

**TIZ Landl – Grieskirchen GmbH**  
**(company register number 226404 y)**  
**Industriestrasse 28**  
**A-4710 Grieskirchen**

**General Terms and Conditions (GTC): TIZ PRÜFTECHNIK GRIESKIRCHEN**

As at November 2019

**1. Scope**

TIZ Prüftechnik Grieskirchen (TIZ Prüftechnik) is a division of TIZ Landl - Grieskirchen GmbH. All offers, legal transactions, deliveries and services within the scope of TIZ Prüftechnik for customers who are entrepreneurs in terms of the Austrian Consumer Protection Act are exclusively subject to these GTC. We hereby expressly reject any provisions which deviate from these GTC. Any such provisions will not be recognized even if we do not explicitly reject them again after receipt. Any deviations from our GTC and any other additional agreements require our written confirmation in order to be effective. Our GTC shall also apply as a framework agreement for all further legal transactions with the customer.

In the event of different interpretations of the content of these GTC, only the GTC in German apply.

**2. Non-disclosure, data processing, retention periods**

2.1. The parties to the contract shall not exploit or disclose to others any business or trade secrets during or after the term of the contractual relationship, in particular prices, terms of payment, internal processes, business relations, know-how of the other party to the contract or of its associated companies or enterprises/businesses, which have been entrusted to them or which became known to them as such on the occasion of the cooperation. The parties to the contract shall use technical information, in particular intentions, experience, knowledge or designs, which become accessible to them or which they receive from one another within the scope of the contractual cooperation only within the scope of their cooperation and shall also treat this confidentially and shall not disclose it to any third parties even after the end of the contractual term. This obligation to confidentiality shall not apply to information, which can be proved to have been:

- already known to the respective receiving party to the contract prior to the cooperation on the basis of the contract,
- lawfully received by the respective receiving party to the contract from third parties,
- already generally known on conclusion of the contract or to have become generally known subsequently without violation of the obligations contained in the contract,
- elaborated by the receiving party to the contract in the scope of its own, independent development,
- made available to group companies or subcontractors of the parties to the contract on the condition of confidentiality pursuant to the contract.

The parties to the contract shall ensure that their employees and vicarious agents are under obligation accordingly. This obligation to maintain confidentiality shall apply insofar as the confidentiality is pointed out by the respective party to the contract or the justified interest of a party to the contract in maintaining secrecy is undoubtedly recognizable to the other party to the contract from the circumstances. The name and logo of the customer may be reproduced in our reference lists.

2.2. The customer consents expressly to the automated processing of personal customer data that has become known to us in the course of the joint business relationship for the purpose of fulfilling the contract.

2.3. The retention period of the raw data produced in the course of conducting the respective tests is 1 year. TIZ shall retain the test report for 3 years.

**3. Conclusion of the contract**

A contract with us is only considered to have been concluded when the customer accepts our offer unconditionally or when he receives our written order confirmation or when we begin performing the service. If we issue a written order confirmation this shall be decisive for the content and scope of the contract unless expressly agreed otherwise. The assumption of guarantees, especially quality guarantees and the assurance of product characteristics require the written form to be effective, whereby in this respect, in deviation from Item 10. of these GTC, the original signature or a secure electronic signature is required.

