

General Terms and Conditions of PAConsult GmbH

1 Scope of application and general information

1.1 These General Terms and Conditions (GTC) shall apply to all test orders and other legal relationships offered, entered into or continued by PAConsult GmbH (PAConsult), Hamburg, and its branches in Berlin and Ochsenhausen. After their initial acceptance by the client, they shall also apply to subsequent orders and future business relationships with the client without the need for renewed acceptance. This shall not apply if the client objects to their inclusion in text form when placing a follow-up order.

1.2 PAConsult hereby objects to the inclusion of general terms and conditions submitted by the client. These shall only become a legally effective component of the legal relationship established between PAConsult and the client if and to the extent that PAConsult has recognized them in whole or in part in writing. The inclusion of deviating or supplementary general terms and conditions of the client through implied action, such as the execution of an order without express objection to their inclusion in the contract, is excluded.

1.3 The contractual relationship between PAConsult and the client shall be governed primarily by the terms and conditions individually agreed between PAConsult and the client in text form. They shall be supplemented by these GTC insofar as the individual agreement does not contain a corresponding provision.

1.4 PAConsult is state-accredited by the Deutsche Akkreditierungsstelle GmbH (DAkkS) as a testing laboratory and is subject to the globally valid standard for laboratory accreditation in the field of testing and calibration in accordance with DIN EN ISO/IEC 17025. Its requirements for competence, impartiality and uniform working methods in the execution of test orders form an essential contractual component of all test orders agreed between PAConsult and the client. The standards of DIN EN ISO/IEC 17025 are applied by PAConsult when carrying out the test order even if they are not expressly mentioned in the contract. The same applies to the application of other regulations relevant to the agreed test and its documentation (e.g. DIN or EN standards), insofar as these are the subject of the test order or result from its content.

1.5 The test methods agreed between PAConsult and the client are decisive for the subject and scope of the test. The selection of the commissioned test methods and standards is the responsibility of the client. PAConsult is responsible for the contractual and standard-compliant execution of the commissioned test, the correct determination of the test results and their documentation but assumes no liability for the suitability of the commissioned test method, the determined results and their documentation for the purpose intended by the client. The use of the test results is the responsibility of the customer.

2 Offers, documents

2.1 PAConsult's offers are always subject to change. The fee amounts stated in PAConsult's offers are initially only non-binding calculations based on the information received from the client regarding the content and scope of the requested audit, which may change in the course of further negotiations.

2.2 Should PAConsult provide the client with illustrations, drawings, calculations or similar with the offer or during the contract negotiations, the information contained therein is given by way of example and is only approximate, unless it is expressly designated as binding. In particular, such information does not constitute a guarantee.

2.3 PAConsult reserves its property rights and copyrights to cost estimates, drawings, drafts, models and other documents such as illustrations, drawings, calculations; they may not be made

accessible to third parties, unless otherwise expressly agreed. In particular, the customer is obliged to make documents designated as confidential accessible to third parties only with the prior consent of PAConsult.

2.4 All proposals, drafts and ideas submitted to the client by PAConsult during the offer and negotiation phase may only be used by the client for its own purposes or for the purposes of third parties if a contract is concluded with PAConsult on the basis of the relevant offer and the contract provides for or implies use by the client or third parties. Section 10.2 remains unaffected.

3 Conclusion of the contract

3.1 The contract for the performance of an audit shall be concluded if the client accepts the offer submitted by PAConsult without reservation. If the client declares that the offer is to be amended or supplemented, the contract shall be concluded in accordance with the offer submitted by PAConsult, including the client's requests for amendments and/or supplements, provided that PAConsult declares acceptance of the amendments and/or supplements requested by the client. If PAConsult rejects the client's requests for changes or additions in whole or in part, the contract shall not be concluded and the commitment to the offer initially made shall lapse. Irrespective of this, further negotiations may be conducted without restriction.

3.2 PAConsult is generally prepared to agree to changes to the agreed scope of services requested by the client, even after a binding order has been placed; PAConsult is under no legal obligation to do so. A legally binding amendment to the original order requires an amendment or supplementary agreement in text form, in which the amended scope of services is specified. PAConsult may make its consent dependent on the charging of an additional fee and a change to the schedule envisaged for the audit. Additional requests by the client that are suitable for unilaterally altering or calling into question audit results cannot be agreed.

