

Applus RTD Deutschland Inspektionsgesellschaft mbH

1. SCOPE

- 1.1 Applus RTD Deutschland Inspektionsgesellschaft mbH (hereinafter referred to as "Applus RTD") shall become active on behalf of its clients solely on the basis of the present General Terms and Conditions (hereinafter referred to as "terms"). They form the basis of any tender and any order confirmation by Applus RTD. Upon placement of the order, they become part of the contract in full. They shall also apply to all deliveries and performances made and rendered by Applus RTD at the stage prior to the conclusion of a potential contract and to all future deliveries and performances by Applus RTD, even if their inclusion is not expressly agreed again.
- 1.2 These Applus RTD terms are exclusive. APPLUS RTD shall not acknowledge any conflicting and deviating conditions on the part of the client, unless Applus RTD has expressly agreed to their applicability in writing. These terms shall also apply if Applus RTD renders the technical service or delivery to the client without reservation but fully aware of conflicting or deviating conditions.
- 1.3 Collateral agreements, promises and other declarations made by Applus RTD staff or authorised agents appointed by Applus RTD shall only be binding if expressly confirmed by Applus RTD in writing. This shall also apply to any amendment to this clause.

2. TENDERS

- 2.1 All tenders by Applus RTD are subject to change. All documents that are part of a tender like illustrations, drawings, other technical presentations and measurements shall only be approximate, unless expressly designated or confirmed as binding in writing.
- 2.2 Applus RTD reserves the right to the ownership and all copyrights to the tender documents. The client must not make them accessible to third parties, unless Applus RTD has given its prior written consent.

3. RENDERING THE SERVICE

- 3.1 Unless other written agreements have been entered into, the services shall be rendered in accordance with the technical and organisational conditions obtaining at the place determined by the client and in accordance with the generally acknowledged rules of technology in compliance with existing safety regulations.
- 3.2 Unless expressly agreed in writing Applus RTD shall not be liable for the correctness of the safety programmes the tests and/or inspections are based upon or of any safety and test and/or inspection specification.
- 3.3 The scope of the service shall be determined in writing when the order is placed. If during a proper execution of the order it turns out that the order volume has to be expanded or amended, this requires a prior written supplementary agreement.
- 3.4 The objects to be tested, and being testable, shall not be processed or modified by Applus RTD. Unless in individual cases expressly agreed otherwise, any necessary processing or modification shall be done by the client at its expense and risk.
- 3.5 The control area shall be set up by Applus RTD, if need be in conjunction with the client. The coordination of all safety and health matters in consideration of safety-relevant specifications, any blocking and marking of public places pursuant to the Road Traffic laws in particular, shall be incumbent upon the client.
- 3.6 Applus RTD shall be entitled to assign the execution of the order or parts of the order to sub-contractors or other vicarious agents, unless this has been expressly excluded in a prior written agreement.
- 3.7 Statements on the test and/or inspection results shall only be binding if included in Applus RTD's written test and/or inspection report. The client shall be solely responsible for any measure it takes based upon the test and/or inspection results.
- 3.8 As far as Applus RTD specifies actions and/or requirements for occupational health and safety (e.g. provision of manway sentinel, gas analysis, measuring devices etc.), these requirements must be fulfilled. It is not allowed to impose other measures and/or specifications to the NDT-operators of Applus RTD on site. Changes in the measures of Applus RTD and/or specification of work safety are only effective if they have been agreed in written form by duly authorized persons before the work starts. Applus RTD's operators on site are not authorized to represent the company in this case.

