

# General Terms and Conditions for Services and Deliveries

## Applus RTD Deutschland Inspektionsgesellschaft mbH

### 1. SCOPE

1.1 Applus RTD Deutschland Inspektionsgesellschaft mbH (hereinafter referred to as "Applus RTD") will engage in business for its clients exclusively on the basis of these General Terms and Conditions for Services and Deliveries (hereinafter referred to as "terms"). They shall be the basis of each offer, each acceptance and each order confirmation by Applus RTD. On order placement, these terms with their complete content will become a component part of the contract. Moreover, they shall apply to both all deliveries and services rendered by Applus RTD to the client during the phase before a potential contract is concluded, and to all future deliveries and services to be rendered by Applus RTD, even if their inclusion is not expressly agreed on once again.

1.2 These terms set out by Applus RTD shall apply exclusively. Applus RTD does not recognize any conflicting or deviating terms set out by the client, unless Applus RTD has expressly consented in writing to their validity. These terms shall apply also in the event that Applus RTD, upon knowledge of conflicting or deviating terms set out by the client, performs the technical service for or delivery to the client without reservation. These terms shall also apply to all future business with the client.

1.3 Supplementary agreements, commitments and other statements by Applus RTD employees or other authorized persons named by Applus RTD shall only be binding in the event that they have been expressly confirmed by Applus RTD in writing. This shall also apply to amendments of this provision. Any deviations from or exceptions to these terms or general terms and conditions of the client shall be binding on Applus RTD only in the event that Applus RTD has expressly confirmed them in writing; should this be the case, such deviations and exceptions shall only apply to the specifically confirmed individual order.

### 2. OFFERS

2.1 All offers made by Applus RTD shall be non-binding to their full extent. Documents belonging to an offer, e.g., diagrams, drawings, other technical descriptions and dimensions are only approximate unless they have been expressly described or confirmed to be binding.

2.2 Applus RTD reserves title and all copyrights to the offer documents. The client may only disclose these documents to third parties with prior express consent by Applus RTD.

### 3. PERFORMANCE OF THE SERVICE

3.1 The services shall be performed in accordance with the technical and organizational conditions and the specified requirements of the client at the place determined by the client. Orders accepted by Applus RTD shall be carried out in accordance with generally accepted rules of engineering in adherence to the existing safety regulations – unless agreements to the contrary have been made in writing.

3.2 Applus RTD does not accept any responsibility for the correctness of the safety programmes or of safety and test regulations on which the tests are based, unless expressly otherwise agreed in writing.

3.3 The scope of Applus RTD's work will be laid down in writing when the order is placed. If, during due performance of the order, changes to and extensions of the determined scope of the order become necessary, such changes and extensions are subject to a prior additional agreement in writing.

3.4 As a matter of principle, the objects to be tested, made fit for testing, shall be neither worked nor changed by Applus RTD. Unless otherwise agreed in a particular case, possibly necessary working or changes shall be carried out by the client for its own account and risk. Applus RTD shall not assume any liability for damage to or deterioration of the test object.

3.5 The controlled area will be established by Applus RTD, if appropriate, together with the client. Any closing off and signing of public traffic areas in accordance with the road traffic law is not within the scope of duties of Applus RTD.

3.6 Applus RTD shall be entitled to pass on performance of the order or of individual parts of the order to subcontractors or other vicarious agents, unless this has been expressly excluded by prior written agreement with the client.

3.7 Statements on the test result shall only be binding to the extent that they are contained in the written test report drawn up by Applus RTD. The client shall be solely responsible for any measures it may take on the basis of the test results.

### 4. DUTY OF THE CLIENT TO PARTICIPATE

4.1 The client shall facilitate and ensure free and safe access to the test objects for Applus RTD for the duration of the test. The client shall obtain for Applus RTD in good time before the test starts any required access or work permits.

4.2 In the event that special official safety regulations or other special provisions apply to the place of performance, which regulations are of importance for performance of the tests at the location, the client shall inform Applus RTD of this situation in good time before the test start. Furthermore, the client shall be responsible for adherence of the specific local area in which Applus RTD is to perform the test to the general and, if applicable, any specific safety regulations.

4.3 The client shall be obliged to participate to the extent that this is necessary for a due rendering of the services by Applus RTD. The client shall at its expense make available to Applus RTD to the extent required electricity, water, scaffolds, ladders, steps, crane facilities, other lifting devices or similar, and shall ensure that there is sufficient illumination at the place of performance. Unless the parties agree otherwise in a particular case, the client shall be solely responsible for adherence to the obligations arising from the regulations for the prevention of accidents with regard to scaffolds (VGB 36a) and to pipe ditches (VGB 49).

