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# Terms and Conditions of ift Rosenheim

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## I General Provisions

### § 1 Scope of Application

- (1) The present Terms and Conditions are applicable to all existing and future business relationships concluded between ift Rosenheim composed of Institut für Fenstertechnik e.V., ift Rosenheim GmbH, ift MessTec GmbH and ift gemeinnützige Forschungs- und Entwicklungsgesellschaft mbH (hereinafter referred to as ift) with its clients (hereinafter referred to as Client).
- (2) The present Terms and Conditions are applicable solely to Corporate Clients who are entrepreneurs within the meaning of § 14 BGB (German Civil Code). With regard to Consumers (§ 13 BGB), the relevant legislation will be applied.
- (3) Any terms and conditions stipulated by Client and deviating from these Terms and Conditions shall become part of the contract solely if ift has recognized them expressly in writing.

### § 2 Orders

- (1) All orders are deemed to be accepted only upon written confirmation by ift. This written order confirmation (OC) can be supplied at a later date. Any individual agreements shall remain unaffected thereby.
- (2) ift shall not be liable for any mistakes resulting from documentation and information (drawings, samples, material and product information and the like) supplied by Client.

### § 3 Prices/Remuneration and Terms of Payment

- (1) Unless agreed otherwise, basis of remuneration shall be the prices quoted by ift. The prices quoted and/or agreed are net prices plus applicable VAT (German Value Added Tax). If VAT changes during performance of the contract, the VAT applicable at the date of providing the last service shall be applied.
- (2) ift has the right to request advance payments prior to the provision of services or partial payments based upon the progress of the services provided.
- (3) The total costs, including credit for the advance payments and/or partial payments made in accordance with OC, shall be invoiced upon completion of provision of services.
- (4) If provision of services is terminated prematurely and falling outside the responsibility of ift (failure of test specimen during a test / discontinuation of further training / discontinuation of an audit due to lack of facilities on the part of Client), Client is obliged to pay for the whole services – if applicable, including records (protocol, report). In such cases, ift will not issue a classification certificate.

If provision of services is terminated prematurely, falling within the responsibility of ift, costs arising until such point in time shall be charged on the basis of the expenditure incurred; this does not apply if ift acted intentionally or grossly negligent.

- (5) Invoices, including claims for advance payments and/or partial payments, shall be settled within 14 days as of the date of the relevant documents and shall include the applicable VAT. If Client fails to settle the respective amount within such period, Client will be considered as being in default of payment without any further notification given by ift.
- (6) In the event of default in payment, ift shall be entitled to the statutory annual interest rate for default. ift reserves the right to prove any further damage caused by default and claim compensation.
- (7) Any bank charges incurred for payments in foreign currency and any costs of payments shall be borne by Client. Local taxes and duties shall be borne by Client.
- (8) Discounts are not permitted unless agreed by individual contract.
- (9) Client shall not be entitled to offsetting counter-claims disputed by ift. This shall not apply to counter-claims made by Client for additional costs for removal of defects and completion based on contracts for services.
- (10) Client shall not be entitled to exercise its right of retention unless the counterclaim is based on the same contractual relationship.
- (11) In the case of products, Client shall not be entitled to exercise retention in the case of defects unless the delivery shows apparent defects. In this case Client shall be entitled to exercise retention only if the amount retained is reasonably proportionate to the defects and the presumable costs incurred for subsequent performance.

## § 4 Confidentiality

- (1) ift and Client mutually commit themselves that all business and personal data, as well as business and company secrets of the other party, that become known during performance of the contract will be treated with strict confidentiality.

- (2) This confidentiality obligation shall not apply to:
  - information that has to be disclosed by the respective party based on legal regulations (e.g. requests for information from courts and authorities),
  - inspection of working documents by experts of the accreditation body;
  - documents prepared by ift for Client that require disclosure (e.g. AbP (national technical test certificate), certificates),
  - reports to a board of arbitration, should a complaint be lodged.

## § 5 Collection and use of data

- (1) In the context of its activities as a testing, inspection and certification body, ift is obliged to mark order-relevant data and store them (current for 10 years) so that they can be tracked. For that purpose, data and information will be collected and stored, among other things, in a database system.
- (2) ift shall be entitled to use data (e.g. descriptions of test specimens) and results (e.g. test and classification values) determined in the context of service provision in an anonymized manner for its own purposes e.g. for statistical surveys or technical evaluations and assessments.
- (3) Client shall be entitled to object to the use of data by ift at any time and revoke consent pursuant to Section (2) above in writing.