4. THE CLIENT'S OBLIGATION TO CO-OPERATE

- 4.1 The client shall provide Applus RTD with free and safe access to the test and/or inspection objects and guarantee said access for the duration of the test and/or inspection. The client shall procure for Applus RTD any necessary access or work permit in good time prior to the start of the test and/or inspection.
- 4.2 If at the place where the service is rendered special official safety or other regulations apply that are relevant to the test and/or inspection being conducted there, the client shall notify Applus RTD thereof in writing and in good time prior to the start of the tests and/or inspections. The client shall also guarantee that the specific locality at which Applus RTD conducts the test and/or inspection meets any special safety regulation.
- 4.3 The client has an obligation to co-operate if such co-operation is necessary for a proper rendering of the service by Applus RTD. It shall make available to Applus RTD electricity, water, scaffolds, ladders, stepladders, cranes, other hoists etc. at its expense and see to a sufficient lighting. It shall be solely responsible for fulfilling the obligations arising from the accident prevention regulations pertaining to scaffolds (VGB 36a) and utility trenches (VGB 49) (VGB = accident prevention & insurance association).
- 4.4 The client shall make accessible lockable rooms for a safe storage of tools and also working and common rooms including acceptable sanitary installations for the Applus RTD testing staff. It shall also provide free special protective clothing, unless it is the usual clothing in Applus RTD's line of business.
- 4.5 Applus RTD's work and working hours shall be taken down in regular work reports or time sheets to be certified by the client or its agent.
- 4.6 If within a reasonable period of time the client does not fulfil its obligation to co-operate even if it has been thus reminded by Applus RTD, Applus RTD shall be entitled to suspend its work, cancel the contract and demand an adequate compensation.
- 4.7 If any material testing has to be done in Applus RTD's workshops, the objects have to be delivered to Applus RTD in a free and risk-free manner and to be collected from there, after said testing.

Shipping the test and/or inspection objects back to the client after said testing shall be done at the latter's expense and risk. Any transport insurance policy and policies covering other risks shall require the client's express request and be at its expense. The risk shall be transferred to the client when the objects are handed over or shipped to it, but no later than one week after Applus RTD has notified the client of the completion or readiness for shipment.

- 4.8 If after the completion – if need be also prior to the expiry of the agreed term of execution – Applus RTD requests an acceptance procedure for its work or completed parts thereof, the client shall have to comply within 12 working days or another term if thus agreed. If no acceptance procedure has been requested, the work shall be considered accepted after the expiry of 12 working days upon the written communication of the completion. If the client has used the work or a part thereof, it shall be considered accepted after 6 working days upon the start of said use.
- 4.9 The client shall be responsible for securing sensors and semi-conductors (EDP or electronic control systems) and other objects and installations in the test and/or inspection objects' environment that react to ionising radiation. This is not part of Applus RTD's obligations arising from the X-Ray and Radiation Protection Ordinance.

5. DEADLINES, DEFAULT, IMPOSSIBILITY

- 5.1 Any execution deadlines shall only be approximate, unless Applus RTD has expressly designated the test and/or inspection period as binding in writing. Its start, duration and end, always subject to unforeseeable events Applus RTD has no influence upon, may well be postponed or changed.
- 5.2 In case of force majeure, fire, flooding, natural disasters, acts of war or terror, blocked etc. transport routes and other circumstances upon which Applus RTD has no influence and business disruptions and problems in the procurement of materials and equipment it is not responsible for, the latter shall be entitled to postpone the test and/or inspection by the duration of the disruption and an appropriate period of relief. If an interruption lasts more than a period of 3 months, after said period either party can cancel the contract in writing. The settlement shall be based upon 5.5. herein. This shall not give rise to any claim for damages on the part of the client.
- 5.3 Unless the provisions below say otherwise, in case of a delayed performance, Applus RTD shall be liable as set forth by the pertinent legal regulations. Applus RTD shall only be considered to be in default upon the expiry of a reasonable deadline granted in writing after the performance was due. For all cases of a delayed delivery or performance, Applus RTD's liability to pay damages in addition to or in lieu of the performance and a compensation for wasted expenditures shall be limited to 10 % (ten per cent) of the value of that part of the performance not called off because of the delay. This is without prejudice to 8.1 and 8.2 herein. Any further claims by the client – also after the expiry of any performance deadline Applus RTD may have been granted – are hereby excluded. The limitation above shall not apply in cases of liability for injuries to life, limb and health. This paragraph's provisions do not change the burden of proof in a fashion detrimental to the client.
- 5.4 Only after a period of grace of at least 14 days after the performance was due has gone by without such performance shall the client be entitled to withdraw from the contract.
- 5.5 Costs incurred by Applus RTD through delays for which the client is responsible shall be borne by the client. If the execution is interrupted for what is likely to be a prolonged period of time without this interruption making the performance permanently impossible, the rendered work shall be settled in accordance with the contract prices and the costs paid that Applus RTD has already incurred and are included in the contract prices of the non-rendered part of the work.

