

# General Terms and Conditions of MPA Eberswalde – Material Testing Institute Brandenburg GmbH

Version of 16. January 2019

1. These terms and conditions apply to all present and future business relationships with business clients. General terms and conditions of the ordering party apply only in so far as we expressly agreed to these in writing. The terms and conditions apply to all present and future business relationships. In so far as individual agreements between client and MPA contain different provisions, those provisions shall apply.

2. The acceptance of an order by MPA must be stated in writing. Supplements and amendments of any kind must also be confirmed by MPA in writing. Information given verbally or by telephone is not binding. Force majeure or unavoidable events absolve MPA completely or partially from carrying out the order and in particular from compliance with agreed deadlines. MPA is in this respect exempt from any liability which exceeds the costs of testing. The same applies when it is impossible for MPA to provide the contractual performance at the place of performance. Advance payments may be requested before carrying out the order. MPA is entitled to receive interim settlements.

3. Test material must be sent to MPA carriage paid and free of delivery charges. MPA is free to dispose of used test material. The transport costs shall be borne by the client. MPA accepts no liability for the transport. The costs for necessary disposals shall be borne by the client. If the client requires the return of the sample material, he must give notification of this within 3 weeks of concluding the contract. In this case, he is obliged to collect the sample goods. If the declaration is not provided, the sample goods may be disposed of at the client's costs. The safekeeping of reference samples remains unaffected by this.

In so far as third parties who are not auxiliary staff of MPA assert any kind of rights against MPA with regard to the test material, the client must at his own cost indemnify MPA against all claims which are deemed by MPA not to result from actions carried out with intent or gross negligence.

4. MPA shall carry out its services on the basis of technical regulations and guidelines. It can extend or reduce the testing, provided that this appears necessary in order to achieve the purpose of the order. If the testing exceeds the scope that was agreed with the client and if the test costs increase by more than 15 % of the costs specified in the order confirmation, the client's consent must be obtained.

5. MPA is entitled to commission subcontractors. As a matter of principle MPA must provide information in the test report about the nature and scope of the services as well as the name and address of the subcontractor.

The subcontractor must furnish MPA with proof of his technical competence (accreditation, notifications, authorizations, etc.) for carrying out the tasks. The client can object to a transfer to a subcontractor if an important reason exists. Such reasons exist especially if there are well-founded doubts about the technical knowledge, the efficiency or reliability of the subcontractor, or if he does not fulfil the legal requirements necessary for the service to be transferred to him.

6. MPA provide a guarantee against defects in its services, at first according to its choice, through rectification measures or compensation deliveries.

If rectification measures are not possible or if the supplementary performance fails, the client can, fundamentally according to his choice, reduce the payment (abatement) or demand cancellation of the contract (redhibitory action) If there is only a minor breach of contract, especially in case of minor defects, the customer is not entitled to cancel the contract.

7. The client is obliged to check the test results within one month following notification and to immediately inform MPA of any obvious defects; otherwise, the assertion of claims under the guarantee are excluded. For observance of the deadline it is sufficient to ensure dispatch in due time. The business client is responsible for the full burden of proof for all conditions of entitlement, especially for the defect itself, for the time of discovery of the defect and for the timely notification of the defect.

If at the time of asserting the presence of a defect it cannot be unambiguously clarified whether it actually concerns a defect, then at the request of the client a repeat test shall be carried out. If the result of the repeat test is consistent with the disputed test result within the normal margins of error, the client shall also bear the costs of the repeat test; otherwise, the disputed test result will be amended free of charge.

8. In the case of slightly negligent breaches of duty, our liability is limited to the foreseeable, direct average damages considered typical for a contract, dependent upon the type of testing involved. This also applies in case of slightly negligent breaches of duty by our legal representatives or performance assistants.

In case of slight negligence, the liability is limited to € 100,000.- Towards business clients, we shall not be liable in the case of slight breach of duty concerning insignificant contractual obligations. The limits of liability stated above do not affect customer claims arising from product liability. Furthermore, the limits of liability do not apply in the case of bodily injury and damage to health or in the event of loss of life with regard to the customer or gross negligence attributable to us.

MPA is liable only for the accuracy of the results determined in the test. The liability for remote consequential damage resulting from a defect is excluded, provided that MPA does not carry the blame of either intent or gross negligence.

9. In the case of investigations made on-site or at construction works, the client must give precise details for the prevention of damage and the prevention of accidents. MPA employees must be given suitable on-site instructions. This also applies to the provision of auxiliary tools and equipment, as well as to specific occupational health and safety regulations. Claims for damages in the case of losses arising as a result of incorrect or inaccurate data as well as for consequential losses connected to these are excluded.

Guarantee claims and claims for damages by the customer resulting from a defect are subject to a limitation period of one year from the delivery of test reports. This does not apply if an accusation of gross negligence or deception can be made against us as well as in case of bodily injury and damage to health or loss of life with regard to the customer attributable to us.

10. Publication of test reports is only permissible if published as a whole. Publication of excerpts, references to tests for purposes of advertising and the use of contents of test reports require in every single case the revocable written consent of MPA.

MPA is obliged to maintain strict confidentiality with regard to its clients. Information about clients, the type and scope of test orders, as well as test results, may only be issued to a third party with written authorization of the client. Information may be issued to the regulatory authorities in so far as tests are required to be carried out for third parties at the instigation of regulatory authorities for the safeguarding of public safety.

11. The consideration for the performances of MPA shall be calculated by applying the performance specifications of MPA Eberswalde.

During the period of arrears, the business client is obliged to pay interest on the financial debt at the rate of 8% above the base lending rate.

The client has a right to offsetting only if his counter-claim has been established as legally binding or has been accepted by us.

The customer can only exercise a right of retention if his counter-claim is based on the same contractual relationship.

The handing-over of report documents and test results of all kinds can be made dependent upon the prior payment of the full consideration. Until complete payment has been made, the absolute title to the performances carried out by MPA remains with MPA and the performances may not be used by the client or transferred to a third party.

12. The law of the Federal Republic of Germany applies. The provisions of the UN law are excluded and do not apply.

If the customer is a businessman, a corporate body under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from this contract is our place of business. The same applies if the customer has no general place of jurisdiction in Germany or if his domicile or usual place of residence is not known at the time when proceedings are instituted. The contractual relationships are subject to German law.

If individual provisions of the contract with the customer, including these general terms and conditions, are or become completely or partially ineffective, then the validity of the remaining provisions shall not be affected by this. The completely or partially ineffective regulation shall be replaced with a regulation whose economic result comes as close as possible to that of the ineffective regulation.