

General terms and conditions of service for RST Rail System Testing GmbH

§ 1 General / Global Scope

Our contractual partners shall be hereinafter designated "the Client" and RST Rail System Testing GmbH shall be hereinafter designated "the Contractor" or "RST" – notwithstanding this designation shall not prejudice or preempt the legal definition in any contractual agreement. Privity of contract between RST and the Client is only valid under the following terms and conditions; exceptions and variations to these terms and conditions on the part of the Client will only be recognised if RST has given specific written agreement to them. The following terms and conditions are also valid if and when RST, in cognisance of exceptions and variations in the Client's terms of business, unconditionally carries out the Client's order.

These terms and conditions only apply to businesses as defined by § 14 of the German Civil Code.

§ 2 Placement of orders

Work orders are not accepted, and any agreements, warranties or subsidiary agreements made orally, by telephone or in person are not valid, without written confirmation on the part of RST.

§ 3 Execution of Work Orders

Work orders are to be executed in a manner commensurate with the principles of professional practice, using the best technical knowledge and practice currently available.

Specific results, particularly ones requested by the Client may only be provided by RST in the context of the objective application of the insights offered by the current technology.

Insofar as it might be necessary or appropriate, RST may call upon the services of a third party for the preparation and/or execution of a work order.

If it is necessary to employ specialists from other disciplines for the appropriate handling of a work order then those individuals will be contracted through RST.

RST's contractual obligation for any work order ends with the forwarding of the results either orally or in writing.

§ 4 Client's Obligation to Co-operate

The Client may not give RST any directives which would lead to the falsification of the de facto findings or results of the work order.

The Client is obliged to provide RST with all the necessary information, records and test items in good time and free of charge. The Client is obliged to inform RST of all procedures and circumstances which might have any bearing on the execution of the work order on time and without being specifically requested to do so.

While RST is working in the offices or on sites belonging to the Client, the Client takes legal and actual responsibility for the necessary public liability insurance against damage to RST property and injury to RST employees. The Client absolves RST employees seconded under the terms of the contract from all liability for simple negligence. The employer will undertake the necessary training of the employees.

Insofar as no other agreement is reached, all test items are to be delivered by the agreed date to RST's place of business free of charge, and collected on completion of the job. If test items remain with the Client then access must be provided by the agreed date.

§ 5 Non-Disclosure

Unless explicitly authorised, RST and all its employees and associates are forbidden to make public, pass on to third parties or make use of, any work results, information or records which may have been made available to them in the course of their work or of which they have become aware. The duty of confidentiality covers all non-publicly available information and remains in force beyond the duration of the contract.

§ 6 Copyright Protection

Where the services rendered result in copyrightable findings, copyright is retained by RST.

In this respect, the Client alone is entitled to make use of the results of any work order, including specifications, calculations and other items, and solely for the purposes specified in the contract.

Any further dissemination of the results to a third party, a different use, or any alteration or shortening of the text by the Client may only be undertaken with the express permission of RST. The publication of the expert opinion and/or the results by the Client always requires the consent of RST. The Client is responsible for the fulfilment of the aforementioned conditions by its employees and associates, and will take appropriate measures to ensure their enforcement.

In the case of infringement, the Client will pay a contractual penalty at a flat rate of € 5,000.00, without prejudice to any further claims on the part of RST.

§ 7 Remuneration

RST is entitled to the payment of remuneration as agreed for the individual works order.

The Customer or Client alone will pay all transport costs of the samples, packing and finance charges (bank charges especially in connection with foreign payments).

§ 8 Payment / Late Payment

Our invoices are payable within 14 days from the date of invoice without deduction of discount.

The statutory VAT is not included in the price quoted by RST and will be included as a separate item in the invoice on the day of issue.

Any discount on payment requires specific written agreement.

Should the Client default on payment, RST is entitled to charge default interest under § 288, Para 2 of the German Civil Code. RST reserves the right to prove a higher default penalty while the Client may also prove that a lower penalty should apply.

