General Terms and Conditions of DLG TestService GmbH - Gross-Umstadt  
(Hereinafter DLG)  
For freely agreed services, especially testing and expert services  
Valid from 01.01.2018

1 General terms, scope of application
1.1 DLG provide services, carries out tests and prepares expert opinions in connection with the development and manufacture of products in terms of quality, practicality and usefulness as well as safety in a scope agreed with the Client from time to time.
1.2 Unless any prevailing deviating provisions have been agreed with the Client, the following terms and conditions apply for the agreed services including information, delivery and such like and for secondary services rendered in connection with the performance of the assignment and other sundry obligations.
1.3 The Client's general terms and conditions including possible purchasing terms do not apply and are ruled out. Contractual terms of the Client do not become an integral part of the contract even if not expressly contradicted by DLG.

2 Conclusion of contracts, scope of services, performance of assignments
2.1 The contract comes into effect when the DLG offer is signed by an authorized representative of the Client and the countersigned offer is received at DLG by post, telefax or electronic transmission in the form of a PDF file.
2.2 The scope of the services owed under the contract shall be agreed in writing between the parties when the assignment is given. Any changes or amendments to the defined scope of the assignment must be agreed between the parties in writing before the services are rendered.
2.3 The agreed services shall be rendered in accordance with the generally recognized rules of the art, observing the regulations applicable at the time the contract comes into effect. Unless otherwise agreed in writing or unless a certain method of action is required under mandatory provisions, DLG is entitled to determine the method and type of testing at its professional discretion.
2.4 The contractually agreed services of DLG are deemed to have been rendered and completed upon preparation of the respective test reports, expert opinions or, respectively, with the award of marks of conformity and their delivery to the Client.

3 Terms of payment, expenses, offsetting
3.1 Unless a fixed price or another basis of assessment is expressly agreed in writing, DLG's services will be billed at the prices or daily and/or hourly rates agreed at the time the contract is entered into.
3.2 DLG is entitled to request appropriate advances for expenses and/or to submit partial invoices in accordance with services already rendered. Partial invoices need not be designated as such. Receipt of an invoice does not mean that DLG has submitted its bill for the entire assignment.
3.3 Unless otherwise agreed, any sums billed in accordance with Sec. 3.2 and/or with the final invoice after the services have been completed are due for payment as soon as invoiced.
3.4 Where applicable, VAT in the statutory amount will be added to the bill. The turnover tax will be shown separately on the invoice.

3.5 In the event that the Client should terminate an assignment for testing or an expert opinion before such work has commenced, DLG is entitled to bill 10% of the agreed remuneration of the assignment as a lump-sum compensation for expenditures. The Client is expressly permitted to submit evidence that, in a specific case, the appropriate compensation for expenses is substantially lower than the lump sum.

3.6 The Client may offset claims of DLG only against claims of its own that are either uncontested or have been declared justified by a court-of-law.

4 Terms of delivery, deadlines

4.1 The terms of delivery and deadlines agreed in the contract are based on estimates of the scope of the assignment on the basis of information provided by the Client. They shall be binding only if confirmed as binding in writing by DLG.

4.2 In the event that deadlines should have been bindingly agreed, the term shall start only after the Client has complied with all its obligations of cooperation agreed in the contract if commencement of the work depends on such compliance.

5 Force majeure

5.1 DLG shall not be responsible for the failure to perform or delays in performance if these are caused by force majeure or other events not foreseeable at the time the contract was entered into. Force majeure is an external event which is not connected to the assignment in question, is not foreseeable and cannot be averted even by the utmost diligence reasonably to be expected, such as, in particular, natural disasters, damages caused by fire, strikes and legitimate lockouts as well as interruptions of operation that are not the fault of DLG, instructions from public authorities, problems with the procurement of material and energy, lack of raw materials as well as non-performance, incorrect performance or belated performance by upstream suppliers unless DLG can be held responsible for such suppliers.

