

# GENERAL CONDITIONS

## SGS GERMANY GMBH – MUNICH SGS-TÜV SAAR GMBH – HOMOLOGATION; FUNCTIONAL SAFETY & IT SECURITY

### I. GENERAL

- 1.1** The mutual written declarations shall determine the extent of any deliveries or services (hereinafter called "Services"). Any general conditions of the Customer shall only apply insofar as SGS Germany GmbH – Munich or SGS-TÜV Saar GmbH, departments Homologation, Functional Safety and IT Security (hereinafter: "SGS") have expressly agreed to such in writing.
- 1.2** SGS shall retain its property and intellectual property rights without limitation in relation to any estimate, drawing and other documents (hereinafter called "Documentation"). Documentation shall only be made available to third parties with the prior agreement of SGS and the Documentation shall be returned to SGS on demand in the event that an order is not placed. Sentences 1 and 2 shall apply accordingly to the Documentation of the Customer. However, such Documentation may be made available to any third party, which SGS has commissioned with the performance of the Services.
- 1.3** SGS may assign subcontracts to third parties.
- 1.4** The written form as agreed between the Customer and SGS for the preparation and transfer of documents within the scope of the contractual relationships (i.a. offer, acceptance, side agreement, addendum) is also met in case of electronic data transfer. Transfer via internet per unencrypted e-mail or other digital transmission technology (e.g. Customer's interface, online portal etc.) or per fax is sufficient.
- 1.5** SGS may mention for purposes of reference the cooperation with the Customer. Within four (4) weeks after the conclusion of the contractual arrangement, the Customer may object to such use.

- 1.6** The Customer accepts that unencrypted messages sent via internet may – through or without intervention of third parties – be lost, modified or falsified. Conventional e-mails are not protected against any third party's access, and SGS therefore assumes no responsibility for the confidentiality and the integrity of e-mails that have left SGS's sphere of responsibility. SGS assumes no liability either for data security during the transmission via internet or for data security while in the Customer's sphere of responsibility. Malware appearing in connection with the electronic transfer of data and resulting possible damage for the Customer are herewith likewise excluded.

### II. SERVICES OF SGS

- 2.1** SGS shall provide the Services in accordance with the recognised rules of technology at the time the order is placed and the reasonable standards of care of the industry. Testing shall take place exclusively on the basis of the agreed guidelines. The Customer shall bear the risk in relation to the suitability of the results for any application in particular in relation to any applications other than those indicated in the test results.
- 2.2** SGS shall base the agreed tests and analyses on the devices under test and materials made available by the Customer. SGS may work on the basis that the samples made available are representative and authentic in relation to all relevant criteria (e.g. amount of functionality, characteristics). There shall be no duty on the part of SGS to verify such.
- 2.3** The Customer shall be liable for any damage resulting from the devices under test unless SGS is responsible for the cause of such damage.

- 2.4** In the event that with the agreement of the Customer SGS accepts the work results of third parties as a basis or component of its Services, SGS may use such results as the basis for its further Services without further verification unless the Customer specifically provides written order for SGS to test the accepted work results.
- 2.5** SGS shall provide its Services according to the law applicable at the place of providing Services. In all other respects SGS shall have discretion to determine the method of performing the Services.
- 2.6** Part performance shall be allowed insofar as such is reasonable for the Customer.
- 2.7** In the event of culpable breach of any consulting or other duty related to services SGS shall first of all be entitled to rectify such unless any such rectification would not be reasonable for the Customer.
- 2.8** The above provisions do not constitute a reversal of the burden of proof.
- 2.9** The signed test report (hereinafter: "Report of Findings", manually or electronically signed) is the only legally binding document (see Clause 2.10).
- 2.10** SGS shall provide the Report of Findings according to the agreement with the Customer either/or in electronic form or in paper form. In absence of an agreement, it will be in SGS's sole discretion if it will deliver in electronic or paper form. The Report of Findings in paper form is an original. If the Report of Findings will be transmitted in electronic form, it will be regarded as an original according to Art. 3 and 17 b UCP 600 (Uniform Customs and Practice for Documentary Credits, ICC 2007 Revision). When transmitted in electronic form, SGS assumes no responsibility as to whether the

electronic form will suffice the purposes of the Customer. When transmitted in electronic form, the Report of Findings will be presented in a digitally signed pdf format. The Customer may check the authentication within the document itself. If generated and provided via SGSonSITE, the authentication may be made via SGSonSITE.

