

## **General Terms and Conditions of DB Systemtechnik GmbH**

**(hereinafter referred to as the "Contractor")**

**Edition 01. October 2017**

### **1. General Matters, Compliance and Export Provisions**

1.1 These General Terms and Conditions of the Contractor shall have sole validity. They shall form an integral part of the contract and of any addenda. Any conflicting, supplementary or divergent terms and conditions of the Client shall become an integral part of the contract only if this is explicitly confirmed in writing by the Contractor. The foregoing shall also apply to any terms and conditions stated in any orders or other documents issued by the Client. The General Terms and Conditions of the Contractor shall also apply even if the contract with the Client has been performed without reservation although the Contractor was aware of conflicting terms and conditions, supplementary terms and conditions, or terms and conditions diverging from the General Terms and Conditions of the Contractor.

1.2 The Contractor and the Client undertake, as part of their business relationship, to comply with all applicable laws, regulations, directives and other legal provisions, including but not limited to anti-corruption laws.

1.3 The Contractor and Client shall grant their reciprocal consent to regular audits of their data in accordance with the current sanctions lists under Council Regulations (EC) no. 2580/2001, (EC) no. 881/2002 and (EU) no. 753/2011 (anti-terrorism regulations) and other applicable national, European and international embargo and export control regulations, within the scope of their contractual relationships, to facilitate and configure a legally-compliant business relationship. The Contracting Parties shall observe all relevant provisions of data protection law, especially with regard to data economy and data security.

The Client declares that its company and employees are not included on one of the aforementioned sanctions lists. The Client undertakes to take appropriate measures to ensure that anti-terrorism regulations and other applicable national, European and international embargo and export control regulations are implemented in its company's business operations. Furthermore, the Client undertakes to inform the Contractor, in text form, without undue delay, should any matches be found during the checks against the aforementioned sanctions lists.

The assertion of claims for any compensation whatsoever (particularly due to delay or non-fulfilment) and of other rights by the Contractor shall be precluded, where they relate to compliance with applicable national, European and international embargo and export regulations by the Client. This shall not apply if the Client is charged with deliberate intent or gross negligence. In the event of a positive audit result (list matches), the Client shall be entitled to cancel the Contract without notice.

1.4 Fulfilment of the contractual obligations (providing goods and services) shall be subject to the proviso that it does not conflict with any national, European or international export control regulations, such as embargoes, sanctions or other restrictions. The Client undertakes to provide any information and documentation required for export or shipment purposes.

Delays due to testing and approval procedures based on export control regulations may negatively affect delivery times and agreed deadlines. If the required approvals are not granted or if the contractual service cannot be approved, the Contractor shall have the right to withdraw from the contract. Where this is the case, assertion, by the Client, of claims for compensation of any kind, particularly due to delay or non-fulfilment, or of other rights, shall be precluded.

The Client gives an undertaking to the Contractor that it shall comply with all applicable export control regulations. Where goods delivered by the Contractor (goods, software or technology, including the accompanying documentation) are passed on to third parties, the regulations applicable under export control law, in particular national or European regulations or such regulations as are valid in the United States, shall be observed by the Client.

## **2. Prices**

- 2.1 Unless other remuneration agreements have been made,
- the services/work shall be invoiced on a time and materials basis and according to the day-to-day cost rate, plus surcharges for administration, sales, risk and profit.
  - a surcharge of 15% shall be charged on the stock withdrawal price (including material overhead costs), for material from stock, and on the net price for deliveries of goods and services rendered by subcontractors and auxiliary suppliers.
- 2.2 All prices are subject to statutory value added tax (VAT) as applicable.
- 2.3 Remuneration shall be in euros.

