

## **General Terms and Conditions (Terms) for any and all services performed by Josch Strahlschweißtechnik GmbH**

### **1. Scope**

These Terms shall apply to all service contracts signed between Josch Strahlschweißtechnik GmbH (hereinafter referred to as the "Company") and its customers (hereinafter referred to as the "Customer/s"), provided the Customer is a business in terms of Section 14 of the German Civil Code [BGB].

Unless otherwise agreed in writing, any contracts signed between the Company and the Customer shall be solely governed by these Terms, to which the Customer herewith agrees. Any of the Customer's terms and conditions that may be different from, inconsistent with or a supplement to these Terms are herewith rejected.

### **2. Conclusion of Contract**

A contract between the Company and the Customer shall be formed whenever the Company accepts the Customer's proposal and provides the Customer with a written confirmation of its order, or the Company the Company starts executing the offered service.

Unless otherwise agreed in writing, any written order confirmation issued by the Company shall govern the contents and scope of the contract.

Any modifications of and amendments to the contract must be made in writing. This written from requirement may not be waived verbally or tacitly.

### **3. Execution**

The Company shall perform the agreed service considering the generally accepted standards of good practice and in compliance with the law. The Company shall not be liable for any damage to or destruction of any of the Customer's property as a consequence of a service performed properly and appropriately by the Company.

Transport of any of the Customer's items shall be at the Customer's expense and risk. In case

of keeping any of the Customer's items, the Company's liability shall be limited to the same due diligence as it would apply in its own affairs.

Prior to the execution of any service, the Customer shall fully inform the Company in due time of any and all facts material to the execution of such service. The Company shall not be bound to check any information and other services provided by the Customer for completeness and correctness, unless the Company has reason to do so considering the specific circumstances.

If and to the extent to which any cooperation on the Customer's part is required for the execution of the service, the Customer shall provide such cooperation at the Company's request at the Customer's own expense. Unless agreed in writing, none of the related expenses shall be refunded.

In case the Customer, despite the Company's written reminder, fails to meet its obligations to cooperate in good time or fails to meet them in the required way and to the required extent, the Company may claim compensation from the Customer for any additional expense thus incurred and damage thus suffered; this clause shall be without prejudice to any further legal claims.

Whenever the Company operates for the Customer outside its business premises as agreed, the Customer shall be bound to take any action required in order to meet its obligations to ensure public safety, unless otherwise agreed or otherwise required in the specific situation. Should the Customer fail to meet this obligation, the Company shall have the right to refuse execution of the service until the required action is taken and to claim additional expenses for any resulting waiting times.

### **4. Agreed Dates and Periods**

Due to the nature of the Company's services, any agreed periods and dates shall be subject to change, unless a precise agreement has been made on periods and dates has been made in

the individual case. In case of periods and dates subject to change, the Company shall not be deemed in default, unless two reasonable grace periods previously granted by the Customer in writing for the performance of the service due have unsuccessfully expired.

If and to the extent to which the Customer does not meet its obligation to cooperate and/or to make advance payment as agreed, periods shall be deemed to be extended and dates shall be deemed to be postponed by a period matching the period that elapses until full cooperation and/or payment.

The Customer shall be obliged to accept the service agreed by contract.

In case the Company is in default or the service becomes impossible to perform for any reasons the Company is accountable for, the Company's liability for any material and financial damage in case of negligence shall be limited to the typical contract-related damage that was reasonably foreseeable at the time of signing the contract.

#### **5. Acceptance**

To the extent to which the Company's service requires acceptance, the Customer shall be obliged to accept in accordance with the statutory provisions. Any failure on the Customer's part to accept the service within 10 work days of a written request for acceptance shall be deemed to be acceptance.

#### **6. Consideration and Reservation of Title**

The Customer shall be due to pay the consideration agreed upon signing the contract and any amendments thereto plus value added tax at the applicable rate if due.

Unless any other terms of payment have been agreed, the Company's invoices shall be due for payment without deduction and charges within 10 days of receipt of the invoice. Payments shall be made non-cash into the Company's account stated in the invoice.

The Company may require reasonable instalment and advance payments.

In case no fixed price was agreed for the service as per contract and the service is based on a quote, more than 20% shall be deemed to be a material exceedance of the quoted price in terms of Section 650 of the German Civil Code [*BGB*].

