

General Terms and Conditions of IPH GmbH

1. General Provisions

1.1 The following General Terms and Conditions (Allgemeine Geschäftsbedingungen - AGB) of IPH Institut "Prüffeld für elektrische Hochleistungstechnik" GmbH (IPH) form the basis of all Contracts for Services between IPH and its Clients.

1.2 IPH is an independent test laboratory and performs Services at the test laboratory as well as also on site at the Client's premises or at the Client's construction sites.

1.3 Services within the meaning of these General Terms and Conditions include i.a.:

- Examinations, including documentation that may be required, e.g. test records, test reports, etc.;
- Expert opinions, including documentation that may be required;
- Counselling;
- All activities directly connected with the above.

1.4 The following services, although rendered, do not form Services within the meaning of these General Terms and Conditions:

- Procurement services for accommodation and boarding;
- Procurement of taxi services;
- Boarding services of canteen and catering;
- Packaging of test objects for their return;
- Assistance in the application for visas;
- Assistance in the handling of customs matters.

The rendering of these services does generally not establish a contractual relationship or liability claims of whatever kind.

1.5 IPH does generally not obtain ownership of the test objects.

1.6 Any deviations from these General Terms and Conditions are subject to written approval by IPH. In case of deviating regulations in quotations for services submitted by IPH according to Section 1.3 above, such approval shall be regarded as given by the Confirmation of Order issued by IPH.

1.7 Any conflicting general terms and conditions of the Client shall not even become part of the Contract when IPH does not expressly contradict them again. In particular, they are not recognized tacitly.

2. Quotation, Order and Confirmation of Order

Quotations are generally without obligation and not binding.

A binding Contract for Services according to Section 1.3 above shall only come about with the written Confirmation of Order by IPH based on an Order placed by the Client.

3. Scope of Services

3.1 The scope of the service shall be exclusively governed by the Confirmation of Order issued by IPH. The underlying basis shall be the characteristics of the test object communicated by the Client. If these characteristics change subsequently or if required characteristics are not or not completely communicated to IPH, the commitments made by IPH shall lose their binding character.

3.2 Any Services that cannot be performed by IPH for fulfilling commitments entered into may be performed by third parties that hold an accreditation in the respective field for guaranteeing the quality required. In case any Services are performed by third parties not holding an accreditation, IPH shall guarantee the quality of such Services.

3.3 In many cases, the achievability of test parameters does not depend on the test equipment/technique alone, but also on the characteristics of the test objects. Therefore short-circuit currents realised or wave forms of test voltages or test currents may be subject to dispersion. Such deviations are admissible when an extrapolation or an interpolation to the optimum value of the parameter is possible. Such deviations does not form a defect in the test service of IPH.

4. Periods/Dates of Performance

4.1 Contractually agreed periods of performance and dates of completion for endurance tests and complex tests extending over several days are based on calculations of the scope of work made in accordance with the information provided by the Client. They shall only be binding when expressly agreed as binding in writing and shall only commence after the Client has performed all participation activities to be carried out by the Client in advance (see Section 5 below).

4.2 If any costs of cancellation or any other costs of third parties should be caused by changes or postponements of dates that the Client is responsible for, such costs shall be borne by the Client to their full extent.

5. Obligations of the Client

5.1 The Client of IPH is responsible for guaranteeing that all required participation activities on its part and on part of its vicarious agents are performed in good time and free of charge for IPH. These participation activities must comply with the respectively applicable standards, safety regulations (VDE, DIN etc.) and industrial safety regulations. If any dangers of whatever kind may emanate from the test object, IPH is to be informed in writing about kind and scope of the possible danger in good time before the start of the test. This applies also to any danger that may occur in the course of normal operation, e.g. because the test object was modified for the testing or because it is subjected to atypical operating conditions within the scope of the test.

5.2 The Client shall provide IPH with all necessary information about internal transport/handling, such as e.g. load-fastening points for lifting and the maximum size of a transport unit as well as all necessary information for the safe installation of the test object during the testing. This applies in particular when the method and manner of installation for the test to be performed deviates from the installation for the later final utilization of the device.