4 Remuneration, ancillary costs and terms of payment

4.1 The remuneration to be paid by the client for the order placed results from the offer submitted by PAConsult to the client on which the agreement is based, in the version accepted by the client and finally agreed with PAConsult.

4.2 Ancillary costs incurred as a result of the order shall be remunerated separately, even if they are not initially expressly mentioned in the order, but are necessarily incurred in the course of order processing or as agreed. The following regulations apply in detail.

4.2.1 Travel expenses and costs for accommodation and meals shall be reimbursed to the extent that they are actually incurred. PAConsult shall be free to choose the means of transportation, but shall select time-saving means and routes. Rail travel shall be in 1st class (ICE/IC). For travel by car, € 0.65/km will be charged.

4.2.2 Consumables will be charged separately unless they are provided by the client.

4.2.3 Test materials, test samples (test specimens) and remnants will be returned to the client at the client's expense. PAConsult shall commission the transportation company with the return transport in the name and for the account of the client. If the customer requests a specific mode of transportation or a specific client, PAConsult must be informed in text form in good time. If, in exceptional cases, return transportation is not desired, the disposal shall be carried out at the expense of the customer, who shall be charged for the actual costs incurred.

4.2.4 Equipment costs are generally included in the agreed remuneration.

4.2.5 The costs for the first and second copies of a test report, expert opinion or similar are not incurred separately as ancillary costs and are included in the agreed remuneration. Additional copies shall be remunerated separately and shall be charged on a time and material basis.

4.3 PAConsult shall pass on the costs of order-related external services to the client plus an appropriate administrative cost surcharge.

4.4 In the case of test orders lasting more than 6 weeks, PAConsult is entitled to issue monthly interim invoices. If, by way of exception, a contract for work and services (§§ 631 BGB) has been agreed between the client and PAConsult, PAConsult shall be entitled to charge appropriate installment payments at the end of each month in accordance with the progress of performance.

4.5 Unless otherwise agreed, all invoices are to be paid within 30 days of receipt of the invoice by the client without deduction to the account designated by PAConsult in the invoice, free of charges and in euros. PAConsult is entitled to interest on arrears in accordance with § 353 HGB (German Commercial Code) and, in the event of default of payment by the client, the statutory default interest.

4.6 The customer is only entitled to offset against claims of PAConsult if the counterclaims asserted by him are legally established, undisputed or recognized by PAConsult. The assertion of rights of retention by the client is excluded, insofar as they are not justified in the same contractual relationship. In the event of a defect in the service incumbent upon PAConsult, the customer's legally mandatory counter-rights shall remain unaffected. Further details are regulated in Section 12.

5. Time of performance

5.1 Delivery or performance times stated by PAConsult are estimated and non-binding. If the client requires a fixed delivery date, this shall only be binding if it has been agreed in text form. The commencement of a performance time specified by PAConsult presupposes the clarification of all necessary questions regarding the order and compliance with the contributions to the fulfillment of the contract incumbent upon the client (e.g. delivery of the test specimens, definition of the scope of the test, performance of any agreed advance payments, etc., see also Section 7). A firmly agreed deadline for the execution of the order shall be tacitly extended by the period of time during which the customer is in default with his obligations to cooperate or pay. Other rights of PAConsult arising from the default of the client remain unaffected.

5.2 Delays in performance due to force majeure or due to unforeseeable circumstances for which PAConsult is not responsible, such as operational disruptions, strikes, lockouts, official orders, late delivery by subcontractors, shall not lead to a delay on the part of PAConsult. An agreed performance period shall be extended by the duration of the delay. If the hindrance lasts longer than two months, each party is entitled to terminate or withdraw from the contract with regard to the part not yet fulfilled after the expiry of a reasonable grace period. Claims for damages are excluded in this case.

5.3 PAConsult shall be entitled to render partial services, insofar as this does not conflict with any recognizable interest of the client.

6 Performance of the services

6.1 PAConsult shall carry out the commissioned service in a professional and compliant manner and shall bear responsibility for the test setup, its execution as agreed and the determination, documentation and evaluation of the test results, unless a test setup or procedure specified by the client has been agreed with the client. The test results obtained by PAConsult relate solely to the test specimens or other samples that have been delivered by the client and whose testing has been documented.

