

## **General Terms and Conditions of Business of Strescon GmbH**

### **as of 01.05.2013**

#### **§ 1 Scope of the General Terms and Conditions**

1.1 The General Terms and Conditions of Business - hereafter referred to as GTC - are valid for current and future business relationships as well as for all contracts which are concluded between Strescon GmbH - hereafter referred to as Strescon - and the Principal or Customer - hereafter referred to as Customer

1.2 The General Terms and Conditions of Business of the Customer are expressly prohibited.

1.3 Deviating, opposing or ancillary General Terms and Conditions of Business are not included as components of a contract, even by prior knowledge of Strescon, unless the validity of said contractual components are expressly agreed to by Strescon in writing.

In the case that the Customer does not want to recognize the validity of the following General Terms and Conditions of Business - GTC, the customer must plan to declare this in writing to Strescon at the latest before the conclusion of the contract.

#### **§ 2 Conclusion of Contracts**

2.1 Strescon renders engineering services - hereinafter referred to as engineering services - in the form of independent and autonomous execution of plans, designs, drawings, calculations, construction and production of prototypes, trial testing and registration support, series preparations, project support, certification measures, development orders, development services as well as additional engineering services from the entire engineering branch.

2.2 The offers from Strescon are always non-binding plus the current legally applicable value added tax (VAT) and are to be made in request to an invitation to order or an acceptance of an offer.

All Customer orders are binding.

2.3 Verbal collateral agreements as well as the assurance of properties as well as contract amendments or supplements are only valid if these are expressly confirmed in writing.

2.4 The Customer conveys Strescon the execution of engineering services in accordance with provision 2.1 in the context of each individual contract.

The important foundations of the contract for the engineering services or orders are:

- The mutual written declaration of Strescon and the Customer, if applicable with the Product Requirement Document (PRD) of the Customer in the case that they are available from the Customer.
- Drawings, pictures, designs, plans, dimensions, weights or other performance data produced and/or made available by the Customer
- The order confirmation by Strescon with which the scope of services is declared.
- Insofar as there is no order confirmation and/or mutual written declaration is available, the written order of the Customer.

The engineering services to be rendered and if applicable the service performance schedule and the deadline are to be stipulated in the above mentioned foundations of the contract.

Incidentally these GTC apply.

2.5 In the course of the contract initiation phase, Strescon retains all property rights and copyright and proprietary rights of all cost estimates, drawings and other documents or tools in an unrestricted manner. The Customer is not allowed to forward any documents to a third party during the contract initiation phase without the express written consent by Strescon.

2.6 If the Customer requests modifications or supplements to the order after placing said order, Strescon will inspect said modifications or supplements and insofar as it is possible to execute said modifications or supplements, Strescon will inform the Customer regarding the claim for additional charges above and beyond the valid prices at the time of order. The Customer accepts the resulting postponement of the delivery deadline for a reasonable amount of time though said delay is not caused by Strescon.

#### **§ 3 Rights of Use**

3.1 All rights in the documents and work results arising from the services shall accrue to the Customer.

3.2 Strescon shall not be restricted to use the gained know-how and to render similar consultancy services for other customers of Strescon, provided Strescon complies with § 12.

#### **§ 4 Services**

4.1 Strescon reserves the right to subcontract the rendering of contractual services

4.2 Insofar as employees or representatives of Strescon work at the Customer, the Customer does not have the authority to give instructions to said employees or representatives. Strescon retains the exclusive right to give instructions to its employees or representatives.

4.3 Strescon reserves the rights for product modifications because of necessity or technical improvements, insofar as these are reasonable for the Customer and comparable to the provisions of the order.

4.4 Prices valid at the time of or from an individual offer are firm prices. Value added tax (VAT) and other legal duties in the country of delivery as well as possible costs for packaging, transport insurance or environmental compliance fees, as well as shipping costs will be separately billed in the invoice.

4.5 Strescon reserves the right for an adequate increase of the price if after conclusion of the contract cost increases due to an amendment of the performance requirements or due to changing legal requirements on the services occur.

4.6 Subletting of Strescon engineering services requires the previous written confirmation of Strescon. This requirement of consent shall also apply for the use of Strescon services by affiliated companies of the Customer.

#### **§ 5 Payment Terms**

5.1. Unless agreed otherwise in writing, payment to us by purchaser shall be effected latest 14 days after the delivery or the performance of services in the invoiced currency.

