

## **CoLT Prüf und Test GmbH (FN 400941w)**

**Breitenach 52**

**A-4973 Sankt Martin im Innkreis**

### **General terms and conditions of business: CoLT Prüf und Test GmbH**

Effective 13.11.2017

#### **1. Scope**

These general terms and conditions apply exclusively to all offers, acts in law, supplies and performances of CoLT Prüf und Test GmbH (hereinafter „CoLT“) with customers, which are contractors as defined by the Austrian Commercial Code (Unternehmensgesetzbuch – UGB). Deviant general terms and conditions are vetoed explicitly hereby. They even do not apply if there is no explicit further veto after their occurrence. Every discrepancy from this general terms and conditions as well as side letters require written approval to become effective. This general terms and conditions also apply to all further acts in law with the customer.

#### **2. Conclusion of the contract**

A contract with CoLT becomes effective only, if an authorised representative of the customer accepts the offer in written form. Written acceptance of order from CoLT, is definitive for content and extent of the contract if there is no different written agreement. The acceptance of guarantees, especially quality warranties, and warranty of qualities requires the written form to become effective, at which in discrepancy to article 10 of this general terms and conditions, the original signature of the authorised representative of CoLT or an advanced electronic signature is required.

#### **3. Order execution, obligation to cooperate**

CoLT offers the services of consulting engineers in the field of technical physics.

- 3.1. CoLT Prüf und Test GmbH is testing materials and components according to the requirements of the customer. CoLT ist no certifying body (Zertifizierungsstelle).
- 3.2. Except a different written agreement, CoLT owes only the contractually exactly defined performances within the realms of technical possibilities and settings, in accordance to - at the moment of execution - in Austria generally accepted rules of technology and legal requirements. CoLT owes in no case the achievement of a research objective or planning target trailed by the customer. CoLT documents the performance in a test report, limited exclusively to the presentation of the test results, provided to the customer as a single copy, where the test results are neither valued nor interpreted by CoLT.

CoLT effects its performances with reasonable care and skilfulness corresponding to the individual instructions of the customer. CoLTs research reports respective to the testing of samples take a stand exclusively to these samples and do not make statements about the rest of the lot from where the samples are retrieved.

CoLTs research reports describe only the detected facts at the moment of testing within the framework of the customer's specific instructions, or without (further) instructions of the customer, within the framework of the test parameters defined in Austria generally accepted rules of technology.

CoLT is not obliged to point out values or facts or to report about them, if they are outside of the individual instructions of the customer.

- 3.3. If in the course of testing preparations or while testing turns out that the required test specifications cannot be accomplished, CoLT is entitled to cancel the testing preparations or testing and to withdraw from the further fulfilment of the contract. In that case CoLT will invoice only the undertaken performances, whereby CoLT has the right to adapt the pricing corresponding to clause 7.1 of this general terms and conditions.
- 3.4. Undertaken tests by CoLT are almost always destructive tests. The customer notes that in each case serious damages of the test object are about to be expected, even if they are not recognizable/visible from outside. The customer is obliged to consider this fact on own basis for potential further usage of the test objects especially referring to corresponding safety measures and adherence to those.

Therefore CoLT does not undertake any duty of warning or further information. The customer has to release CoLT from all (legal) entitlements of third parties/ hold CoLT totally harmless also against claims. CoLT does not pay for damages or destructions of the customer's objects as a result of a proper execution of CoLTs performance (eg. Destructive Test). The customer has to collect/have collected testing material (also damaged or destructed material) from CoLTs factory premises immediately, at the latest 4 weeks after the conclusion of the testing. If the customer does not fulfil this obligation, CoLT has the choice to assume the testing material in its sole property without any title of compensation by to the customer or to dispose/let dispose the testing material at the expense of the customer or to transmit the testing material at customer's risk and expense. In that case CoLT has furthermore the right to place the testing material into stock at CoLT or a third party at normal market conditions on behalf of the customer as well as on his risk and expense.

CoLT is not obliged to store samples.

If an own item (eg test device) is damaged or destroyed as a result of a proper execution of CoLTs performance without CoLTs fault eg also because of the use of a customer device, or an own item gets lost, CoLT has the right to require a free of cost replacement by the customer