## § 6 Place of Jurisdiction

As permitted by § 38 ZPO (Code of Civil Procedure), the place of jurisdiction for all disputes arising from the contract concluded between ift and Client, from the present Terms and Conditions, or from the additional provisions applicable to the certification and inspection body is deemed to be Rosenheim.



## § 7 Applicable Law / Prevailing Language

- (1) Performance of the contract and any enforcement of claims thereunder shall be subject to the law of the Federal Republic of Germany.
- (2) These Terms and Conditions have been drafted in German and in English. For purposes of interpretation of these Terms and Conditions and in case of any possible conflict between the German and English text, the German version shall be decisive and shall prevail.

## § 8 Limitation of liability

ift shall be liable in accordance with the statutory provisions if Client asserts claims

for damage caused by wilful intent or gross negligence and/or wilful intent or gross negligence on the part of a representative or vicarious agent of the contractor. If it cannot be proven that ift committed wilful or grossly negligent breach of duty, the liability for damage shall be limited to damage that typically occurs. This does not apply to liability in the case of culpable injury to life, limb or health and also not to the mandatory liability in accordance with the German Product Liability Act.

## § 9 Information according to Consumer Dispute Resolution Law

ift Rosenheim GmbH is not bound nor willing to participate in a dispute settlement procedure before a consumer arbitration board.

# II Special Conditions for Products

## § 1 Scope of Application

These Terms and Conditions (Part II) shall be applicable to products in addition to the Terms and Conditions (Part I – General Provisions) of ift.

- (3) Scope of delivery shall be as stipulated by the individual contract. The deliveries made by ift will not include source codes, circuit diagrams and parts lists.

## § 2 Conclusion of Contracts

- (1) With order of the goods, Client undertakes to purchase the goods ordered.
- (2) In the event that items cannot be delivered because ift did not receive such items from its suppliers, did not receive the correct items or did not receive them on time, ift shall be entitled to withdraw from the contract. This reservation of failure of suppliers to honour obligations shall only be permissible if ift is not responsible for such failure of suppliers. If items cannot be delivered in whole or in part, if the correct items cannot be delivered or not on time, ift will inform Client immediately of such situation, and payments received will be reimbursed.

## § 3 Reservation of Title

- (1) ift retains title to the goods delivered until all claims arising from the existing business relations with Client have been settled.
- (2) If Client fails to comply with its duties, in particular in the case of default of payment or infringement of the following Section (3) of this §, ift shall be entitled to withdraw from the contract and request return of items.
- (3) Client undertakes to notify ift immediately of any seizure of goods by third parties, e.g. in the case of attachment of property, as well as of any damage to or destruction of the goods. Client shall inform ift immediately of any change in the ownership of the goods and of any change in the Client's place of residence.

(4) Client shall be entitled to resell the goods to third parties in the ordinary course of business. Client assigns to ift already now all receivables from third parties in the amount of the invoiced sum which result from the re-sale to third parties. ift accepts such assignment. Subsequent to assignment, Client has the right to collect the debt. ift reserves the right to collect the debt itself if Client fails to duly meet its payment obligations and defaults in payment. In such a case, upon written request from ift, Client shall inform ift of receivables assigned and of the corresponding debtors as well as furnish particulars required for collection by submitting photocopies of all associated documentation within a period of 5 working days and, additionally, inform debtors of the assignment.

#### § 4 Passage of risk

- (1) On transfer of goods, the risk of accidental loss or deterioration of the goods passes to Client. Goods will be regarded as transferred also in the case of delay in taking delivery by Client.
- (2) In the case of sale by delivery to a place other than the place of performance, the risk shall pass to Client with delivery of the goods to the forwarder, carrier or other person or institution charged with shipping of the goods.

#### § 5 Operation

ift expressly points out that operation of the products is reserved to skilled personnel only and that the products shall be operated exclusively on the basis of the operating instructions and as provided by the specified intended use. Client therefore undertakes to entrust only adequately skilled and trained personnel with operation and maintenance. ift shall not be liable for any consequences resulting from non-observance by Client of the provisions specified herein.

#### § 6 Liability for defects

- (1) Rights of Client based on product defects

presuppose that Client has duly complied with its duty to inspection and objection pursuant to § 377 HGB (German Commercial Code). Obvious defects have to be reported in writing at the latest within 3 working days as of receipt of items.