5.2 If Strescon renders engineering services and/or other pertinent services, 30% of the relevant order sum is to be paid by the Customer to Strescon immediately upon confirmation of the order or placement of the order. The Customer is obligated to pay Strescon an additional 20% of the order sum

upon the according indication of the beginning of service by Strescon.

Strescon reserves the right to invoice an additional 30% of the order sum upon the execution of half of the services to be rendered. The Customer must pay the remaining 20% of the order sum upon the conclusion of the ordered services.

5.3 If no payment is made within 30 days upon due date of the invoice amount, the payment is automatically considered in default. From this point in time, the Customer must pay interest to the amount of 8% over the current base interest rate of the European Central Bank - ECB - in accordance with the legally determined interest rate for businesses according to § 288 Paragraph 2 BGB.

5.4 Insofar as these terms of payment and/or payment due dates are not observed by the Customer and doubts exist regarding the solvency of the Customer, Strescon can at any time demand that services be paid step by step in cash, advance payment or a security collateral payment by means of an irrevocable guarantee or in a similar manner by the customer. In this case all outstanding claims by Strescon against the Customer are payable immediately either in instalment payments or as accepted exchange.

5.5 The Customer can set off recognized or legally binding entitled claims against claims from Strescon.

#### **§ 6 Delivery and Service Conditions**

6.1 Strescon realizes services for the Customer principally at the offices of Strescon. Delivery is consequently made at the risk and cost of the Customer.

6.2 The complete or partial execution of services at the offices of the Customer must be especially agreed upon in writing.

The right to instruct its employees especially introductions, instructions and supervision is solely vested in Strescon.

A confirmation of the progress of the order is made by the Customer on the basis of the project stage report to Strescon.

6.3 The service due dates and/or the service deadline will be agreed upon according to the anticipated service capacity of Strescon and is non-binding and subject to timely delivery and unforeseen circumstances and obstructions, especially Force Majeure, governmental actions, not obtaining approval of governmental authorities, software mistakes through no fault of Strescon, as well as strikes and similar occurrences apply, insofar as

there is no other written agreement between the contractual parties. The above mentioned occurrences extend the delivery due date accordingly and also when these occur during a delay which has already happened. In this case the grace period is extended by the Customer by the length of the occurrence of the unforeseen circumstance. The Customer may - irrespective of other rights to withdraw in the event that the above-described events lead to a delay in performance of more than two months - withdraw from the contract if the delay in performance is not due to changes required by the Customer.

6.4 The compliance of deadlines on the part of Strescon requires that the Customer make available to Strescon and its employees, if necessary subcontractors, all required information, documents and data, as well as the support for the execution of the order free of charge and in a timely manner. The Customer bears the responsibility for the accurateness of the documents and information made available and is liable that these documents and information do not infringe on copyrights of third parties. Strescon does not compensate for damages which arise due to deficient cooperation obligation from the Customer.

6.5 In the case that the suitable extension of the delivery deadline is not reasonable due to the consequences in the above stated provision 6.3 for the above mentioned circumstance for Strescon, Strescon has the right, upon prior indication, to either entirely or partially withdraw from the contract. Claims for damages are completely and mutually excluded in this case.

Strescon is released from its obligation of delivery when it is or will be either unreasonable or entirely impossible to carry out the delivery of goods and services or the execution of services due to reasons listed under provision 6.3 listed circumstances especially in cases of Force Majeure.

6.6 Strescon has the right to deliver orders in partial deliveries.

## **§ 7 Installation Services**

7.1 If installation services are part of the range of services supplied by Strescon, the Customer must supply at its own expense the required auxiliary personnel, necessary materials, such as tools and computer time, electricity and any similar necessities. Additionally the Customer is responsible for the safe storage of materials and tools of Strescon at the place of installation.

7.2 If the installation or commissioning is delayed by circumstances in which the Customer is responsible, the Customer must bear all costs for downtime and overtime as well as additional required emergent travel expenses of the personnel of Strescon or the engaged subcontractors.

## **§ 8 Acceptance Test, Transfer of Risk**

8.1 Upon delivery the Customer must immediately inspect the delivered items to ascertain whether the delivery is complete and in conformance with the declared contractual foundations under §2 of these GTC.