- 3.5. Transport of items to and from CoLTs factory premises takes place on customers expense and risk. Storage of customers items at CoLT takes exclusively place on customers risk. Insurance of these items against whatever risk is customers obligation. CoLTs liability in relation to these items is limited to the diligence on own items and exists only as defined in clause 6 of this general terms and conditions.
- 3.6. Customer has to inform CoLT about all facts which are relevant for the execution of the performance, and, unless otherwise agreed, to provide all items and equipment for testing which is lacking at CoLT (eg clamping device or adapter). If CoLT purchases such items or equipment for testing, it stays in sole property of CoLT, even if the customer ordered these and/or added to the costs. CoLT is not obligated to verify data, information or other deliveries from the customer upon completeness and correctness. CoLT is not responsible for the correctness of safety regulations, safety instructions and safety programs, on the tests, test reports and expertise's are based on. CoLT has no duty to test or warn respective the intended (serial)use of the tested item by the customer. Rules, safety regulations, conditions of use et cetera in this regard have to be considered by the customer on his own as well as correctness, function and safety of the tested item in the framework of (serial-) use have to be ensured. In this respect the customer has to release CoLT from all requirements of third parties and all connected own expenses/ hold CoLT totally harmless also against claims.
- 3.7. If for the execution of the performance single or repeated acts of cooperation (once or several times) of the customer are necessary (eg preparation of data or test items), customer has to provide these in time and on his own expense; expenses are not refunded. If customer does not attend to his duty in time or proper, CoLT has - regardless of further legal or contractual rights – the right to withdraw from the contract, after setting an adequate period of grace and CoLT is not liable for a delayed fulfilment of the contract.

- 3.8. CoLT has the right to execute its performances by subcontractors.
- 3.9. If CoLT acts outside of its factory premises, the customer is incumbent to all measures which are necessary to fulfil the liability for premises. CoLT has the right to refuse the performance as long as the necessary measures are not taken, without arising any requirements of the customer out of this.

#### **4. Deadlines and due dates**

- 4.1. The customer acknowledges, that the test facilities necessary for the execution of the performance possibly are not available in time, caused by an extension of length of an previous testing or damage of test facilities on the occasion of previous testing, not foreseen by CoLT. Deadlines and appointments are planned carefully, but they are not binding for CoLT. In any case deadlines starts with the proper and complete provision of all acts of cooperation owed by the customer as well as if there was a commission agreed with the incoming payment, appointments extend accordingly. Later changes of request or delayed acts of cooperation of the customer extend the time of performance corresponding.
- 4.2. If CoLTs performance is delayed or interrupted because of unforeseen or circumstances outside of CoLTs control (eg unscheduled break or damage of the testing material, need of revision respective test procedure, labor dispute, business disruption, lack of transport, lack of basic material, official measures – each applies also to previous delivery supplier – as well as delayed self-delivery), CoLT has the right to withdraw from the contract at all, or at CoLTs choice to postpone/interrupt the performance for the time of obstruction without getting in default. CoLT will inform the customer immediately about the unavailability or interruption of the performance or the part of the performance. If the delay/interruption is caused by the sphere of the customer (eg unscheduled break or destruction of the testing material, inadequate testing procedure, faultiness or other uselessness of testing data provides by the customer) and CoLT has expenses because of this (eg replacement or repair of equipment under test, revision of testing procedures or testing data) CoLT has the right to charge this properly to the customer.
- 4.3. If the customer is in default of acceptance - also if it's without his fault – or he breaches his duty to cooperate, he has - regardless of any other rights of CoLT – to replace/refund the arising damage/harm and possible additional expenses.
- 4.4. If CoLT is in default or the performance is impossible or unacceptable for CoLT, a possible liability of CoLT exists only in accordance with clause 6 of this general terms and conditions.

#### **5. Warranty**

- 5.1. CoLT warrants the accordance of the provided performances to the performance agreement. An insignificant impairment remains out of consideration. The assumption, that the defect existed already at the time of handover if it appears within 6 months after the time of handover, is excluded. Warranty for the realization of estimates and forecasts is excluded. A test report does not contain any statement about the individual content of the test report and this particular case , especially about the usability or quality of the tested item. The customer is not entitled to retain payments because of warranty claims.
- 5.2. Warranty claims against CoLT – for whatever legal foundation – expire within 12 month after producing the contractual main performance to the customer or third party named by the customer.
- 5.3. Place of performance of the warranty is Breitenach 52, A-4973 St. Martin im Innkreis. Possible costs of transport/costs of the repeated provision of materials et cetera bears in either case the customer.

- 5.4. Defects – also the absence of possible guarantee of quality/warranted characteristics – have to be stated in written form immediately at the latest 7 days after receipt of the performance, hidden lacks immediately at latest 7 days after detection. This notification has to be combined with a concrete written description of the lack. Fails the customer the notification in due form and in due time, the performance becomes effective as proper provided and the customer loses all claims. For the timeliness of the notification the moment of access to CoLT in accordance with clause 10 of this general terms and conditions is relevant. Upon request the customer has to provide CoLT all documents and information, necessary to evaluate and eliminate possible lacks.
- 5.5. If there is a potential choice between improvement and exchange CoLT has the right to choose. CoLT has the right to refuse the supplementary performance under the legal provisions. The execution by substitution by the customer is excluded. Furthermore requirements of the customer because of lack of performance of CoLT for whatever legal foundation, especially challenge because of error are excluded. Claims for damages also consequential harm caused by a defect (Mangelfolgeschäden) exist only in accordance with clause 6 of this general terms and conditions. Contribution claims after the period of warranty are excluded also in case of warranty from one contractor to a customer (§ 933b ABGB – Austrian Civil Code)

## 6. Liability

- 6.1. CoLT is neither an insurer nor a guarantor. The take-over of any such connected responsibility is explicitly disclaimed. The customer has to take out an insurance on its own against such/any risk.

