§ 1 Scope of the provisions

(1) These terms and conditions for sales issued by TESTING Blühm & Feuerherdt GmbH, Motzener Straße 26 b, 1227 Berlin, HRB 44 273 B AG Charlottenburg (subsequently, “TESTING”) apply solely to companies, legal persons under public law or public assets as established by § 310 BGB (subsequently, the “Customer”) in their capacity as subject of the contract, independently of the conditions provided by the customer and which conflict with or differ to these established here, and exclusively at the expense of the customer.

(2) These terms and conditions for sales also apply to all future commercial operations with the customer in as much as they apply to legal transactions of a related nature.

§ 2 Quotes, conclusion of the contract

(1) Our quotes are subject to change. All the documents sent within the scope of our offer (such as calculations, diagrams, etc.) remain the sole property of TESTING (including copyright). We also retain copyright of these documents. These documents may not be made available to any third parties, unless we expressly consent before returning any goods.

(2) The customer undertakes to pay the remuneration that has been contractually agreed within 30 days from dispatching confirmation of order. In case of defective performance of the service, the deadline for payment is extended by an appropriate period. If the same reasons make delivery impossible, we are entitled to reclaim the collected proceeds, is not in default of payment and in particular, has not applied for insolvency.

(3) Should the goods delivered display a fault which despite all due care and attention existed before the transfer of risk, we shall either remedy the fault (given notification of a defect during the warranty period) or replace the goods free of charge. We must always be accorded the opportunity for supplementary performance within an adequate period. Any right of recourse remain unaffected by the previous provision.

(4) If the customer undertakes an additional warranty performance because of the repair work becomes necessary, the customer is to perform these in due time at his own cost. A right of recourse on the part of the customer is only constituted against us insofar as the transport corresponds with their intended use.

(5) The parties commit themselves to replace the invalid provision with a valid provision which fills this incomplete clause.

(6) The parties undertakes to replace the invalid provision with a valid provision which fills this incomplete clause.

(7) The parties undertakes to replace the invalid provision with a valid provision which fills this incomplete clause.

(8) The parties undertakes to replace the invalid provision with a valid provision which fills this incomplete clause.

(9) The parties undertakes to replace the invalid provision with a valid provision which fills this incomplete clause.

(10) In the case of delayed payment or breach of duty on the part of the customer, all claims made by TESTING receive information which indicates considerable and well-founded doubts relating to the customer’s creditworthiness or if insolvency proceedings are opened regarding his assets.

(1) Both this contract as well as the entire privity of contract between the parties is subject to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). With controversy of the interpretation of these terms and conditions, the laws of the Federal Republic of Germany are applicable.

(2) The place of delivery and exclusive jurisdiction for all disputes arising from this contract is our business location, unless the order confirmation indicates anything to the contrary. The parties agree to waive the right to object to the jurisdiction.

(3) The customer is obliged to handle the purchase order with care until it comes into his ownership. In particular, he is obliged to insure it at his own expense (value as new) against theft, fire, water damage and war, within 10 days of delivery. If damages are caused during the inspection works becomes necessary, the customer is obliged to perform these immediately and free of charge. In case of other interference by a third party. As far as the third party is not in position to reimburse us with the court and out of court costs of a successful legal claim in accordance with § 770 ZPO, the customer is liable for these costs.

(4) The customer is entitled to resell the goods subject to retention within the course of normal business dealings. The customer cedes to us all earnings from his sales of the goods subject to retention to the extent of our claim. In the event of default, we are entitled to reclaim the collected proceeds, is not in default of payment and in particular, has not applied for insolvency.

(5) The handling and processing or remodelling of the purchase order by the customer is always to be effected in our name and on our behalf. In this case, the customer’s expectant right towards the purchase order continues on the thus processed or otherwise remodelled order. Insofar as the purchase order has been processed together with other objects not belonging to us, we acquire the coownership of the new object equal to the share which corresponds with the proportion of the objective value of our purchase good to the other item at the time of said processing. The same applies to the case of mixture. Insofar as the mixture is performed in a manner that the result of the mixture is to be regarded as a new object, we acquire the co-ownership or co-ownership for us. To safeguard our claim against the customer, the customer agrees to sign a separate agreement, if such a mixture is performed. We are entitled to reclaim the collected proceeds in case of default with a property towards a third party for security. We accept this cession now.

