

General Terms and Conditions of Materialprüfanstalt für das Bauwesen, Braunschweig (MPA BS) – (valid as of 01-Jan-2024)

1. Scope of Application

- 1.1. For the business relationship between client and MPA BS, the Terms and Conditions set forth below shall exclusively apply in the applicable version valid at the time of order placement. Any deviating, supplementary or contradictory terms from client-side shall only become integral part of the contract, if MPA BS has expressly agreed to their validity. This shall also apply, when MPA BS with knowledge about the client's terms performs a service for the client without reservation.
- 1.2. These Terms and Conditions shall apply in their applicable version as framework agreement also for future contracts with the client, without MPA BS having to refer to them in each individual case.

2. Quotation, Conclusion of Contract

- 2.1. MPA BS shall be obliged to provide services only on the basis of a quotation made out in writing by MPA BS 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 BS.
- 2.2. Any modifications, side agreements and supplements to existing contracts require a written confirmation from MPA BS for coming into effect.
- 2.3. No MPA BS employee – except for the Executive Board – shall be entitled to enter into verbal agreements deviating from these Terms and Conditions. This especially applies to the acceptance of guarantees.

3. Prices and Terms of Payment

- 3.1. The prices as offered shall only apply in case of order placement of the complete scope of quotation.
- 3.2. The agreed remuneration is to be understood plus VAT at the statutory rate applicable at the time of service performance.
- 3.3. As travel and accommodation expenses, the actually incurred costs ex office shall be invoiced, unless agreed otherwise.
- 3.4. MPA BS shall be entitled to demand prepayments for the entire service or for foreseeable and definable partial performance, and to invoice definable partial performance provided.
- 3.5. All payments are to be made immediately following invoicing. Any delay and interest are subject to legal regulations. Discount deduction shall not be allowed.
- 3.6. In case the scope of deliveries and services increases during order processing, MPA BS shall inform the client immediately. Extra expenses shall be invoiced either at cost at the applicable MPA BS cost rates, or via a supplementary offer, for which an order is to be placed in writing by the client, before the additional work is performed.
- 3.7. Extra costs / extra expenditure due to non-submitted, faulty or modified documentation and according to boundary conditions non-considered in the quotation shall be invoiced at MPA's cost rates applicable at that time.

4. Testing and Examinations

- 4.1. MPA BS guarantees the application of and adherence to acknowledged testing methods, but not the actual achieving of specific test results or development targets.
- 4.2. In case of positive test outputs of component tests performed in accordance with the standards, the client shall receive a test report after 3 – 6 months following the last test, or after receipt of all necessary documentation. To bridge the elaborations, a letter stating the most important results can be issued by request, for submission to authorities, building sector institutions, or similar.
- 4.3. In case of non-achieved test objectives, incomplete tests, tests for orientation, or tests based on a standard, etc., the client shall receive within two months following the last test, according to prior agreement, an examination report or a letter stating the most important test results, or just an excerpt with the results.

4.4. In case the test course as required in the technical specification/regulation is interrupted or the test is aborted because of a failure of the test equipment due to a technical defect or another malfunction, MPA BS shall repeat the test for the ordered service, if the test result cannot be evaluated according to the technical specification/regulation. The testing body shall decide on this. The costs for the non-evaluable test shall not be invoiced to the client. Any additional expenditure on client-side shall not be reimbursed. This applies only to tests that are performed on the premises and with testing equipment of MPA BS.

4.5. If the result report of the test includes a statement of conformity for the tested item, this statement does not consider the measurement inaccuracy of the testing method applied.

4.6. Result reports for accredited tests shall only be prepared with the accreditation symbol, if this has been agreed between client and MPA BS, or if this is prescribed due to legal or other overriding regulations.

5. Test Dates, Rescheduling of Test Dates, Time of Performance

- 5.1. Tests and examinations are scheduled by MPA BS with lead times. Upon order placement, a test date is scheduled and bindingly agreed by the client and MPA BS. In case the test date is postponed by the client, the client shall bear the costs for additional expenditure resulting from rescheduling of the test date.
- 5.2. Should the client cancel the test date within less than six weeks beforehand, MPA BS shall be entitled to charge 10% of the agreed gross remuneration as a flat rate for the rendered services and lost remuneration. This shall also apply if the client has ordered more than one test and if the first test that is precondition for the other tests fails. The client shall be entitled to prove that MPA BS has incurred lower costs and remuneration minus expenses saved, or that MPA BS could instead have processed other test orders on equal conditions. MPA BS shall be entitled to charge, against proof, costs higher than the flat rate for the rendered services and the lost remuneration. Services rendered here shall also include material that cannot be used further, which the client can collect at his own expense. Should the client fail to comply despite reminder, MPA BS shall be entitled after a period of four weeks to dispose of this material at the client's expense.
- 5.3. Adherence to the performance time requires that the order has been completely clarified and that particularly all specifications, documentation, necessary approvals and releases to be supplied by the client have been submitted in time and collaboration services have been rendered. The performance time will be appropriately extended, if these prerequisites have not been fulfilled in time.
- 5.4. Should a test to be conducted by MPA BS represent a precondition for further measures, the client must make MPA BS aware of any existing time criticality.