CoLT makes inspection reports on basis of information, documents and/or samples transmitted by customer. Inspection reports are solely for the use of Client. Customer has to draw conclusions of the inspection reports on his own responsibility. CoLT excludes explicitly the liability for any actions taken or not taken on the basis of the inspection reports and for any incorrect results arising from unclear, erroneous, incomplete, misleading or false information provided to CoLT.

- 6.2. The liability of CoLT for any claims for damages or reimbursement of expenses only (excluding furthermore liabilities) is limited as follows:
- liability is excluded by ordinary negligence
  - liability of CoLT is limited to the amount insured by CoLT;
  - liability for indirect damages (mittelbare Schäden), subsequent damages (Folgeschäden) (in particular also consequential harm caused by a defect (Mangelfolgeschäden)), business interruption, loss of profit (entgangener Gewinn), regress relating to product liability, products recall, loss of information and data is excluded. In this connection loss of profit is also the loss of a commercial opportunity, which is a present independent asset at the moment of the damage, for example because of an existing contract between the claimant and a third party.
  - liability for damage (destruction) of provided checking devices is also excluded by ordinary negligence
  - If there is any liability of CoLT, liability is limited to typical and foreseeable damages;
- 6.3. CoLT concluded a liability protection to cover damages caused by incorrectly testings by CoLT. This liability protection corresponds to the requirements of the *Bundesministers für wirtschaftliche Angelegenheiten über die Pauschaldeckungssumme von Versicherungsverträgen akkreditierter Stellen (AkkVV-Akkreditierungsversicherungsverordnung)*.
- 6.4. CoLT ist not liable for any claims of compensation raised by a third party because of the usage of test results. In case of any claims by third parties the customer has to indemnify and hold harmless CoLT.
- 6.5. All claims against CoLT expire 12 months after handover/delivery of the contractual main performance, in case of tortuous liability or grossly negligent lack of knowledge of circumstances founding the claim and the liable persons.

6.6. This provision also applies to subcontractors, representatives, employees and other assistants of CoLT

## **7. Reimbursement, payment**

7.1. If there is no other agreement, the total price is made up of unit price, all-inclusive price and/or force account price. Unit prices are those, at which the unity of the performance is ascertainable by measuring unit. All-inclusive price are those, when the price is specified for an overall performance or partial performance by a sum. Force account price are those, which are discounted for a unit (eg hour of performance) on the basis of real costs. Total price are the reward as defined by the UStG (Austrian value added tax act) and constitute the base for value added tax, which has to be paid – if accrues – by the customer. The customer has to bear possible other taxes/tolls and other dues, in conjunction with the concrete order.

The customer acknowledges that the unit prices, all-inclusive prices and/or force account prices offered by CoLT are subject to the execution of the total offered performance. CoLT has the right to adapt the offered unit prices, all-inclusive prices and/or force account prices, as CoLT usually charges the mentioned performance if – for whatever reason – not the total offered performance is executed or additional expenses accrued because of insufficient information of the customer.

7.2. In the framework of continuing obligations and Long Term Agreements CoLT has the right to conduct an increase of prices if the initial costs increase; if the customer does not agree with the increase of prices, he has the right to dissolve the contract for the future in case of notification within 4 weeks after access of the increase request, otherwise the increase applies.

7.3. The customer has to announce CoLT for billing the relevant address for service. As long as CoLT is not made aware verifiable in written form of a different address for services, deliveries of all kind take place at the announced one, otherwise they take place at the address named in a public register with effect to be effectively delivered. Bills have to be paid on CoLTs denoted account under specification of the invoice number without cash discount deduction and exempt from charges in accordance to the agreed payment schedule, otherwise within 2 weeks after date of invoice. If in particular case checks are accepted because of an agreement this effects only as payment (zahlungshalber) and also without cash discount deduction. The customer has to bear possible discount changes. CoLT reserves it's right to request proper payments on account and payments in advance.

7.4. The estimation of costs are made with best expert knowledge, there is no warranty for correctness. If during execution of the performance it turns out, that the effective costs will be more than 15 % higher than the estimated costs, the customer will be informed. In that case the customer has the right to terminate the contract in case of effective increase. CoLTs performances until that moment will be discounted, whereupon CoLT has the right to adapt prices according to clause 7 of this general terms and conditions. Same applies if CoLT withdraws from the contract because of important reason or mutual termination of the contract.

