General Terms & Conditions

WESSLING Consulting Engineering GmbH & Co. KG

§1 General Information

1. These General Terms and Conditions of Business shall apply exclusively to entrepreneurs within the meaning of §14 of the German Civil Code (BGB), legal entities under public law and special funds under public law.
2. Our offers, contracts, services and other legal transactions shall be carried out exclusively on the basis of these terms and conditions. They shall therefore also apply to all future business relations, also if they are not expressly agreed on again. These terms and conditions shall be deemed accepted at the latest upon receipt of the service.
3. Deviating, conflicting or supplementary general terms and conditions of the customer only become part of the contract if and to the extent that we have expressly granted to their validity. This consent requirement applies in every case, for example, even if the customer refers to is GTC in the context of the order and we do not expressly object.

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

1. Our offers are subject to change and are non-binding. This shall also apply if we have provided the customer with technical documents – also in electronic form – to which we reserve property right and copyrights.
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 contractual offer within 10 working days of receiving it.
3. The acceptance may be declared either in writing (e.g., by order confirmation) or by execution of our performance for the customer.
4.Should the customer request modified or additional services (service changes) after conclusion of the contract, we shall provide it with a non-binding offer the desired service change. Our commissioning shall be based on this offer in accordance with the aforementioned clauses 2 and 3.
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 fundamentally be sent to the customer by e-mail, if necessary with an electronic signature. The customer shall be required to check the respective mailbox for incoming mail an inform us if a test report is not received within the usual period. We shall also be free to transmit test reports by other means, e.g. letter, fax, etc.
2. in the event of a conformity assessment, measurement uncertainties shall be stated in test reports if and to the extend that legal provisions or test procedures provide for this. Should the customer request the specification of measurement uncertainties in other cases, this shall require express commissioning.

§ 4 Use of subcontractors

Useless expressly agreed otherwise, we shall be entitled to make use of qualified or otherwise suitable third parties to fulfil our contractual obligations. This shall, in particular, apply to the commissioning of accredited or notified laboratories.

§5 Prices and terms of payment

1. Our prices are subject to the statutory value added tax on the invoice date.
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 to the customer on advance payment terms only, to call in all outstanding invoice amounts immediately, and to demand cash payment or provision of security.
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 deduction of taxes or duties.
5. The customer shall only be entitled to offsetting or retention rights insofar as its claim has been legally established or is undisputed. In case of defects in the delivery, the customer's opposing 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 to be paid on the basis of the contract at our reasonable discretion in line with the development of the costs which are decisive for the price calculation. A price increase shall be considered and a price reduction shall be made if the costs for the procurement of the ordered goods increase or decrease due to price changes on the part of our suppliers or if our energy costs or personnel costs change. Increases in costs in one area may only be used for a price increase to the extent that they are not offset by possible decreases in costs in other areas. In case of cost reductions, prices shall be reduced by us to the extent that these cost reductions are not fully or partially offset by increases in other areas.
When exercising our reasonable discretion, we shall choose the respective dates of a price change so that cost reductions are not calculated according to criteria which 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 remains unaffected.

§ 7 Delivery and passing of risk

1. The delivery time shall be as agreed 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 sooner. 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 authorizations, as well as upon due clarification and approval of plans.
2. If we fail to deliver within the specified period 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 from the customer shall always be required.
4. The place of performance shall be the place of our commercial 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 specified upon execution of 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 the customer fails to do so, we shall then procure these documents if possible and shall charge an appropriate fee for them 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 - upon notification of termination of the work and, at the very latest, upon 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 sphere of influence through which we are fully or partially prevented from fulfilling our obligations, including fire damage, floods, strikes and lawful lockouts,

pandemics or epidemics that occur unexpectedly, as well as business disruptions which we are not responsible for or official decrees. Supply problems and other disruptions to performance on the part of our suppliers shall only be deemed force majeure if the supplier, for its part, is prevented from providing the service owed due to an event described in sentence 1.
2. We shall notify the customer immediately of the occurrence and cessation of the force majeure and do our best 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 which goes beyond this, any other type of use, any change of wording or abridgement may only be undertaken by the customer subject to our consent. In particular, any publication or reproduction for advertising purposes shall be subject to our prior consent in any given case.
2. 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 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 fee and the receivables which have accrued in connection with the contractual relationship have been paid.

§ 11 Acceptance

1. A formal acceptance of our performance shall be required only if this has been agreed with the customer.
2. In all other cases, our performance shall be deemed accepted in accordance with the contract through the intended use of our work performance, at the latest upon 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 recognized 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, the customer shall have the rights

described 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. If this fails, the customer shall be entitled to the other rights relating to defects (self-remedy, withdrawal, reduction, compensation for damages). At our discretion, the subsequent performance shall be effected by remedying the defect or by making a new contractual item.
4. Unless a longer limitation period applies by law, e.g., in the case of fraudulent concealment of a defect (§ 634a (3) BGB), the assumption of a guarantee of quality or contractual liability for damages arising from injury to life, limb or health due to intentional or negligent breach of duty on our part, or on the part of one of our legal representatives or vicarious agents, the limitation period for warranty claims shall be one year from acceptance.
5. The liability for material defects shall be excluded if the customer has changed or modified the subject-matter of the contract, however, 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 provide otherwise, in case of a breach of contractual and non-contractual obligations we shall be liable in accordance with the statutory provisions.
2. Irrespective of the legal grounds, in the context of fault-based liability we shall be liable for damages in cases of intent and gross negligence. In case of simple negligence, subject to statutory limitations of liability (e.g., diligence in one's own affairs; insignificant breach of duty), we shall only be liable for
 a) damages resulting from injury to life, limb or health,
 b) damages arising from the breach of an essential contractual obligation (an obligation the fulfilment of which is essential for the proper performance of the contract and the observance of which the contractual partner regularly relies on and may rely on). In case of a slightly negligent breach of essential contractual obligations, our liability shall be limited to the amount of the typically foreseeable damage up to a maximum amount of € 5 million. If a greater sum of liability than the maximum amount of € 5 million is desired, individual liability insurance with a higher indemnity limit may then be taken out at the client's expense.
No liability shall be accepted in any case for indirect and consequential loss and damage.
3. The limitations of liability ensuing from para. 2 shall also apply to third parties and in case of breaches of duty by persons (also in their favour) for whose fault we

are responsible according to statutory provisions. They shall not apply insofar as a defect was fraudulently concealed or a guarantee for the quality of the goods was assumed, or for any claims of the customer under the Product Liability Act.
4. We shall not be liable for any damage resulting from incorrectness or incompleteness of the information provided to us or from the non-availability of documents. In cases where a third party suffers damage through our services as a result of incorrect, incomplete or missing information to be provided by the customer, the customer shall indemnify us against 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 the 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 upon 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. 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 sample is admissible and that the samples are properly and securely packed. In particular, the regulations on hazardous waste and hazardous substances shall be complied with.
5. Sample materials delivered by the customer shall be accepted on condition that they have been correctly packed 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 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.
 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 overriding statutory provisions, especially such as relate to exclusive jurisdiction.

§ 16 Other agreements, choice of law

1. Should one or more clauses 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 further provision is required.
2. German law shall apply exclusively, to the exclusion of the CISG, unless expressly agreed otherwise in any individual Case.