6. General Terms and Collaboration Duties for the Client in Material Testing

- 6.1. Prior to the execution of tests and examinations, the client shall submit all necessary documents and drawings to MPA BS. Extra costs / expenditure due to non-submitted, faulty or modified documentation shall be invoiced at MPA's cost rates applicable at that time. As necessary, MPA BS shall be entitled to cancel the test at the client's expense.
- 6.2. For the safety of the client's and MPA's staff, the client undertakes to adhere to all processing-related and legal protective regulations, especially safety at work and accident prevention regulations.
- 6.3. Before the test, related safety datasheets are to be submitted for all test materials. In case of product still under development or which are not completely documented for other reasons, the client shall inform MPA BS in writing about potential risks.
- 6.4. The client must not deliver any asbestos-containing materials. MPA BS does not perform tests of asbestos-containing samples, either, including their preparation.

- 6.5. In case of need and subject to prior information to and release by the client, MPA BS shall be entitled to involve partner companies as subcontractors or for account of the client in the preparation of the test set-up, in sampling, or for other work.
- 6.6. If the test specimen is installed and/or removed by the client, this is to be done within the MPA-confirmed period of time. The client shall provide all necessary equipment and staff required to complete the set-up on time.
- 6.7. As a rule, the test set-up can be made from Monday till Thursday between 7 a.m. and 5 p.m., as well as on Fridays and before legal holidays between 7 a.m. and 2 p.m. In case the test set-up shall be made beyond these times, this is to be agreed with the responsible MPA BS personnel at least 15 working days in advance. Test materials may be delivered from Monday till Thursday between 7 a.m. and 3 p.m., and on Fridays and before legal holidays between 7 a.m. and 12 o'clock.
- 6.8. If the test set-up is prepared by the client at MPA's premises, the client must provide the necessary equipment including possibly prescribed extraction devices. The equipment used must comply with the legal requirements for industrial safety. The client's staff must be instructed by the client with regard to accident prevention and equipped with the necessary personal protection equipment (work boots, helmets, protective masks, etc.). The equipment must comply with the applicable regulations and requirements.
- 6.9. Access to the place of set-up of the test specimen may be temporarily restricted for personal security, if such a measure is necessary due to another test within the danger area.
- 6.10. The costs for disposal of the test material shall be borne by the client. The same applies to residual quantities and non-used test material. MPA BS shall be entitled to dispose of test and residual material at the client's expense.
- 7. Supplementary Conditions for Sampling and Inspection on Site / of a Structure**
- 7.1. If samples have to be taken from structures or structural members, the client, or the person authorised by the client, shall define sampling points together with MPA BS. Cordoning off, scaffolding, propping measures and closing of sampling points are the client's responsibility. MPA BS shall not be liable for interruption of normal work caused by sampling measures, unless MPA BS is itself responsible for the delay.
- 7.2. The client shall ensure safe access to the structure and places of examination.
- 7.3. Prior to the beginning of work, the client shall obtain the necessary approvals for using public and adjoining ground at the related bodies/persons. Approvals are to be submitted to MPA BS.
- 7.4. Unless expressly agreed otherwise, the client provides the necessary ladders and scaffolds to reach the place of work, which must comply with the prescribed safety requirements.
- 8. Supplementary Conditions for Fire Resistance Testing**
- 8.1. The offered price for fire resistance testing includes – unless specified otherwise – the expenditure for test preparation, test execution, removal of the test specimen, and the preparation of the test report.
- 8.2. The following documents must have been submitted for order processing at least seven working days before the supporting construction for the test is built:
- Complete, detailed description (drawing with dimensions of the test specimen, detailed data of the fasteners, hardened concrete and fresh concrete reports, etc.) of the components to be tested.
 - Design drawings of the components to be tested including precise dimensions and details. All drawings should have DIN A4 format and be sent as PDF file.
 - Data on type and composition of the building materials used for the component, proof of combustibility, apparent density, possible general building authority approval, general building authority test certificate or declaration of performance.
 - In case of loadbearing constructions and glazings: a static calculation including indication of permissible stress or permissible / desired internal forces (permissible M, permissible Q, permissible N, ...) or the permissible component height.
 - The purpose of use and the type of installation of the components concerned in practice, for comparison between practice and test, data on maximum and minimum values: maximum span, minimum width, maximum height, suspension depth, grid dimensions, etc.
- 8.3. The test construction is to be agreed with MPA BS, which must be made in time before the test date. Normative requirements (e.g., conditioning times) are to be considered here.
- 8.4. Supporting constructions made of solid building materials for installing the test specimens can be built by MPA BS. They will be erected with the tolerances usual for building construction.
- 8.5. The client shall make available to MPA BS reference samples of all materials including fasteners and dowels (3 pcs. each). Board materials must have the dimensions 300 mm x 300 mm. The technical datasheets and safety datasheets are to be enclosed to the materials.
- 8.6. If the test specimen consists entirely or partly of concrete, the client must provide to MPA BS three concrete cubes to determine the compressive strength at the time of testing. The test cubes are to be clearly marked according to the concrete type of the individual test specimen.
- 8.7. The components shall be tested on condition that the requirements according to Item 8.2 a) to e) are complied with. In case of water-bound components like walls, floors, etc. using concrete, mortar, or similar, it must be waited with testing, until the weight constancy of the specimen has been reached. This also applies to other substances like timber, calcium silicate, or similar, where the test results would be affected by too high moisture contents.
- 8.8. A fire test with flaming along the standard temperature-time curve (ETK) can be performed up to a maximum test duration of 180 minutes. If the test duration goes beyond this limit or if a deviating fire load is requested, MPA BS shall be informed on this with order placement, so that additional measures can be taken at the test station. The costs for extra work shall be invoiced at cost at MPA's cost rates.
- 9. Liability for Damages**
- 9.1. MPA BS shall be liable without limitation 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.
- 9.2. MPA BS shall also be liable without limitation 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.
- 9.3. In all other respects, MPA BS 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. Major contractual obligations are those, the fulfilment of which in the first place enables the proper execution of the contract, and the compliance of which the individual contract partner regularly relies on and may rely on.
- 10. Limitation**
- 10.1. Material defect liability claims shall become invalid after 12 months. This does not apply to claims for damages.
- 10.2. In case the client can no longer raise a claim for supplementary performance or substitute performance since limitation has started, any claims for damages can no longer be sustained on this. This does not apply, if MPA BS has breached its obligation to supply defect-free work or remove the deficiency at a time, when the client's claim was not lapsed. For claims for damages sustained on this, the legal limitation periods shall apply.
- 11. Reservation of Title**
- 11.1. Delivered plant shall remain the property of MPA BS until remuneration claims, including accessory claims, and any additional claims, which are due to MPA BS 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 BS shall release securities to which MPA BS is entitled under the above regulations to such an extent as their economic value is higher by 10% than the claims for which they are to provide security.

