

General Standard Terms and Conditions for Services of GSI – Gesellschaft für Schweißtechnik International mbH

1. Scope of these Terms and Conditions

1.1 These General Standard Terms and Conditions (GSTC) apply to all contractual and pre-contractual relations with companies, businessmen, legal entities of public law, or public-law special funds – henceforth referred to as clients – irrespective of whether the issue at hand deals with the fulfillment of primary or secondary duties. They also apply to all future business relationships with our clients.

1.2 These GSTC are subordinate to different or additional agreements stated in our written offers and/or the written order confirmations issued by us (see also 1.3).

These GSTC do not apply to services in context with the "Training and Examination of Welders," the teaching of classes, or examination procedures. The training and examination of welders is governed by our "Special Rules for Participation."

1.3 Different, additional, or contrary terms and conditions of the client shall not apply, even if in his order or his enquiry the client refers to the exclusive application of his GSTC.

Furthermore, different, additional, or contrary GSTC of the client shall not apply, even if we are aware of these terms and conditions and return a pre-formulated confirmation letter to the client or if we carry out our services without reservations. The GSTC of our clients shall only apply if an authorized body of GSI, a holder of commercial authority, or an employee with individual power of representation explicitly acknowledges them by means of a written or verbal confirmation.

2. Formation of Contracts

2.1 A contract with us is considered to be concluded and binding as soon as a client accepts our offer by means of a verbal confirmation, by a written confirmation, by fax, or by e-mail, when the client receives our written order confirmation in response to his order, or when we start performing our services.

If we accept the offer to conclude a contract (e.g. an order by our client), our order confirmation governs the content and scope of the contract, unless explicitly agreed otherwise.

2.2 We shall only be bound by verbal subsidiary agreements, confirmations, and other verbal agreements when they have been given by an authorized body of GSI, a holder of commercial authority, or an employee with individual power of representation.

3. Execution of Orders and Client's Obligation to Cooperate

3.1 Unless explicitly agreed otherwise, we only owe those services that have been explicitly agreed upon in the contract, which we perform in line with the generally accepted rules of the field and the regulations required by law. Our experts and qualified staff shall not be bound by any third-party orders when they work on assessments or write reports.

3.2 We are not liable for any damaged property of our clients that occurs as a direct consequence of our proper performance of services. If our own equipment is damaged or lost as a direct consequence of our proper performance of services and through no fault of our own, we are entitled to claim compensation from our client for lost value pursuant to Article 670 of the German Commercial Code (BGB). Our client bears the expenses and risks for the transportation of his property to a location (and possibly returning from the location); the return transportation however, only takes place upon the explicit request of the client. With respect to the storing of the property, our liability is only limited to our normal care and diligence.

3.3 The client has to fully inform us about all facts that are relevant for the performance of our services. We are not obligated to verify the completeness and accuracy of the data, information, and other services that the client provides to us, as long as there appears no need to do so, giving due consideration to the specific individual case.

3.4 In case the performance of our services requires one or several acts of cooperation from the client, the client is obligated to provide this cooperation at his own expense if we so request; expenses will only be reimbursed if this has been previously and explicitly agreed. If the client does not fulfill his obligation to cooperate, does not do so in time, or does not do so adequately in spite of a written request referring to the regulation of this provision (Section 3.4, sentence 2 of the GSTC), we are entitled to charge him for the additional expenses that we incur as a consequence of his negligence. We further reserve the right to enforce additional legal claims.

3.5 If we perform our services outside of our premises, the client is responsible for safeguarding all measures necessary to guarantee traffic safety, unless already provided for in the nature of the specific situation or otherwise agreed upon with the client. We reserve the right to refuse to perform our services as long as the necessary measures have not been taken. The necessary measures also include the client's obligation to support GSI's representatives in the assessment and removal of potential risks that may exist or emerge during the performance of our services outside of our premises, according to the Work Protection Act and the Accident Prevention Regulations that have to be considered during the performance of our services and that are stipulated by the accident insurance provider. Any waiting time that may result from this will be counted as regular working time.

