

RTE Akustik + Prüftechnik GmbH, Pfinztal

General Terms and Conditions of Service for Testing Equipment

These „General Terms and Conditions of Service“ (hereinafter also referred to as “Service Conditions”) of RTE Akustik + Prüftechnik GmbH (hereinafter referred to as “RTE”) correspond to the greatest possible extent to the recommendations given by the association of the German mechanical and plant engineering industry (VDMA) as of 8/2012.

I. Scope

1. These Service Conditions shall apply to any offer, quotation, contract or agreement of RTE for any installation, maintenance, overhaul work, calibration, product sampling, training, analysis, study, performance of measurements and software adaptation also when performed by means of remote service (hereinafter collectively referred to as “Services”) unless as otherwise agreed on a single-case basis. When Service is performed by remote access, RTE's terms and conditions of teleservice shall apply on a complementary basis.
2. These Service Conditions shall be applicable on an exclusive basis; no purchaser terms and conditions conflicting with or differing from these Service Conditions shall be recognized by RTE unless with RTE's express and written consent to the validity thereof. These Service Conditions shall also be applicable if RTE performs any Service to the purchaser without any reservation while being aware of purchaser terms and conditions conflicting with or diverging from these Service Conditions.
3. These Service Conditions shall not be applicable unless to entrepreneurs as defined in Section 310, Subsection 1 of the German Civil Code (BGB).

II. RTE's rights and obligations

1. RTE shall, in good time, supply the drawings or other documents for performing the Services as well as any instruction which is required in order to create conditions suitable for providing the Service, including but not limited to meeting the requirements for bringing the delivery item and the pieces of equipment required to the position at which the delivery item should be installed and for making all connections required thereto.
2. The Services shall be invoiced on the basis of time and material unless an all-inclusive price has been expressly agreed.
3. Any amount agreed upon shall be deemed exclusive of value-added tax which shall be paid to RTE in addition in the applicable statutory amount. Any remuneration shall be paid in Euros.

III. Cooperation by purchaser

1. The purchaser shall, in good time, make available all facilities and make certain that the conditions are met as required for providing the Services and for the proper use of the object of delivery or Service. The foregoing shall not apply to any preparatory work to be performed by RTE under the terms of any agreement.
2. The purchaser shall carry out any preparatory work as agreed with or as specified by RTE and complete such work in good time. The purchaser shall, in any case, make certain that the environmental conditions are suitable (dust, sound insulation, etc.) and that the foundations can carry an adequate load. If the purchaser is responsible for the transport of the delivery item to the place of Service performance, the purchaser shall make certain that the delivery item arrives at such place in good time as agreed and that RTE is allowed access to the place of performance.
3. In the event of any assignment to be carried out by means of remote service, the purchaser shall allow access as agreed.

IV. Technical assistance by the purchaser

1. The purchaser shall be obligated to provide technical assistance at its expense including but not limited to the following:
 - a) Provide suitable auxiliary personnel as needed (e.g., bricklayers, carpenters, fitters and any other skilled personnel, auxiliary workers) in the number and for the time as required for providing the Services. Any such auxiliary personnel shall follow the instructions given by RTE's project manager. RTE shall not assume any liability for such auxiliary personnel. Section VII and section VIII of these Service

Conditions shall apply if any defect or damage has been caused by auxiliary personnel due to any instruction given by RTE's project manager.

- b) Perform any action as required for allowing the performance of the Services.
- c) Provide any auxiliary means as required at the place of Service performance free of charge and in good time, including but not limited to cranes and lifting equipment for transport within the place of Service performance.
- d) Provide energy including the connections required at the location as agreed.
- e) Provide dry and lockable rooms as required for storing any tool of RTE's personnel.
- f) Transport the plant components to the position of Service performance and protect materials against adverse influence of any kind.
- g) Provide appropriate and theftproof recreation and work rooms for RTE's personnel.
- h) Provide materials or parts for adjusting the delivery item as well as for carrying out trials as specified by the agreement.

2. The technical assistance provided by the purchaser must be so as to ensure that installation may commence immediately after the arrival of RTE's personnel and may be performed without any delay until its acceptance by the purchaser.
3. If the purchaser fails to comply with the purchaser's obligations, RTE shall be entitled but not obligated to perform any action incumbent on the purchaser by itself at the purchaser's place and at the purchaser's expense.

V. Period for performing service, delay

1. The period for performing Service shall be deemed observed when, at the expiry of such period, the delivery item is ready for acceptance by the purchaser.
2. RTE shall be entitled to a reasonable extension of the deadline for completion when a delay is due including but not limited to any one or more of the following causes:
 - a) Any circumstance like industrial action, fire, war, etc.;
 - b) Incorrect or delayed delivery by any subcontractor;
 - c) Any modification or conversion activity caused by any law or regulation;
 - d) Any modification or conversion activity caused by any purchaser request;
 - e) Any action or failure to act on the part of the purchaser, e.g., as provided for in Sections III. and IV. of these Service Conditions.
3. If the purchaser suffers any verifiable loss or damage due to any delay in performing the Services, the purchaser shall be entitled to claim a lump-sum compensation for delay equivalent to 0.5% per full week up to a total maximum of 5% of the net contract value for the part of the plant which cannot be used due to such delay. Any further claim for delay shall be determined subject to Section VIII.3.