The transfer of the electronic Report of Findings will take place via internet per unencrypted e-mail or via other digital transmission technology (e.g. via Customer's interface, online portal etc.) or per fax.

### III. PRICES AND CONDITIONS OF PAYMENT

- 3.1 The price for Services shall be calculated according to the price list of SGS valid at the time of providing the Services. Payment shall be due without any deduction within 14 days of the date of the receipt of the invoice. Discounts shall only be allowed if such are agreed in writing.
- 3.2 The Customer shall reimburse any expenses e.g. for telephone and costs of necessary travel and any necessary accommodation.
- 3.3 Cancellation fees shall be made if the Customer does not utilise services (e.g. of test facilities) during a time in which such are made available in terms of the contract and the Customer has not cancelled in due time. When the length of occupancy exceeds 5 work days, a written cancellation must be submitted at least 4 weeks prior to the beginning of occupancy. When the length of occupancy is smaller than or equal to 5 work days, a time limit of 2 weeks is sufficient.
- 3.4 SGS may demand a reasonable increase in payment for further costs resulting from changes to the order at the request of the Customer or for any other reasons for which SGS is not responsible.
- 3.5 The Customer may calculate in any set off only those claims of the Customer which are undisputed or sanctioned by a final court judgement.
- 3.6 Any breach of duty by the Customer, in particular in relation to late

payment, shall entitle SGS to cancel the Contract and recover its property subject to the expiry of a reasonable period of notice. The legal provisions as to the dispensability of a period of notice shall remain unaffected hereby. The Customer shall be obliged to make available the work results.

### IV. DEADLINES FOR PROVIDING OF SERVICES; DELAY

- 4.1 Dates and deadlines for providing of Services are only binding if such are agreed to in writing. Compliance with such dates and deadlines by SGS is subject to the timely receipt of all devices under test to be provided by the Customer as well as Documentation and any necessary permit and approval, in particular for planning, and is also subject to compliance with the agreed payment conditions and other duties such as the duty to assist on the part of the Customer. In the event that such preconditions are not fulfilled on time and deadline shall be extended accordingly. This shall not apply if SGS is responsible for the delay.
- 4.2 In case of any breach of deadline resulting from acts of God, such as mobilisation, war, civil unrest or similar events, e.g. strike, lock-out, the deadline shall be extended accordingly.
- 4.3 In the event that SGS is delayed the Customer may demand damages for each completed week of delay at the rate of 0.5 % (but not exceeding in total more than 5 %) of the net price of the part of the Services in delay, provided that the Customer shall provide prima facie evidence of damage.
- 4.4 Any claims for damages by the Customer due to delay in the Services as well as claims for damages instead of Services are excluded in all cases of delayed performance even after the expiry of any period of notice requiring performance. This shall not apply in cases of wilful acts, gross negligence or cases involving injury to life, personal injury or injury to health for which liability is mandatory. The Customer may only cancel the Contract in terms

of the law insofar as the delay in the performance is the fault of the Supplier. The above provisions do not constitute a change in the burden of proof to the disadvantage of the Customer.

- 4.5 The Customer shall, at the request of SGS declare within a reasonable period whether due to the delay in Services it still requires the Services and/or the Customer shall be making claims to enforce its rights.
- 4.6 The Customer is considered in default even without a reminder being necessary. If the Customer is a company, interest at a rate of 9% above the base rate will become due from the beginning of the default.

