

# General Terms and Conditions

of NavCert GmbH

(hereinafter referred to as NavCert)

## 1. General Information

1.1 NavCert provides technical services as testing and assessments of products, components, technical product designs in their different stages of development, preparation of technical reports, issuing voluntary certificates and providing type examination. Services are provided on the basis of legal regulations, national, European and international standards, NavCert's testing principles as well as specifications agreed upon with the customer.

1.2 In the event that an order is placed, the customer shall accept the General Terms and Conditions, the Testing and Certification Regulations and the agreed Prices respectively the hourly rates which apply at the time when the order is placed. As a rule, deviating General Terms and Conditions of individual customers will not be honoured.

1.3 Ancillary agreements, promises and other statements made on the part of NavCert staff or the experts called upon by them shall be binding only if they are expressly confirmed and in writing. This shall also apply to any modifications of this clause.

## 2. Executing Orders

2.1 Orders accepted by NavCert shall be executed and/or expert opinions shall be prepared in accordance with recognized technical standards while taking the state of the art into consideration and – insofar as contrary agreements have not been made in writing – the customary handling practiced by NavCert. No responsibility shall be assumed for the correctness of the guidelines and standards on which testing is based unless otherwise agreed and put in writing.

2.2 The scope of the work performed by NavCert shall be specified in writing when the order is placed. If changes or extensions of the specified scope of the order result

during proper execution of the order, then they shall form the subject of an advance agreement in writing. In this case the customer shall be entitled to cancel the contract, if it would no longer be reasonable to expect that the customer adheres to the contract with regard to the changes or extensions. The customer shall, however, in accordance with Section 649 of the German Civil Code [BGB] pay the agreed remuneration or, in lieu of agreement, appropriate remuneration.

2.3 The contractual services of NavCert shall be deemed as having been furnished and completed with preparation of the respective final reports or expert opinions and – where applicable – the issuance of certificates.

## 3. Deadlines, Delay, Impossibility of Performance

3.1 The order periods indicated by NavCert shall not be binding unless they are specifically agreed upon in writing.

3.2 If NavCert exceeds a binding order period for reasons for which it is responsible and defaults on performance as a result, then the customer shall be authorized – to the extent that he has suffered damage because of the delay – to assert claims to damages for delay for each completed week of delay of 1% of the order value overdue as a result of such delay or a maximum amount of up to 25% of the order value overdue as a result of such delay. The regulations in 4.5 and 5 shall apply to any other claims to compensation in damages.

3.3 If, after the service becomes due, the customer grants NavCert an appropriate grace period and if NavCert allows this period to elapse or if it becomes impossible for NavCert to provide the service, then the customer shall be entitled to cancel the contract and – to the extent that NavCert proves to be culpable – assert claims to compensation in damages instead of the service in the amount of the damages for delay specified in

Subclause 3.2. Sections 281 and 323 of the German Civil Code [BGB] shall remain unaffected.

#### 4. Warranty, Liability

4.1 The warranty granted by NavCert covers only the services expressly ordered from it in accordance with Subclause 2.1. NavCert does not warrant for the correctness and functioning of the respective overall facilities to which the examined or tested parts belong; in particular, NavCert shall not be responsible for the design, choice of materials and construction of the plants examined insofar as such questions do not form the express subject matter of the order. Neither the warranty nor the legal responsibility of the manufacturer shall be limited or taken over in the latter case as well.

4.2 The warranty provided by NavCert shall initially be limited to subsequent performance within an appropriate period. If subsequent performance fails, i.e. it becomes impossible or unreasonable for the customer or in the event of unauthorized refusal by NavCert or undue delay, then the customer shall, at his discretion, be entitled to demand a reduction in the remuneration, or cancellation of the contract.

4.3 The warranty period shall amount to one year starting from passage of the risk, i.e. as of acceptance of the works.

4.4 NavCert shall only assume liability for a warranted quality of items and works, in particular that the service is suited to the purposes of the customer if the service is unsatisfactory and insofar as NavCert is responsible or a corresponding guarantee has been provided. Liability for consequential harm caused by a defect which results from violation of duty or with regard to a warranted quality shall be excluded if the violated duty or quality guarantee is not intended to protect against precisely such types of consequential damage. Customer warranty claims within the meaning of Section 443 of the German Civil Code [BGB] shall remain unaffected.

4.5 If a defect which does not involve the absence of a warranted quality, is due to a circumstance for which NavCert is responsible or in the event that NavCert violates a contractual obligation, then NavCert shall, per order, be liable for resultant damage to the customer in

the case of only slightly negligent causation of damage up to an amount of

1,000,000 EUR for property loss

250,000 EUR for financial loss

Clause 5 shall apply in the case of any other claims for damages.

4.6 Claims to repayment of expenses in accordance with Section 635 Subclause 2 of the German Civil Code [BGB] shall remain unaffected.

If expert opinions, test results, calculations or the like (edit) or to make use of such outside of his business premises. As it is in accordance with the contractually presupposed purpose, the forwarding of expert opinions and test results shall be allowed to public authorities. Any publication of expert opinions or test results particularly via media (internet) and any forwarding to a third party requires the explicit prior approval in writing by NavCert.