- (2) If items have any defects that already existed at the time of passage of risk, ift shall be entitled – subject to a timely notice of defect pursuant to Section (1) – to initially provide subsequent performance by means of reworking or replacement delivery at the sole discretion of ift. ift shall in all cases be granted an opportunity of subsequent performance within an appropriate period of time. Expenses required for subsequent performance will be borne by ift within the framework of legal regulations in as far as expenses are not increased as a result of the fact that the item has been transported to a place other than the place of performance.
- (3) In the event of failure of subsequent performance, Client – notwithstanding any compensatory damage claims – shall be entitled to withdraw from the contract or reduce payment.
- (4) Claims for defects cannot be asserted in the case of only slight variation from the agreed quality, in the case of only slight impairment of the fitness for use, in the case of natural wear and tear and in the case of defects that occurred after the passage of risk due to incorrect or negligent handling, excessive use, unsuitable equipment, failure to perform maintenance operations and the like.
- (5) If Client decides to claim damages after subsequent performance has failed, the items remain with Client on the request of ift unless this is unreasonable.
- (6) Claims based on defects are subject to a limitation period of 1 year as of the passage of risk. This does not apply insofar as longer periods are mandatorily prescribed by law according to § 438 Section 1 Clause 2 BGB (German Civil Code), § 479 Section 1 BGB and § 634a Section 1 BGB.

## III Special conditions for Services

(e.g. testing, audit/inspection, certification, expert opinions/technical information, training/session, research)

### § 1 Scope of Application

These Terms and Conditions (Part III) shall be applicable to services in addition to the Terms and Conditions (Part I – General Provisions) of ift.

with ift and reserved for Client or cancel the order in full or in part.

- (2) Client shall also be obliged (regardless of any individual case) to pay fees for the postponement/cancellation amounting to 20 % of the gross order sum.

### § 2 Preconditions for provision of Services

- (1) If advance payment for the total order sum or for parts thereof has been agreed, ift shall have the right to commence with provision of services only after receipt of payment.
- (2) If ift forwards specific data sheets to Client which are required for the specification/description of the subject of the order (e.g. test specimens/ product, management system, construction project) or if ift requests documentation from Client, Client shall return the completed data sheets and/or documents to ift duly completed and as soon as possible, at the latest on the date agreed.
- (3) If the data sheets/submission of documents are incomplete or delayed and/or not completed, ift reserves the right to cancel a date agreed for the provision of services and to invoice Client for any losses suffered in that regard (cf. § 3).
- (4) If the ift documentation to be prepared in the context of provision of services is incomplete because data/documents submitted by Client are incomplete, ift does not assume any responsibility that such documentation can be used in accordance with the originally intended purpose.

Notwithstanding that, ift is entitled to provide evidence of expenses incurred/additional losses suffered and request reimbursement.

- (3) In the case of cancellation, the following shall apply in addition: If notice of cancellation is received by ift within a period of 4 weeks to 1 week prior to the test date, Client shall be obliged to pay an additional fee of 30 % (i.e. a total of 50 %) of the gross order sum. If notice of cancellation is received by ift within the last 7 calendar days prior to the test date, Client shall be obliged to pay a total of 100 % of the gross order sum.

### § 4 Private expert opinions

In the case of private expert opinions which have been prepared by the ift for the Client, it may happen that the ift expert will be summoned as an expert witness in a later court proceeding. The ift is legally bound to release the expert for the hearing without remuneration. Due to the fact that the court will only pay a very small compensation to the witness, apart from refunding the travelling expenses, the ift will in such cases charge the costs at the ift rates valid for experts at that time to the Client; in this, the compensation awarded by the court will be taken into account.

The Client irrevocably agrees to refund the difference between the two amounts to the ift.

### § 3 Cancellation or postponement by Client

- (1) Client shall be obliged to immediately notify ift in writing, should Client not be in a position to keep the appointment agreed



