

**General Terms and Conditions**  
**of Hegewald & Peschke Meß- und Prüftechnik GmbH**  
**for the Delivery, Assembly, Repair and Maintenance of Machines and Machine Parts, for the**  
**Delivery of Test Software and for Instruction and Training on the Testing System (General Terms**  
**and Conditions of Sale)**

**I. Scope**

1. These Terms and Conditions will only be applied in relation to persons who act in the performance of their commercial or self-employed professional activity when concluding the contract (business people) as well as corporate bodies under public law and special funds under public law (hereinafter referred to as "Customer").
2. All deliveries, services and offers of Hegewald & Peschke Meß- und Prüftechnik GmbH (hereinafter referred to as "Contractor") shall only be based on these General Terms and Conditions. These shall form an integral part of all contracts which the Contractor concludes with his Customer for the deliveries and services offered by him. They shall also apply to all future deliveries, services and offers to the Customer, even if they are not agreed separately again.
3. Any terms and conditions of the Customer or third parties shall not apply, even if, in individual cases, the Contractor does not object to their application separately. Even if the Contractor makes reference to a letter that contains terms and conditions of the Customer or a third party or refers to them, this shall not be considered as a consent to the application of such terms and conditions.

**II. Offer, Conclusion of Contract**

1. All offers of the Contractor shall be without obligation and non-binding unless they have been designated as binding expressly or contain a certain period for acceptance. The Contractor may accept orders within 14 days after their receipt. The contract shall only become binding on the Contractor by the written acceptance or order confirmation.
2. Only the contract concluded in writing, including these General Terms and Conditions, shall be applicable to the legal relationships between the Parties. Said contract shall contain all agreements between the Parties on its subject matter completely. Any oral assurances given by the Contractor before the conclusion of said contract shall not be legally binding, and any oral agreements between the Parties will be superseded by the written contract unless it is stated in them expressly that they will continue to apply in a binding manner.
3. Any changes or amendments of the agreements made, including these Terms and Conditions, must be in writing in order to be effective. Except for managing directors or authorised signatories (*Prokuristen*), the Contractor's staff members shall not be entitled to make oral agreements in deviation from this. For complying with the requirement of written form, transmission by telecommunications, particularly by facsimile or email, shall be sufficient, provided that a copy of the signed declaration will be submitted.
4. Information by the Contractor on the object of the delivery or service which is contained in brochures or other documents (e.g. weights, measurements, service values, capacities, tolerances or technical data) as well as the representation of such information (e.g. drawings or images) shall only be considered approximate unless the usability for the intended purpose defined by the contract requires exact conformity. They shall not be guaranteed characteristics but descriptions or designations of the delivery or service. Customary deviations or deviations which occur due to legal provisions or constitute technical improvements, and the replacement of components by equivalent parts, shall be permitted insofar as they do not adversely affect the usability for the intended purpose defined by the contract.

5. In the case of deviations between brochures or other documents and the technical offer, the latter shall have priority.
6. The Contractor reserves the ownership of, or copyright to, all offers and quotations submitted by him and the drawings, images, calculations, catalogues, models, tools and other documents and implements provided to the Customer. Without the Contractor's express consent, the Customer may not make said items or their contents accessible to third parties, make them public, use them – or cause third parties to use them – for himself or reproduce them. On the Contractor's request, he shall return said items to the Contractor completely and destroy any copies which have been produced if he no longer needs them in the ordinary course of business or if any negotiations have not led to the conclusion of a contract. This shall not apply to the storage of data which has been provided electronically, for the purpose of producing customary backups.