### V. TAX CLAUSE, INTERNATIONAL SERVICES

- 5.1 This clause shall only apply if either the Customer and/or the Subcontractor of SGS are seated outside of Germany.
- 5.2 No taxes are included in any and all prices and costs for the Services rendered by SGS or an affiliated enterprise within the meaning of Sect. 15 ff. of the German Stock Corporation Act (Aktengesetz – AktG) or a subcontractor. Among others, this comprises VAT or equivalent fees, taxes (in particular income tax, stamp duties, associated charges or withholding tax). Besides, they do not contain any liabilities referring to them (collectively: "Taxes") billed to the Customer under applicable national law.
- 5.3 Any payment by the Customer is to be made free of and without withholding or deducting, any Taxes. This shall not apply if such withholding or deduction is required based on applicable law and/or applicable double tax treaties. The Customer shall make available to SGS without delay proof of such payment as well as copies of any documents, which have to be submitted when making such payment.
- 5.4 The Parties shall use their best efforts towards the deducted amounts or the relevant Tax being refunded. They shall support each other concerning their obligations in this respect. Any refunded

Taxes shall be paid back in accordance with the relevant sums they are entitled to receive.

## VI. TRANSFER OF RISK

The supply and collection of the devices under test shall be at the expense and risk of the Customer. The Customer shall pack such materials in a correct manner and in conformity with any direction of SGS and shall comply with the transport regulations as well as any applicable provisions related to dangerous goods. SGS may at any time require the Customer to take back any devices under test at the Customer's own risk and expense. This shall also apply after the processing of the devices under test by SGS.

## VII. DUTY OF CUSTOMER TO ASSIST

- 6.1** The Customer shall assist SGS in the providing of the Services to a reasonable extent. In particular, the Customer shall allow SGS the necessary access to its premises and all necessary information when taking measurements on site and shall further make available qualified personnel as well as all other necessary equipment and infrastructure, and shall further inform SGS without delay as to any circumstances related to the fulfilment of the Contract (in particular by making available valid DIN safety data sheets and/ or completing questionnaires made available by SGS) and further the Customer shall nominate an authorised contact person available during the normal hours of business.
- 6.2** The Customer shall accept work services without delay. The acceptance shall be subject only to the agreed final result. SGS may require an interim acceptance of interim performance as well as part performance insofar as such forms the basis for further performance. Article VI shall apply in relation to interim and part acceptance.
- 6.3** The Customer shall inform SGS in writing within 14 days of the date of the receipt of the work services as to whether such will be accepted as being in accordance with the Contract or the Customer shall inform SGS without delay, but no

later than within the above-named period, of the specific defect with an exact description. If such does not happen, acceptance shall be deemed to have taken place. Acceptance shall also be deemed to have taken place if the Services (even after the conclusion of an agreed test phase) are being used.

- 6.4** In cases of minor defects the Customer may not refuse acceptance of Services or refuse to take delivery of Services.

## VIII. CONFIDENTIALITY

- 8.1** The know-how of SGS as well as all other commercial and operational secrets of SGS including the contents of contracts with the Customer (hereinafter called "Information") shall be treated as confidential by the Customer. The Customer shall take all necessary measures to protect the information from unauthorised access, unauthorised release, copying, transmission as well as any other unauthorised use. Such shall not apply to Information that was already available or in relation to which the Customer can prove that after transmission it became generally available. Any further provisions of law shall not be affected hereby.
- 8.2** The Customer is hereby obliged to ensure that employees and third parties receiving access to the Information are subject to the same duty of confidentiality in regard to SGS as the Customer itself. The Customer shall, at the request of SGS ensure that the employees and third parties sign a separate confidentiality agreement before access to the Information is allowed.
- 8.3** The Customer shall notify SGS without delay in the event that the Customer receives any court, government or other official and binding demand for the release of Information.
- 8.4** The duties named in this Article VIII shall also apply after the ending of this Contract.

