



General Contractual Terms and Conditions (GCTC) of the MPA-IfW

May 2015

General Contractual Terms and Conditions (GCTC) for the rendering of services and/or processing of orders of the *Staatliche Materialprüfungsanstalt Darmstadt* (State Materials Testing Institute Darmstadt), and of the *Fachgebiet und Institut für Werkstoffkunde* (Department and Institute for Materials Technology (MPA-IfW), hereinafter referred to as MPA-IfW, of the *Technische Universität Darmstadt* (Darmstadt University of Technology)

§ 1 Scope

- (1) MPA-IfW provides testing services, investigations, monitoring, calibration, inspection and certification as well as advisory services under a regime of scientific rigor and in accordance with the recognized rules of engineering and technology and applicable standards, technical regulations and codes.
- (2) For businesses as clients and MPA-IfW, the following General Contractual Terms and Conditions (GCTC) shall apply exclusively in the version in effect at the time of confirmation of order. Deviating terms and conditions from the client shall not be recognized unless MPA-IfW expressly approves their validity in writing.
- (3) A commercial operator is defined as any natural person or legal entity or judicable partnership vested with legal capacity who or which, upon entering into the contract, is acting in the capacity of its commercial or independent occupational activity. For publicly funded research and development projects, the respective funding directives shall apply. For all other research projects which go beyond any of the services set out in subsection 1, the research contract negotiated in the pertinent individual case shall be valid.
- (4) For investigation assignments based on an order to hear evidence/court order in the context of court proceedings, the terms of the JVEG (Justizvergütungs- und Entschädigungsgesetz, German law on remuneration of witnesses and experts) shall take precedence, as well as the respective codes of judicial procedure (StOP (Code of Criminal Procedure), ZPO (Code of Civil Procedure) etc.) in the respective valid version.
- (5) With respect to consumers, the statutory provisions shall apply.

§ 2 Conclusion of the contract

- (1) Upon request the client shall, as a first step, receive an offer from MPA-IfW, accompanied by the currently valid version of the General Contractual Terms and Conditions. Upon subsequent placement of the order, the client has submitted a legally binding request to conclude the corresponding contract and in so doing also accepts the General Contractual Terms and Conditions in the version valid at the time of order placement. MPA-IfW then sends the client a written order confirmation (conclusion of contract) under consideration of subsection (2).
- (2) All orders directed to MPA-IfW shall be in writing. Supplements and amendments must be confirmed by MPA-IfW in writing in order to be valid. MPA-IfW is only obliged to commence the execution of an order upon receipt of the requested advance payment and any other outstanding invoice amounts.
- (3) No written order confirmation by MPA-IfW shall be required for an order value of up to 500,- Euro. In this case, an implied contract shall be considered to be in effect if, after the binding written placement of the order by the client, the services have been rendered and/or executed.

§ 3 Obligations of the client

- (1) The client shall fundamentally be required to procure the specimen material and/or the test objects free of third-party rights and to send the material to MPA-IfW carriage paid or deliver it free of charge, or these specimens will be collected by MPA-IfW personnel in the context of the order.



- (2) If the respective specimen material and/or test object cannot, as an exception, be procured free of third-party rights, the client exclusively shall be responsible for procuring the necessary permission and/or necessary approvals from the holder of the rights.
- (3) At shipping and/or delivery of the respective specimen material and/or test object, the client guarantees that these harbor no health risks (radiation, viruses etc.) for MPA-IfW personnel. Should MPA-IfW have concerns relating to possible hazards to the health of personnel, then MPA-IfW shall have the right to refuse the order or to require the client to eliminate the hazard at the cost of the client.
- (4) Unless agreed otherwise, the ownership of any specimen material remaining after execution of the order shall transfer to the MPA-IfW if its return has not been requested by the client within six months after notification of the result of testing. Liability and costs for the return shipment shall be borne by the client.
- (5) Retained samples shall be stored by MPA-IfW only if and as long as such storage has been agreed upon.
- (6) Costs for the disposal of specimen material shall be borne by the client.
- (7) If MPA-IfW personnel work at the plant or site of the client in the context of the placed order, the client guarantees that its systems and equipment comply with the applicable occupational safety and accident prevention regulations. If the client fails to meet this obligation, then the MPA-IfW personnel shall be permitted to stop their work at the cost of the client.

§ 4 Obligations of MPA-IfW / handling of test results

- (1) MPA-IfW shall not utilize or disclose to others business or trade secrets which become known or have been entrusted to MPA-IfW during and after the end of the contractual relationship, as long as and to the extent that this information has not become generally known through other means or the client has not waived such confidential treatment in writing.
- (2) If the client has concerns that the test results communicated to him could be in error, then he shall notify MPA-IfW of these in writing within an exclusion deadline of three months after receipt of the test results. MPA-IfW shall then evaluate the results, the testing apparatus and, if relevant, the test procedures. If the disputed test results are thereby confirmed to be correct, the client shall bear the cost of the repeat testing. Otherwise the disputed test results shall be corrected free of charge.
- (3) Objections to the test results, even when they are asserted within the deadline period set out in subs. 2, shall not entitle to a right of retention and shall not, in particular, authorize a refusal of payment.