#### 4. Performance of the contract, obligation to cooperate

- 4.1. Unless otherwise agreed in writing, we are only obliged to deliver the services defined precisely in the contract within the scope of the technical possibilities and equipment known to the customer and which we provide in compliance with generally recognized good engineering practice and legal requirements at the time of performance. Under no circumstances shall we owe the achievement of any research or development target pursued by the customer. Unless otherwise agreed in writing we shall document the services owed by us exclusively in a test report restricted to the presentation of the test results, to be made available to the customer in a single copy, in which the test results are neither be interpreted nor evaluated by us.
- 4.2. Should it emerge in the course of the test preparation or during the test that the desired test specifications cannot be achieved, we shall be entitled to cancel the test preparation or the test and to withdraw from further fulfilment of the contract. We shall then only invoice the services provided up to this point in time, whereby we shall be entitled to adjust the prices pursuant to Item 8.1. of these GTC. In this case, any liability on our part shall be pursuant exclusively to Item 7. of these GTC.
- 4.3. The services to be rendered by us are regularly destructive tests. The customer shall acknowledge explicitly that serious damage to the test parts is to be expected in any case but that this damage may not be easily recognizable or visible from the outside. The customer is obliged to take this circumstance into consideration in the event of any further use of the test parts and to take the relevant safety precautions into account alone or to ensure compliance with them. In this respect, we are not in any way obliged to any test or warning obligation and the customer shall release us from all claims of third parties or fully indemnify us and hold us completely harmless. We shall not provide any compensation for damage to or destruction of items belonging to the customer as a result of the proper performance of our services (e.g. destructive testing). The customer shall collect or have collected immediately any test material (including damaged or destroyed material) from our premises, at the latest however within 4 weeks after completion of the test. Should the customer fail to comply with this obligation, we are entitled, at our discretion, to assume sole ownership of the test material without any claim for compensation on the part of the customer, to dispose of it or have it disposed of at the customer's expense or send it to the customer at the customer's risk and expense. Furthermore, in this case, we are entitled to store the test material in the name of the customer and at his risk and expense at normal market conditions on our premises or at the premises of a third party. If as the result of or on the occasion of the proper performance of our services our own property (e.g. test equipment) is damaged, destroyed or lost through no fault of our own, we shall be entitled to demand compensation from the customer in application of Section 1014 Austrian Civil Code.
- 4.4. The transport of the customer's goods to and from our business premises shall be at his risk and expense. The storage of the customer's goods is exclusively at his risk. The insurance of these items against any kind of risk is exclusively the responsibility of the customer. Our liability with regard to such items is restricted to our own due care and otherwise exists only pursuant to Item 7. of these GTC.
- 4.5. The customer shall inform us fully of all facts relevant to the performance of our services, and unless otherwise agreed, shall make available to us the objects and equipment not available to us (e.g. clamping device, adapter) for the performance of the test. Should we provide such objects or equipment for the performance of the test, they shall also remain our sole property, even if the customer has commissioned them and/or has contributed to the cost. Unless otherwise agreed in writing, we are not be obliged to check data, information or other services provided by the customer for their completeness or correctness. We shall not be responsible for the correctness of safety regulations, provisions and programmes on which our tests, test reports and expert opinions are based, unless the regulations, provisions or programmes originate from us or are themselves the subject of the test order. We are not in any way obliged to any test or warning obligation with regard to the (serial) use of the tested object intended by the customer. Such standards, safety regulations, conditions of use, etc., or compliance with them shall be taken into account by the customer alone. The customer shall also ensure the correctness, function and safety of the tested object within the scope of (serial) use. In this respect, the customer shall release us from all claims of third parties and from all necessary expenditure on our part incurred in this connection or shall fully indemnify us and hold us completely harmless.
- 4.6. As far as one-off or repeated acts of cooperation on the part of the customer are required to carry out our services (e.g. provision of test documents or test parts), the customer shall provide these in good time and at his own expense; expenses shall only be reimbursed if this has been agreed in writing. As long as the customer fails to perform the acts of cooperation, does not perform on time or does not fulfil them properly, we are entitled - irrespective of any further legal or contractual claims - to withdraw from the contract after granting an appropriate grace period.

- 4.7. We have the right to have the services incumbent on us carried out by a subcontractor carefully selected by us and deemed suitable.
- 4.8. If we are active outside our business premises, the customer shall be responsible for undertaking all necessary measures to fulfil road safety obligations, insofar as nothing to the contrary emerges from the nature of the matter or an agreement with the customer indicates otherwise. We are entitled to refuse to perform the service as long as the necessary measures have not been taken.
- 4.9. If the service or part of the service has been subcontracted to a supplier, the supplier guarantees that it shall permit TIZ Grieskirchen and its customers and all public inspection institutions access to its business premises insofar as this is necessary to assess compliance with quality standards. The supplier shall disclose all necessary specifications, instructions, processes, records or special requirements.
- 4.10. The customer agrees that the supplier may claim the research premium pursuant to Section 108c Austrian Income Tax Act.

