

GENERAL TERMS AND CONDITIONS OF BUSINESS

Article 1 - Scope of Application

1. The following General Terms and Conditions of Business shall apply to every contract between FGH Engineering & Test GmbH (hereinafter referred to as FGH E&T GmbH) as a contractor and the respective client. Several clients shall act jointly and are regarded as one client.
2. These Terms and Conditions shall have precedence over any terms of contract and terms of payment of the clients and shall also be applicable without a respective written acknowledgement.

Article 2 - Offer, Order, Confirmation of Order

1. Offers shall be without binding effect, unless a period of commitment is stated.
2. Orders must always be placed by the client in writing and, if they diverge from the existing offer according to Art. 2 No. 1, are subject to acceptance by FGH E&T GmbH.
3. The order shall set forth at least the following information:
 - Type and number of the test items;
 - Exact technical specifications, in particular weights and dimensions as well as any further information required for performing the tests;
 - Test program and, if applicable, test specifications, form of the desired documentation;
 - Dates/periods requested or already agreed.
4. For every order placed, FGH E&T GmbH prepares a written confirmation stating type and scope of the order.
5. Upon placing the order or accepting the confirmation of the order, the client recognizes the General Terms and Conditions of Business of FGH E&T GmbH in force at that time.
6. Any deviations from the order placed and confirmed normally require a further written confirmation between the client or its authorized agent and FGH E&T GmbH.
7. Any deviations from the order placed and confirmed that are requested by the authorized agent of the client in the course of the tests shall be carried out, provided they are reasonable for FGH E&T GmbH. Additional expenditure resulting from such deviation shall be charged.

Article 3 - Date and Reservation of Tests Bays

1. Date or period of the performance of the order are set forth in the respective confirmation of the order.
2. Test bays can be reserved for whole or half shifts. A whole shift comprises 8 hours during the regular daily working time; half a shift has 4 hours either at the beginning or at the end of the daily working time. It is in the discretion of FGH E&T GmbH whether and for what time booked shifts or periods can be exceeded.
3. Any set-up or resetting work or other waiting periods that FGH E&T GmbH is not responsible for shall be charged as time of reservation according to the price list as far as a simultaneous other utilization of the test laboratory is excluded.

Any test shifts not used as a whole or in part due to a delayed receipt of the test item, non-usability of the test item or other reasons not caused by the test laboratory shall be charged to the client at the reservation fee of the respective test circuit, unless the test laboratory can be used otherwise.

It shall be in the discretion of FGH E&T GmbH whether the laboratory can be used otherwise during the set-up or resetting time.

If test installations are used otherwise during the set-up or resetting time, the use of staff of FGH E&T GmbH for the respective work shall be charged according to the rates set forth in the price list. FGH E&T GmbH can only make staff available for such set-up or resetting work when such staff is not required for the operation of the test laboratory.
4. A cancellation or postponement of an order placed by the client must be made in writing not later than five working days before the agreed date. If such notice is only given at a later time, FGH E&T GmbH shall be entitled to charge the resulting loss to the client's account.
5. Any preliminary services for the respective order that have been rendered until the time of receipt of the cancellation shall be borne by the client (cf. Art. 13 Subsec. 2).
6. An exchange and passing-on of booked shifts is only possible subject to the approval of FGH E&T GmbH.

Article 4 - Scope of Service

1. It shall be regarded as the object of the order what has been expressly agreed.
2. The set-up, resetting or dismantling of the test items shall be incumbent on the client, unless agreed otherwise. The transport at the test premises, except in case of test items that cannot be transported with the means of transport of FGH E&T GmbH, their connection at the test bay and the connection of the measuring devices shall be carried out by the staff of FGH E&T GmbH.
3. Orders shall be performed in accordance with generally accepted regulations or with specifications defined by the client. The regulation(s) or specifications to be used as a basis are to be stated in the order.
4. If, in the course of a test, any resetting, repair, reconditioning or the like of or on the test item should be required at the client's instruction that causes an extension of the time of the test, such extension shall be regarded as service rendered in addition to the agreed order and shall be additionally charged to the amount of the costs of the shift and of the staff required.