6.2 All documents and information that are of importance for the fulfillment of PAConsult's services may be copied and stored by PAConsult within the scope of the fulfillment of services. Further details may result from any confidentiality agreement concluded with the client.

6.3 As an accredited testing laboratory, PAConsult is not subject to any instructions from the client that go beyond the agreed contractual relationship. This applies in particular if instructions are likely to influence the results of the tests to be objectively carried out and documented in the public interest.

6.4 The customer shall be responsible for selecting the test method to be used and shall specify the standards/test regulations etc. to be used for testing. When fulfilling the commissioned services, PAConsult shall observe the test specifications specified therein, the relevant statutory regulations and the recognized rules of technology.

6.5 Insofar as it is necessary to process or damage the test specimens or other samples in order to carry out the agreed test, PAConsult may do so without the consent of the client. The client shall have no claim to restoration or compensation.

6.6 PAConsult is obliged to inform the client of the commissioning of tests to subcontractors or other third parties. Upon commissioning, the client shall give its consent to this. Should the need to involve a third party for the execution of the inspection order only arise after the order has been placed, PAConsult shall obtain the client's consent in advance.

7 Obligations of the customer to cooperate

7.1 The customer is obliged to support the services of PAConsult in an appropriate manner; this applies in particular to the obligation to provide the information necessary for the provision of services and the provision of additional information requested by PAConsult during the contractual relationship.

7.2 Unless otherwise agreed, the customer shall deliver the test samples (test specimens) and other samples required for testing in the agreed number to the PAConsult branch that prepared the offer on which the order is based. Delivery shall be at the customer's own expense and risk. Any specifications from PAConsult regarding the packaging of the test samples must be observed to ensure that the test is carried out professionally.

7.3 The selection of the test samples and their number is the responsibility of the client. The client shall be responsible for ensuring that test specimens and other samples are suitable to enable the commissioned testing services and that the delivered test specimens and other samples are suitable as samples ("pars pro toto") of their product series for conformity tests. PAConsult assumes no responsibility for the selection of the test specimens and the professional collection of the other samples supplied, nor any liability for their usability for the purpose intended by the client. Irrespective of this, PAConsult shall support the client in the selection of its test specimens and, if necessary, also make suggestions for an alternative test method if it becomes apparent that the delivered test specimens or other samples are unsuitable for the intended test purpose. The support is non-binding and does not justify any claims for

compensation even if recommendations prove to be unsuitable. PAConsult shall be entitled to invoice the client for any additional expenditure resulting from subsequently changed test requirements.

7.4 The client shall instruct PAConsult in the handling of the test specimens or other samples supplied by it, insofar as this is technically necessary, and shall inform PAConsult of any special features to be observed. PAConsult must be informed in good time of any risks posed by the test items and other samples so that special precautionary measures can be taken into account both when calculating the remuneration and when preparing the test. This applies in particular if the test items or other samples pose health or safety risks, such as contamination with toxic substances, radioactive material or pathogens. PAConsult is entitled to refuse to accept risky test specimens and other samples and to withdraw from the contract, unless it is clear from the contractual relationship with the client that PAConsult was aware of and accepted the risk when accepting the order.

8 Documentation of the test results

8.1 PAConsult shall document the performance of the test and the test results obtained in a test report in accordance with the relevant standards for the type of test. The documentation must meet scientific and technical requirements. It must be truthful and objective.

8.2 Tests that are intended to prove that a product represented by the test specimen meets the requirements that must be fulfilled in order to place it on the market (conformity tests) must also comply with the test and documentation specifications to which accredited test laboratories are subject in accordance with DIN EN ISO/IEC 17025. PAConsult is entitled to reject any deviating requirements of the client.

8.3 The test report and other test-related documents, e.g. test plan, certificates for the devices and systems used for testing, together with the associated calibration certificates and the documents submitted by the client, etc. shall be prepared in accordance with the relevant regulations and general statutory provisions. If necessary, these shall be supplemented by a confidentiality agreement concluded between PAConsult and the client.

8.4 In accordance with DIN EN ISO/IEC 17025:2018, there is a requirement to document decision rules that are applied to a conformity statement. Decision rules describe how the measurement uncertainty (MU) is taken into account when statements on conformity with a specified requirement are made.