3.6 If GSI is assigned to issue a quality control report (hereafter QC-report), the client is only permitted to forward this QC-report without any abbreviation or alteration to third parties. Forwarding of an abbreviated or otherwise altered QS-report to third parties is only permitted if a written (also by fax or e-mail) approval from GSI or the assigned branch has been given beforehand. If the client forwards an abbreviated or otherwise altered QS-report without authorisation, GSI cannot be held liable for the content of this report.

3.7 If the client delivers material to GSI that is contaminated by radiation or material that otherwise poses a risk to health, the client is obliged to immediately collect this delivered material from GSI at the client's own expense. If the client does not follow GSI's instructions within 48 hours, GSI is entitled to return the material to the client or is entitled to dispose of the material otherwise at the client's expense.

3.8 If GSI receives samples from the client in connection with an order to evaluate or analyse these, GSI will dispose these samples after the contract has been completed, unless explicitly agreed otherwise.

4. Deadlines, Dates, Delay, and Impossibility of Performance

4.1 Deadlines and dates are always non-binding, unless they have been explicitly described as "binding" in our offer or order confirmation. In cases where they are non-binding, we are only in delay when the client has given us an appropriate deadline for fulfilling the services that we owe and has done so in writing and without a result. In any and all cases deadlines only become effective upon the full and complete cooperation that we require from the client as well as possibly upon the receipt of the agreed prepayment. Belated requests for changes or belated acts of cooperation from the client automatically extend the period of performance accordingly.

4.2 Delays in the performance of our services, for which we are not responsible, such as force majeure, industrial action, or similar events, which make it difficult or impossible for us to perform our services, automatically result in the extension of the deadline by the duration of the respective disruption plus an adequate start up time. If the period of performance becomes longer due to such an event, the client shall in no way be entitled to enforce any claim for compensation. The aforementioned provisions (4.2) also apply when there is a disruption at our supplier or their sub-suppliers.

4.3 If the client is late in accepting our performance of services and/or if he does not comply with any other obligations to cooperate, we reserve the right to charge him for any expenses we have incurred, including potential additional costs, after we have unsuccessfully given him an adequate deadline.

4.4 If we are in delay or unable to carry out the performance of our services due to reasons for which we bear responsibility, our liability in the case of slight negligence shall be limited to the – subject to the kind of order - predictable, typical and direct average damage.

5. Acceptance

5.1 If our service calls for an acceptance by the client, he is required to do so. Small defects that do not have a significant impact on the quality and/or usability of the service as it was laid out in the contract constitute no ground for the client to reject the service, without prejudice to his right to call for the remedy of the defects within an appropriate time frame.

5.2 If the client makes use of the service or parts of the service, the acceptance is considered to have taken place ten working days after the client has started using the service or parts thereof, unless otherwise agreed. We will specifically point this out to the client at the beginning of this ten-day period.

5.3 Intellectual services are considered accepted unless the client expresses his objection in writing and no later than 30 days after receipt thereof. We will specifically point this out to the client at the beginning of this thirty-day period. If the client does express his objection, we will review our service. If it turns out that there are no grounds for the objection, the client will bear the additional costs we have incurred.

6. Fees / Prices and Payment

6.1 The fees that are listed in our offer or in our table of fees at the time when the contract is signed are authoritative; these fees are net prices and do not yet include the value added tax (in so far as it applies). Our invoices provide for no cash discount and are free of charges; unless otherwise agreed all invoices are due 14 days after the date on which the invoice was issued. Payments through checks are only considered as made when the respective amount has been credited to our account. We reserve the right to request adequate partial payments and prepayments.

6.2 If there is no fixed price for the provision of a service, and if during the performance of a service it turns out that the costs will be 20 or more percent higher than the amount originally estimated, we will inform the client immediately. In this case the client is entitled to terminate the contract. We then charge for the services so far provided plus for the actual expenses that we have incurred and that are not included in our fee. The same applies when we terminate the contract or both parties mutually agree to terminate the contract.

6.3 The client only has the right to claim a set-off if his counterclaims have been legally upheld, if they are undisputed or if we have confirmed them in writing. The same applies to business persons who claim a right of retention.

