

## WESSLING GmbH General Terms & Conditions

### § 1 General information

1. The following General Terms & Conditions shall constitute an integral part of all our quotations, contracts, services and the resulting contractual relations.
2. We shall not be bound by any differing agreements and conditions, most notably terms of purchase, unless we have issued confirmation to that effect in text form.
3. Unencrypted emails lack protection from access by third parties and may be falsified or altered. WESSLING shall not assume liability for the confidentiality and integrity of unencrypted emails during their transmission and after their receipt by the customer. Unless expressly requested otherwise by the customer and confirmed by WESSLING, email communications shall nevertheless be unencrypted. The customer hereby agrees to this in full knowledge of the risks.

### § 2 Contracts

1. Our quotations shall be valid for three months as a general principle, although this binding force shall apply to quotations in text form only. The period of validity shall commence on the date stated on our quotation.
2. Unless agreed specifically in text form, 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. Should the customer depart from our written quotation when placing the purchase order, or should the customer place a purchase order on the basis of a verbal quotation, then the formal conclusion of the contract shall be strictly subject to our confirmation in text form.
4. If two letters of confirmation containing different terms and conditions cross en route then ours shall be deemed to be the agreed version.

### § 3 Prices and terms of payment

1. We shall only be bound by price quotations if they have been set out in text form by us.
2. The prices set out in text form shall not include the value added tax which shall be payable at the relevant statutory rate on the invoice date, nor shall they include costs for storage, shipping and/or disposal of sample materials. Services not listed in the quotation shall be invoiced according to our price list as generally applicable at the time of placing the order.
3. If our supplies and services extend over a period of more than one month then we shall be entitled to issue invoices for instalments or part payments as the project progresses.
4. If goods are to be supplied and services provided more than four months after entering into the contract, and if the fixed costs of said goods and services increase in the meantime by more than 5 %, e.g. through increases in wage costs, salaries, material prices and energy costs, or through changes to existing public charges or the introduction of new public charges, etc., then we shall be entitled to increase our prices accordingly (in relation to the proportion

- in which these costs were included in the original price). This right shall also apply if a service may only be performed after four months for reasons for which the customer is responsible. We shall not exercise this right within the first 12 months of the contract. The wage cost increase shall be calculated according to the lowest pay group for qualified masters in the collective wage scale agreed for the chemical industry in North Rhine-Westphalia.
5. If the customer is faced with an increase in prices of more than 25 % on account of adjustments made for the above reasons, then the customer shall be entitled to withdraw from the contract. This right of withdrawal shall not apply if the service may only be performed after four months for reasons for which the customer is responsible.
  6. If payment is delayed, or if a cheque or bill is protested, then we shall be entitled to make any further deliveries to the customer on advance payment terms only, to call in all unpaid balances on invoices, and to demand a cash payment or security deposit in exchange for bills accepted on account of performance.
  7. If insolvency proceedings have been instituted against the customer, or if the customer has filed an insolvency petition, then we shall also be entitled to withdraw from the contract and to demand the restitution of our goods and services.
  8. 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 must be made strictly net without deduction of taxes or duties.

### § 4 Rights of offset and retention

Offsetting against counterclaims shall only be permissible insofar as any such claims of the customer are undisputed or established as final and absolute. The same conditions shall apply to the exercise of rights of retention by the customer.

### § 5 Delivery and passing of risk

1. The delivery time shall primarily be as set out in text form 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 the 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 specified period under § 5 para. 1 then the customer shall be required to allow us a reasonable amount of time for supplementary performance. The time of respite shall begin on the day on which we are given due notice by the customer.

3. Industrial disputes or unforeseeable exceptional events, such as acts of public administration, traffic congestion, disruptions to operations due to natural disasters, significant levels of staff absence and of machine breakdown, shall relieve us of our obligation to perform for the duration of their impact or entirely in the event of impossibility of performance. This shall also apply if these disruptive events occur during an existing delay. The customer is to be notified as soon as possible of the onset and end of such disruptions.
4. Claims for damages may not be made against us in the event of exceeding any deadlines for delivery or performance unless we are guilty of a deliberate act or gross neglect; in the latter case § 9 para. 8 shall also apply.
5. Our place of business shall be the place of performance for all contractual duties. In the event of delivery or dispatch, the risk shall pass to the customer upon handover to the forwarding agent, carrier or other person specified on execution of the shipment. The customer shall bear the costs of transfer to a place other than the place of performance.
6. 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 the customer fails to do so then we shall procure these documents if possible and shall charge an appropriate fee for the same as well as claiming for out-of-pocket expenses. In the case of drilling and sounding work, the risk – and most notably the legal duty to maintain safety – shall pass to the customer on notification of the termination of the work and, at the very latest, on inspection and acceptance of the work.