## **5. Deadlines and dates**

- 5.1. The customer acknowledges that the testing equipment necessary to execute the order may possibly not be available on time, due, e.g. to an unforeseen extension of the duration of previous tests or damage to the testing equipment on the occasion of previous tests. Deadlines and dates are planned carefully but are always considered to be non-binding with regard to our provision of services unless binding written agreements have been concluded in individual cases. In as far as they are non-binding, we shall only be in default if the customer has already unsuccessfully granted us an appropriate grace period in writing twice. In any case deadlines only expire after the proper and complete performance of all cooperation actions owed by the customer as well as – in as far as an advance payment has been agreed – from the date of receipt of the advance payment; deadlines shall be postponed accordingly. Subsequent modification requests or delayed performance of cooperation actions by the customer shall extend the performance time appropriately.
- 5.2. If our performance is delayed or interrupted due to unforeseen circumstances or circumstances beyond our control (e.g. inadvertent breakage or destruction of the test materials, need for revision of testing procedures, industrial disputes, operating disruptions, obstacles to transportation, lack of primary materials, official measures – also affecting our suppliers – as well as late self-supply), we are entitled to withdraw from the contract in whole or in part or, at our discretion, to postpone or interrupt the performance of the service for the duration of the obstruction without being in default. We shall inform the customer immediately of the unavailability or interruption of the service or partial service. If expenses on our part (e.g. replacement or repair of test specimens, revision of testing procedures or test data) are necessary to eliminate a delay or interruption of our performance (e.g. inadvertent breakage or destruction of test material, inadequate test procedures, inaccuracy or other unsuitability of test data provided by the customer) that is attributable to the sphere of the customer, we are entitled to invoice the customer for these expenses in an appropriate amount.
- 5.3. If the customer – through no fault of his own – is in default of acceptance or if he violates his obligations to cooperate, he is obliged – without prejudice to our other rights – to compensate us for any loss suffered by us including any additional expense.
- 5.4. If we are in default or if the performance of the service is impossible or unreasonable for us, the only liability on our part shall exist exclusively pursuant to Item 7. of these GTC.
- 5.5. A cancellation of ordered test services is only valid in writing. In the event of a cancellation the customer will be invoiced for all expenses incurred up to the cancellation.  
In the event of cancellation up to 5 weeks before the start of the ordered test service the customer shall be charged 30% of the ordered order amount.  
In the event of cancellation up to 3 weeks before the start of the ordered test service the customer shall be charged 60% of the ordered order amount.  
In the event of cancellation up to 1 week before the start of the ordered test service the customer shall be charged 90 % of the ordered order amount.  
The customer undertakes to pay the respective invoice.

## **6. Warranty**

- 6.1. We guarantee that the services to be rendered by us are in accordance with the relevant service agreement. A minor impairment shall not be considered here. The presumption of Section 924 sentence 2 Austrian Civil Code is excluded. A guarantee for the realization of estimates or forecasts is excluded in the absence of a written agreement to the contrary. Any provision of a test certificate shall not contain any

statement that goes beyond the concrete contents of the test certificate, in particular on the usefulness or quality of the test item. The same applies to certificates within the scope of (quality) management system certifications. The customer is not entitled to withhold payments due to warranty claims.

- 6.2. Warranty claims against us – for whatever legal reason – shall be time-barred 12 months at the latest from delivery of our main contractual performance to the customer or to a third party named by the customer.
- 6.3. The place of performance of the warranty is Industriestrasse28, A-4710 Grieskirchen. Reimbursement of expenditure based on the transfer of the object of performance away from this place of performance is excluded.
- 6.4. Obvious defects –also the absence of any quality guarantees or assured product characteristics - shall be notified immediately in writing, at the latest within a period of 7 days of receipt of the service, hidden defects shall be notified immediately in writing, at the latest within 7 days of their discovery. This notification must be combined with a concrete written description of the defects. Should the customer neglect to make the notification in due form and within the prescribed period, the service shall be deemed to have been accepted. The timeliness of the notification is determined by the time of its receipt by us. If requested, the customer shall provide us with documents and information to an extent deemed to be reasonable that we need to assess and eliminate the defects.
- 6.5. We provide a warranty by way of subsequent performance within a reasonable period of time. We shall in any case be entitled to choose between rectification and replacement of the performance. We are entitled to refuse subsequent performance according to statutory provisions. We are entitled to the right of subsequent performance twice for each case of warranty, unless this is unreasonable in the individual case or if special circumstances exist which justify the immediate rescission of the contract or reducing the payment after taking the interests of both parties to the contract into consideration. After the unsuccessful expiration of the second remedy period the customer may demand rescission of the contract or a reduction in payment in accordance with legal regulations. Self-performance by the customer is excluded unless we agree to it in writing. Any additional claims on the part of the customer due to defectiveness of our services, regardless of the legal reason, especially on avoidance of the contract on account of error are excluded. Claims for compensation for damages under warranty exist only according to Item 7. of these GTC. Any recourse claims of the customer pursuant to Section 933b Austrian Civil Code are excluded.