## IX. RIGHTS OF USE OF THE CUSTOMER

- 9.1** SGS shall grant to the Customer upon payment in full a non-

exclusive, non-transferable right to use the work results derived from the Services by SGS as well as the related documentation made available to the Customer including software (collectively called "Work Results") for the agreed contractual purpose or in accordance with the aim of the Contract. This shall also apply insofar as the Work Results are protected or are capable of being protected and shall include any confidential know how contained therein.

The Customer shall obtain the right to copy the Work Results including software made available for internal operational purposes. For such copying intellectual property and protection marks shall not be removed. Any granting of sublicenses requires the prior written approval of SGS.

- 9.2** Test reports, expert opinions and certificates including any related attachments thereto shall only be published in a complete form with details of the date of issue. Any part release of Work Results shall only be permitted with the written approval of the issuer.

## X. LIABILITY FOR DEFECTS AS TO QUALITY ("SACHMÄNGEL") FOR WORK SERVICES

For defects as to quality SGS shall be liable as follows:

- 10.1** Any Services showing a defect within the period of limitation, without consideration of the period of operation, shall, at the discretion of SGS be rectified, replaced or performed again provided that the cause of the defect had already existed at the time of the transfer of risk.
- 10.2** Claims for defects as to quality are subject to a limitation period of 12 months. This provision shall not apply where longer periods are prescribed by law according to Sec. 438 para. 1 No. 2 (buildings and things used for a building), Sec. 479 para.1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code ("BGB"), as well as in cases of injury of life, body or health, or where SGS intentionally or grossly negligently fails to fulfil

its obligation or fraudulently conceals a Defect. The legal provisions regarding suspension of expiration (“Ablaufhemmung”), suspension (“Hemmung”) and recommencement of limitation periods remain unaffected.

- 10.3** The Customer shall notify SGS in writing without delay as to any defect.
- 10.4** In case of notification of defect the Customer may retain payments in reasonable proportion to the detected defect. The Customer may only retain payments if no doubt exists as to the justification for the notification of defect. In the event that such notification is incorrect SGS may require the Customer to pay any related expenses.
- 10.5** SGS shall first be given the opportunity to supplement its performance (“Nacherfüllung”) within a reasonable period of time.
- 10.6** In the event that such supplement performance is not successful the Customer may, regardless of any Rights to Damages in accordance with Article XII, cancel the Contract or reduce payment.
- 10.7** Rights to claim in relation to defects shall not exist in cases of minor variations from the agreed quality, or in cases of minor limitations of use, in cases of natural wear and tear or for damage resulting from incorrect or negligent use after the transfer of risk, for excessive use, for unsuitable operation methods or defective construction work, for unsuitable construction land or for any circumstances resulting from external influence which were not foreseen in the Contract as well as in cases of non-reproducible software defects. If the Customer or any third party undertakes inappropriate changes or maintenance work no rights in relation to claims based on defects shall exist for such work and the resulting consequences.
- 10.8** Any claims by the Customer based on expenses related to supplementary performance, including costs of transport, travel, work and material costs

are hereby excluded insofar as the expenses increased because the subject matter of the Services was later transported to a different place than the branch office of the Customer unless such transportation is in accordance with the use as intended.

- 10.9** Notices of defect in accordance with §§ 377, 381 II of the Commercial Code (HGB) shall be in writing.
- 10.10** Any further rights of the Customer other than those detailed in Article IX based on any area of law whatsoever and in relation to the Supplier or its agents on the basis of defects are hereby excluded except for those related to circumstances involving wilful acts or gross negligence in relation to a breach of duty or injury to life, personal injury or injury to health or a warranty as to the non-existence of defects. The above provisions do not constitute a change in the burden of proof to the disadvantage of the Customer.

