

General Terms and Conditions of Materialprüfanstalt für das Bauwesen (MPA) Braunschweig (valid as at 01/01/2009)

The Terms and Conditions set forth hereinbelow shall apply to all quotations and contracts of MPA Braunschweig, also in connection with current or future business relations, or to follow-up orders placed by the client. Any other arrangements or the client's own general terms and conditions shall remain ineffective, even if they are not in conflict with the present Terms and Conditions.

1 Conclusion of Contract

MPA shall be obliged to provide services only on the basis of a quotation made out in writing by MPA and countersigned by the client; on the basis of a purchase order made out in writing by the client in response to said MPA quotation or an uncontradicted letter of confirmation sent out by MPA.

2 Remuneration Fees

The agreed remuneration fees exclude VAT (which will be added at the rate effective at the time services are rendered). MPA shall have the right to require that advance payment be made for a complete service or for foreseeable delimitable part services, and that part payment be made for rendered delimitable part services. All payments shall fall due immediately after invoicing. If requested by the client, MPA will levy invoiced amounts by postal cash order at the client's expense - instead of asking for advance payment. Due amounts may be set off against the client's own claims only, if these claims are uncontested or have been recognized by declaratory judgement. The right to withhold performance or the right of retention on the part of the client shall be excluded, unless this is based on the same contract or legal relationship. Delay in performance and interest are subject to statutory provisions.

3 Testing and Examination

The client shall submit all necessary documents and drawings, before tests and examinations are made. If the client installs and/or removes the specimens himself, installation / removal must be made within the shortest possible time after MPA has asked the client to do so. The client shall hold ready the appliances and staff required for this purpose. For the safety of his own and of MPA staff, the client shall guarantee that all processing regulations and all official safety regulations, in particular job safety and accident prevention regulations, and the safety data sheets relating to the products used, will be complied with. The client shall remove without delay any waste material and all oil spills, dust etc. caused by the installation / removal of the specimen. The client shall without delay also remove and dispose of, or take back, any remaining test material, after testing / examination has been completed and MPA has released the specimen for removal. Should the client fail to comply despite a reminder, MPA shall have the right - after a period of four weeks - to dispose of the test material at the client's expense, and to additionally charge the client with any disposal costs thus incurred. MPA plans its test and examination programmes with lead times. Should a test date be cancelled less than six weeks in advance, MPA shall be entitled to charge 25 % of the agreed gross remuneration as a flat rate for rendered services and lost remuneration. The client shall be entitled to prove that MPA has incurred lower costs and remuneration, minus expenses saved, or that MPA could instead have processed other test orders on the same conditions. MPA shall be entitled to invoice costs for rendered services and lost remuneration higher than the flat rate, proof for which must be furnished. Services rendered shall also include material that cannot be put to further use, and which the client can collect at his own expense. Should the client fail to comply despite a reminder, MPA shall have the right - after a period of four weeks - to dispose of the material at the client's expense, and to additionally charge the client with any disposal costs thus incurred.

4 Sampling and Inspection on Site / of a Structure

If samples have to be taken from structures or structural members, the client, or the person authorised by the client, shall determine sampling points together with MPA. Cordoning off, scaffolding, propping measures and closing of sampling points are the client's responsibility. MPA shall not be liable for interruption of normal work caused by sampling measures, unless MPA is itself responsible for the delay. In that case, the liability provisions set out in clause 8 of these Terms and Conditions shall apply.

5 Default in Performance

Deadlines, processing periods and delivery times specified by MPA shall be understood to be anticipated times and periods even without expressly saying so, and expiry of said times and periods shall not

represent a delay of performance. Delay of performance shall also be excluded in the event of incorrect self-delivery, disruption in operation as a result of industrial action or other unusual circumstances, such as acts of state, adverse weather conditions or force majeure, for which MPA cannot be held responsible. Should these disturbances prove to be final and be beyond MPA's control, MPA shall be released from the obligation to perform. MPA shall inform the client without delay of any such disturbing circumstances. The client's right to withdraw from the contract in the event of a final disturbance shall remain unaffected. Any payments that may already have been effected will be reimbursed by MPA.

6 Reservation of Title

Delivered plant shall remain the property of MPA until remuneration claims, including accessory claims, and any additional claims, which are due to MPA on whatever legal grounds, under this contract and under the business relations with the client now and in the future, have completely been settled. If and as requested by the client, MPA shall release securities to which MPA is entitled under the above regulations to such an extent as their economic value is higher by 20% than the claims for which they are to provide security.

7 Warranty

MPA warrants that scientific diligence will be exercised and that generally approved technical rules and regulations will be applied, not however that a specific test result or development objective will actually be achieved. MPA shall warrant for defects in compliance with statutory requirements subject to the liability provisions set forth in clause 8 of these Terms and Conditions.

8 Liability

MPA shall have unlimited liability in the event of damage to life, limb or health caused by its own intentional or negligent breach of duty or by the intentional or negligent breach of duty committed by one of its legal representatives, or its executive or assistant staff. MPA shall also have unlimited liability for other damage caused by its own intentional or grossly negligent breach of duty or by the intentional or grossly negligent breach of duty committed by one of its legal representatives, or its executive or assistant staff. In all other respects, MPA shall only be liable for breach of major contractual obligations, which shall be limited in extent to damage that can typically be expected in view of the subject matter and the volume of the order in question.

9 Limitation

Warranty claims asserted against MPA are subject to a period of one year after rendering the service. In all other respects, statutory periods shall apply.

10 Observance of Secrecy

MPA and the client agree that during the life and after termination of the contract any information of a technical or commercial nature that is exchanged between both parties and that has been declared to be confidential will be kept secret. This shall not apply to information which the parties to the contract have received from third parties, information which is common knowledge, or for which MPA and the client have renounced in writing any confidentiality claims. The onus of proof rests with the party claiming that information has been made available by third parties or that it is common knowledge. The client shall have the sole responsibility for measures that are to ensure that confidential information will not be disclosed by the appearance of test installations, e.g. by covering said installations.

11 Treatment of Results and Reports

The client may transmit test results only when using the full wording of said results and when reference is made to MPA as the author of said results. Excerpts may be published by the client only with the approval of MPA. Notwithstanding any duty to observe secrecy, the client shall expressly point out to MPA that publications to which MPA is normally entitled might affect copyright interests. Documents, design or improvement proposals and recommendations prepared by MPA do not certify that third-party copyrights are not affected. The client shall carry out the required investigations and search.

12 Final Provisions

Place of performance and jurisdiction shall be Braunschweig, provided the client is a merchant, a legal person under public law or separate estate under public law. German law shall prevail, excluding the UN Convention on Contracts for the International Sale of Goods. Should individual regulations of these Terms and Conditions, or should individual regulations forming part of additional arrangements, be or become ineffective, this shall be without prejudice to any of the other regulations.