## **3. Performance and Principal's Obligations to Assist**

- 3.1 In effecting contractual performance, the Contractor shall apply the general, accepted technical rules applicable on the date of signature of the contract insofar as they relate to the scope of its services.
- 3.2 The Contractor shall be entitled to commission subcontractors with performance of the service/work.
- 3.3 The delivery of test items provided by the Client to the Contractor, and the subsequent collection thereof, shall take place at the cost and risk of the Client.
- 3.4 The Client shall provide the Contractor with all free-issue material, information and documentation, necessary for the proper execution of the contract, free of charge and in good time. The Contractor is not obliged to examine the documentation, provided by the Client as to its completeness and accuracy, unless this constitutes the service itself or expressly constitutes the subject matter of the order.
- 3.5 Where the Client fails to comply with its obligations to assist, or fails to do so on time or in full, or where the Client's performance is delayed for other reasons for which the Client is responsible, the Contractor is entitled to claim compensation for any loss arising as a result, including additional costs.
- 3.6 To the extent that the Contractor renders services on, or needs to access, the Client's works premises, the Client is obliged to take action, free of charge, to ensure compliance with the safety and accident prevention regulations and other regulations, particularly access authorisations, house rules and the emergency plan applicable on site, and provide instructions where necessary. If Contractor's employees enter, spend time or conduct work in the track area, Client shall be obligated to take special safety precautions.

## **4. Deadlines and Delay**

- 4.1 Unless a binding performance date has been agreed, the Contractor is only in default of performance where the Client has given the Contractor, by way of prior written notification, a reasonable period within which to effect contractual performance, and this has been without result. Performance periods commence only once the Client has fully complied with all of its obligations to assist. Subsequent requests for changes or delays in providing assistance by the Client result in a reasonable extension of the performance periods and performance deadlines.
- 4.2 Events constituting force majeure and any unforeseeable obstructions to performance for which the Contractor is not responsible, entitle it to defer performance by the duration of the obstruction plus any reasonable set-up time. Where, for one of the aforementioned reasons, performance becomes wholly or partially impossible, the Contractor can rescind the contract, or the part of it which has not been fulfilled, if it notifies the Client, without delay, of the impossibility of performance and reimburses the Client for any services rendered in return, also without delay. The Contractor is not obliged to arrange substitute procurement. The Client can require the Contractor to provide a declaration as to whether it will effect performance within a reasonable time limit or rescind the contract. Where the Contractor fails to make a declaration, the Client can rescind the contract.

## 5. Acceptance

5.1 In the case of performance of work and services, acceptance of the work by the Client must take place at the agreed time. Where a time has not been agreed, the Client is obliged to indicate acceptance within ten working days of receipt of the work or refuse performance with reasons. Where the Client fails to declare acceptance or refusal within the aforesaid time limit, the work shall be deemed to have been accepted. The work is also deemed to have been accepted if it is used productively by the Client without reservation.

5.2 Acceptance cannot be refused due to minor defects which do not seriously impair the work's fitness for the contractually agreed purpose.

5.3 The Contractor can also require partial acceptance in the case of parts of the work which have been completed.

## 6. Payment Terms, Assignment of Claims, Right of Retention, Set-off

6.1 Payments shall be due without any deduction on receipt of the invoice by the Client. The Client shall be in default of payment thirty calendar days after receipt of the invoice without the need for a reminder. Receipt of payment shall be defined as the date on which the invoice amount is credited to the Contractor's account.

6.2 The Contractor shall be entitled to demand interest-free advance payments, down payments, instalment payments or part payments.

6.3 The Client is not permitted to assign its claims against the Contractor to third parties. This shall not affect the provisions of Section 354a German Commercial Code (*Handelsgesetzbuch*, "HGB").

6.4 The Client shall have no rights of retention based on counter-claims from other legal transactions with the Contractor.

6.5 The Client shall be entitled to offset only against claims which are undisputed or have been determined by final judicial decision.

6.6 The Contractor shall be entitled to full rights of offsetting and retention.

## 7. Reservation of ownership

The Contractor shall reserve ownership or joint ownership of the supplied object until full payment of the contract price.