5.2 If such events should make it impossible or unduly hard for DLG to provide the service and such inability should not be merely temporary, DLG is entitled to rescind the contract.

5.3 In case of events that are merely temporary, deadlines shall be postponed or extended by the period such events last plus an adequate re-start time.

5.4 If the Client cannot be reasonably expected to accept the service as a result of such delay, the Client may rescind the contract by making a written declaration to this effect to DLG immediately.

5.5 Irrespective of the above rights, the parties shall consult about the next steps of action in the event of force majeure and – where possible – reach mutual agreement on such steps in writing.

6 Liability for material defects (warranty)

6.1 DLG’s liability for material defects comprises only those services expressly defined in the contract. This does not constitute a warranty regarding the reliability and functionality of the overall system concerned which the parts to be tested or which an expert opinion is to be given on belong to; in particular, DLG will not accept any responsibility for constructions, the selection of materials and the design of the systems tested unless these issues are expressly a subject matter of the assignment. Even in the latter case, the manufacturer’s liability for material defects and its legal responsibility are neither limited nor assumed.

6.2 Warranty periods commence with the completion of the services owed under the contract (see Sec. 2.4).
6.3 Apart from that, the liability for material defects shall be governed by the statutory provisions unless otherwise agreed between the parties.

7 Liability
7.1 DLG shall be liable for premeditation and gross negligence. In addition, DLG shall be liable for the negligent violation of cardinal obligations, i.e. such obligations compliance with which makes the orderly performance of the contract possible in the first place, the violation of which jeopardizes reaching the purpose of the contract and the compliance with which the Client regularly relies on. In the latter case, DLG shall be responsible only for damages which were foreseeable at the time the contract was entered into and which are typical for such contracts. DLG shall not be liable in the event of slightly negligent violations of non-substantial contractual obligations.

7.2 The above exclusions and limitations of liability shall not apply to damages to life, body or health and to claims under a warranty of certain characteristics or under the Product Liability Act.

7.3 DLG explicitly points out to the Client that articles to be tested are subjected and exposed to extraordinary stress and loads in connection with such testing and that it may further be necessary to change the structure of items to be tested for testing purposes (for example for the purpose of installing measuring instruments). Such measures are immanent to the testing assignment. DLG shall not be liable for damages in any of such cases, especially not for restoration to the original condition.

8 Deployment of third parties (subcontractors)
8.1 DLG is entitled to use subcontractors at its own expense and without prior consultation with the Client. Deployment of a subcontractor does not relieve DLG from its contractual obligations. DLG is not entitled to substitution. The subcontractor is a vicarious agent of DLG.

9 Confidentiality, copyright
9.1 DLG is entitled to keep copies of written documents which are provided to it for inspection and which are relevant for performing the assignment in its files.

9.2 To the extent that expert opinions, test results, test reports, calculations and such like are prepared in connection with the assignment are subject copyright, DLG grants the Client an ordinary, non-transferable right of use to the extent this is required for the purpose intended by the contract. Other rights are expressly not transferred at the same time; in particular, the Client is not entitled to edit expert opinions, test results, calculations, test reports, marks of conformity and such like or to use these in any other form outside its routine operation.

9.3 DLG, its staff and the experts and other third parties retained by DLG shall not disclose or exploit any business and operational secrets they become aware of in connection with performance of their duties without proper authority.

10 Severability, written form, jurisdiction, applicable law
10.1 No collateral agreements to the present contract exist.

10.2 In order to be effective, any changes and amendments to the present contract must be in writing; this also applies for any waiver of this written form clause.

10.3 In the event that one or more provisions of the present contract should be invalid, the parties shall agree on a valid substitute provision which comes as close as possible to the invalid provision both in legal and economic terms.

10.4 The Courts of Mainz, Germany shall have jurisdiction in the event of disputes in connection with the present contract. This contract is governed by German Law, ruling out Private International Law and the provisions of the Convention on the International Sale of Goods (CISG).