5. Within the limits defined in its quality management system, FGH E&T GmbH shall be released from a personal performance of test services, but shall always remain directly obliged to the client.
6. FGH E&T GmbH shall be entitled to account for the test services rendered already before the preparation of a test document.
7. In case the client should fail to submit all written documents required for the preparation of a test document 12 weeks from the last day of the test at the latest, FGH E&T GmbH shall be entitled to charge 50 % of the costs of the test document specified in the confirmation. Thereby, the agreed service of preparation of the test document shall be regarded as performed.

Article 5 - Duties of the Client

1. The client undertakes to create all conditions required for the performance of the order.
2. The client must authorize a staff member or another person for the performance of the tests who can make all legally binding statements on behalf of the client in connection with the tests.

In order to avoid any damage, the person responsible appointed by the client shall be present during the unloading and loading of the test item as well as during the testing or shall give respective instructions in advance. That person shall be responsible for safeguarding the client's interests before, during and after the testing.

3. All costs connected with the travel there and back of staff members or persons entrusted by the client shall be borne by the client.
4. The client must take care that the test item is available for the test in good time and ready for testing at the agreed point of time.
5. All costs of the transport there and back of the test item (including any import and/or export duties, if applicable) shall be borne by the client and shall be invoiced directly to the client by the forwarding firm respectively instructed, unless otherwise agreed. In the same way, the costs of packaging and storage shall be borne by the client. The risk of loss of the test item during the transport there and back shall be borne by the client. The transport risk shall also be borne by the client if, by way of exception, the transport costs should be borne by FGH E&T GmbH.
6. If the weight, dimensions and/or residues of the test item should exceed the capacity of the transport and lifting equipment of FGH E&T GmbH, third-party enterprises may be involved in agreement with the client. The resulting expenses shall be borne by the client.
7. After completion of the order, the test items and other items shall be collected by the client within one week. In case this period is exceeded, FGH E&T GmbH can invoice storage costs to the client.
8. If the client makes any technical means, such as tools, equipment, machines, means of transport, lifting and conveyor equipment, etc. available itself, such means must be in line with generally accepted technical procedures, industrial safety rules and regulations for the prevention of accidents.

Article 6 - Test Documentation and Keeping of Documents

1. Tests are documented depending on their respective type and result. Type and scope of the documentation result from the respective confirmation of FGH E&T GmbH.
2. Type approval certificates and test certificates can be issued for devices and means of operation that have passed tests for proving or determining nominal values performed pursuant to applicable test specifications, generally accepted guidelines or recommendations. For tests performed for obtaining a type approval certificate or test certificate, drawings for the identification of the test item must have been submitted.
3. For all other tests, test reports or trial reports can be handed over at the client's request.
4. A transmission of test documents by electronic means, whether encrypted or plain, is subject to the client's approval. The client must clearly specify an e-mail address for that purpose. Receipt of the e-mail must be confirmed. The encryption software is to be coordinated between the client and FGH E&T GmbH.
5. FGH E&T GmbH shall keep all documents referring to the test for 10 years and any test document resulting therefrom for 30 years from the completion of the test. After the expiry of this period, the documents can be destroyed without further notice to the client.

Article 7 - Intellectual Property

1. As far as the results of work create any copyright, such copyrights shall be kept by FGH E&T GmbH. The client shall be granted the irrevocable, unrestricted, exclusive and non-assignable right to use the results of the work.
2. The client is only allowed to reproduce test documents observing a reproduction of the complete document true to the original. Any other publication or a utilization for advertising purposes is subject to the express written approval of FGH E&T GmbH.
3. In case of utilization for advertising purposes, there must be included an addition to be completely specified by FGH E&T GmbH in writing.

Article 8 - Secrecy

1. FGH E&T GmbH performs orders on its own behalf and for its own account. Notwithstanding the above, FGH E&T GmbH reserves the right to make use of support by services or Forschungsgemeinschaft für Elektrische Anlagen und Stromwirtschaft e.V. or other subcontractors (cf. also Art. 4 No. 5) and, to such extent shall be released from the obligation to observe secrecy. FGH E&T GmbH as well as Forschungsgemeinschaft für Elektrische Anlagen und Stromwirtschaft e.V. or respective other subcontractors oblige themselves to observe secrecy with regard to all information that come to their knowledge within the framework of the business relationship and not to further utilize any such information for themselves.
2. FGH E&T GmbH obliges itself to observe secrecy with regard to all facts that come to its knowledge in connection with its activities for the client, to treat in particular information on operating and business secrets as well as technical specifications of the test item of the client confidentially, not to use such information for itself outside the order and not to disclose it to any third party. This applies also to any such circumstances that are or will be of substantial importance to future business activities of the client, unless they are publicly accessible or known.
3. FGH E&T GmbH may only make written statements to a third party subject to prior written approval of the respective client.
4. The obligation to observe secrecy shall apply beyond the performance of the respective order and shall also be binding on any external third parties that may be involved in the order.

