions about the use of the sample materials for analysis, about their return to the customer, and about the disposal of the sample materials at the expense of the customer. We hereby accept this assignment.

§ 15 Place of performance and jurisdiction

1. Our business establishment shall be the place of performance for all contractual duties.
2. Altenberge shall be the place of jurisdiction for all disputes arising from contracts with registered traders, corporate bodies under public law or special funds under public law. We shall, however, also be entitled in all cases to bring an action at the place of general jurisdiction of the customer. This shall not affect any overriding statutory provisions, especially such as relate to exclusive jurisdiction.

§ 16 Other agreements, choice of law

1. Should one or more provisions of these General Terms & Conditions be or become invalid or impracticable, this shall not then affect the validity of the other provisions. The statutory regulations shall apply where any further provision is required.
2. German law shall apply exclusively, to the exclusion of the CISG, unless an agreement to the contrary is explicitly set out in any individual case.