§ 5 Liability

- (1) Claims of the client for damages (e.g. for damages sustained by the client which occur during the collection of material samples, the fulfillment of a service due, or through faulty testing) are generally excluded. The following exceptions apply: damage claims of the client for injury to life, limb, and health, or for a breach of material contractual (cardinal) obligations, and liability for other damages caused by an intentional or grossly negligent breach of duty by MPA-IfW, its legal representatives, or its agents. Material contractual obligations are those whose fulfillment is necessary to reach the objective of the contract. The client shall agree to indemnify and hold harmless MPA-IfW from third-party claims for damages—irrespective of legal basis—unless the damages were caused by wrongful intentional or grossly negligent actions on the part of MPA-IfW.
- (2) In cases of breach of material contractual obligations, MPA-IfW shall be liable only for the foreseeable damages typical of the contract, provided these were caused by simple negligence, unless the client claim is one of damages for injury to life, limb, and health.
- (3) The restrictions set out in subsections 1 and 2 also apply to the benefit of the legal representatives and agents of MPA-IfW when claims are lodged directly against these parties.



- (4) The claims of the client under the contract for breach of an obligation arising from the contract, and claims for damages, are subject to a statute of limitations of one year for businesses. The statute of limitations begins with the dispatch of the test or inspection report or other written statements from MPA-IfW concerning the results of the tests conducted.
- (5) The MPA is a central technical operating unit; the IfW is a department and institute of the TU Darmstadt for materials science; together they form a scientific-technological unit. As a public state university, the TU Darmstadt is a legal entity governed by public law. In the event of a claim against the university, if and to the extent that this cannot be satisfied out of the assets of the university, the state is liable without limitation (as guarantor) (§ 2 subs. 2 TU Darmstadt statute).

§ 6 Remuneration

- (1) The remuneration of services is calculated—if no deviating agreements have been concluded or regulatory requirements are in effect—on the basis of the Directory of Services of Official Materials Testing MPA Darmstadt, hereinafter referred to as “LaM”. The calculation shall be based on the LaM edition valid at the placement of the order.
- (2) The value-added tax shall be levied at the respective applicable statutory rate.
- (3) The invoice amount shall be paid within 30 days from the date of issue of the invoice without deductions. A payment is deemed to have been made only when the Technische Universität Darmstadt can access the amount.
- (4) If the client defaults on payment, MPA-IfW shall be authorized to charge interest on arrears pursuant to § 288 subs. 2 BGB (German Civil Code).

§ 7 Cancellation / Rescission

If the client terminates the contract for a reason for which MPA-IfW has no accountability, MPA-IfW shall receive the agreed remuneration for services already rendered plus an additional 40% for the yet outstanding portions of services. The client has the right to prove that the actual expenses incurred by MPA-IfW were lower.

§ 8 Confidentiality

MPA-IfW shall commit to the client to treat all business-related data, business and trade secrets which become known to MPA-IfW in the course of the contracted work in strict confidence.

§ 9 Privacy policy

In the process of contract implementation, MPA-IfW collects client data. In this case, the provisions of the Data Protection Act of the state of Hessen (HDSG) shall be observed. MPA-IfW shall collect, process and utilize the client’s inventory and usage data only to the extent necessary for fulfillment of the contract and for use and invoicing unless agreed otherwise. MPA-IfW shall not use client data for the purpose of advertising, market research, or opinion.

§ 10 Final provisions

- (1) The contractual relationship between the client and MPA-IfW shall be governed exclusively by German law.
- (2) If the client is a merchant, a legal entity under public law or public-sector entity with special assets and the order contract belongs to the operation of his trade, Darmstadt shall be exclusive legal venue. The same shall apply if the client transfers his place of ordinary residence outside the scope of the Code of Civil Procedure or if such residence is not known at the time of commencement of proceedings.
- (3) Modifications and supplements to a contract must be confirmed in writing to be legally sufficient. This also applies to the modification or repeal of the present clause.



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- (4) In the event that individual provisions of the contract are legally invalid, the remaining provisions shall remain binding and effective. Such invalid provisions shall be replaced by statutory regulations if they are available. The contract shall become void in its entirety only if this would constitute an undue hardship for one of the contracting parties.
- (5) This translation is for informational purposes only. The German version of these General Contractual Terms and Conditions is the binding version for the parties to the contract.