Article 9 - Invoicing, Terms of Payment

1. The invoice shall be made out according to the actual expenditure incurred and shall be based on the price list respectively in force.
2. Any travelling or driving time required for performing the order shall be charged at the hourly rates specified in the price list.
3. Travel expenses shall be accounted for according to the actual expenditure. There shall be refunded travelling costs for 1st class (train) or business class (flight) plus any additional charges incurred.
4. The choice of the means of transport is reserved to FGH E&T GmbH.
5. Invoices are due and payable 30 days from the invoice date. Any deductions or retentions are not permissible. Payment is to be made in a manner free of costs for FGH E&T GmbH; in case of international payments, all additional charges resulting therefrom are to be borne by the client.
6. A payment shall be regarded as made as soon as FGH E&T GmbH can freely dispose of the amount of payment.
7. Prices stated are net prices to which value-added tax at the respective legal rate is to be added.
8. In case of a delay in payment, FGH E&T GmbH shall be entitled to charge administrative fees to an amount of EUR 10.00 per reminder sent, without prejudice to further claims.
9. In case of a delayed receipt of payment, FGH E&T GmbH shall be entitled to charge, as from the 31st day from the invoice date, default interest at a rate of 4 % p.a. above the respectively applicable base interest rate of the Central Bank of Germany (Deutsche Bundesbank) or, in case it ceases to be applicable, the respective successor interest rate.
10. If several persons have placed the order jointly, they shall be jointly and severally liable.

Article 10 - Warranty, Safety Regulations and Liability

1. All work is performed by FGH E&T GmbH in compliance with the applicable generally accepted standards and rules.
2. In case of a defective service, FGH E&T GmbH is to be given an opportunity to rectify the defects within a reasonable period.
3. If the defect cannot be rectified after one attempt of rectification, the client shall be entitled to withdraw from the contract or to a reasonable reduction of the price charged.
4. Claims for a rectification of defects are to be asserted in writing immediately, but not later than 4 weeks (date of receipt of the claim by FGH E&T GmbH) from the handing-over of test documents, clearly describing the defect complained about. If the documents are sent to the client or to an address specified by the client, they shall be regarded as handed over 3 working days from posting.
5. The safety regulations of the test laboratories of FGH E&T GmbH are to be observed; it is in particular required that the client, its agents and persons accompanying them adhere to the resulting instructions given by the test laboratory staff.
6. In the event any damage to property or personal injury should occur in spite of the safety measures taken by FGH E&T GmbH, FGH E&T GmbH shall be liable for any damage caused by intent or gross negligence of its staff, including also third-party staff, unless the damage itself was a possible predictable result of the work to be performed or was caused by a failure of the test item. In case of gross negligence, liability is limited to the immediate damage, however, not exceeding the amount covered by the existing third-party liability insurance in the respective case. Any liability for pecuniary loss as well as processing damage is exclusively excluded. If a test item has a value of more than EUR 50,000.00, that must be notified to FGH E&T GmbH by the client.
7. FGH E&T GmbH does not assume any liability for damage to any items provided by the client caused by fire, by natural disasters or by third parties as well as in case of theft of any items provided by the client.
8. FGH E&T GmbH does not assume any liability for consequential damage. This applies in particular to pecuniary loss.
9. In case any safety regulations and instructions derived therefrom are not observed by the client, its agents or persons accompanying them, there is not assumed any liability. The client shall also be responsible for any damage caused by the test item within the scope of the test. In case a fact leading to danger was or should have been known to the client FGH E&T GmbH shall be informed in advance. In case of a danger, FGH E&T GmbH is entitled without prior check-back with the client, to take any measures necessary for the protection of persons and property.