## **7. Liability**

- 7.1. We are liable for any claims regarding damages or reimbursement of expenses – regardless of the legal reason – to the exclusion of any further liability as follows:
  - liability is excluded in cases of minor and simple gross negligence;
  - the liability for indirect damages, consequential damages (especially consequential damage resulting from defects), interruption of operations, loss of profit, recourse in connection with product liability, product recalls, loss of information and data is excluded in any case. In this context lost profit shall also be understood as the destruction of commercial opportunities, which at the time of damage already represent a current, independent asset for the injured party, e.g. due to an already existing contract between the injured party and a third party;
  - Insofar as a liability exists on our part, this is restricted to typical and foreseeable damage;
- 7.2. Claims for damages and reimbursement of expenses shall become time-barred 12 months after delivery of our main contractual performance, in the case of liability under tort law from the time of knowledge or grossly negligent ignorance of the circumstances substantiating the claim and of the person liable to pay damages.
- 7.3. Insofar as our liability is excluded or restricted, this also applies to our subcontractors, representatives, employees and other vicarious agents.

## **8. Remuneration, payment**

- 8.1. Unless agreed otherwise in writing, our total prices comprise unit prices, lump sums and/or direct labour prices. Unit prices are those for which the unit of a service can be recorded in certain units of measurement. Lump sums are those for which the price for a total service or partial service is stated as one amount. Direct labour prices are those for one unit (e.g. hour of performance) and are invoiced according to actual work and costs involved. Total prices are the remuneration in terms of the Value Added Tax Act and form the assessment basis for the value added tax to be paid by the customer, if applicable. The customer acknowledges that the unit prices, lump sums and direct labour prices offered by us are understood to be subject to the execution of all services offered. We shall be entitled to adjust the unit

prices, lump sums and direct labour prices in such a way as we usually charge for the relevant services, if – for whatever reason, except in the event of termination by the customer for a significant reason of gross negligence on our part – not all of the services offered are performed.

- 8.2. Within the scope of continuing obligations and long-term contracts we are entitled to make appropriate price increases in the event of an increase in our production costs. If the customer does not agree to such a price increase, he may terminate the contract within a period of 4 weeks of receipt of such an increase request, otherwise the increase shall be deemed to have been agreed.
- 8.3. The customer is obliged to inform us of his delivery address which is relevant for invoicing. As long as no other delivery address for the customer has been verifiably brought to our attention in writing, deliveries of all kinds will be made to the address we have been given, otherwise to the address of the customer listed in a public directory with the effect that all deliveries shall be deemed to have been received by the customer. In the absence of any other agreement our invoices are to be paid without discount and free of charges according to the agreed payment schedule, otherwise into our specified account within a period of 2 weeks from the invoice date quoting the invoice number. If cheques are accepted on the basis of written agreements in individual cases, this shall only be on account of payment and also without deduction of discount. Any discount charges shall be borne by the customer. We reserve the right to demand appropriate advance payments and prepayments.
- 8.4. Cost estimates are prepared to the best of our knowledge, we cannot, however, accept any liability for their accuracy. Should it turn out during the performance of a service that the costs will exceed the amount originally estimated to the customer by over 50%, we shall inform the customer accordingly. In this case the customer shall be entitled to terminate the contract. We will then only invoice the services we have provided up to this point in time, whereby we are entitled to adjust the prices pursuant to Item 8.1. of these GTC. The same applies if we withdraw from the contract for good cause or if the contract is cancelled by mutual consent. Should cost overruns of up to 15% occur after the order has been placed, a separate notification is not necessary, and the costs may be invoiced as usual.
- 8.5. Unless otherwise agreed in writing, order changes or additional orders (e.g. increase in the number of test parts, change of the test procedure, rectification of damage to test parts or adapter parts) may be invoiced at agreed prices or in the absence of specific agreements, at reasonable rates.
- 8.6. If we are entitled to several claims against the customer, we shall determine to which debt a payment shall be attributed.
- 8.7. If it becomes apparent after conclusion of a contract that our claims against the customer are at risk due to the customer's inability to pay, we shall be entitled to perform outstanding services against advance payment or provision of security only and to withdraw from the contract after fruitless expiry of a deadline set for this purpose; Item 8.4. sentence 4 of this section shall apply accordingly.
- 8.8. If the customer is in default of payment, we shall be released from all further contractual obligations and shall be entitled to withhold outstanding services or demand advance payment or the provision of security. Furthermore, the customer shall owe default interest in the amount resulting from Section 1333 (2) Austrian Civil Code, unless we can prove higher damages to the customer. In addition, we shall be entitled to charge a lump sum of € 50,00 per reminder sent by us. Moreover the customer shall also reimburse us for any reminder and collection expenses, to the extent that they are necessary for appropriate legal prosecution, whereby the customer undertakes in particular, to reimburse at most the fees of the collection agency involved which are based on the regulations of the Federal Ministry of Economic Affairs regulations governing maximum rates of fees charged by collection agencies.

