

**diondo GmbH, Hattingen**

**General Terms and Conditions for Test Services (revised: March 2021)**

**I. Choice of law, future contracts**

(1) Unless expressly otherwise agreed in writing, these GTCs apply in the commercial activities between diondo GmbH ("diondo") and its contract partner (the "client") for the services to be provided by diondo in the area of non-destructive materials testing, to the exclusion of all others.

(2) Apart from the contractual agreements, including these GTCs, only German law shall apply, to the exclusion of the regulations of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG).

(3) Once these GTCs have been included in a contract with the client, they also apply for all future contracts with the relevant client without these GTCs having to be referenced once again.

(4) These conditions only apply for entrepreneurs and legal entities under public law as defined by Section 310(1) of the German Civil Code (BGB).

**II. Order execution**

(1) Unless diondo receives written instructions to the contrary from the client before executing the order, no persons other than the client itself are entitled to issue instructions to diondo with regard to the scope of the order.

(2) The client shall make the test object available to diondo for the period of execution of the order. The client is responsible for the proper delivery and packaging of the test object to be examined.

(3) The client shall provide all relevant information on handling the test object (e.g. in the event of contaminated, toxic, caustic, highly flammable, explosive, radioactive material).

(4) diondo provides test services, it does not assess whether the test object can fulfil the client's intended purpose. The client must independently draw the necessary conclusions from the test results supplied by diondo. Neither diondo, nor its executives, employees or subcontractors are liable to the client or third parties for any type of actions that are or are not taken based on the results or investigation reports supplied by diondo.

(5) Results or investigation reports supplied by diondo for the purpose of testing the client's objects refer exclusively to these test objects and do not provide any information on the remainder of the delivery from which the test objects were taken or on objects from other lots.

(6) The test service is comprised of two phases: offer preparation and testing. As part of the offer preparation, diondo decides on the feasibility of the testing. In this phase, diondo is entitled to refuse to continue with the order at any time, without providing reasons.

(7) diondo reserves the right to subcontract services either in part or in full. In certain cases, this may even take place without first notifying the client. It may disclose all information necessary to carry out the assigned services to the subcontractor.

(8) diondo shall submit the test results and/or the investigation report in digital form and/or as a hard copy in consultation with the client. If this has not been arranged,

diondo is free to submit the test results and/or the investigation report to the client in either a digital form or as a hard copy, at its discretion.

(9) The results and/or the digital investigation report are transmitted via the internet, by way of unencrypted email, in a cloud or using other digital transfer options.

(10) A commenced test order may also be cancelled, if the test system assigned for the order is not ready for operation due to a technical fault.

### III. Cooperation and information

(1) To ensure the successful execution of the test order, the client must

(a) comprehensively inform diondo, particularly of all data that are required to assess the feasibility of the testing;

(b) prepare precise specifications based on which the testing is to be carried out (test instructions);

(c) supply adequate quantities of the test objects to carry out the testing and

(d) soweit vereinbart, während der Prüfungsdurchführung anwesend zu sein.

(2) If the client has not provided information or instructions, the following apply:

(a) the contents of the order confirmation and/or diondo's associated standard specification sheet; and/or

(b) the applicable commercial usages, customs or practices; and/or

(c) procedures that diondo considers to be appropriate for technical, organisational and/or commercial reasons.

(3) The client must immediately check the interim results, investigation reports, records and the like submitted by diondo, particularly the results of the feasibility study, for their accuracy with regard to the underlying matter, especially with regard to the information contained about the test object.

### IV. Confidentiality and data backup

(1) The client and diondo shall treat the business and trade secrets received from the other party as part of the contractual relationships as confidential and shall not disclose these to third parties or use these for their own purposes without the prior written consent of the other party. diondo shall treat all information received or obtained as part of the contractual relationships as confidential, unless it is publicly known or accessible, or diondo was already aware of this information or it was disclosed to diondo by a third party without violating any confidentiality requirement.

(2) After the completion of the test process, the data created during testing and when preparing the data shall remain on data carriers of the relevant test or analysis station or a file server assigned to the test facility for 3 months, unless another period has been agreed.

(3) The process is deemed completed upon the expiration of the payment period specified in the invoice.

(4) Additional measures to back up or delete data must explicitly be organised by the client. They are documented between the client and diondo in a separate confidentiality and non-disclosure agreement. They are not part of the test order.

(5) The client accepts that unencrypted messages sent via the internet may get lost, be modified or falsified with or without the intervention of third parties, that conventional emails are not protected from access by third parties and that diondo therefore takes no responsibility for the confidentiality and integrity of emails that have left diondo's area of responsibility.

(6) diondo accepts no liability for data security during any transfer via the internet, or for data security if they are within the client's area of responsibility. In connection with the electronic transfer of data, this also includes malware and the resulting potential losses for the client.

#### **V. Consequences of breaches of duty**

(1) If the number of supplied test objects differs from the quantity, form or material specified in the order, diondo is not obliged to execute the order until it receives a correct order. It shall not enter into default with its services in this respect. The client shall bear any additional costs incurred by diondo due to the delay.

(2) diondo shall not be considered in default with its services if the delayed performance is due to the following events and diondo is not responsible for these events:

(a) Unforeseen absence of the customer advisor or inspector specified for the order;

(b) Force majeure, particularly the consequences of terrorist attacks, strike, lock-out, technical failure of the test facility or

(c) Similar unforeseeable events.

(3) diondo accepts no liability for the following damages: Damages resulting from the client's failure to (adequately) comply with its obligations from Section 3 of these GTC, irrespective of whether it is at fault, in particular if the

test instructions are inadequate or incorrect, or cannot be complied with, or if the client provides incomplete or incorrect information about the test object;

(b) Damages caused by diondo due to slight negligence and not as a result of a breach of a cardinal obligation; this excludes physical injury;

(c) Unforeseeable damages whose occurrence cannot be controlled by diondo.