5.3 The Client of IPH shall bear all additional expenses incurred because, due to late, incorrect or incomplete information that it is responsible for or due to improperly performed participation activities, any work has to be repeated or is delayed. Also when a binding fixed or maximum price has been agreed upon, IPH shall be entitled to charge any such extra expenses in addition.

5.4 In case the Client should find out that the objects tested by IPH within the scope of a proving test have been or may have been the cause of personal injury, damage to property or any other damage, the Client shall be obliged to inform IPH immediately thereof in writing.

5.5 The Client shall confirm receipt of the Service immediately after its performance. If the Client is not present when the Service is performed, the Service shall be regarded as accepted when the invoice is not opposed immediately.

5.6 The Client obliges itself to indemnify, at first demand, IPH, its managing directors, staff members and further vicarious agents against any and all costs and expenses of whatever kind that are directly caused by:

- a) any culpable violation of the provisions of these General Terms and Conditions by the Client, including its failure to observe or its omission of any other justified requirements;
- b) any application of devices in a way and manner that is not in line with the requirements on the proper use of such devices;
- c) any subsequent auditing of the tested objects;
- d) any event triggering damage that occurs during the testing of the test objects; and
- e) any intentional or unintentional violation of the Client's obligation to inform IPH in writing about any essential disclosures or other misinterpretations. This shall not apply when the expenses or costs were caused by grossly negligent or wilful behaviour on part of IPH in its acts or omissions during a proving test.

6. Compensation for Loss of Use

A change of date by the Client is possible until 8 weeks before the agreed test date without additional costs for the Client. In case of cancellation or postponement of a date at short notice for reasons that the Client is responsible for until 4 weeks before the confirmed test date, IPH reserves the right to charge 50 % of the lost order value (excl. ancillary costs) to the Client as loss compensation fee. After expiration of the above-mentioned periods, IPH shall be entitled to charge to the Client the full order value in case of cancellation or postponement of a date. This shall also apply in case of an early termination of tests for reasons that the Client is responsible for.

7. Warranty

7.1 Any defects with regard to the test service must be reported to IPH in writing immediately after their detection.

7.2 Under the warranty, the Client can only demand subsequent performance of the defective service free of charge first. If subsequent performance is not provided within a reasonable period of time or if the subsequent performance fails, the Client can demand rescission of the Contract or reduction of the remuneration. Rescission of the Contract is excluded when the Client has received detailed results of the test. Otherwise, the respective legal provisions shall apply.

7.3 Test reports of IPH refer exclusively to concretely tested test objects and not to production series, not even when there have not been made any changes in the design type in comparison with the tested unit.

8. Liability

8.1 IPH is exclusively liable for the performance of Services according to Section 1.3 of these General Terms and Conditions.

8.2 Liability losses of the Client caused by IPH within the framework of the agreed Services shall be settled under a business liability insurance. Upon request, Clients shall receive a respective confirmation of cover.

8.3 IPH shall only be liable for performance statements and undertakings or other declarations of third parties holding an accreditation for their respective service when that has been expressly agreed.

8.4 IPH is not liable for indirect damage or consequential damage, unless the damage was caused wilfully or by gross negligence. This limitation of liability does not apply to any damage resulting from damage to life, body or health of persons caused by IPH or its vicarious agents. Any further claims of the Client are excluded. This applies in particular to any claims for compensation for any damage not caused to the test specimen itself.

8.5 The Client is aware of the fact that it's in the nature of things that tests may lead to destruction of or damage to the test specimens. Therefore, the client agrees that IPH neither assumes nor accepts any responsibility for any damage to property in the ownership or possession of the Client or its staff members that may occur during or as a result of a test. Thus, any liability for a damaging of or damage to and/or by the test specimen that occurs in the course of the agreed electrical and/or mechanical test process is excluded. The same applies to the utilization of the test specimen and its suitability for sale after the test.