8.2 With contracts for work and service, Strescon has the right of an acceptance test as well as a partial acceptance test for its rendered services, insofar as said services are rendered and can require each time a partial acceptance test according to contractual delivery of services of the current project step. The Customer must accept within three weeks upon written indication of the readiness of acceptance of the delivered services or partial services and must sign the acceptance test records created for this purpose. If the Customer does not make acceptance within the above-mentioned deadline, although the customer is obligated to do so, or if circumstances come to bear in which acceptance is not made because of the actions of the Customer, these services or partial services are valid at the latest three weeks after the notice of the readiness of acceptance quasi with the operation by the customer.

8.3 With the delivery of items such as drawings, plans inter alia, the Customer assumes the risk upon shipping or collection and/or upon occurrence of receiving delay. With service or work, the same applies to the point in time of the acceptance and/or implied acceptance.

## **§ 9 Retention of Title**

9.1 All services which Strescon must render in the course of its contractual obligations, inter alia plans, calculations, prototypes, documentation, project plans, multimedia and/or special material remain the property of Strescon at the latest until the execution of all requirements from the contract. If the contract partner is a legal entity of public law, a special estate under public law or a corporation exercising its trade or self-employed commercial occupation, this is also valid in addition to up to the payment in connection with the contract of Strescon out of the current business relationship resulting claims.

9.2 If the Customer should default on payments also for other future services of Strescon, or should the

Customer be in financial difficulties, Strescon can withdraw from the contract and has the right in this case to exercise claim damages in place of services; Strescon also has the right to enter the Customer's premises and to seize any goods supplied. In case of compensation for return, Strescon and the Customer agree that this is done at the ordinary market value of the contractual item at the time of return.

9.3 The enforcement of the retention of title and the revocation of legal rights and the seizure of delivery items by Strescon do not count as withdrawal from the contract, provided the Customer is a merchant.

9.4 When Strescon delivers materials, multimedia, prototypes, CAD models, plans and other special items for testing purposes and demonstration purposes to the Customer, Strescon retains these property rights and/or copyrights. The Customer has the right to use said materials for testing purposes and demonstration purposes. The Customer is prohibited for usage above and beyond these purposes, unless Strescon gives express written permission for the special usage under said conditions.

## **§ 10 Rectification of Defects and Liability**

10.1 Strescon will execute its services and performance according to generally recognized rules of technology at the time of the order placement and with the usual care customary for its field of services.

10.2 If defects should occur, the Customer must immediately make a written claim for the rectification of defects. The claims for the objections of the performed engineering services must be made in writing no later than four weeks after receipt of said services and such claims for the objections must be precisely described.

If the Customer does not make any objections within four weeks upon receipt of services, the engineering services are effectively valid as contractually fulfilled and confirmed. The customer is allowed if applicable by Strescon the rectification of defects at the reasonable discretion of Strescon in the required time and opportunity. If the customer refuses these, Strescon is exempt from the rectification of defects. Furthermore legal defect claims of the Customer apply upon presenting a defect within the restrictions of the regulated stipulations found in these General Terms and Conditions of Business.

10.3 The warranty period is 24 months according to these stipulations. The warranty period begins at the point in time of delivery and/or transfer of risk and/or acceptance of the company.

10.4 The Customer is obligated to inspect the executed services and goods from Strescon immediately and to check said delivery of executed services and goods for possible deviations in order quantity and to check said executed services and goods for defects. Insofar as deviations or defects are discovered, Strescon is to be immediately informed of said deviations or defects claims in writing.

10.5 If dimensions are the basis for the execution of services of Strescon, such given dimensions are the binding contractual basis for multimedia, drawings, designs, CDs etc. Strescon is not liable for these given dimensions by the Customer.

10.6 If defect claims or deviation claims are asserted on time and in the correct manner by the Customer, Strescon is obligated to perform a rectification of defects or deviations immediately. The contractual parties are thus in agreement that Strescon has at least two opportunities for the rectification of defects in respect to the same defect or deviation. Depending on any individual case, additional rectifications of defects can occur. Strescon has the right, instead of a rectification of defects, to carry out a replacement delivery.

For the performance of all at their reasonable discretion appearing rectifications or replacement deliveries, the Customer must make its place of business or its place of production available to Strescon within its normal business times with enough time and ample opportunity for the implementation of the necessary measures for rectification or replacement.

Upon repeated failure of the rectification of defect within reasonable deadline, the Customer has the right to request either a reduction of the agreed upon payment or the annulment of the contract.

10.7 The obligation of Strescon for the warranty postulates that the Customer recognizable defects, which exist at the point of time of the transfer of risk and/or acceptance, in the case of a delivery are to be claimed immediately in writing and/or in the case of acceptance, these recognizable defects are to be entered in the acceptance records and/or in the case of concealed defects, which arise at a later date, must be disclosed to Strescon immediately upon discovery of said concealed defects.