VI. Acceptance

1. The Services shall be deemed accepted if and when
 - a) Acceptance testing has been performed successfully or is deemed successful or
 - b) if the purchaser has received a written notice from RTE indicating that the Services are complete if and where such notice corresponds to the

contractual provisions concerning acceptance; this shall not be applicable unless in those cases in which the parties have not agreed on the performance of any acceptance testing.

2. Any minor defect, which does not affect the Services, shall not entitle the purchaser to refuse acceptance.
3. If acceptance is delayed due to any cause beyond RTE's control, acceptance shall be deemed granted upon the expiry of two weeks after the receipt of such written notice.
4. Prior to acceptance the purchaser shall not be entitled to make any use of the work or Service or of any part thereof. In default whereof the work shall be deemed accepted by the purchaser unless a written consent was granted by RTE. In such case, RTE shall not be obligated any longer to perform any acceptance testing.

VII. Claims based on defects

1. After the acceptance of the Services, RTE's liability for any defect in the Service shall consist in RTE's obligation to correct any such defect. The purchaser shall agree to immediately notify RTE in writing of any defect which may have occurred.
2. Such notification shall include a description of the defect.
3. The purchaser shall lose its right to claim defect correction if the purchaser fails to notify RTE of a given defect as stipulated in items no. 1 and 2 hereinabove.
4. If a defect could cause any damage, the purchaser shall give immediate written notice thereof to RTE. The purchaser shall bear the risk of any damage resulting from any failure to give such notice.
5. No liability of RTE shall exist if a defect is insignificant for the purchaser's interests or based on any circumstance under the purchaser's control.
6. RTE's liability shall be cancelled for the consequences brought about by any modification or repair work which has been performed improperly by the purchaser or by any third party without RTE's prior authorisation. The purchaser shall not be entitled neither to correct any defect on the purchaser's own nor have any defect corrected by any third party, and claim compensation from RTE for any expenditure required thereby unless in urgent cases which cause a hazard to operational safety or where required in order to avert any disproportionately high damage or loss while RTE shall be given immediate notice thereof.
7. From the immediate cost caused by defect correction, RTE shall pay the cost of subsequent performance including any shipping if and where such complaint is proven to be justified. RTE shall also pay the cost of removal and installation or of any adaptation of the software as well as the cost for the provision of any fitter and auxiliary personnel required including travel expenses unless such costs involve any disproportionate burden on RTE.
8. The purchaser shall have a right of reduction within the scope of statutory provisions if, taking account of the exceptions as provided for by law, RTE allows a reasonable time limit for defect correction set for RTE to elapse without fulfilment. The purchaser's right of reduction shall also exist in any other case in which defect correction fails. The purchaser shall not be entitled to rescind the contract or agreement unless the Service is proven to be unsuitable for the intended use by the purchaser in spite of such reduction.
9. Any other purchaser claim shall be subject exclusively to Section VIII.3 of these Service Conditions.

VIII. Liability, exclusion of liability

1. If any installation part delivered by RTE is damaged during the provision of the Services due to any fault committed by RTE, RTE shall, at RTE's option and expense, either repair or replace any such installation part.
2. The provisions as set forth in sections VII and VIII.1 and 3 of this Service Conditions shall apply mutatis mutandis excluding any further claim of the purchaser if the installed item may not be used by the purchaser as provided for in the contract through any fault on RTE's side, due to any failure to perform or any defective performance of any proposal or consulting made or given either before or after contract conclusion or any other subsidiary duty under the contract, including but not limited to any instruction for the operator control and maintenance of such installed item.
3. RTE shall not assume liability for any loss or damage which, irrespectively of its legal basis, has not been caused in the delivery item itself unless

- a. caused intentionally;
- b. caused by gross negligence committed by the proprietor, by any executive body or by any executive employee;
- c. in the event of any culpable injury to life, body, or health;
- d. for any defect RTE has fraudulently concealed or whose nonexistence RTE has guaranteed;
- e. for any defect in the deliverable item if and where liability for personal injury or property damage to any privately used object shall be assumed under the German Product Liability Act.

In the event of any culpable non-observance of an essential duty under the contract, RTE shall also be liable for any gross negligence committed by any non-executive employee and for ordinary negligence while liability for the latter shall be restricted to the foreseeable damage or loss typical of the agreement.

Any further claim for damage compensation shall be excluded.

IX. Statute of limitations

1. Every claim made by the purchaser shall become statute-barred in twelve (12) months irrespectively of its legal basis. Any claim for damage compensation pursuant to Section VIII. 3 a – e of these Service Conditions shall be subject to the statutory time limits. Statutory time limits shall also apply if RTE performs work in a building structure and thus causes the structure's defectiveness.

X. Compensation by purchaser

1. The purchaser shall be obligated to compensate any damage or loss when any jig or tool provided by RTE is damaged or stolen through no fault of RTE at the place of Service performance. This shall not apply to any damage due to normal wear and tear.

XI. Choice of law, place of jurisdiction

1. Any legal relationship between RTE and the purchaser shall be governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention.
2. The place of jurisdiction shall be the court of law competent for RTE's place of business. But RTE shall be entitled to bring action at the purchaser's principal place of business.