## 8. Liability

8.1 In case of defects, the Client is entitled to the statutory rights subject to the proviso that the Client must notify the Contractor of obvious defects without delay and in any case within no more than ten working days after acceptance and, in the case of hidden defects, within no more than ten working days after discovery. Otherwise, performance is deemed to have been accepted irrespective of the defect.

8.2 In the case of a defect, the Contractor can opt either to remedy the defect or effect subsequent performance.

8.3 Where the Contractor refuses subsequent performance or where subsequent performance fails, the Client shall be entitled to withdraw from the contract or demand a reduction of the remuneration payable.

8.4 In the case of intent or gross negligence on the part of the Contractor or its representatives or performing agents, the Contractor shall be liable in accordance with the statutory provisions; likewise in the case of a culpable breach of material contractual conditions. Insofar as there has been no intentional breach of contract, the Contractor's liability for damages is limited to foreseeable loss which typically occurs.

8.5 This shall be without prejudice to liability for death, personal injury or damage to health or liability under the Product Liability Act.

8.6 Unless otherwise expressly stipulated in the foregoing provisions, liability on the part of the Contractor is precluded.

8.7 The Client's rights under Clause 8.3 shall lapse within one year after acceptance, or after the respective partial acceptance in the case of Clause 5.3.

8.8 Where, in the context of its obligations to assist, the Client provides the Contractor with test items, the Contractor is obliged to ensure the careful storage and safekeeping of these items; the Contractor's liability is, however, limited to its own usual standard of care. The Contractor is not liable for damaging acts by third parties and does not have any insurance for the test item to cover loss resulting from third-party acts.

## **9. Confidentiality and Storage Obligations**

9.1 Confidential information is that which is expressly labelled as "confidential" or in respect of which one party must assume, based on the content of the information communicated, that a "confidential" label has accidentally been forgotten.

9.2 The legitimate representatives of the parties, who are involved in order to implement the contract, will treat confidential information as top-secret. This does not include information which

- a) is generally known or became known later without any fault on the part of the receiving Party or
- b) the receiving Party knew of earlier without being subject to a duty of confidentiality or which it can prove was developed independently by the receiving Party at a later date, or
- c) was disclosed to the receiving Party by a third party not subject to a duty of confidentiality, or
- d) has been approved for publication, in writing, by the disclosing party, or
- e) must be disclosed due to a binding official or judicial ruling or by law.

9.3 The duty of confidentiality under Clause 9.2 shall come to an end three (3) years after the end of the contract.

9.4 The parties undertake to comply with the statutory provisions on data protection. The Parties shall impose corresponding obligations on their employees, suppliers and other persons who have contact with data.

9.5 For the purposes of documentation, the Contractor is entitled to store documents with which it is entrusted, having due regard for confidentiality.

## **10. Delivery and Transfer of Risk**

10.1 Unless otherwise expressly agreed, deliveries shall take place "ex works" pursuant to Incoterms 2010 to the location specified in our offer or, where no location is specified in the offer, "ex works" Minden / Westfalen.

10.2 Passing of risk shall be governed by the legal provisions. Where the Contractor is liable for effecting delivery, the risk of the accidental destruction and accidental deterioration of the goods shall pass on transfer of the goods to the forwarder.

## **11. Place of Performance, Jurisdiction, Applicable Law and Written Form**

11.1 Place of performance for all services shall be the Contractor's registered office.

11.2 It is agreed that the Minden/Westfalen Local Court (Amstgsgericht) shall have jurisdiction over legal disputes which fall under the formal responsibility of the Local Courts, and the Bielefeld Regional Court shall have jurisdiction - including international jurisdiction - for legal disputes which fall under the formal responsibility of the Regional Courts. The Contractor shall also have recourse to the courts in the Client's domicile. Overriding statutory provisions, particularly on exclusive jurisdiction, remain unaffected.

11.3 The contract shall be governed solely by German law, excluding the UN Convention on Contracts for the International Sale of Goods. Only the German version of the Contract shall be binding.

11.4 Any amendments to the contract must be made in writing for the preservation of evidence.