4.6 The limitations of liability of Subclauses 4.4 and 4.5 shall also apply with regard to the personal liability of NavCert staff, their executing aides and, in particular, experts.

#### 5. Other Liability

Except in cases of intention and gross negligence, bodily injury or liability as defined by product liability law, any other claims asserted on the part of the customer for direct and indirect damages for any legal reason whatsoever, in particular, claims for payment of damages because of violation of duty or unlawful acts and compensation for damage which has not occurred on the subject of the order itself shall be excluded, insofar as they go beyond the warranty and liability provided for by NavCert in Subclauses 3.2, 3.3 and 4.2 to 4.7. This shall also apply to the personal liability of NavCert staff, their executing aides and, in particular, experts

## 6. Terms of Payment and Prices

6.1 Charges for services rendered will be calculated on the basis of prices resp. hourly rates agreed when the contract was concluded, unless a fixed price or some other assessment basis has been agreed upon. If a period of more than 4 months has elapsed between placement and confirmation of the order, and prices have increased in the meantime, then the modified price shall be the basis of calculation as of the 5th month.

6.2 Appropriate advances on costs may be required and/or partial invoices may be submitted for services already furnished. The receipt of an invoice does not imply a complete settlement of the order.

6.3 The fees invoiced in accordance with Subclause 6.2 and/or the final invoice after acceptance of the works shall be payable within 14 days after billing, insofar as no other agreement has been made.

NavCert shall be entitled to charge interest of 8 percentage points above the basic interest rate during any delay on the part of the customer to pay an open invoice. The customer shall become in arrears by way, of a reminder, or 30 days after receipt of the invoice at the latest. If a particular date of payment is agreed upon based on the calendar, then the customer shall become in arrears at the end of the payment term. Section 286 of the German Civil Code [BGB] shall remain unaffected.

6.4 The respective fees do not include the legally valid value added tax. The value added tax is shown separately in the invoice.

6.5 Objections to NavCert invoices shall be communicated and justified in writing within a fixed period of exclusion of 14 days after receipt of the invoice.

## 7. Obligation to Maintain Secrecy, Copyright, Data Privacy Protection

7.1 NavCert shall be authorized to make file copies of written documents which have been made available to it for review and which are important for processing the order.

7.2 Insofar as expert opinions, test results, calculations, etc. are prepared in the course of processing the order

and which are subject to the protection of copyright, then NavCert shall grant a simple, non-transferable right to use to the customer, insofar as this is necessary and in accordance with the contractually presupposed purpose. Other rights shall not be transferred; in particular, the customer shall not be entitled to modify expert opinions, test results, calculations or the like (edit) or to make use of such outside of his business premises. As it is in accordance with the contractually presupposed purpose, the forwarding of expert opinions and test results shall be allowed to public authorities.

Any publication of expert opinions or test results particularly via media (internet) and any forwarding to a third party requires the explicit prior approval in writing by NavCert.

7.3 NavCert, its staff and any experts which may be called in shall not disclose and use trade and business matters about which they have gained knowledge during the performance of their work without proper authorization.

7.4 NavCert processes and uses personal data exclusively for its own purposes. It also uses automatic data processing systems for this purpose. In order to fulfill the data security requirements of the Annex to Section 9 of the Federal Data Protection Law [BDSG], it has taken technical and organizational measures which ensure the security of the data and the data processing operations. NavCert staff involved in data processing is obliged to strictly comply with the BDSG and all data protection regulations.

## 8. Jurisdiction, Place of Performance, Applicable Law

8.1 The place of jurisdiction for the assertion of any claims for both parties to the contract shall be Braunschweig, insofar as the prerequisites as specified in Section 38 of the Code of Civil Procedure are given.

8.2 The place of performance for any obligations arising out of this contract shall be Braunschweig, the principal place of business of NavCert.

8.3 The contractual relationship and all attendant legal relations shall be exclusively governed by the law prevailing in the Federal Republic of Germany between domestic contracting parties under the exclusion of the

United Nations (Vienna) Convention on Contracts for the International Sale of Goods (CISG)

## 9. Scope of Application

9.1 These General Terms and Conditions shall apply both to businesses as well as all legal entities under public law and special funds under public law within the meaning of Section 310 of the German Civil Code [BGB], insofar as deviations have not been expressly determined.

9.2 If the customer does not belong to the category designated in Subclause 9.1 of Section 310 of the German Civil Code [BGB], then these General Terms and Conditions shall apply with the following stipulations:

- Contrary to Subclause 3.1, the order periods indicated by NavCert shall be binding.
- Subclause 6.3 shall apply under the condition that the interest on arrears amounts to 5 percentage points per annum above the basic interest rate.
- Clause 8.1 shall apply under the condition that Braunschweig is agreed upon as the place of jurisdiction in the event that the customer moves his principal place of business, domicile or customary place of residence outside of the scope of application for the law prevailing in the Federal Republic of Germany or his principal place of business, domicile or customary place of residence is not known at the time that action is brought.
- Subclause 8.2 shall not apply.

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