## **9. Intellectual property rights**

We shall retain all intellectual property rights relating to the services provided by us, especially cost estimates, plans, sketches, expert opinions, test reports, test results and calculations. Subject to deviating agreements in individual cases, we shall, in each case, grant the customer a simple right of use to our services which are protected by intellectual property rights, insofar as this is necessary for the contractually agreed use of the services specified in the contract. The dissemination and utilization of our services beyond the contractually agreed purpose, especially their reproduction or publication is only permitted with our prior written consent. The customer shall be solely responsible for compliance with the legal provisions (e.g. with competition law) applicable to the utilization of our performance, especially regarding the content of advertising statements. In this respect the customer shall release us from all claims of third parties and from all necessary own expenses incurred in this connection and shall fully indemnify us and hold us completely harmless.

## **10. Written form**

Any contracts to be concluded within the scope of these GTC require the written form to be effective. Modifications and amendments to the contracts concluded within the scope of these GTC also require the written form to be effective. The written form can only be waived in writing. Oral collateral agreements are invalid. Notifications made by fax or e-mail shall be deemed to be in writing.

## **11. Severability clause**

Should any individual provisions of these GTC or of any contracts concluded thereunder be or become invalid or unenforceable in whole or in part, this shall not affect the validity and enforceability of the remaining provisions of the GTC or the contracts concluded thereunder. The parties to the contract undertake to replace the invalid or unenforceable provision by a valid and enforceable provision which comes as close as possible to the economic purpose of the invalid or unenforceable provision intended by the parties to the contract. This shall also apply if the ineffectiveness or unenforceability of a provision is based on a measure of performance or time standardized in these GTC or in contracts concluded thereunder. In such cases a legally permissible measure of performance or time that comes as close as possible to the intended purpose shall be agreed upon. The same shall apply if there should prove to be any loopholes needing to be amended in the GTC or in any contracts concluded thereunder.

## **12. Offsetting, retention**

Offsetting counter claims of any kind whatsoever against our claims shall not be permitted. The customer is not entitled to a right of retention.

## **13. Place of performance**

The place of performance for all services from the contracts concluded within the framework of these GTC is Industriestrasse 28, A-4710 Grieskirchen.

## **14. Applicable law, place of jurisdiction, contract language**

These GTC and all contracts concluded thereunder shall be governed exclusively by the laws of Austria. The conflict of laws rules of private international law and the UN Sales Convention (CISG) are excluded. The exclusive place of jurisdiction for all legal disputes arising from or in connection with these GTC or the contracts concluded thereunder is the court with material and regional jurisdiction for A-4710 Grieskirchen. However, we shall be entitled, at our discretion, to bring legal action against the customer at any other court which may be competent under national or international law. The contract language is German.