6. WARRANTY, LIABILITY FOR DEFECTS, NOTIFICATION OF DEFECTS

- 6.1 The client has to file a written notice of defect without any delay, but no later than within an exclusion period of 6 working days upon its receipt of the delivery or performance, the test and/or inspection report or acceptance certificate in particular. After the expiry of said notification period the performance shall be considered approved, unless the defect is latent. Otherwise, §§ 377 ff. HGB (Commercial Code) shall apply.
- 6.2 Applus RTD has the unrestricted right to see and inspect the defect. Within such framework and upon request, Applus RTD shall make available any operating report, records etc. and give pertinent information.
- 6.3 In case of a defect, Applus RTD hereby undertakes to remedy this within a reasonable period of time of at least 14 days either by rework or a replacement delivery or performance (supplementary performance), as it sees fit. If it is unreasonable or impossible for Applus RTD to remedy the defect or would such remedy require a disproportionately large input, Applus RTD shall have the right to refuse.
- 6.4 If within a period of at least 14 working days no supplementary performance is rendered or fails or is unreasonable, the client shall have the right to withdraw from the contract or reduce the price, as it sees fit and if lawful. Only a second failed attempt shall constitute a failed supplementary performance. In case of minor defects or breaches of duty, the client shall have no such right of withdrawal.
- 6.5 Applus RTD shall not be liable for any damage sustained through an inappropriate or improper use of the deliveries or performances by the client. Any liability for defects is excluded if and to the extent that a defect is based upon circumstances caused by the client or a third party.
- 6.6 Warranty claims shall become time-barred after one year upon the receipt of the delivery or performance. In cases to which 8.2 herein pertains, the relevant statute of limitations shall apply.

7. NO ACCEPTANCE OF GUARANTEE

Any data and information given by Applus RTD in brochures, advertising material, ads, documentations, tenders and similar writings are only descriptions and do not guarantee its deliveries' and performances' condition. Any guarantee shall only become effective if individually and expressly agreed in writing or expressly confirmed by Applus RTD in writing. This is without prejudice to 3.1 herein.

8. LIMITATION OF LIABILITY

- 8.1 In accordance with and subject to the following provisions, Applus RTD shall be liable only for wilful conduct and gross negligence. Applus RTD's liability to pay damages in addition to or in lieu of the performance and a compensation for wasted expenditures, irrespective of the legal basis (e.g. non-performance, misperformance, impossibility, defect of title, breach of duties prior to or during the conclusion of the contract, torts etc.), shall be limited as follows:

Applus RTD Deutschland Inspektionsgesellschaft mbH

- (i) In any case of damage, Applus RTD shall only be liable for the damage at the time of concluding the contract typically to be expected for a culpable breach of duties arising from the contractual relationship, but for no more than the agreed order value of the pertinent delivery or performance.
 - (ii) Applus RTD shall not be liable for a slightly negligent breach of minor duties arising from the contractual relationship.
 - (iii) If an insurance policy taken out by the client covers the damage, Applus RTD shall only be liable for the effects detrimental to the client when claiming for benefits (e.g. excess).
- Any liability for damages to the client's other legally protected interests (e.g. objects/goods) caused by the delivery item or performance item is excluded.
- 8.2 Applus RTD shall only be liable for direct damages to the delivery item or performance item, but not for random, indirect or secondary damages like downtimes, lost profits or other purely financial losses, unless 8.3 applies.
 - 8.3 The liability limitations set forth in 8.1 and 8.2 herein shall not apply in cases of mandatory legal liability (pursuant to the Product Liability Act in particular) or if Applus RTD has fraudulently left a defect undisclosed or in cases of culpably caused injuries to life, limb and health.
 - 8.4 For all damages sustained by and in the context of a nuclear incident in terms of Art 1 (a) (i) of the Convention on third-party liability in the field of nuclear energy (Paris Convention), any liability by Applus RTD, irrespective of the legal basis, is excluded. In cases of claims for damages in terms of § 13 Para 5 Atomic Energy Act arising in the context of activities outside nuclear plants and approved by Applus RTD from dealing and transporting radioactive materials covered by the permit, Applus RTD shall be liable to the amount of the coverage of the third-party liability insurance pursuant to the nuclear licensing financial security ordinance (atomrechtliche Deckungsvorsorgeverordnung).
 - 8.5 Applus RTD shall never be liable for damages sustained by third parties.
 - 8.6 If Applus RTD's liability is excluded or limited, this shall also apply to any personal liability by its legal representatives, staff and other vicarious agents. For simple vicarious agents who are neither legal representatives nor senior staff (leitende Angestellte) of Applus RTD, any liability even for gross negligence shall be excluded. If a simple vicarious agent in terms of the above is in breach of a cardinal contractual duty, such liability limitation shall not apply.
- 9. RESERVATION OF OWNERSHIP**
- 9.1 Until the client has paid Applus RTD in full, all the documentations to be prepared by Applus RTD and taking the form of films, test and/or inspection and evaluation records and other documents in physical or electronic form shall remain Applus RTD's property. These documentations are copyrighted in terms of the Copyright Act (UrhG) and are thus protected by § 2 Para 1 No. 7 UrhG. Applus RTD assigns the clients the rights to an exclusive and sole use and utilisation, subject to the suspensive condition of a full payment of Applus RTD by the client.
 - 9.2 In case of the client's breach of duty, default of payment in particular, Applus RTD shall be entitled at any time and without setting a deadline to collect the test and/or inspection documents, documentations and delivery items or demand their submission. The client shall be obligated to submit them forthwith. Unless expressly declared thus in writing, Applus RTD's assertion of such rights shall not be considered a withdrawal from contract.
 - 9.3 If at the client's site delivery items covered by the reservation of ownership are inseparably mixed with other objects not owned by Applus RTD, Applus RTD shall become co-owner of the new item on a delivery items' value/inseparably mixed objects pro-rata basis. The client shall store the new item co-owned by Applus RTD for free.
 - 9.4 The client shall be entitled to assign the delivered items, particularly the test and/or inspection documents, to third parties in its ordinary course of business. However, the client shall as of now assign to Applus RTD all receivables to the amount of the compensation (incl. VAT) the client accrues from the assignment, irrespective of if the delivered items have been assigned prior or after processing. After its assignment, the client is still authorised to collect the receivable. This is without prejudice to Applus RTD's right to collect the receivable, but Applus RTD undertakes not to do so as long as the client is meeting its payment obligations and is not in default of payment. If the client is in default of payment vis-a-vis Applus RTD, the latter can demand that the client discloses the assigned receivable and its debtor, provides all the information necessary for a collection, submits all the pertinent documents and notifies the debtor (third party) of the assignment.
 - 9.5 The client must not pledge the delivery items nor assign them as security or otherwise dispose of them. Applus RTD shall have to be notified of any seizures, attachments or other disposal by third parties forthwith. It shall have to be furnished with all information and documents it may need to protect its interest immediately. Executory officials or third parties have to be informed of Applus RTD's ownership.
 - 9.6 If the realisable value of all security interests Applus RTD is entitled to exceeds the amount of all the secured claims, upon the client's request Applus RTD shall release a corresponding part of the security interests. It shall be at Applus RTD's discretion which security interests to release.
- 10. TERMS OF PAYMENT AND PRICES**
- 10.1 Unless another basis has been expressly agreed in writing, the prices given in the applicable tenders and price lists shall apply. Applus RTD shall be free reasonably to change the product and price list at any time, effective for the future.