#### § 6 Copyright

1. We reserve the property rights and joint property rights to our work and services.
2. 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 circulation 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 text form in any given case.
3. The documents supplied to us for the 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 fifth calendar year after payment of the final invoice and then destroyed.

#### § 7 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 con-

tractual relationship have been paid. The customer may only use the item supplied under the contract after full payment of the agreed charge.

#### § 8 Acceptance

1. A formal acceptance of our performance shall be required only in those cases in which this has been agreed with the customer in text form.
2. In all other cases our performance shall be deemed to have been accepted as specified in the contract 14 days after the provision of the contractually agreed service, unless the customer opposes the acceptance within this period. This shall also apply to any partial performance.

#### § 9 Warranty

1. The work and 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 in any given contract, 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, then the statutory rights of the customer shall be as set out below. Our statements about the properties and condition of the subject matter of a contract shall constitute neither a special guarantee nor any further rights which may ensue therefrom.
3. Minor instances of non-conformity or variations of no technical detriment may not be the subject of complaints unless there are substantial adverse effects impacting on serviceability and economic viability.
4. Section 377 of the German Commercial Code (Handelsgesetzbuch - HGB) shall apply analogously to business traders, even if they are not merchants as defined in the HGB.
5. We shall not be liable for damages arising from the fact that the documents submitted to us are inaccurate or incomplete or due to the fact that documents are missing. Nor shall we be liable for damages based on the fact that authorisation was issued by the client or the latter's representatives. In these cases the customer shall indemnify us against third-party claims for damages.
6. The limitation period for warranty rights shall be one year from the time of acceptance. This one-year period shall not apply if the law provides for a longer period of limitation as, for example, in case of fraudulent concealment of a defect (section 634a (3) of the German Civil Code (Bürgerliches Gesetzbuch - BGB)), in case of assumption of a guarantee as to quality and condition, or in case of contractual liability for damages arising from injury to life, limb or health through wilful or negligent breach of duty on our part or on the part of one of our legal representatives or vicarious agents, as well as in case of liability for other damages through wilful or grossly negligent breach of duty on our part or on the part of one of our legal representatives

or vicarious agents. With reference to the subject matter of the contract, we shall choose whether to rectify a defect or make a new product. The warranty shall not cover defects if the customer has changed or modified the subject of the contract, however, unless the customer can prove that said changes or modifications were not the cause of the defect.

7. We shall not be liable in cases of slight negligence insofar as our neglect does not relate to major contractual duties, damages arising from injury to life, limb or health, or to warranties, and insofar as our neglect does not affect claims under product liability law. The same shall apply to neglect of duty on the part of our vicarious agents. In cases of slight neglect of major contractual duties, our liability shall be limited to foreseeable damages as might typically be expected and up to a maximum amount of € 5 million. If the client would like a greater sum of liability exceeding the € 5 million limit then the latter may 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. Claims for damages shall also become statute-barred one year after acceptance.
8. Should we be obliged, under § 9 above, to pay compensation for defects or damage in respect of the object of our work which is in progress or has been completed, we must first be given opportunity to rectify the defects or damage ourselves or to arrange to have the defects or damage rectified.

#### § 10 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 the 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 the samples (according to the contract specification/quotation) shall apply to uninsured transport. Insured transport shall be possible as a general rule for an extra charge.
4. The customer shall be liable for ensuring that the sample transport 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.

#### § 11 Place of performance and jurisdiction

1. Our place of business 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, and for actions on bills of exchange and cheques.

#### § 12 Other agreements

1. Should one or more clauses of these General Terms & Conditions be or become invalid or impracticable then this shall not affect the validity of the other provisions. The statutory regulations shall apply where further provision is required.
2. German law shall be applicable to the exclusion of the CISG, unless an agreement to the contrary is explicitly set out in text form in any individual case.
3. Unless alternative agreements are set out above, the following shall also apply:
  - In case of drilling work: Verdingungsordnung für Bauleistungen (VOB) Teil B und Teil C [German contracting rules for award of construction contracts, parts B and C]
  - In case of analysis work: Verdingungsordnung für Leistungen (VOL) Teil B [German contracting rules for award of public works contracts, part B]
  - In case of survey reports and planning work: Honorarordnung für Architekten und Ingenieure (HOAI) [German fee structure for architects and engineers], as applicable
4. In the case of analyses, individual services shall be contracted out to other business partners. These services shall be indicated as such in the test report.