

# General Terms and Conditions of MPA NRW

## Article 1

- (1) Confirmation of an order by MPA NRW requires the written form.
- (2) Ancillary agreements, in particular those made subsequently are only valid if these have been confirmed in writing by MPA NRW. Information supplied verbally or by telephone is not binding.
- (3) If a definite deadline for carrying out a test has been agreed upon, and which is not possible to uphold for reasons caused by the Client, the costs incurred to MPA NRW will be charged to the Client. Under these circumstances MPA NRW has the right to use the reserved test equipment for other purposes.
- (4) The customer shall give access to his premises and his documentation in the context of witness audits according to EN ISO/IEC 17011:2004.

## Article 2

- (1) Test materials are to be sent to MPA NRW free of charge. Alternatively, the incurred costs will be invoiced to the Client. Should no alternative have been agreed in writing, the used test materials become the property of MPA NRW, and which MPA NRW may freely dispose of. The costs of return of the samples tested will be charged to the Client. MPA NRW accepts no responsibility for transport. During the storage period of the sample MPA NRW undertakes to provide exactly the same care of it as for any other similar item, belonging to MPA NRW.
- (2) Should a third party asserts any rights over MPA NRW in respect of the test material, the Client must release MPA NRW from claims of any kind and volume at the Client's expense.
- (3) Article 2 Section 1, sentence 3 and 4 do not apply to test material, submitted by courts of justice or public prosecution bodies.

## Article 3

If employees of MPA NRW carry out work on the Client's premises within the framework of the testing order, the Client undertakes to ensure that the plant and equipment used on the premises are in compliance with the relevant accident prevention regulations (UVV) of the professional associations and the other industrial safety regulations. Prior to commencing work on the Client's premises the employee of MPA NRW must be informed of dangers and protective measures (Article 8 of the Industrial Safety Regulations Act). If the Client fails to comply with these obligations the employees of MPA NRW will be entitled to terminate testing at the Client's expense.

## Article 4

MPA NRW is entitled to extend or limit the testing, as appears, necessary in order to carry out the testing thoroughly that has been ordered. Where testing exceeds the scope expected by the Client and where the testing costs stated in the confirmation of the order are exceeded by more than 25%, the scope and the price of the work will be submitted in advance by MPA for acceptance by the Client.

## Article 5

If the Client raises objections to the submitted test result, then MPA NRW will examine the result, the testing equipment and if necessary the testing procedure. If the test result which was in question is subsequently proved correct, the costs of the repeated test will be charged to the Client. Otherwise, the queried test result will be corrected free of charge.

## Article 6

- (1) MPA NRW shall be liable without limitations for the breach of contractual duties according to the legal provisions if the breach of duty is based on intent or gross negligence. The unlimited liability shall also apply to damages arising out of death and injury to body or health.
- (2) MPA NRW shall only be liable for damage arising out of contractual breaches of duty that do not come under Article 6 para. 1 if the breached duty is of essential importance for the achievement of the purpose of the contract, and even then only up to the extent of the typically arising predictable damage.
- (3) The regulations according to Article 6 para. 2 shall apply appropriately to other than contractual claims for damage, in particular to claims arising from a tortious act, with the exception of the claims arising from the product liability law. Moreover, the limitation of liability shall also apply in favour of the employees and vicarious agents of MPA NRW.
- (4) Notwithstanding the legal regulation, claims for damage on account of property or pecuniary damage shall become statute-barred in cases of slight negligence within one year as

from emergence and knowledge of the party entitled of the person of the opponent of the claim and the circumstances from which the claim arises; irrespective of this knowledge the limitation of actions shall occur after 5 years as from emergence. The expiry of the period of limitation shall already be inhibited for the duration of six months by the party entitled asserting the claim for damage, at least on its merits, in writing against the opponent of the claim.

- (5) The performance shall be regarded as accepted vis-a-vis an entrepreneur, a legal entity of public law or separate assets under public law after expiry of 12 working days as from the remittance of the expert opinion, test certificate, certificate, test report or other written notifications by MPA NRW on the executed services or in the absence of a notification of this kind, as from remittance of the invoice.
- (6) The preceding clauses shall apply accordingly in cases of possible liability on the part of MPA NRW vis-a-vis third parties because these (parties) were able to have faith in the correctness of the ascertainment made by MPA NRW. The client shall ensure this by means of appropriate agreements. The client shall indemnify MPA NRW from every more far-reaching claim.

## Article 7

- (1) Without the prior permission of MPA NRW certificates of inspection and reports may only be published or copied unchanged as to form and contents. Furthermore, without prior permission certificates of inspection may only be published or copied within the period of validity stated on the certificate. Where the standards or other technical regulations upon which the testing was based have changed during the period of validity, then in each case the permission of MPA NRW must be obtained regarding further publication.
- (2) Reproduction of consultants' reports and certificates that have been altered in respect of form and content is not permissible.

## Article 8

- (1) If the service of MPA NRW is not provided, following contractual agreement, or for reasons for which the Client is responsible, until after the expiry of 4 months following conclusion of the contract, then MPA NRW is subsequently entitled to increase, its confirmed price appropriately in the event of any wage increases or energy costs increases occurring in the meantime.
- (2) If settlement is made based on labour used, each commenced quarter of an hour will always be charged as a full quarter of an hour.
- (3) Additionally, invoices can be issued covering: cash expenses, extraordinary expenditures, deliveries and services by third parties, travel expenses, waiting periods for which the Client is responsible as well as lump sums for travel expenses, mileage allowances etc.
- (4) Should a test or examination not be completed for reasons for which the Client is responsible, a payment of at least 50% of the fee due for completion of the order will be charged.
- (5) An advanced payment may be charged upon commencement of work.
- (6) The issuing of a consultants' report, certificate of inspection, test report, certificate or the publication of the results can be made dependent on prior payment of the fee.
- (7) The legal V.A.T. rate is charged.

## Article 9

- (1) The amount invoiced is payable immediately and without deductions.
- (2) In the case of delayed payment the statutory rates of interest shall be charged.

## Article 10

German law shall be applied exclusively to the legal relationship between the Client and MPA NRW. The above is a translation of the General Terms and Conditions of MPA NRW. The German text prevails.

## Article 11

- Jurisdiction and place of performance is Dortmund if the Client is
- a businessman by profession as defined by the German commercial code (HGB)
  - a legal entity under public law
  - special fund under public law or
  - not generally based in Germany.