 - 10.2 For orders with a performance period of more than one month, Applus RTD shall be entitled to invoice the deliveries and performances already having been made and rendered.
 - 10.3 Unless agreed otherwise, all payments shall be due upon receipt of the invoice or other requests to pay. All payments have to have come in no later than on the date of payment or within the agreed term of payment. The term of payment shall start with the date of the respective invoice or request to pay. If no express date of payment is given and no express term of payment determined, the invoice is payable strictly net within 14 days upon invoicing. If the payment has not come in within the term of payment or 14 days after the date of the invoice or request to pay, the client shall be considered in default, with no reminder being necessary.
 - 10.4 All prices are net prices, excluding VAT and any other travel expenses and shipping costs. The sales tax (VAT) shall be due to its amount applicable until the completion of the order on top of the prices and separately shown on the invoice.
 - 10.5 Applus RTD shall have to be notified of any objections to invoices in writing and within the exclusion period of 14 days after invoicing.
- 10.6 If the client does not meet conditions of payment, Applus RTD is entitled to demand immediate payment of all its previous receivables and make all outstanding deliveries and performances conditional upon a payment of the arrears and an advance payment of the outstanding deliveries and performances.
 - 10.7 If Applus RTD's completion of its performance is rendered impossible by a circumstance it is not responsible for, it can demand from the client such a part of the agreed payment that is commensurate with the work rendered and also a compensation for the expenses not included in the payment.
 - 10.8 The client shall only be entitled to assert rights of retention and to set off counter-claims if these rights or claims have been established as final and absolute or acknowledged or not contested by Applus RTD.
 - 10.9 The interest on arrears shall be based upon §§ 288, 247 Para 1 Sentence 1 BGB (Civil Code). This is without prejudice to an assertion of a higher damage caused by default.
- 11. NON-DISCLOSURE, COPYRIGHT, PRIVACY**
- 11.1 In the context of the execution of the order either contracting party may have access to the opposite party's information including know-how and process technologies ("confidential information"). The contracting parties, their staff and other vicarious agents have to treat this information with the utmost discretion. A contracting party's information that (i) is or becomes accessible to the public without there having been an act or omission of the opposite contracting party or (ii) having been legally owned by the opposite contracting party before it was disclosed and that the opposite contracting party has not received, neither directly nor indirectly, from the disclosing contracting party or that (iii) has been independently developed by the opposite contracting party shall not be considered confidential information in terms of this provision.
 - 11.2 The contracting parties may only pass on confidential information to third parties after the opposite contracting party's written consent. Applus RTD shall, however, be entitled to use the client's name for advertising or when information is given to investors and analysts.
 - 11.3 During the execution of the order and for another two years after its completion, confidential information has to be treated with utmost discretion and never be disclosed. There shall be no such confidentiality, however, if there is a legal disclosure obligation or both contracting parties agree on an exception.
 - 11.4 Applus RTD shall be entitled to file away photocopies of documents the client has made available for inspection within the context of the execution of the order.
 - 11.5 Applus RTD expressly reserves the copyrights to the expert reports, test and/or inspection results, calculations, test and/or inspection specifications etc. it has prepared.
 - 11.6 Applus RTD will process personal data exclusively for its own purposes; for this purpose, Applus RTD uses electronic data processing systems. In order to comply with the protection of system data in accordance with § 6 BDSG [Federal Data Protection Act], technical and organizational measures have been taken to ensure the security of the data stocks and the data processing sequences. Applus RTD employees entrusted with data processing are bound to comply with the BDSG and are obliged to strictly adhere to all data protection provisions.
- 12. MISCELLANEOUS**
- 12.1 If the client is a merchant (Kaufmann), Bochum, Germany, shall be the sole place of jurisdiction, also for cheque and bill of exchange proceedings. The same place of jurisdiction applies if at the time judicial proceedings are initiated the client has no general place of jurisdiction in the Federal Republic of Germany. However, Applus RTD shall be entitled to go to any competent court.
 - 12.2 The place of fulfilment for all commitments arising from this contract shall be Bochum, Germany.
 - 12.3 The privacy of contract shall be exclusively governed by the laws of the Federal Republic of Germany.
 - 12.4 Supplements, amendments or modifications to contracts and any collateral agreements or promises have to be in writing. This shall also apply to any waiver of this written-form requirement.
 - 12.5 If a provision or a part of the agreements entered into between the client and Applus RTD is ineffective or unenforceable, this is without prejudice to the full validity of the remainder of the provisions of the agreement. The contracting parties hereby undertake to replace such an ineffective or unenforceable provision by an effective or enforceable provision that most approximates the ineffective or unenforceable provision's business purpose. The same shall apply if the agreement shows a gap.
- Bochum, Germany, February 2015**