In case the Company should hold more than one claim of similar kind against the Customer, the Company shall decide at its discretion which debt is redeemed by a payment. The Customer shall only have a right of setoff and retention provided the Customer's claims are based on a final court decision, ready for decision, undisputed or acknowledged in writing by the Company.

The Company reserves the title of any goods delivered until the final settlement of any and all claims resulting from the business relationship.

#### **7. Warranty**

The Company's warranty shall cover the application of scientific due diligence as well as compliance with the generally accepted standards of good practice. For research and development orders, the Company shall not assume any warranty for the actual achievement of the contractual objectives within the agreed period of performance.

Any other legal warranty rights shall apply.

The issue of a test certificate shall not be construed as containing any statements on the fitness for use or quality of the test item other than those related to the precise technical content of such test certificate.

#### **8. Liability**

Any claims for damages due to breach of contract and tort against the Company and any of its agents shall be excluded, unless due to wilful or grossly negligent acts. This clause shall not apply to damage due to injury of life, body or health; in any such case, the Company and its agents shall be liable as provided by law.

In case of negligently caused material and financial damage, the Company and its agents shall be liable only if in breach of any material

duty of contract, however only up to the amount of the typical contract-related damage that was reasonably foreseeable at the time of signing the contract, material duties of contracts being deemed to include any obligations the fulfilment of which is material to the contract and the Customer may therefore reasonably rely on.

In addition, the Company's liability for financial damage shall be limited to lower of either the contract value or 50,000.00 €. The Company's liability for damage to property and persons shall be limited to 3,000,000.00 €.

In case of material and financial damage caused by negligence, the Company's and its agents' liability shall be limited to four times the net contract value if the Customer has refused a separate test of the service requested and motivated by the Company in writing and if such test, according to expert assessment, would have most probably resulted in the identification of the specific breach of duty which caused the damage.

The Company assumes no liability for the service to be free of third-party rights.

#### **9. Ancillary Copyrights**

Any ancillary copyrights arising from the performance of the service as provided under the contract shall be solely due to the Company.

In case the Customer, for using the service provided by the Company, requires any of the Company's licensed or licence-capable intellectual property rights or know-how capable of protection, a separate related patent, know-how or licence agreement governing the commercial use of the property right concerned shall be signed.

The Customer herewith grants the Company a right that is free of charge, non-exclusive and unlimited as to space and time to use any and all copyrights and/or intellectual property rights created during the performance of the service as provided under the contract, in which the Customer jointly participates as co-author. The Company may freely use this right in processing further third-party orders.

Any transmission and use of the service provided by the Company that goes beyond the purpose as specified by the contract, including without being limited to its publication, shall be subject to the Company's prior written consent. The Customer shall be solely responsible for compliance with the legal provisions applicable to the use of its service (competition law) and in particular for the content of advertising messages. In this respect, The Customer shall indemnify, defend and hold the Company harmless from and against any and all third-party claims.

#### **10. Non-Disclosure**

The Customer and the Company mutually agree to strictly refrain from disclosing to third parties any oral or written information received through the execution of the contract, unless such information has otherwise become part of the public domain or the other party has waived its non-disclosure in writing. Third parties in terms hereof shall not be deemed to include any persons or institutions if the disclosure of such confidential information to these is required for or conducive to the achievement of the purpose of contract.

#### **11. Place of Performance**

The place of performance for all services shall be D-06193 Petersberg, Germany.

Any assignment of claims that the Customer may derive from his business relationship with the Customer shall be excluded.

#### **12. Jurisdiction Clause and Applicable Law**

The sole place of jurisdiction for any and all of the Company's claims that may arise from the business relationship against traders and legal entities under public law shall be Halle (Saale).

The Company shall also be free to choose to sue the Customer at the Customer's place of general jurisdiction.

In case of transnational services, Halle (Saale) shall be the sole place of jurisdiction for any and all disputes arising from or in connection with the contract (Art. 23 of Regulation (EC) N°

44/2001 on Jurisdiction and the Enforcement of Judgments [*EuGVVO*]).

Any and all business and legal relationships between the Customer and the Company shall be solely governed by and construed in accordance with the laws of the Federal Republic of Germany.

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