The Client may only offset against any claims by RST when their counterclaim has been established legally, is uncontested or is recognised by RST. Furthermore, the Client is only authorised to exercise the right to withhold payment when their counterclaim involves the same contractual relationship.

§ 9 Delivery Period / Exceeded Deadlines

When a timeframe for the delivery of work results is agreed, this starts with the delivery of the test items, and the provision of all records, information and appurtenances, insofar as these items are necessary for work to commence.

Should a specific execution period be agreed for the work and the Client delivers the test items after the agreed time, then the execution period will be revised dependent on the order situation and scheduled laboratory capacity of RST.

In the event of RST falling behind schedule, the Client may only withdraw from the contract or demand compensation if RST has been warned and set an appropriate new delivery date for the work results.

RST is only deemed to be in default when RST is responsible for the failure to meet the schedule. In cases where RST is not responsible for the failure to deliver due to events beyond its control and which may lead to substantial disruption to the business, e.g. cases of force majeure, illness, industrial action and lockouts, then default does not occur. The delivery period is extended accordingly and the Client may make no claim for compensation.

Should such difficulties render it impossible for RST to fulfil the work order then RST is released from its obligations. Once again, the Client may make no claim for compensation in this case.

The Client may only seek compensation in addition to the work ordered if and when the Client can prove intentional or gross negligence on the part of RST.

§ 10 Cancellation / Termination of Contract

Both the Client and RST may terminate the contract for good reason at any time. The termination must be in written form.

If the good reason for termination is the responsibility of RST, then RST is only entitled to remuneration for any partly completed work orders at the time of termination insofar as this work is objectively useful to the Client.

In all other cases RST retains the right to the contractually agreed fees, minus any expenditures not yet incurred.

Unless the Client can demonstrate a higher proportion of expenditures not yet incurred, then the expenditures not yet incurred will be set at 20% of RST's fee for the incomplete works order.

§ 11 Warranty

The Client's sole right of warranty is the repetition of the work order at no further cost.

If repeat delivery is not made within the agreed time limit then the Client, may withdraw from the contract or seek reimbursement of the fee.

In the event of no further developments then all claims on the part of the Client, whatever the legal grounds, are excluded. RST therefore does not guarantee against any damages not due to unsatisfactory work results themselves. In particular RST offers no warranty for any resulting loss in profits or subsequent financial or property losses on the part of the Client.

The above-mentioned restriction of warranty does not apply if the cause of damage is intentional or the result of gross negligence. It is also not valid where the Contractor has maliciously concealed a fault or has given a quality guarantee for the work results or for damages due to injury to life, limb or health.

If RST is negligent in respect of a cardinal obligation or an essential contractual obligation then liability for damages is limited to the typically foreseeable sums based on the contract.

The duration of the warranty is two years and begins with the delivery of the test or work results.

§ 12 Liability

RST is liable for damages arising from faulty work results insofar as these are due to intentional or gross negligence on the part of employees or associates of theirs if the aforesaid arrangements do not provide otherwise.

If the liability of RST is excluded or limited, the same applies to the personal liability of their employees, agents and associates.

Liability for personal damages is limited to €3 million and that for any financial and property damages to €250,000 per individual case. Further liability may be agreed in writing with the Client subject to the acceptance of a supplementary insurance premium. The rights of the Client under § 11 (Warranty) are not in any way affected. Any claims regarding late delivery are dealt with fully and finally under § 9.

§ 13 Place of Fulfilment and Jurisdiction

The place of fulfilment and court of jurisdiction is Neuruppin, Federal Republic of Germany.

Any alterations or additions, as well as the abrogation of any one of the clauses of these terms and conditions are only binding when made in writing. The same is valid for this requirement of written notification.

§ 14 Partial Validity

Should any of the individual terms and conditions of the contract prove invalid or unfeasible, the validity of the remaining terms is not affected. Instead of the unfeasible contractual terms, the parties to the contract are obligated to agree alternative terms in writing. These alternative terms should best reflect the commercial result intended by the invalid or unfeasible terms.

In case of a dispute, the German version of these Terms and Conditions applies.