4.4 The client shall make available free of charge suitable lockable rooms for the safe storing of tools and suitable work and recreations rooms for the test personnel of Applus RTD, including acceptable sanitary installations, as well as special protective clothing and devices to the extent that they are not customary in the trade of Applus RTD.

4.5 Work reports or time report sheets shall be drawn up on a regular basis with regard to Applus RTD's work performance and times, which reports have to be certified by the client or its authorized representative.

4.6 Should the client fail to perform its duty to participate even after having received an express written reminder by Applus RTD setting a reasonable period of grace, Applus RTD shall be entitled to stop working, terminate the contract and demand adequate compensation.

4.7 In the event that material tests are to take place in the workshops of Applus RTD, the test objects have to be delivered to and picked up free of charge from Applus RTD after the test. Consignments back to the client after the test has been completed shall be made for the client's account and risk. Transport insurance against damage to goods in transit and other risks shall only be taken out on the client's express wish and at its expense. The risk will pass to the client on delivery or dispatch to it, latest, however, one week after Applus RTD has advised the client of completion or readiness for dispatch.

4.8 Should an acceptance of the performance of Applus RTD have been agreed on or should such acceptance be required for any other reasons or demanded by Applus RTD, the client shall be

obliged to accept the services after completion within a reasonable period set by Applus RTD. Otherwise, the performance shall be held accepted on expiry of said period.

4.9 Safeguarding of sensors and semi-conductor devices (EDP or control electronics), as well as of other items and facilities in the vicinity of the test objects, which react to ionising radiation, shall be within the responsibility of the client and does not belong to the duties arising for Applus RTD from the X-ray Ordinance (RoV) and Radiation Protection Ordinance (StrlSchV).

### 5. TIME LIMITS, DEFAULT IN PERFORMANCE, IMPOSSIBILITY

5.1 Details with regard to the duration and completion of the test performance are determined regularly based on a normal work sequence, and therefore apply only approximately, unless the test duration has been expressly described by Applus RTD in writing as binding. Start, duration and completion may be postponed due to unforeseeable events and circumstances beyond the control of Applus RTD.

5.2 In the event of Force Majeure, fire, flood, natural disasters, armed or terrorist violence, labour dispute action, authority interventions, obstructions on transport routes or other circumstances beyond the control of Applus RTD, such as, e.g., operational breakdowns and difficulties in obtaining material and equipment for which Applus RTD cannot be held responsible, Applus RTD shall be entitled to postpone the date for completing the tests by the duration of the impediment and a reasonable restart phase, or to withdraw from the contract in whole or in part. A withdrawal declared in this respect shall not entitle the client to claim damages.

5.3 In the event of a delay in performance, Applus RTD shall be liable in accordance with the statutory provisions, unless otherwise provided for in the regulations below. Applus RTD shall only be in default upon a written reminder by the client after occurrence of the due date. Should Applus RTD be in default, the client shall be entitled to set a reasonable period of grace for Applus RTD. In all cases of a delay in the performance, Applus RTD's liability and a claim of the client for damages in addition to and instead of the performance and for reimbursement of expenses incurred in vain shall be restricted to 10 % (in words: ten per cent) of the value of such part of the delivery which is not called for because of the delay in performance; the provision under item 8.4 shall remain unaffected. Any further claims of the client shall be excluded – also upon expiry of a time limit which may have been set by the client for performance by Applus RTD. The above limitation shall not apply in the event of liability due to injury to life, limb or health. The above regulations of this paragraph shall not shift the burden of proof to the prejudice of the client.

5.4 Should the client during Applus RTD's delay in performance set Applus RTD a reasonable extension of at least 14 days, and should Applus RTD let this term expire for reasons for which Applus RTD can be held responsible, or should it be impossible for Applus RTD to perform for reasons for which Applus RTD can be held responsible, the client shall be entitled to withdraw from the contract.

5.5 Costs incurred by Applus RTD through delays for which the client can be held responsible shall be borne by the client.

### 6. WARRANTY, LIABILITY FOR DEFECTS AND NOTICE OF DEFECTS

6.1 Applus RTD has to be notified by the client in writing immediately, latest within a cut-off period of 14 days after receipt of the delivery or service, especially of the test report, the acceptance certificate or similar, of any recognizable defects and lack of characteristics which may have been warranted. After expiry of the time limit for making a claim, recognizable defects and the lack of warranted characteristics cannot be asserted with legal effect.