If there is a cost overrun up to 15% after assignment of a mission, a separate information is not required, the costs can be charged.

7.5. Order modifications or additional orders (eg increase of the number of testing items, modification of testing procedure, structural maintenance of testing items or parts of adapters) are, unless different agreement, billed based on proper prices.

7.6. If there are several bills outstanding against the customer, CoLT decides to which debt the payment is charged.

7.7. If CoLT fears, after conclusion of the contract, because of objective circumstances that the requirements of CoLT against the customer are at risk because of lacking performance of the customer, CoLT has the right to fulfil outstanding performances only after cash payment before delivery or deposit and to withdraw from the contract after effectless ending of a set deadline; clause 7.4. of the general terms and conditions apply.

7.8. If customer is in default of payment CoLT is released from all further performances obligations and has the right to restrain owing performances and/or request deposit. Furthermore the customer owes business default interest rates. The enforcement of further claims for damages is unaffected and for each reminder a cost lump sum of EUR 50,00 is charged. Additionally the customer has to pay CoLT the arising reminder fees and collection expenses, whereat the customer obliges himself in particular to pay maximal the costs of the engaged collection agency.

## **8. Confidentiality**

The parties agree two-way discretion respective all information concerning the contractual partner which were received in conjunction with the order. The customer obligates himself to keep discretion respective the concrete procedure executed by CoLT and possible confidential information. In return CoLT obligates itself to keep all information especially also test results confidential. This does not apply to public information or publicly available information.

## **9. Intellectual property rights**

CoLT reserves all rights especially also intellectual property rights respective to all generated performances of CoLT, especially estimation of costs, plans drafts, expertise, test reports, test results and calculations. Subject to other agreements in particular cases, CoLT grants the customer a simple right of use related to performances which are intellectual property rights able, as far as it is necessary to use the contractual performances according to contract. The transmission and utilization of the performances in excess of the contractual agreed purpose, especially duplication and publication, is allowed just with prior written consent and only until revoked. Solely the customer is responsible for the compliance with legal requirements which apply to the utilization of the performance of CoLT (eg competition law), especially for the content of advertising messages; in this respect customer has to release CoLT from all requirements of third parties and all connected own expenses/hold CoLT totally harmless also against claims.

## **10. Claim Management**

The customer can put possible claims and request referring to test results in oral or in written form to CoLT. (phone: 0043 59 616-3000; Email: [office@colt-lab.com](mailto:office@colt-lab.com); mail: CoLT Prüf und Test GmbH, Breitenach 52, 4973 St. Martin im Innkreis, AUSTRIA

CoLT verifies, reviews and treats the claim referring to the quality management procedure of CoLT. CoLT notifies the customer in oral or in written form about the results.

## **11. Written form**

All in the framework of this general terms and conditions concluded contracts require written form to become effective. Changes and supplements of contracts concluded in the framework of this general terms and conditions require also written form to become effective, this applies also for the requirement of the written form itself. Oral side-agreements are ineffective. Declarations via fax email conform to the written form.

Orders may be placed solely in written form from authorized representative. Further information/ additional orders et cetera may be transmitted/placed from the project leader.

All legal effective and binding declarations become solely effective, if they are transmitted either via mail to CoLT Prüf und Test GmbH, Breitenach 52, 4973 St. Martin im Innkreis or via email to the email-address [office@colt-lab.com](mailto:office@colt-lab.com)

## **12. Summation, retention**

Summation against requirements of CoLT with counterclaims of any kind is excluded, except judicially ascertained or recognized requirements. The customer has no right of retention.

## **13. Severability clause**

If any provisions of this general terms and conditions/ the contracts concluded in framework of this general terms and conditions becomes entirely or partly invalid unenforceable the remainder of the general terms and conditions/contracts concluded in framework of the general terms and conditions will not be affected. In such case the parties agree upon a valid and enforceable provision, reflecting as much as possible the commercial purpose of the invalid provision.

## **14. Place of performance**

The place of performance for all performances of contracts concluded in framework of this general terms and conditions is Breitenach 52, A-4973 St. Martin im Innkreis.

## **15. Application of law, jurisdiction clause, contract language**

General terms and conditions and all concluded contracts between the parties are governed exclusively by the law of Austria. The conflict rules of the private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) are excluded. The exclusive place of jurisdiction for all disputes in connection to this general terms and conditions/ the contracts concluded in framework of this general terms and conditions is the factual and local competent court for A-4973 St. Martin im Innkreis. CoLT has the right on her own choice to claim the customer also at each other court, which can be responsible because of national or international law. The contract language is german.

In case of clarity and possible difference the german version of this general terms and conditions prevails.