(4) In case of simple negligence, diondo is not liable for the damages caused by the loss of/damage to the test object. Liability in case of intent or negligence and liability for damages from death, physical injury and damage to health remain unaffected.

(a) If diondo is required to provide compensation for the entire or partial loss of the test object, diondo must reimburse the value at the place and time of transfer.

(b) If the test object is damaged, the difference between the value of the intact test object at the time and place of transfer for storage and the value that the damaged test object would have had at the time and place of transfer must be reimbursed. It is assumed that the costs to be spent to reduce and remedy the damage correspond to the difference determined under sentence 1.

(c) The value of the test object is based on the market price; otherwise based on the common value of test objects of the same type and quality.

(d) The client must verify the value of the test object as defined under V (4) (b) to (d).

(e) diondo shall not reimburse financial losses, damages that are not typically expected or damages that differ from the regulations under a) to e), unless diondo has been accused of gross negligence or intent in relation to the

damages. diondo is not liable for indirect or consequential damages, particularly not for lost profit, business interruption, loss of a business opportunity, reduction in goodwill as well as the costs associated with a product recall.

(5) In case of gross negligence, diondo's liability is limited to the foreseeable damages that typically occur, to a maximum of ten times the remuneration for the relevant individual service whose execution led to the damage. diondo's liability shall never exceed a maximum total amount of 10,000.00 euros per damage event.

(6) In case of claims for damages, the client must notify diondo of the circumstances giving rise to the damage in writing within 30 days of discovery.

(7) Claims for damages against diondo, to which the client is entitled and which are not based on death, physical injury and damage to health or gross negligence or intent by diondo shall lapse after one year.

#### **VI. Completion of the order, return, transport, storage**

(1) The order is completed if

(a) diondo refuses to continue executing the order during the offer preparation phase or

(b) the testing is complete and the client collects the test object or issues instructions for its return.

(2) The client bears the costs for returning the test object. diondo processes the return of the test object after receipt of payment and in accordance with the relevant instructions. In this case, the delivery packaging is used, provided that the packaging is suitable and intact. The shipping method is the same method used for delivery. Any material required for securing during transport and for packaging as well as instructions on handling the securing material and packaging must be supplied by the client.

(3) diondo shall store all test objects for a maximum period of 3 months, unless the nature of the samples requires a shorter storage period. If the test objects are not returned to the client during this period, upon its expiration, they shall be disposed at the client's expense, unless this involves hazardous material. diondo reserves the right to return hazardous materials to the client, at the client's expense, after conducting the commissioned investigations. The client shall take over the storage costs for samples that are to be/need to be stored for longer than 3 months. The conditions under VI (2) apply for the return shipment.

#### **VII. Invoicing, consequences of default of payment**

(1) diondo invoices its services after the completion of the order preparation and after completion of the testing.

(2) If an agreed scope of services is only partially provided, diondo reserves the right to proportionately reclaim any discounts granted.

(3) Unless otherwise agreed, the net remuneration is payable within 30 days of invoicing.

(4) After the due date, default interest of 6% above the relevant base rate p.a. is charged. We reserve the right to claim additional damages due to default.

(5) If the client defaults on the payment of an outstanding receivable, diondo is entitled to suspend its activities until the claim is settled.

(6) The parties agree that diondo has a lien on the test object until the receipt of payment.

### **VIII. Industrial property rights**

(1) diondo reserves the rights to all test procedures as well as all facilities that it develops itself or generally uses, unless they were developed exclusively for the client as part of the provision of the services based on a written agreement.

(2) diondo reserves the copyright to all services provided, to the extent possible. The client may only use the results delivered as part of the contractual relationships for the contractually agreed purpose after complete payment of the remuneration. The client is not permitted to amend or edit written investigation reports, or to only use extracts of these reports. Any disclosure of the results to authorities or other public bodies is permitted, if and to the extent that this is necessary based on the contractually agreed purpose or is required by law. Any publication or reproduction of the content (including extracts) of written investigation reports, particularly via the internet or for advertising purposes is only permitted with diondo's prior written consent.

(3) The following applies for inventions that were produced or developed by a contract partner while providing the services and for which industrial property rights were registered:

(a) Inventions by the client's employees belong to the client and inventions by diondo's employees belong to diondo.

(b) Inventions jointly produced by the client's and diondo's employees and associated industrial property rights belong to both contract partners. Each contract partner has the right to issue licences for such inventions to third parties or to transfer its rights without making payments to the other contract partner. However, the written consent of the other contract partner must be obtained before transferring licenses to third parties. The associated details shall be regulated in a separate written agreement.

(4) The use of the diondo company name, logo and/or registered trademarks for advertising purposes of any kind is prohibited, unless diondo has provided its prior written consent.

### **IX. Miscellaneous**

(1) During the period in which the services are provided and for a subsequent period of one year, the client is not permitted to directly or indirectly poach diondo employees, encourage diondo employees to join the client or attempt to do so via offers.

(2) diondo may use the collaboration with the client as a reference. The client may object to this use within four (4) weeks of the end of the contractual agreement in writing.

### **X. Place of fulfilment, forum of jurisdiction, severability clause, written form**

(1) The place of fulfilment of the order and the client's payment obligation is Hattingen.

(2) The forum of jurisdiction is Hattingen. However, diondo is also entitled to bring an action against the client at its registered office or at any other competent court at the place of fulfilment.

(3) The invalidity of one of the above provisions shall not affect the validity of the remaining provisions.