8.6 The limitations of liability do not apply to the absence of warranted characteristics. As far as IPH is liable as a joint and several debtor jointly with other parties, IPH shall always only be subject to secondary liability on the last tier. Prior judicial recourse to the other joint and several debtors is not required. As far as liability of IPH is excluded or limited, this applies also to staff members, employees, representatives and vicarious agents of IPH.

8.7 The Client is liable for the correctness, completeness, traceability and timely submission of its information, including specifications, operational information, technical data, test data, etc.

8.8 Unless expressly agreed, IPH shall not be responsible for the examination or correctness of the underlying safety regulations and safety programmes that form the basis of its tests and opinions.

9. Terms of Payment

- 9.1 In addition to all fees and prices, there is charged value-added tax at the rate in force at the time of invoicing, if applicable.
- 9.2 The Client shall make an advance payment on account of the ordered service to an amount of 100 % of the order value.
- 9.3 With Clients the credit standing of which is known to IPH, different terms of payment may be agreed upon. In case of indications giving rise to doubts about the Client's solvency, especially in case of payments in arrears, cessation of payments, request for a composition or a moratorium on part of the Client, the full claim of IPH shall become immediately due for payment.
- 9.4 If a fixed price has been agreed in writing, IPH is entitled to a closing invoice on a pro-rata basis according to the respectively completed part of the overall Service.
- 9.5 IPH can submit any self-contained part of the order for acceptance as part performance and invoice such part after acceptance. The Client of IPH is obliged to immediate acceptance. If the Client should fail to comply with its obligation to accept immediately, acceptance shall be regarded as made two weeks after performance of the respective Service.
- 9.6 Any objections to invoices of IPH are to be notified to IPH in writing, stating the reasons for them, within a preclusive time limit of 10 calendar days from receipt of the invoice.
- 9.7 Claims of IPH can only be set off against undisputed claims or claims that have become res judicata.
- 9.8 The day of payment shall be the point of time when IPH can dispose of the amount paid. In the event of a culpable exceeding of the agreed terms for payment, the consequences of default shall take effect without a separate reminder being required. Reserving the assertion of further rights, statutory default interest shall be charged.

10. Accreditation and Recognition

- 10.1 The test laboratories of IPH have been accredited i.a. according to DIN EN ISO/IEC 17025. The current status and scope of accreditation can be found in the internet.
- 10.2 The accreditation of IPH does not mean that test reports are approved by the accreditation council or another agency.
- 10.3 The Client shall not use or release any test reports or parts thereof for advertising purposes when such use is regarded as misleading by the accreditation council.
- 10.4 Test reports must not be published in extracts, unless with the written approval of the accreditation council and/or of IPH.
- 10.5 When Clients wish to refer to the use of the services of IPH as an accredited test laboratory, the following wording is to be used:
 "Geprüft von IPH, einem gemäß DIN EN ISO/IEC 17025 akkreditierten Prüflaboratorium"
 ("Tested by IPH, a test laboratory certified according to DIN EN ISO/IEC 17025").
- 10.6 IPH reserves the right to withdraw test reports in case the Client fails to meet its obligations.

11. Delivery and Collection/Return of the Test Objects

11.1 Delivery

- 11.1.1 The Client shall deliver the test specimens free IPH's address. The Client must conclude, on its own account, the contract on the transport of the test specimens as well as on the respective transport insurance, if required, and has to provide, at its own expense, for packaging as required for the delivery of the test specimen.

11.1.2 The Client must, at its own expense and risk, obtain the export and import permits or other official permissions or documents and, if applicable, handle all customs formalities required for the export and import as well as for the transit of the test specimen through every country concerned.

11.1.3 The Client must inform IPH in an appropriate manner that the test specimens have been dispatched and give any other information that IPH needs for effecting the measures required for taking delivery of the test specimen.

11.1.4 The Client must, at its own expense, procure for IPH the delivery order and/or the usual transport document (e.g. a transferable bill of lading, a non-transferable sea waybill, a document of the inland waterway transport, an airway bill, a railway waybill, a road waybill or a multimodal transport document) that IPH needs for taking delivery of the test specimen. When respectively agreed, the aforementioned document can also be replaced by a respective information in electronic data exchange (EDI message).