## § 5 Test Specimens

- (1) Client shall deliver test specimens required for carrying out laboratory tests as specified by ift. ift reserves the right to request additional test specimens from Client to ensure reliability of test results.
- (2) Client shall inform ift in due time – if possible when placing the order – on what will be done with the test specimen subsequent to completion of testing or assessment. If no such information is given by Client, the provisions set forth hereunder in § 5 (7) of this Part of the Terms and Conditions shall come into effect.
- (3) Client shall deliver the test specimens to ift free of charge and with all custom duties paid. Client assumes responsibility for all risks and costs in connection with shipping and transporting documents or test specimens to and from ift as well as for waste disposal that may be required.
- (4) As regards the time of storage of test specimens, ift shall only take reasonable care as it usually employs in its own affairs of similar type (§ 690 BGB) (German Civil Code).
- (5) Client acknowledges and agrees that also in the case of non-destructive testing the necessity may arise to destroy the test specimen for the purpose of identifying and tracking the test results. As a rule, also non-destructive testing is likely to result in damage to the test specimens in the form of scratches, etc.
- (6) The necessity may arise that use of the test report is subject to retention of a reference sample at Client's premises. As a rule, ift recommends that Client retains a reference sample at its premises during the time of using the test report.
- (7) **Storage of test specimens at ift:**
  - 7.1 With regard to what will be done with test specimens after test completion, the regulations under 7.2 and 7.3 shall apply. The test is completed once test documentation has been dispatched to Client or if the test had to be discontinued out of schedule.

7.2 Client shall be obliged to collect the test specimen within a period of 4 weeks after test completion. Client has to agree a collection date with ift. If the test specimen has not been collected within that period, ift will dispose of the test specimen at the expense of Client.

7.3 If Client advises ift of a collection date (at the latest within 4 weeks after test completion) and if such collection date is after the 4-week period, ift will store the test specimen beyond the 4-week period; in this case, the risk of accidental loss/ destruction/ damage shall pass on to Client after the 4-week period. In addition, Client has to pay a lump sum for the delay amounting to € 250.00 for each component and/or, in the case of smaller test specimens, € 250.00 for each container per week or part-week, whereas Client shall be free to furnish proof of minor damage. If Client fails to collect despite having stipulated a collection date, ift shall be entitled to dispose of the test specimen at the expense of Client 3 months after test completion.

7.4 The following applies prior to testing: If Client delivers the test specimen within a period of 2 weeks prior to the date of testing agreed, ift will store the test specimen. If Client delivers the test specimen before such 2-week period, ift shall be entitled to reimbursement of storage costs amounting to € 250.00 for each component and/or, in the case of smaller test specimens, € 250.00 for each container per week or part-week up to 2 weeks before the date of testing.

7.5 ift is also entitled to request such storage costs if, during execution of the order, storage periods of more than 2 weeks arise for which ift is not responsible (e.g. test interruption due to the need of procuring replacement parts, requirement for follow-up tests).

- (8) As necessary, the costs of packaging will be calculated on the most favourable price basis. Packaging will not be taken back. Any transport equipment and packaging employed by Client will be used to return the test specimen or will be disposed of at the expense of Client.



- (9) Client shall be responsible for due compliance with all custom formalities in the case of deliveries from abroad.
- (10) ift shall not be liable for any data given by the manufacturer with reference to the test specimen. These data will only be checked for plausibility. Reference samples may be retained to ensure evidence of the test specimens delivered, e.g. as part of expert opinions. Client shall be responsible for the retention of reference samples.

## § 6 Documentation of Services provided

- (1) ift shall prepare written documentation for Client in accordance with the service ordered. The manner, contents and scope of documentation are specified by the type of service and, as appropriate, an intended purpose of use agreed at the time of order placement.
- (2) Client shall be obliged to respect the ift Guidance Sheet "Bedingungen und Hinweise zur Verwendung von ift Dokumentationen (Conditions and Guidance for the Use of ift Documents).
- (3) Upon request, ift will have ift documentation translated into other languages. In such a case, the German original document shall prevail.

## § 7 Recall and Revision of ift Documentation

ift will exercise reasonable care and diligence in preparing its written documentation. In the case of reasonable indications of defects contained in written documentation, ift shall have the right to recall such written documentation, regardless of the reasons for such documentation being defective. In this case Client shall be obliged to discontinue the use of such written documentation.

From the date of the respective recall or provision of a revised version of the documentation, ift shall not be liable for the continued use and application of the original/incorrect written documentation. ift shall have the right to withdraw the written documentation.

If there are reasonable indications of the necessity of carrying out supplementary testing, ift shall have the right to perform such a supplementary testing.

## § 8 Provision of Services by Third Parties

As a rule, services are provided by qualified ift in-house staff. As necessary, ift shall have the right to rely on appropriate/competent third parties (service providers, subcontractors). Client will be informed of this in each individual case. ift shall remain the sole contracting partner of Client also in this case.