6.2 In the event of each notification of defect, Applus RTD shall have an unlimited right to view and check the matter of complaint. In the context of such check, at the request of Applus RTD, any operational reports, records etc. have to be made available and relevant information given to Applus RTD.

6.3 In the event of a defect, Applus RTD shall be obliged within a reasonable period, at its own discretion, to remedy such defect by either eliminating the defect free of charge or, by way of replacement, by delivering or performing a new item free of defects (subsequent performance). Should the subsequent performance only be possible by incurring disproportionately high costs, Applus RTD shall be entitled to refuse such performance.

6.4 In the event that, within a period of grace of at least 14 days set by the client, no subsequent performance happens or such performance fails or the client cannot reasonably be expected to agree to such subsequent performance, provided that the statutory requirements are fulfilled, the client, at its own discretion, shall be entitled to withdraw from the respective contract, reduce the price or, provided the further statutory requirements as defined by § 281 BGB (German Civil Code) have been met, may claim damages or, as the case may be, claim reimbursement of expenses incurred in vain in accordance with item 8 below. In the event that the client wishes to claim damages instead of performance or to eliminate the defect on its own, a failure of the repair shall be held given only after a second attempt has failed. In the event of minor defects or breaches of duty, the client shall not be entitled to withdraw from the contract.

6.5 Applus RTD shall not assume any warranty for damage occurring as a result of unsuitable or improper use by the client of the deliveries and services of Applus RTD, unless Applus RTD can be held responsible for the damage. Liability for defects shall be excluded, if and to the extent that a defect results from circumstances for which the client or a third party can be held responsible.

6.6 Claims against Applus RTD based on defects shall become statute barred one year after receipt of the respective delivery or service. In the cases under item 8.2 below, the statutory limitation period shall apply.

### 7. NO WARRANTING

Information which may be given by Applus RTD in brochures, advertising, advertisements, documentations, offers and similar papers, constitute descriptions only and do not contain any warranty for the condition of its deliveries and services. In order to be effective, each warranty in every individual case requires an express written agreement or an express written confirmation on the part of Applus RTD. Item 3.1 shall remain unaffected.

### 8. LIMITATION ON LIABILITY

8.1 In accordance with and subject to the following provisions, Applus RTD shall on principle be liable only in the event of intent or gross negligence. Any claim for damage instead of or in addition to the performance and for reimbursement of expenses incurred in vain, regardless on which legal ground (e.g., in the event of failure to perform, defective performance, impossibility, defects in title, infringement of duties before or on conclusion of the contract, tortious act, etc.) shall be limited as follows:

- (i) In each case of damage, Applus RTD's shall be liable, limited to the damage foreseeable at the point in time when the contract was concluded, which damage would typically occur, for the culpable infringement of duties arising from the obligation, however, at most up to the amount of the order value agreed on for the respective delivery or service.
- (ii) Applus RTD shall not be liable for any slightly negligent infringement of immaterial duties arising from the obligation.

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(iii) Insofar as an insurance taken out by the client grants cover for the damage, Applus RTD shall only be liable vis-à-vis the client for the disadvantages arising for it from claiming its insurance (e.g., retention).

Any liability for damage caused by the object of delivery or service to other legal interests of the client (e.g., damage to other property of the client) shall be completely excluded.

- 8.2 The limitation under item 8.1 shall not apply in the event of a mandatory statutory liability (especially in accordance with the Product Liability Act), as well as in the event of the assumption of a warranty of condition or to the extent that Applus RTD has fraudulently concealed a defect or culpably caused injury to life, limb or health.
- 8.3 Applus RTD shall only be liable for direct damage to the object of delivery or service, not, however, for accidental, indirect or consequential damages, as, e.g., loss of use, loss of profit or other pure economic losses; unless it is a case under item 8.2 or the damage results from the infringement of an essential contractual obligation. In the event of an essential infringement of the contractual obligation, the liability shall also be subject to the limitations of item 8.1 (i) through (iii) above.
- 8.4 Claims for damages asserted against Applus RTD instead of or in addition to the performance due to delay of delivery or performance shall be limited to 5 % of the order value. Any further liability due to delays shall be excluded. The above-mentioned limitations do not apply to cases under item 8.2 above.
- 8.5 For all possible damage arising from and in connection with a nuclear incident as defined by art. 1 (a) (i) of the Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention) any liability of Applus RTD shall be excluded, regardless of the legal ground. In the event of claims for damages as defined by § 13 par. 5 Atomic Energy Law, which claims arise in connection with Applus RTD's permitted activities outside nuclear installations from handling and transporting the radioactive material covered by the notice of approval, Applus RTD shall be liable at most to the extent of the amount covered by the liability insurance in accordance with the provision for coverage regulation under the Atomic Energy Law.
- 8.6 On no account shall Applus RTD be liable for damage incurred by third parties. Insofar as in a particular case due to specific agreements or due to mandatory statutory regulations, a liability of Applus RTD vis-à-vis third parties should exist, the limitations of liability in accordance with items 8.1, 8.3, 8.4 and 8.5 shall apply mutatis mutandis.
- 8.7 To the extent that a liability of Applus RTD is excluded or limited, this shall also apply to any personal liability of its legal representatives, members of staff or other vicarious agents. In the event of simple vicarious agents who are neither legal representatives nor executives of Applus RTD, liability for wilful and gross negligence shall also be excluded. In the event that a simple vicarious agent as described above infringes an essential (cardinal) contractual obligation, the limitations on liability under item 8.7 shall not apply.
- 8.8 In all cases in which Applus RTD incurs liability, the amount of the claim for damages shall be limited by the benefit from Applus RTD's company liability insurance.