10. The risk of the transport there and back as well as the risk of unloading an loading shall be borne by the client.

Article 11 - Default in Acceptance and Cooperation

1. In case the client gets in default with the acceptance of the agreed services, FGH E&T GmbH shall be entitled to the rights under Art. 615 BGB (German Civil Code) without further notice of default. Without prejudice to an exercise of the rights under sentence 1 above, FGH E&T GmbH shall be entitled to terminate the contract according to Art. 626 Subsec. 1 BGB. Art. 626 Subsec. 2 BGB is excluded. A default in acceptance shall not exist in case of an event of force majeure.
2. In case the client fails to provide the cooperation required for performing the service, such failure shall constitute a good cause for a termination with immediate effect according to Art. 627 BGB.
3. FGH E&T GmbH shall be entitled to a claim for compensation for the additional expenses incurred due to the default as well as for a damage incurred. This shall also apply if FGH E&T GmbH does not exercise its right to termination.

Article 12 - Force Majeure

1. In case of events of force majeure, FGH E&T GmbH shall be entitled to perform its obligations at a time postponed for the period of existence of the event of force majeure plus a reasonable period for restarting its operations. Strike, lock-out, fire, interruption of operations, measures of the authorities and the like shall be equivalent to events of force majeure. In case of such conditions, FGH E&T GmbH shall inform its client without delay.
2. If performance is impossible as a whole or in part for reasons of force majeure, replacement time shall be made available to the client within reasonable time. The costs caused by the postponement of the date are to be borne by the client itself. FGH E&T GmbH cannot be held liable for any prejudice suffered by the client as a consequence of the interruption of the test or the cancellation or postponement of the date due to force majeure.
3. Interruptions of tests caused by force majeure shall be - as far as possible - made up for immediately or credited by the hour.
4. If performance is not possible within foreseeable time, the contract shall be declared terminated. Client and FGH E&T GmbH shall bear their respective costs themselves.

Article 13 - Termination, Interruption, Delay

1. Without prejudice to the preceding provisions, the client shall be regarded as being in default according to law in case the client fails perform its obligations properly and in due time or in case of an application for the institution of insolvency proceedings, a resolution for liquidation, an application for receivership or an order of guardianship. In such case, FGH E&T GmbH shall be entitled, without taking any further measures in or out of court, to postpone or declare terminated parts of the contract or the contract as a whole, without giving rise to any rights of the client to claim damages. The right of FGH E&T GmbH to receive compensation for the damage caused by the client's failure to perform, by the postponement or by the termination of the contract shall remain unaffected. In case of existence of one of the conditions mentioned in the first sentence of this item, all outstanding claims shall be due and payable with immediate effect.
2. The client shall bear all costs caused by termination or interruption, unless FGH E&T GmbH is responsible for the cause of the termination or interruption.
3. In case the interruption lasts longer than 6 months, FGH E&T GmbH can regard the contract as terminated. The above period shall commence on the date of the client's letter notifying the interruption. In the absence of such a letter, the period shall commence on the date of the letter of FGH E&T GmbH stating the interruption.
4. In case of a delay or extension of the order, FGH E&T GmbH can charge the additional costs to the client, unless FGH E&T GmbH is responsible for the delay or extension. An intermediate invoice may be made out.

Article 14 - Environmental Protection

1. The client must ensure that the equipment and test items provided by it are in line with generally accepted and applicable regulations on environmental protection. The client shall be liable for any infringement of such regulations and shall indemnify and hold harmless FGH E&T GmbH with regard to any claims asserted by third parties, including authorities.
2. Any environmentally-harmful and dangerous substances shall be properly disposed of by FGH E&T GmbH at the client's expense or returned by the client under its responsibility.

Article 15 - Other Provisions

1. In case offer and confirmation of the order should differ, there shall always apply the confirmation of the order.
2. The client and FGH E&T GmbH oblige themselves to be loyal to one another.
3. These General Terms and Conditions of Business shall be solely governed by the laws of the Federal Republic of Germany. Mannheim is agreed to be the place of jurisdiction and the place of performance.
4. If any provisions of these General Terms and Conditions of Business should be or become invalid, this shall not affect the remaining provisions. The parties undertake to replace any invalid provisions immediately by valid ones. Any alterations and additions shall apply only in the respective individual case; they must be made in writing and expressly marked as such.