11.2 Collection/Return

11.2.1 After completion of the tests, the Client shall collect its test specimens from IPH at its own expense and risk.

11.2.2 In case of a duration of storage at IPH of 7 days or more from the completion of the tests, IPH can assert the payment of additional storage fees by the Client.

11.2.3 As far as return shipment of test specimens by IPH has been agreed, it shall be made at the Client's expense and risk.

11.2.4 The test specimens shall be packaged by the Client immediately after completion of the tests. If, at the Client's special request, test specimens shall be packaged by IPH for the return shipment, IPH does not assume any liability with regard to proper packaging.

11.2.5 In case the Client fails to fulfil its obligation to collect, IPH shall be entitled to scrap test specimens at the Client's expense 3 months after the date of invoicing for the Services performed. This requires that the Client was unsuccessfully asked in writing to collect the test specimens and was informed about the intention to scrap the test specimens.

11.2.6 The Client is obliged to dispose of any residual electronic waste, accessory parts and packaging subject to obligatory disposal and, as far as applicable, also test specimens at its own expense. If the disposal is carried out by IPH at the Client's request, the Client shall bear the respective costs.

12. Copyright/Publications

12.1 All copyrights and joint copyrights in the test reports, test results, calculations, representations, etc. drawn up by IPH shall continue to be owned by IPH.

12.2 The Client of IPH may use test reports, test results, calculations, representations, etc. prepared under the Order only for the purpose that they are intended for according to the Contract.

12.3 IPH is not authorized to pass on for the purpose of publication any test reports, test results, calculations, representations prepared and any knowledge, information, etc. obtained in connection with the Service, unless with the Client's written approval.

13. Data Protection

IPH processes the data transmitted by the Client observing the regulations of the Federal Data Protection Act and of the Accreditation Directive. Data are only processed and transmitted to third parties to the extent required for performing the contractual relationship and as far as there is no reason to assume that the party concerned has an interest meriting protection in an exclusion of transmission and utilization.

14. Assignment

The parties to the Contract can only assign any rights and obligations under the Contract subject to prior written approval by the respective other party.

15. Intra-Community Trade

15.1 The Client assures the correctness of the information regarding its name and address and of its VAT ID No. that it will communicate immediately without further request, unless that has already been done.

It obliges itself to communicate any change in its name, its address and its VAT ID No. to IPH as well as to its competent national tax authority without delay. If, due to defects in the statement of name, address or VAT ID No., a delivery should be treated as subject to taxation, the Client shall reimburse IPH for the tax to be paid by IPH.

15.2. In case there should occur double taxation - purchase tax in the county of delivery, value-added tax in Germany -, the Client shall refund to IPH the tax paid in excess.

16. Place of Performance and Place of Jurisdiction

16.1 Place of performance and place of jurisdiction for both parties shall be Berlin, Germany. This exclusive place of jurisdiction shall also apply to all current and future claims resulting from the business relationship, unless the party to be sued has moved its place of residence and its customary place of abode to a place outside the area of application of German law or it is not known at the time the action is brought. The same shall apply in case claims are asserted by way of default action (Art. 688 et seq. Code of Civil Procedure - ZPO). It is agreed that the contractual relationship shall be exclusively governed by the laws applicable in the Federal Republic of Germany. Application of the UN Sales Convention (CISG) is excluded.

16.2 Exclusively the German version of these General Terms and Conditions is binding upon the contractual relationship between the parties.

17. Collateral Agreements

Any collateral agreements to, alterations of or additions to these General Terms and Conditions or Contracts must be confirmed in writing by IPH to become effective.

18. Final Provisions

If any individual provisions of these General Terms and Conditions should be invalid or impracticable or if these General Terms and Conditions should have any gaps, that shall not affect the effectiveness of the remaining provisions. In place of the invalid or impracticable provisions, there shall be regarded as agreed the effective or practicable provision that comes as close as possible to the economic meaning and purpose of the invalid or impracticable provision.