

General Terms and Conditions

The following terms and conditions (GTC) apply to all deliveries and services, including any consulting services and information (services) from KST Motorenversuch GmbH & Co. KG (hereinafter referred to as KST).

The GTC of KST apply also to all future business with the client (hereinafter referred to as AG).

The GTC of KST do not apply to consumers as defined in § 13 BGB (German Civil Code).

Conflicting terms or terms that deviate from the GTC of KST that are set by the client are not valid unless KST has explicitly agreed to their application in writing. They are also not valid if KST carries out services without reservation while knowing of conflicting or deviating terms and conditions that are fixed by the client.

1. Quotations and Utility Models

- 1.1. Quotations from KST for the conclusion of a contract for the provision of testing services are non-binding until the conclusion of the contract.
- 1.2. Side agreements and changes made by the client are only valid after written confirmation by KST. They are only included in the price stated in the quotation if this has been confirmed explicitly and in writing by KST.
- 1.3. KST reserves the ownership and copyright, as well as the patent and designs and utility models rights, to information and documentation of any kind included in or provided with the quotation. The quotation documents must be returned or destroyed by the client if so requested by KST.
- 1.4. The Purchaser shall be required to receive our express consent in writing prior to passing on such documents to any third party.
- 1.5. Upon request by KST, the Purchaser shall return to KST all said information and documents submitted with the offer. Furthermore, the Purchaser agrees to destroy all information in his files, archiving media and backup information systems. Upon request by KST, the Purchaser shall provide a certificate confirming the full return and/or destruction of all files and information record files

2. Client Obligation to Cooperate

- 2.1 The client is obliged to supply KST with all components, documentation, information and data necessary for the provision of the service and specified in the service package in full and on time. KST is not required to inspect the components, documentation, information and data for defects prior to the provision of the service.
- 2.2 The client will also keep a back-up copy of the documentation, information and data supplied to KST on their own premises so that they can be reconstructed in case of damage or loss.
- 2.3 Should the client not meet their obligations under 2.1 and 2.2, KST shall invoice separately all ensuing expenses and downtime.

3. Prices

- 3.1 The prices are quoted net cash plus value added tax at the respective statutory rate valid at the time of billing and other country-specific charges. They comprise, unless otherwise agreed, on delivery EXW of KST (exclusive of packaging, freight, insurance and customs duties, etc.)
- 3.2 If and when taxes or other charges are incurred on the services provided by KST, KST will be exempt from these taxes and charges by the client.

4. Payment Terms: Reservation of Proprietary Rights

- 4.1 KST is entitled to partial service and partial billing.
- 4.2 The payment of our services is due immediately on receipt of the invoice by the client. The term of payment is 14 days net from the date of invoice unless otherwise agreed. The timeliness of any payments is determined by the receipt of payment by KST.
- 4.3 KST is entitled to credit payments first to any older debts of the client. If any expenses and interest have already been incurred, KST is entitled to credit the payment first to the expenses, then to the interest and lastly to the principal service.
- 4.4 The client is only entitled to a right of retention if this right of retention is based on the same contractual relationship as the counterclaim of KST. Offsetting is excluded if the counterclaim is not uncontested or has not been legally established.
- 4.5 If the client is in danger of becoming insolvent or an application of insolvency has been placed on his assets, KST is entitled to stop providing services altogether or to stop providing the service until the corresponding payment has been made or the client has provided sufficient collateral. KST is entitled to demand immediate payment for all residual debt. Furthermore, KST has the right to withdraw from the contract.
- 4.6 Costs of the payment transactions shall be assumed by the client.
- 4.7 KST reserves the ownership of the work results provided or the work done until payment of all liabilities from the underlying legal transaction with the client is made in full.

5. Processing Time

- 5.1. The processing time starts after confirmation of the client's order by KST, however not before receipt of all information and/or materials from the client necessary for the processing of the order or an agreed advance payment. It is calculated to the best of knowledge, taking into consideration any planned, required cooperation by the client, and presupposes the clarification of all technical questions as well as the punctual and correct fulfilment of the obligations of the client. Target dates given with the order confirmation are therefore binding.
- 5.2. Should KST realize that the processing time is not sufficient for the task set, this will be communicated to the client, specifying the cause. In this case, KST and the client will agree on an extension of the processing time. If the delay is not reasonably acceptable for the client and if it is KST's sole responsibility, the client can cancel the contract.
- 5.3. Should the client be in default of acceptance, KST can claim compensation for possible additional expenditure. For the duration of the delay, the loss will amount to at least the daily rate for the testing services, including personnel and test bench, which KST would charge the client for proper fulfilment of the contract. The same applies if the client has negligently breached his duty of cooperation and has therefore caused interruptions to the test procedure.

6. Place of Fulfilment, Shipping and Transfer of Risk

- 6.1. Place of fulfilment for both contracting partners is the place of business of KST.
- 6.2. The delivery by KST is EXW, unless otherwise agreed explicitly and in writing. If KST, or an agent appointed by the company, carry out the transport or service, this happens on the client's request and expense.
- 6.3. Should the shipment be delayed as a result of circumstances for which KST is not responsible, the risk is transferred onto the client from the day of readiness for shipment.

7. Rights of Use and Industrial Property Rights

- 7.1. KST does not conduct any property right research in connection with the carrying out of the order, unless agreed explicitly and in writing. Therefore KST only guarantees the services not to be subject to property rights of third parties if this has been agreed upon explicitly and in writing.
- 7.2. If the client duly fulfils his contractual obligations relative to the service, KST grants him the right to use the work results in accordance with the contract. All copyrights, patent rights and other industrial property rights remain with KST, unless agreed otherwise explicitly and in writing. If and when, within the fulfilment of the contract, inventions are made that are eligible for trademark protection, KST will grant the client non-exclusive right of use on preferential terms.
- 7.3. Insofar as the client needs other proprietary know-how from KST for the use of the services commissioned by the client, KST will grant him, wherever possible, a non-exclusive, non-transferable right of use on reasonable terms. Insofar as KST recognizes a potential necessity for such use, the company will indicate this necessity to the client.