10.8 Warranty claims are not transferrable.

10.9 If the investigation of the defect claim yields that a warranty claim case does not exist, Strescon has the right to claim compensation for all expenses and to invoice said expenses, insofar as it does not deal with marginal expenses.

## **§ 11 Liability**

11.1 Strescon is only liable for the liability provisions of damage, which are intentionally caused and/or are grossly negligent and result in a breach of due diligence.

11.2 Liability for minor and/or slight negligence is excluded. Strescon is also not liable for unforeseen damage, defect damage and other consequential damage and damages due to loss of profit.

11.3 Compensation claims of the Customer are subject to a limit of 24 months.

11.4 A liability of Strescon is only in the case of a breach of essential contractual obligations and is limited to foreseeable typical damages upon conclusion of the contract.

11.5 If the damage is covered by a concluded insurance policy of the Customer, Strescon is only liable for occurring financial detriments with the claim settlement of the Customer, such as increased insurance premiums or interest penalties.

The liability of Strescon remains unaffected independent of whether Strescon is at fault in the case of fraudulently concealment of a defect, acceptance of a guarantee or according to product liability law.

Consequences resulting from a delay in delivery are entirely regulated in § 6 of these General Terms and Conditions of Business.

The personal liability of the managing directors of Strescon is excluded from damage caused by vicarious agents and employees as well as active subcontractors due to minor negligence.

11.6 Strescon assumes no liability for data, loss of profits or other consequential damage or loss, as well as no intent, no gross negligence, no breach of essential contractual obligations and when in no case of the lack of assured attributes on the side of Strescon exists.

11.7 The amount of the compensation for damages is, except in cases especially of intent of gross negligence and also with minor negligence of essential contractual obligations, limited to per case 20 % of the amount of the order value with a maximum of € 50,000.00 or when in connection with continuing cases with a maximum of € 100,000.00.

## **§ 12 Confidentiality/Non-disclosure Agreement**

Both contract partners are mutually obligated, as a part of the contractual relationship, to obtain the

agreement of the other contract partner when making provided documents and information available to any third party, unless these are assigned permissible deliveries and services. This non-disclosure agreement does not apply insofar as the provided documents and information are clearly public knowledge or subsequently proven that the other party had made said documents or information available to a third party and is not in breach of this non-disclosure agreement. In the latter case the contract partner must immediately inform the other contract partner in writing. The Customer is obligated to include its employees and any vicarious agents and subcontractors in this non-disclosure agreement. The non-disclosure agreement remains valid even after the termination of this contractual relationship.

## **§ 13 Cancellation of Orders**

If the Customer terminates the contract, which Strescon has no responsibility for the termination, the Customer owes the entire contractual fees for the executed service up to the time of termination and furthermore at least an additional payment of 15 % of the agreed contractual fees for the remaining not to be executed services due to the cancellation of the order. In addition Strescon is free to pursue additional compensation claims as per § 649 sentence 2 BGB.

## **§ 14 Modifications**

With modifications or other conditions after conclusion of the contract, from which higher demands and/or increased expenses result for Strescon, the price and possibly the delivery deadline must be determined and agreed upon. In this case the Customer owes Strescon a reasonable payment for the executed services and expenses of said modifications, which conform to the agreed upon prices up to that point.

## **§ 15 Place of Performance, Court of Jurisdiction**

The place of performance for mutual services and - insofar as authorized - sole court of jurisdiction for all claims from or in connection with the contractual relationship is Stuttgart, Germany.

## **§ 16 Applicable Law**

German law is exclusively valid.

## **§ 17 Privacy Protection**

Strescon is entitled to handle data within the purpose of the Federal Privacy Protection Law, which arises out of the business relationship or in connection with work with the Customer, whether this data comes directly from the Customer or a third party. This reference substitutes the notification according to the Federal Privacy Protection Law, which personal data about the Customer via IT is saved and processed.

#### **§ 18 Final Provisions**

18.1 Modifications and supplements to the contractual items and these GTCs must be written to be effective. This is also valid for the effectiveness of the waivers of the written form clause and/or written requirements in individual cases.

18.2 The nullification of an individual provision or multiple provisions of the GTCs does not affect the validity of the other provisions. The contract partners will replace or supplement nullified or incomplete provisions with appropriately valid provisions, which conform to the economic purposes of said provisions.