### 9. RESERVATION OF TITLE

- 9.1 The documentation to be drawn up by Applus RTD in the form of films, test and evaluation records and of similar documentation in physical or electronic form shall remain property of Applus RTD until all of Applus RTD's claims for payment against the client arising from the business relation have been settled. This documentation constitutes work protected by copyright as defined by the Copyright Act (UrhG) and is therefore subject to § 2 par. 1 item 7 UrhG. Applus RTD shall transfer to the client the rights arising from the work protected in this manner for exclusive and sole use and exploitation, subject to the condition precedent of full settlement of all claims Applus RTD may have against the client.
- 9.2 In the event that the client violates its duty, in particular in the event of default in payment, Applus RTD shall be entitled, even without setting a time limit, to take back the test documents and other documentation and services or to demand their return; the client shall be obliged to return said objects. Assertion of these rights by Applus RTD shall not be held to be a withdrawal from the contract, unless such withdrawal has been expressly declared by it in writing.
- 9.3 In the event that objects of delivery are mixed at the client's with other objects not belonging to Applus RTD in such a way that they cannot be separated, Applus RTD shall acquire co-ownership in the new object in the proportion of the value of the objects of delivery to the other objects inseparably mixed. The client shall keep the joint property for Applus RTD free of charge.
- 9.4 The client shall be entitled to transfer to a third party in the ordinary course of business the objects delivered, especially the test documents made available and other deliveries and services. However, the client even now assigns to Applus RTD all claims to the extent of the compensation for work and services (including VAT) agreed between Applus RTD and the client, which claims accrued to the client from passing on such work and services, regardless of whether the objects delivered were passed on before or after processing. The client shall be entitled to collect said claim after its assignment. Applus RTD's right to itself collect the claims shall remain unaffected by this, however, Applus RTD commits itself not to collect the claim as long as the client duly meets its financial obligations and does not default. In the event that the client defaults vis-à-vis Applus RTD, Applus RTD shall be entitled to demand that the client discloses the assigned claim and its debtor, supplies all information required for a collection, hands over the pertinent documents and notifies the debtor (third party) of the assignment.
- 9.5 The client shall neither pledge nor assign by way of security the delivery objects or dispose of them in any other way, unless some other regulation results from the provisions above. In the event of attachments and seizures or other third party dispositions, the client has to immediately notify Applus RTD and has to make available all information and documents required for safeguarding Applus RTD's rights. Judicial enforcement officers or third parties, as the case may be, have to be informed of Applus RTD's title.
- 9.6 To the extent that the realizable value of all security interests owed to Applus RTD exceeds the amount of all secured claims by more than 20 %, Applus RTD will release at the client's request a corresponding part of the security interests. It shall be within Applus RTD's discretion which of the various security interests it chooses to release.

### 10. PAYMENT TERMS AND PRICES

- 10.1 For invoicing the services, the remuneration rates as per the currently valid offers or price lists shall apply unless a lump-sum price or another basis for assessment has been expressly agreed in writing. Should the parties to the contract not have expressly agreed on prices, invoicing will be based on the list of products and prices applicable at Applus RTD at the point in time when the services and/or deliveries are rendered. Applus RTD may at any time, at its complete discretion, reasonably amend the list of products and prices with effect for the future.
- 10.2 In the event of orders with a period of service longer than one month, Applus RTD shall be entitled to make out partial invoices for deliveries and services already rendered.
- 10.3 Unless otherwise agreed, all payments shall become due on receipt of the invoice or other request for payment. Payments have to be made latest by the payment date agreed in each case, whereby the date of receipt of payment on the account of Applus RTD shall be the decisive date. For commencement of the term of payment, the respective date of the invoice or the request for payment shall be the decisive date. If no express date of payment is mentioned and no express

term of payment specified, the respective payment shall be payable without deduction within 14 days of the date of the invoice or request for payment. Should the payment not be received by Applus RTD within the term of payment or 14 days of the date of the invoice or the request for payment, the client shall be in default without a need for Applus RTD to make any further statement.