6.4 If after entering into the contract we learn about facts that may significantly lower the credit worthiness of the client, we are entitled to perform remaining services only in exchange for early payment or other forms of security; and to terminate the contract after futile expiry of a respective deadline; number 2, sentence 3, of this section applies accordingly.

6.5 In the case of late payments the client owes us default interest in the amount of 5 percentage points above the respective key interest rate of the ECB, if he is a private individual, and 8 percentage points above the respective key interest rate if the client is a merchant. We reserve the right to claim higher damage.

6.6 Multiple clients are jointly and severally liable

7. Warranty / Guarantee

7.1 The warranty of GSI covers the application of scientific prudence and the compliance with generally accepted rules of technology, with which the services performed by GSI also have to comply at the time of acceptance. For any and all research and development projects GSI assumes no responsibility for actually attaining the desired objective stated in the contract or to do so within the agreed schedule.

7.2 In case we explicitly guaranteed quality parameters/characteristics, we guarantee compliance at the time of acceptance or the passing of the risk, provided that the client strictly complies with the guidelines we have given. The guarantee of quality parameters/characteristics does not cover whether the result of our service is useful for the client and his intended purpose. This applies in particular to the marketability and usability of products that are produced and offered on the basis of the results we have delivered.

7.3 The granting of a test certificate does not constitute a statement about the usability or quality of the tested item other than the specific technical content of the test certificate. It does especially not contain a warranty or guarantee of special characteristics of the product. In principle it only states that we did not find any inadmissible deviations from the values provided by the respective standard when we applied the test specification or standard as agreed in the contract.

7.4 Our warranty does not cover those defects that are caused by actions of the client or that were known to the client at the time of acceptance and that are only claimed afterwards.

7.5 In case we have provided a flawed service the client is obligated to give us the opportunity to belatedly comply with our obligations within an adequate period of time. If the belated performance is unsuccessful, the client is only able to require a reduction in price (impairment) or the rescission of the contract (termination) and claim for damages instead of the service within the framework of the liability clause (Article 8 of these GSTC).
In the case of a minor breach of contract, especially in cases of only small defects, however, the client is not allowed to rescind the contract.

7.6 As long as the defects are not the result of negligence or willful misconduct in complying with our duties, the client is not allowed to rescind the contract.

7.7 The costs that are incurred due to belated compliance shall be borne by GSI. Additional costs, which are incurred due to the transfer of the item or product on which we have performed our services to another location than the one that was agreed on in the contract (place of performance), shall be borne by the client.

7.8 The client's rights with respect to defects that do not relate to a building or similar works, providing planning and monitoring services for buildings, are subject to a limitation period of 1 year after the work has been accepted.
This short period of limitation does not apply in cases where we are grossly negligent or in cases where we have caused bodily or health-related harm or the loss of life. The liability according to the Product Liability Act also remains unaffected.

7.9 In cases of fraudulent concealment of a defect or the assumption of a guarantee for the condition, further claims remain unaffected.

7.10 For the realization of estimates of forecasts in cases we provide a warranty or accept damages (subject to Section 8 of these GSTC) only where this has been explicitly agreed.

8. Liability / Damages

8.1 GSI's liability for delays or impossibilities are not covered by this section (Section 8). The provisions stipulated in Section 4.4 of these GSTC apply to this type of liability.

8.2 In principle, claims for damages from GSI are excluded. This does not apply in cases of gross negligence or willful misconduct and/or in cases where we are in breach of fundamental contractual obligations. Similarly, the exclusion or limitation of our liability does not apply in cases where we have injured the life, body, or health of persons or in cases where we are mandatorily liable according to the Product Liability Act.

8.3 If GSI is liable for damages due to breaches of fundamental contractual obligations as a result of simple negligence, our liability is limited to the amount of our liability insurance of EUR 10,000,000.00 (in words: ten million). In rare cases this amount insured does not cover the typically expected damage, the amount of our liability is in any event limited to the typically expected damage.