If no decision rule has been agreed in the contractual relationship between PAConsult and the client and if such a rule is not specified in standards and/or specifications that are to be applied to the commissioned test, the MU is not taken into account in the conformity statement for variable data. If a decision rule is defined by the customer before the start of the test, it will be applied as far as practicable. Any additional work resulting from a decision rule is charged separately for each test.

For tests in which no variable data is collected for the conformity statement or no conformity statement is made, the definition of a decision rule is omitted.

9. Whereabouts of the test specimens and other samples after completion of the test

9.1 After the test has been carried out as agreed, test samples (test specimens) and specimens that are no longer required shall be returned to the client. PAConsult shall arrange for the return

or return shipment to the client at the client's expense and risk. PAConsult accepts no liability for any damage or loss during loading and/or return shipment, nor does it assess the impact of the damage or loss on the study results. Parcel shipment and pallet shipment are insured as standard; the transportation and liability conditions of the commissioned transport company apply. If the customer requests a different type of transportation or a higher sum insured than the standard insurance offered by the transport company, the return shipment must be made or commissioned by the customer.

9.2 If the storage or disposal of the test specimens or other samples is agreed with the client as an exception, the client shall be charged the costs incurred by PAConsult plus administrative expenses. This also applies in particular if additional costs are incurred because the storage or disposal is subject to special requirements (e.g. in the case of hazardous waste or dangerous goods).

9.3 The statutory retention obligations shall apply to the retention of test reports and other documents relevant to the test.

10 Industrial property rights and copyrights

10.1 PAConsult reserves all industrial property rights and copyrights to the services and reports it provides. The client is entitled to use the services of PAConsult for the purpose that was communicated to PAConsult prior to the provision of services or that was obviously recognizable to PAConsult. In this respect, the client is granted a license of use from the property rights and copyrights to which PAConsult is entitled in accordance with sentence 1. Any further use by the client requires a special agreement with PAConsult.

10.2 Insofar as PAConsult has not been expressly informed by the client of the disclosure of the test results to third parties prior to or upon conclusion of the contract or their disclosure corresponds to the sense and purpose of the order placement, they may not be disclosed to third parties by the client. All documents created by PAConsult concerning test results, product descriptions and evaluations may only be passed on to third parties, either in full or in part, once they have been approved by PAConsult. This restriction applies in particular to documents that can be regarded by third parties as a promise of quality for a product or a product series, relying on the accuracy of the test results documented by PAConsult. If the third party asserts claims for damages against PAConsult due to non-approved test results, the client shall indemnify PAConsult against such claims.

10.3 PAConsult shall observe the industrial property rights and copyrights of the client to the resources provided to it in accordance with Section 7 above. PAConsult is entitled to retain the corresponding documents until the limitation period for any warranty and in particular liability claims of the client against PAConsult has expired.

10.4 Unless expressly agreed otherwise, PAConsult shall provide its services free of third-party rights in Germany. If PAConsult's services are to be used outside of Germany, the client shall check PAConsult's services for freedom from third-party rights before using them or inform PAConsult of the existence of corresponding third-party property rights without being requested to do so, in good time before PAConsult performs the services, so that PAConsult can take these into account. The client shall indemnify PAConsult against any third-party claims arising from a breach of this obligation by the client.

10.5 In the event of an infringement of third-party property rights for which PAConsult is responsible, PAConsult may, at its own discretion, either obtain and grant a right of use sufficient

for the agreed or presumed use at its own expense, modify the service in such a way that the property right is not infringed or replace the service, insofar as this does not impair the agreed or presumed use of the object of service by the client. If this is not possible or unreasonable for PAConsult, the customer shall be entitled to the statutory claims and rights. Clause 12 shall apply to claims for damages.

11 Warranty

11.1 PAConsult shall provide the commissioned services professionally, regularly and with the care of a prudent businessman. Only the provision of the inspection service as such is owed, but under no circumstances a specific inspection result. This results exclusively from the factual findings that PAConsult has determined after the test carried out in accordance with the order and in compliance with the generally recognized rules of technology and evaluated scientifically and technically, including any statement of conformity. The test report and the determined test results do not represent a product in the sense of the Product Liability Act, because PAConsult is not the manufacturer of the test results, but only determines them.

