

General Terms and Conditions for Testing, Expert Opinions, and Other Engineering Services

of the Product Compliance Center of Fujitsu Technology Solutions GmbH

1. Services

- 1.1 The following terms and conditions shall apply exclusively to all services provided by Fujitsu Technology Solutions GmbH (hereinafter referred to as FTS). FTS will only be bound by conflicting or supplementary General Terms and Conditions of the customer if either those General Terms and Conditions are consistent with the following terms and conditions or if FTS has approved the conflicting or supplementary terms in writing.
- 1.2 FTS will provide the services as agreed in the respective individual order.
- 1.3 FTS will document work products in suitable form and appropriate scope.
- 1.4 If the individual order calls for obtaining official approval, FTS will support the customer appropriately, in particular with the submission of applications and in dealing with the responsible agencies. FTS does not owe timely and successful official approval or consultation on legal aspects.

2. Cooperation between the parties to the contract

- 2.1 The customer will provide FTS with all documents, especially units for test, other items, technical documentation, and information in a timely fashion at its own expense and risk and will collect them again after execution of the order. The customer will inform FTS in writing of any events or circumstances that could be of significance to the execution of the individual order. This applies also to documents, events, and circumstances that do not become known to the customer until after FTS has begun its activities.
- 2.2 In addition, the customer will retain copies of all documentation to ensure that the documents provided to FTS can be reconstructed at any time in case they become damaged or lost.
- 2.3 Each party to the contract will provide the other with the name of an expert person who can provide information and either make or cause to be made decisions that are required for execution of the individual order.
- 2.4 Set time limits to accomplish service will be extended reasonably if the customer does not accomplish his obligations to co-operate on time or if FTS would be prevented from accomplishing the service without its fault.
- 2.5 The employees of one party to the contract do not enter into an employment relationship with the other party to the contract, even if they work on their premises. Except as necessary for complying with plant security or other safety regulations, the other party to the contract will not issue any instructions to them.

3. Elimination of Defects

- 3.1 The customer can demand the elimination of defects in the services for which FTS bears responsibility, or, if efforts to eliminate these defects fail, the customer can demand a reduction in the payment or cancellation of the individual order.
- 3.2 The claim for elimination of defects must be made without delay in writing and expires 12 months after FTS has provided the service.
- 3.3 If FTS executes the individual order together with employees of the customer or with third parties brought in by the customer, FTS is not liable for any defects that these persons cause in the jointly provided services. If the individual order concerns only the testing or provision of an expert opinion on parts of a total system, FTS is not liable for any defects that result only after the part interacts with the total system.

4. Payment, Terms of Payment

- 4.1 Payment for the services to be performed by FTS is based on the individual order. Besides the payment, any expenses paid by FTS, e.g. for application fees, and the applicable sales tax, will be billed additionally.
- 4.2 All payments are due without delay after the service has been provided and the bill has been received by the customer.
- 4.3 If additional work time, travel time, or other costs are incurred by FTS due to circumstances for which the customer is responsible, in particular due to errors in the documentation provided to FTS or due to subsequent changes in the tasks described in the individual order or in the documents, events, or circumstances named under Item 2.1, then the customer will reimburse FTS for this effort at the respective prices valid at FTS.
- 4.4 FTS is entitled to demand reasonable advances on costs for payments and expenses.
- 4.5 The customer is entitled to offset or withhold payments due only when FTS has expressly agreed to this in writing or when the counterclaims are uncontested or have been determined by a court of law.

5. Rights to Work Product

- 5.1 With payment in full and reimbursement of expenses to FTS, the customer receives a simple right to use the work products for its own purposes. Unless the purpose of the individual order already provides for permission to transmit work products to certain third parties, such transmission of work products to third parties requires the prior written consent of FTS.
- 5.2 If the customer has permission for transmission to third parties and wishes to refer to the testing done by FTS, the following sentence is to be used: "Tested by the Product Compliance Center of Fujitsu Technology Solu-

tions GmbH, an accredited test laboratory, German Accreditation Council (DAKks) Registration Number D-PL-12108".

- 5.3 FTS shall have the right to use the ideas, experiences, conceptions, tools, methods, program development components or techniques resulting from the work products developed by FTS whilst rendering the service free of charge.

6. Delay in performance, Liability

- 6.1 If the customer has not received services for which FTS is responsible in a timely fashion and can establish preponderant evidence that it has suffered damages as a result, it can claim lump-sum compensation for damages. FTS is not liable for mobilization, war, riots, strikes, general shortage of materials or lockouts or any cause beyond its reasonable control. The lump-sum compensation for damages is 0.5% of the payment for the late services from the date of the respective individual order per completed calendar week of lateness; however the total may not exceed 5% of this payment. Any further claims by the customer for late performance are excluded.
- 6.2 FTS is liable for any personal damage for which it is responsible without limitation and will replace any property damage for which it is responsible in the amount of the restoration costs for the items up to an amount of EUR 250,000.- for each damaging event.
- 6.3 FTS shall not be responsible if customer fails to perform daily actual data security in an adequate manner in order to insure actual economic and efficient restoration of data in case of a loss. If data storage materials are lost or damaged, the obligation to restore does not include the costs for recovering lost data.
- 6.4 Any further damage claims by the customer beyond those specifically named in this contract, regardless of the legal grounds, especially claims because of damage resulting from interruption of business or lost revenue, profits or sales, loss of information and data or for any special, incidental, punitive, indirect or consequential damages shall be excluded, except for example for damage to privately used items or when liability is compulsory due to intent, negligence or breach of fundamental contractual obligations . Any liability of FTS arising out of slight negligent breaches of any fundamental contractual obligations shall be limited to the typical and foreseeable damage.

7. Confidentiality, Data Protection

- 7.1 FTS is permitted to make copies or transcripts of written documents given to it for inspection or for execution of orders.

- 7.2 Both parties will use all documents, information, and data that they receive for execution of the order and that are marked as confidential only to execute that order. As long as and as far as they have not become generally known or the other party has not previously agreed to publication, both parties will treat the documentation and information mentioned as confidential vis-à-vis non-involved third parties. These obligations remain in force even after the order has been completed.

- 7.3 In connection with the purposes determined by the customer, FTS is also entitled to permit third parties to process the personal data with which it has been entrusted.

- 7.4 FTS can issue subcontracts, but must impose an obligation of confidentiality on the subcontractors in accordance with these terms and conditions

- 7.5 After expiration of a period of six months following execution of the order, but at the earliest after its claims under the order have been completely satisfied, FTS must, upon request by the customer, hand over all documents that it received from the customer for execution of the order.

8. Export Permits

- 8.1 The services agreed to in an order, due to their nature or to the nature, origin, and final destination of the units under test, can be subject to German, EU, US and/or other export regulations. Therefore, every order is subject to the reservation that the responsible agency grants the permits that FTS requires to perform the services.
- 8.2 The customer itself will obtain the required permits in a timely fashion. FTS will provide the customer with appropriate assistance if desired at the respective prices valid at FTS.

9. Conclusions

- 9.1 Additional or ancillary agreements must be in writing.
- 9.2 The customer may not assign its rights or obligations under this contract except with the prior written consent by FTS.
- 9.3 Place of jurisdiction is for all disputes arising out of this contract shall at FTS's choice be Munich.
- 9.4 The contract shall be governed by German law without any reference to the conflict of law rules. The United Nations Convention on Contracts for International Sales of Goods (CISG) dated 04.11.1980 is excluded