12. Secrecy

- 12.1. MPA BS 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 BS 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.
- 12.2. However, MPA BS shall be entitled to forward the client's confidential information, if this is required legally or by official directive or if MPA BS is entitled to do so owing to a deviating contractual agreement. MPA BS shall inform the client about the disclosure of such information, unless legally forbidden.

13. Publishing of Results and Reports, Property Rights

- 13.1. The client shall receive the test results and the reports from MPA BS for submission to authorities or building sector institutions, or similar. The client may transmit test results only when using the full wording of said results and when reference is made to MPA BS as the author of said results. Excerpts may be published by the client only with the approval of MPA BS. Other usage or publishing for promotional purposes require the prior express agreement from MPA BS. The same applies to videotaping and the usage and publishing of videos of the tests performed.

- 13.2. The client shall by no means receive the right to use the brand MPA BS.

- 13.3. Notwithstanding any duty to observe secrecy, the client shall expressly point out to MPA BS that publications to which MPA BS is normally entitled might affect copyright interests.

- 13.4. Documents, design or improvement proposals and recommendations prepared by MPA BS do not certify that third-party copyrights are not affected. The client shall carry out the required investigations and search.

14. Offsetting, Retention

- 14.1. The offsetting of the client's claims shall only be admissible, if these are uncontended or recognised by declaratory judgement. Any rights to withhold performance or rights of retention of the client shall be excluded, unless they are based on the same contract or legal relationship.

15. Place of Performance, Choice of Legal Form, Place of Jurisdiction

- 15.1. 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.

- 15.2. German law shall prevail, excluding the UN Convention on Contracts for the International Sale of Goods.

Status: 16-Aug-2023