8 Breach of Obligation Due to Defects

- 8.1. The testing service in accordance with the contract is carried out by KST based on the appropriate, recognized rules and with the best available technology. Accordingly, the company guarantees the corresponding flawlessness of its services for a period of twelve (12) months after transfer of risk, based on the following prerequisites and conditions.
- 8.2. The client must check the result of the testing service carried out by KST immediately and notify KST at once in writing about any suspected defect. By dealing with delayed defect notifications, KST shall not waive the claim of late notification.
- 8.3. If the service carried out by KST shows a defect which can be proven to have existed already on the transfer of risk, KST is under obligation to repair the defect or provide the defective part of the service anew, at their discretion, free of charge. If such a defect cannot be found, the client bears the cost of the inspection.
- 8.4. The client must give KST the required time to make all required changes and replacement deliveries. KST reserves the right to decide whether they make the repair on the client's premises at the point of use or on KST's premises. Faulty parts must be sent back to KST on request.
- 8.5. If, after two attempts by KST, a repair or renewed service fails, proves impossible or unreasonably delayed, the client can reduce the agreed payment.
- 8.6. KST cannot be held responsible for a defect if:
 - the client has not notified the company of a recognisable defect after completion of the service,
 - the client has not notified the company within the period of time specified in point 8.1.,
 - the client is not using the service in accordance with the requirements,
 - KST is no longer able to determine beyond doubt if the defect is in accordance with pts. 8.2 and 8.3. due to circumstances that lie within the client's responsibility.
 - the defect is due to instructions or materials or parts that the client has provided, unless the faultiness of the instructions or materials or parts was obvious to KST,
 - changes are made in the area of measurement/test engineering on an overall system or its individual components without prior written acceptance by KST. This comprises changes to computer hardware by adding or removing hardware components, changes to an operating system by adding or removing driver units, changes to setups of an operating system incl. BIOS and changes to a run-time system by adding or removing software of any kind.

- 8.7. KST does not guarantee the proper functioning or absence of defects of products manufactured by the client or a third party with KST's testing services or based on them, unless KST has been instructed about the use and the conditions of use before accepting the order, and the client has tested the products sufficiently. KST is not liable when the client has worked on or processed the service, in accordance with § § 478, 479 BGB.
- 8.8. Specifications about and reference to our services in DIN or ISO norms, standards or other national or foreign quality norms, as well as analyses provided or the description of physical properties of our services are not guaranteed in the sense of § 276 Sect. 1 line 1 BGB, unless agreed otherwise explicitly and in writing.
- 8.9. Insofar as a testing service from KST contains research and/or development work, KST endeavours to achieve the objective the client requests. However, KST does not accept a more extensive commitment and/or liability in the framework of the contract about the supply of the testing services, especially concerning the achievement of the desired objective/work, unless agreed otherwise explicitly and in writing.
- 8.10. The transfer of rights for breach of obligation due to defects is excluded.
- 8.11. In addition, the German legal regulations are applicable.

9. Liability

- 9.1. Based on these terms and conditions, KST is liable to the client for damage caused by gross negligence or deliberate actions or culpable breach of a fundamental contractual obligation by KST, their legal representatives or their employees, for which KST is responsible. Any compelling statutory liability remains unaffected.
- 9.2. Insofar as KST is liable in accordance with pt. 9.1., their liability is limited to the typical, foreseeable damage, unless the damage has been caused intentionally.
- 9.3. KST is not liable if the damage caused by the client or through circumstances which lie within the client's responsibility.
- 9.4. Insofar as property has been left with KST for the carrying out of the services requested by the client, KST is only liable for damages to these if they are caused by gross negligence or deliberate actions on the part of KST. The liability is hereby limited to the typical, foreseeable damages.
- 9.5. With regard to transport carried out by KST, the company is only liable for damage caused directly to the transported goods or their components. For prototype components, this applies only up to the purchase amount of the comparable serial component. KST is not liable for any secondary damage.

10. Confidentiality

Any knowledge about KST, its operations and information of any kind in connection with KST will be treated confidentially by the client and not passed on to third parties. This does not apply to information about KST or their work which is already publicly known.

There is no confidentiality obligation vis-à-vis the customer insofar as KST is or will be legally obliged to disclose this information to competent authorities or courts.

11. Place of Fulfilment / Applicable Law / Place of Jurisdiction

- 11.1. For the relationship between the client and KST, only German law is applicable, with the exclusion of international private law. The contractual place of fulfilment for the testing service to be carried out by KST is the place of business of the company.
- 11.2. For all disputes resulting directly or indirectly from the relationship between the client and KST, solely the court of justice competent at the place of business of KST has been agreed on as the place of jurisdiction, unless other places of jurisdiction are mandatory.

12. Miscellaneous

- 12.1. Any changes to contracts must be made in writing in order to be valid. The requirement of the written form can only be waived by a written agreement.
- 12.2. In case of invalidity of individual terms of this GTC, the other terms remain legally binding. In lieu of the invalid terms, such provisions shall be applicable which correlate best with the economic object of the contract and with the appropriate safeguarding of the mutual interests.
- 12.3. In accordance with § 33, Federal Data Protection Act, the client is advised that KST stores its data using electronic information processing systems.