11.2 Based on the above service description, warranty claims by the client can only be based on the fact that PAConsult has used an unsuitable test standard as the basis for the test contrary to the order or has incorrectly implemented or documented the procedure described in a suitable test standard. In other cases, a warranty claim is excluded, unless PAConsult has acted with intent or gross negligence. Claims for defects do not exist if there are only insignificant deviations from the agreed quality or only an insignificant impairment of the usability of the service result.

11.3 For the assertion of warranty claims, the customer must first grant PAConsult a reasonable period of time to rectify the defects (at PAConsult's discretion, rectification or renewed performance). If this fails, if PAConsult refuses to do so or if the subsequent performance is unreasonable for the customer, the customer shall be entitled to the statutory claims. Clause 12 of these GTC shall apply to claims for damages.

11.4 The client's claims for defects shall expire 12 months after the handover of the documentation of the test results. Claims for material defects to which the regular statutory limitation period of three years applies shall become time-barred after two years. The statutory limitation periods shall apply in the event of intentional or grossly negligent causation of a defect and in the event of fraudulent concealment of a defect as well as for all other statutory limitation periods for claims for defects that are longer than two years. The aforementioned limitation periods shall also apply to consequential damages due to defects for which PAConsult is responsible in accordance with these GTC. If subsequent performance is required due to a defect, the limitation period shall only be suspended until subsequent performance and shall not be restarted.

11.5 Section 12.1 of these GTC shall apply to the assertion of claims for damages due to claims for defects, e.g. consequential damages.

12 Claims for damages and liability for other reasons

12.1 The assertion of claims for damages due to defects and claims for damages due to defective services is excluded, unless PAConsult has caused the defects intentionally, through gross negligence or through negligent breach of essential contractual obligations (obligations on whose compliance the client could rely). The assertion of claims for consequential damages, in

particular loss of profit due to such defects, is excluded unless PAConsult caused the defect intentionally or through gross negligence without fault. This also applies to claims for reimbursement of expenses by the client due to defects. PAConsult's liability for negligence is limited to the foreseeable damage typical of the contract.

12.2 All other claims for damages and reimbursement of expenses by the client are excluded, regardless of the legal grounds. This also applies to claims arising from the breach of duties arising from the contractual obligation and from tort.

12.3 The above limitations of liability shall not apply to claims arising from the Product Liability Act, in cases of intent or gross negligence, for injury to life, limb and health, due to the assumption of a guarantee for the existence of a property.

12.4 Insofar as the liability of PAConsult is excluded or limited, this shall also apply to the personal liability of the members of the management, employees, representatives and vicarious agents of PAConsult.

12.5 PAConsult holds liability insurance for third-party damages. Information about the sum insured will be provided upon request. PAConsult is entitled to leave the handling of claims for damages to its liability insurer.

12.5 Section 11.4 of these GTC shall apply accordingly to the limitation period for claims for damages, insofar as claims under the Product Liability Act are not affected.

13. Premature termination of the order by the client

If the client seriously declares in text form that PAConsult should not or no longer carry out the commissioned audit, PAConsult shall nevertheless retain its claim to the agreed remuneration, taking into account the expenses saved. In the event of cancellation of the order placed, a lump sum of 50% of the agreed remuneration shall be deemed to have been bindingly agreed as a minimum amount. Cancellation of a test that has already begun must be documented in accordance with DIN EN ISO/IEC 17025.

14 Place of jurisdiction, place of performance and applicable law

14.1 The exclusive place of jurisdiction for all claims arising from and in connection with this contract is Hamburg. However, PAConsult is also entitled to sue the customer at the court of its registered office.

14.2 Unless otherwise expressly stated in the contract, the place of fulfillment is the registered office of the branch of PAConsult that has concluded this contract with the customer (Hamburg, Berlin or Ochsenhausen).

14.3 The legal relationship between the parties shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods. These GTC shall only apply to entrepreneurs within the meaning of Section 14 (1) BGB, legal entities under public law and special funds under public law within the meaning of Section 310 (1) BGB.

15. Severability clause

Should individual provisions of this contract or these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions of this contract and these terms and conditions. Instead, the effective provision that comes closest to the content of the invalid provision from an economic point of view shall be deemed to have been agreed.

16. Text form requirement

All further agreements and arrangements between the contracting parties made for the execution of the contract must be in text form unless a verbal agreement or arrangement has already been implemented without objection. Amendments, collateral agreements, supplements and rescission of the contract must be made in text or written form.

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Translated with DeepL.com (free version)