(6) We obligate ourselves to free up the securities owed to us upon demand of the customer inssofar as the value of the securities exceeds the balance involved by more than 20%. In the case of multiple securities, the selection is to be performed by TESTING.

§ 8 Guarantee, notification of defects and recourse

(1) Customer guarantee rights can only be activated if the customer has first performed all of his duties of investigation and reproof in the manner prescribed by § 377 HGB.

(2) Claims for shortcomings can only be made if the goods are not handed over after delivery for which after they become subject to prescription. A guarantee is not provided for used goods. The previous provisions do not apply as far as the law (in accordance with § 438 sentence 1 No. 2 BGB Backhaus and Sachen fur die Rechtspflege, 4th edition § 432 section 1 BGB sentence 2 BGB sentence 120 sentence 8 BGB, section 1 BGB sentence 141 sentence 5 BGB sentence 1 BGB (including VAT)). Our right to cession applies respectively of whether the purchase order is sold on or without further processing.

(3) The customer must first obtain from the manufacturer or supplier a written declaration that the supply is not subject to retention with a property towards a third party for security. We accept this cession now.

(4) We obligate ourselves to free up the securities owed to us upon demand of the customer inssofar as the value of the securities exceeds the balance involved by more than 20%. In the case of multiple securities, the selection is to be performed by TESTING.

(1) The delivered goods remain the property of TESTING (reservation of retention) until we receive full payment of all contractually agreed matters outstanding. This also applies for all future deliveries, even if we make no express and repeated claim to this. We are entitled to reclaim the collected proceeds, is not in default of payment and in particular, has not applied for insolvency.

(2) Upon discontinuation during an unpaid current invoice, the right of retention applies for the entire outstanding balance. This also applies to any other invoices.

(3) The customer is entitled to handle the purchase order with care until it comes into his ownership. In particular, he is obliged to insure it at his own expense (value as new) against theft, fire, water damage and war, within 10 days of delivery. If damages are caused during the inspection works becomes necessary, the customer is obliged to perform these immediately and free of charge. In case of other interference by a third party. As far as the third party is not in position to reimburse us with the court and out of court costs of a successful legal claim in accordance with § 770 ZPO, the customer is liable for these costs.

(4) The customer is entitled to resell the goods subject to retention within the course of normal business dealings. The customer cedes to us all earnings from his sales of the goods subject to retention to the extent of our claim. In the event of default, we are entitled to reclaim the collected proceeds, is not in default of payment and in particular, has not applied for insolvency.

(5) The handling and processing or remodelling of the purchase order by the customer is always to be effected in our name and on our behalf. In this case, the customer’s expectant right towards the purchase order continues on the thus processed or otherwise remodelled order. Insofar as the purchase order has been processed together with other objects not belonging to us, we acquire the coownership of the new object equal to the share which corresponds with the proportion of the objective value of our purchase good to the other item at the time of said processing. The same applies to the case of mixture. Insofar as the mixture is performed in a manner that the result of the mixture is to be regarded as a new object, we acquire the co-ownership or co-ownership for us. To safeguard our claim against the customer, the customer agrees to sign a separate agreement, if such a mixture is performed. We are entitled to reclaim the collected proceeds in case of default with a property towards a third party for security. We accept this cession now.

(6) We obligate ourselves to free up the securities owed to us upon demand of the customer inssofar as the value of the securities exceeds the balance involved by more than 20%. In the case of multiple securities, the selection is to be performed by TESTING.

§ 9 Software

(1) The customer is liable only for the correct operation of software which is isolated from a customer software environment. We are not liable in any way for malfunctions resulting from its integration in a software environment. The customer alone is responsible for the choice of the hard and software employed to reach the desired result. He is also responsible for the installation and programming of the software and the associated data entered by the customer.

(2) The place of delivery and exclusive jurisdiction for all disputes arising from this contract is our business location, unless the order confirmation indicates anything to the contrary. The parties agree to waive the right to object to the jurisdiction.

(3) The parties undertakes to replace the invalid provision with a valid provision which fills this incomplete clause.

(4) Testing contracts its Assozial partner therewith that business-related data and other data necessary for conducting business will be gathered, saved and processed within the framework of the federal data protection law (Bundesdatenschutzgesetz) 28 BDSG.

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