#### **XI. INDUSTRIAL PROPERTY RIGHTS AND INTELLECTUAL PROPERTY RIGHTS; DEFECTS OF TITLE**

- 11.1** Unless otherwise agreed SGS shall provide the Services in the country of the place of the Services free from any industrial property rights and intellectual property rights of third parties (hereinafter called Property Rights). Insofar as any third party makes a valid claim against the Customer on the basis of an infringement of Property Rights for Services provided by the Supplier, SGS shall be liable to the Customer within the limitation period named in Article X No. 9.2 as follows:
  - a) At its choice SGS may either obtain at its own cost the right of use for the respective Services or so change such Services so that the Property Rights are not infringed or SGS may provide replacement. If such is not possible under reasonable conditions the Customer may utilise its legal rights to cancel the Contract or reduce the price.

b) The above duties of SGS are subject to the Customer having notified SGS of the claim by the third party in writing and without delay, the Customer having not admitted any infringements and SGS retaining all rights to arrange a defence and negotiate the settlement. If the Customer stops the use of the Services for reasons of mitigation of loss or for other important reasons the Customer shall be obliged to inform the third party that the ending of use does not constitute acknowledgement of any infringement of Property Rights.

- 11.2** Any rights and claims of the Customer are excluded insofar as the Customer is responsible for the infringement of Property Rights.
- 11.3** Any rights or claims of the Customer are also excluded insofar as the infringement of Property Rights results from special requirements of the Customer, from use not foreseeable by the Supplier or if the infringement of Property Rights results from any changes to the Services by the Customer or the utilisation in connection with products not provided by the Supplier.
- 11.4** In case of infringement of Property Rights the claims of the Customer allowed in 10.1 a) shall apply as well as the provisions of Article X No. 9.4 and 9.5 accordingly.
- 11.5** In case of defects as to title the provisions of Article X shall apply accordingly.
- 11.6** Any further rights of the ordering party other than those detailed in this article based on any area of law whatsoever and in relation to the Supplier or its agents on the basis of defects are hereby excluded except for those related to circumstances involving wilful acts or gross negligence in relation to a breach of duty or injury to life, personal injury or injury to health or a warranty as to the non-existence of defects. The above provisions do not constitute a change in the burden of proof to the disadvantage of the ordering party.

## XII. LIABILITY OF SGS

- 12.1** SGS shall be liable for any injury to life, personal injury or injury to health for which it is responsible without limitation and in case of damage to property SGS shall be liable for the costs of replacement or repair of the property to an amount of EURO 500,000 in each case of damage. In relation to any damage to data carriers such duty of replacement shall not include the costs of recovering any lost data or information.
- 12.2** Any further claims or rights for damages or expenses of the Customer (hereinafter called "Rights to Damages") regardless of the legal basis, in particular related to breach of duties in relation to obligations or torts are hereby excluded.
- 12.3** This shall not apply in cases of mandatory liability, e.g. according to the Product Liability Code, in cases of wilful acts, gross negligence, in cases of the

acceptance of a guarantee as to quality of property or in cases of fraudulent concealment of a defect or in cases of breach of material contractual duties. Any Rights to Damages for the breach of important contractual duties shall however be limited to typical, foreseeable damage unless caused by wilful acts or gross negligence.

- 12.4** If any Rights to Damages are available to the Customer such shall be time-barred with the expiry of the period of limitation for Rights to Damages according to Article X No. 9.2. This shall not apply in cases of wilful acts, gross negligence, and in the event of injury to life, personal injury or injury to health as well as fraudulent concealment of under Product Liability Code.
- 12.5** The above provisions do not constitute a change in the burden of proof to the disadvantage of the ordering party.

## XIII. COURT OF JURISDICTION AND APPLICABLE LAW

- 13.1** The sole court of jurisdiction if the Customer is a merchant in relation to any disputes arising directly or indirectly from the contractual relationship shall be Hamburg. SGS may however commence legal proceedings at the court at the place of seat of the Customer.
- 13.2** All disputes arising out of or in connection with the Contractual Relationships hereunder shall be governed by and construed in accordance with the substantive laws of Germany exclusive of any rules under international private law.

## XIV. VALIDITY OF CONTRACT

This Contract shall continue to be binding in the event that individual provisions become ineffective. Such shall not apply if compliance with the Contract would result in unreasonable hardship for a Party.