- 10.4 All prices stated by Applus RTD are net prices and are understood plus the statutory turnover tax as well as possible travel expenses and shipping charges. The turnover tax (value added tax) shall be levied to the extent applicable in each case until final performance of the order; the VAT shall be levied in addition to the remuneration and shall be shown separately in the invoice.
- 10.5 Objections to the invoices, setting forth the reasons, must be communicated to Applus RTD in writing within a settlement period of 14 days of receipt of the invoice.
- 10.6 Should the client not comply with the terms of payment, Applus RTD shall be entitled to declare all claims which have already arisen to be immediately due and make outstanding deliveries and services conditional on payment of the arrears and on a respective advance payment for the services still to be rendered.
- 10.7 Should completion of the service by Applus RTD become impossible due to circumstances for which it cannot be held responsible, Applus RTD may demand from the client a part of the agreed remuneration corresponding to the work performed and reimbursement of the expenses not included in the remuneration.
- 10.8 The client shall only be entitled to assert retention rights and to offset claims against counterclaims if these rights or claims have become res judicata or have been recognized or not rejected by Applus RTD.
- 10.9 For the duration of default in payment, the client shall owe RTD default interest amounting to 8 percentage points above the reference rate in accordance with § 247 BGB (German Civil Code). Assertion of a higher damage caused by default shall remain unaffected.

### 11. CONFIDENTIALITY, COPYRIGHT, DATA PROTECTION

- 11.1 In the context of carrying out the order, the parties to the contract may possibly have access to information including know-how and technologies of the other party to the contract ("confidential information"). This information shall be treated as confidential by the parties to the contract, their members of staff and other vicarious agents. Information of one party to the contract which (i) already is or becomes available to the public without any action or failure to act by the other party to the contract being the reason for this, or which (ii) was lawfully owned by the other party to the contract before such information was disclosed, and which the other party to the contract did not receive neither directly nor indirectly from the disclosing party to the contract, or which (iii) had been developed independent from the other party to the contract, shall not be held to be confidential information as defined by this provision.
- 11.2 Only upon prior written consent by the other party to the contract, shall either party to the contract be entitled to pass on confidential information to third parties. Applus RTD shall be entitled, however, to use the name of the client, if appropriate, for advertising measures or in the context of information submitted to investors and analysts.
- 11.3 Confidential information has to be treated as confidential and kept secret during the execution of the order and for two years after its completion. There will be no need for confidentiality, however, if there is a statutory obligation to disclose information or if both parties to the contract agree on making an exception.
- 11.4 Within the context of the order execution, Applus RTD shall be entitled to file its own copies of documents made available to it for inspection by the client.
- 11.5 Applus RTD expressly reserves the copyrights to expert opinions, test results, calculations, test specifications etc. prepared by Applus RTD.
- 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. OTHER GENERAL PROVISIONS
- 12.1 In the event that the client is a merchant, Bochum shall be the exclusive venue, also for proceedings involving cheques or bills. The same venue shall apply in the event that, at the point in time when the court proceedings are initiated, the client does not have a general venue in the Federal Republic of Germany. However, Applus RTD shall be entitled to bring a case before any court having legal jurisdiction.
- 12.2 Place of payment of all liabilities arising from this contract shall be Bochum.
- 12.3 The legal relationship between the parties to the contract shall be exclusively subject to the law of the Federal Republic of Germany.
- 12.4 Addenda, amendments or alterations to contracts as well as possible supplements or representations must be made in writing in order to be valid. This shall also apply to any waiver of the requirement of writing.
- 12.5 Should a provision or a part of the agreements between the client and Applus RTD be ineffective or unenforceable, the remaining provision of the agreement shall remain in force without limitations. The parties to the contract commit themselves to replace the ineffective or unenforceable provision by an effective or enforceable provision which is as close as possible to the economic purpose of the ineffective or unenforceable provision. The same shall apply in the event that there is a regulation gap in the agreement.

Bochum, September 2007