8.4 We do not assume any liability for damages due to infringement of third parties' rights, unless there is willful and grossly negligent violation of the duties by GSI and/or its supporting agents. If the result cannot be used at all or only to a limited extent due to interfering industrial property rights, we will, once we have learned about this, make adequate suggestions to the client for clarifying the legal situation and for further joint action against a third party with the objective of removing the interference.

8.5 In so far as the liability is excluded or limited according to Section 8, the same also applies to the personal liability of the bodies of GSI, its staff, workers, employees, representatives, contractors and subcontractors.

9. Industrial Property Right, Copyright, Right of Utilization

9.1 If results that are worthy of protection emerge during our provision of services that are subject of the contract, we shall be the owners of these rights. We shall bear the costs that are incurred during the copyright protection process.

9.2 If the client requires licensed copyrights or know-how from us that is worthy of protection in order to utilize our services, this know-how may only be utilized commercially based on a separate patent/know-how license agreement made with us.

9.3 We shall receive a free, non-exclusive right of utilization of all copyrights and/or industrial property rights for which the client is a joint author and that emerge during our provision of contractual services. We are entirely free to use these rights when we work on projects for other parties.

9.4 Passing on and utilizing our services beyond what is stipulated in the contract, in particular the publication of our services, shall only be permissible with our prior written consent. The client bears the sole responsibility for complying with the legal requirements governing the exploitation of our services (e.g. competition law), particularly with respect to the content of advertising campaigns; the client shall indemnify us against any and all related third-party claims.

10. Secrecy

The parties commit themselves to keep secret from any third party all verbal and written information and statements that are part of our contract, unless such information has already become public in some other way or unless the other party has waived this secrecy requirement in writing. Persons, institutions and the like shall not be considered unauthorized third parties if, for example, the passing on of information to such a group helps GSI to fulfil the objectives of the contract.

11. Termination

11.1 For good cause we have the right to terminate the contractual relationship, without notice.

11.2 Sufficient grounds for the termination for good cause are, among others:
- Defaults or delays with retainer payments or default on previously agreed payment deadlines by the client.
- Delay in acceptance by the client.

11.3 After the termination has become effective we hand over to the client the results we have achieved up to the termination, within a certain period of time to be agreed upon in such a case. The client is obligated to compensate us for our partial services and our expenses that we have incurred up to the termination. Furthermore, Article 649 of the German Civil Code applies, unless we are responsible for the termination.

11.4 In such a case each party shall immediately return to the other party the items and rights that had been provided by that party for the performance of the contract. This also includes the repayment of amounts paid to us in advance, in so far as they exceed our claims for compensation having incurred until then.

11.5 Further claims of the client do not exist.

12. Place of Performance and Prohibition of Assignment

12.1 The place of performance for all services shall be Düsseldorf or the location of the executing branch, subject to GSI's discretion.

12.2 Under no circumstances may the client assign to another party the claims to which the client is entitled based on our business relationship.

13. Place of Jurisdiction and Applicable Law

13.1 The place of jurisdiction for all claims that arising from or in connection with the business relationship vis-à-vis merchants, legal entities of public law, or public-law special funds shall be Düsseldorf or the location of the executing branch, subject to GSI's discretion. This also applies to claims in relation to checks, tort law, and the issuance of a third-party notice. However, we shall be also entitled to file suit at the client's general place of jurisdiction.

13.2 In cases of the provision of transnational service Düsseldorf shall be the only place of jurisdiction for all legal disputes that arise from the contractual relationship. However, we reserve the right to file suit at the client's general place of jurisdiction or to address any other court that has jurisdiction.

13.3 The law of the Federal Republic of Germany shall explicitly govern all business and the entire legal relations between the client and us.

14. Final Provision.

14.1 If any of the provisions of this agreement is invalid or becomes invalid at some point in the future that shall in no way have an effect on any of the other provisions. The invalid provision will be replaced by a new and valid provision that reflects the economic intent of the originally invalid provision as closely as possible and that adequately safeguards the interests of both parties.

14.2 All previous General Standard Terms and Conditions for services by GSI are replaced by these GSTC. These GSTC apply to all GSI services that follow the date on which these GSTC become effective.