### **III. Prices and Payment**

1. The prices shall apply to the scope of delivery and services contained in the contract and/or the order confirmation. Any additional or special performance will be billed separately. The prices are in euro and ex works, and they exclude packing, the statutory value added tax, customs duties (in the case of export deliveries), fees and other public charges.
2. An adequate price adjustment shall be permitted if the delivery or service is to be performed more than four months after the conclusion of the contract and customs duties, taxes, freight charges, energy costs, wages etc. are introduced or increased in the meantime or if the Contractor's acquisition prices increase due to exchange rate changes.
3. Invoice amounts shall be paid without any discount within 14 days, unless otherwise agreed in writing. The applicable date of payment shall be the date of the receipt by the Contractor. Payment by cheque shall be excluded unless it has been agreed separately in individual cases. If the Customer does not make a payment by its due date, an interest of 5% p.a. shall be charged on the outstanding amounts from their due date. The right to claim any higher interest or further damages in the case of default shall remain unaffected.
4. An offset against counterclaims of the Customer or the withholding of payments due to such claims shall only be permitted if the counterclaims are undisputed or ripe for adjudication or have been established as final and absolute.
5. The Contractor shall be entitled to perform outstanding deliveries only against advance payment or the provision of security if, after the conclusion of the contract, circumstances come to his knowledge which are capable of reducing the Customer's creditworthiness considerably or by which the Customer's satisfaction of the Contractor's outstanding claims arising from the contractual relationship concerned (including any other individual orders to which the same framework agreement applies) is jeopardised.

### **IV. Delivery and Delivery Periods of Items**

1. Deliveries shall be performed ex works.
2. Periods and dates which are announced by the Contractor for deliveries and services shall always be considered approximate only, unless a fixed period or date has been assured or agreed expressly. If dispatch has been agreed, the periods and delivery dates relate to the time of the handover to the freight forwarder, carrier or other third party to which the transport has been assigned.
3. The Contractor may – without prejudice to his rights arising from the Customer's default – require the Customer to extend periods for delivery and performance or to postpone delivery and performance dates by the period in which the Customer does not fulfil his contractual obligations towards the Contractor.

4. The Contractor shall not be liable for any impossibility of delivery or delay in delivery if they have been caused by force majeure or other events not foreseeable at the time of the conclusion of the contract (e.g. operational disruptions of whatever nature, difficulties in procuring materials or energy, delays in transport, strikes, legally permitted lock-outs, shortage of labour, energy or raw materials, difficulties in obtaining necessary permissions from public authorities, measures of public authorities or deliveries by suppliers which are not performed or are performed incorrectly or late) for which the Contractor is not responsible. If such events make it considerably more difficult or impossible for the Contractor to perform the delivery or service and the obstruction is not only temporary, the Contractor shall be entitled to withdraw from the contract. In the case of temporary obstructions, the periods for delivery and performance shall be extended, or the delivery or performance dates shall be postponed, by the duration of the obstruction plus an adequate starting time. If, as a result of the delay, it is not reasonably acceptable for the Customer to accept the delivery or service, he may withdraw from the contract by means of a written declaration made to the Contractor immediately.
5. If a delivery or performance by the Contractor is delayed or if, regardless of the cause, a delivery or performance becomes impossible for him, the Contractor's liability for damages shall be limited in accordance with Section VIII of these General Terms and Conditions.

#### **V. Place of Performance, Dispatch, Packaging, Passing of Risk, Acceptance**

1. The place of performance for all obligations arising from the contractual relationship shall be the Contractor's place of business, unless otherwise stipulated. If the Contractor (also) owes assembly, repair or maintenance work, the place of performance shall be the place at which such service shall be performed.
2. The type of dispatch and the packaging shall be chosen in the Contractor's dutiful discretion.
3. The risk shall pass to the Customer no later than the handover of the delivery item to the freight forwarder, carrier or other third party to which the dispatch has been assigned (with the commencement of the loading process being applicable). This shall apply even if partial deliveries are made or the Contractor has also taken over other services (e.g. dispatch or assembly). If the dispatch or handover is delayed due to a circumstance caused by the Customer, the risk shall pass to the Customer on the day on which the delivery item is ready for dispatch and the Contractor has reported this to the Customer.
4. Any storage costs incurred after the passing of risk shall be borne by the Customer. In the case of storage by the Contractor, the storage costs shall amount to 0.05% of the invoice value of the delivery items to be stored for each working day. The Parties reserve the right to claim and prove any exceeding or lower storage costs.
5. Only if requested expressly by the Customer, the Contractor shall ensure the consignment against theft, breakage, transport damage, damage caused by fire or water or other insurable risks at the Customer's expense.
6. If an acceptance must be performed, the delivery item or service shall be considered accepted when
  - the delivery has been completed and, if the Contractor also owes the assembly and possibly also the instruction, this has also been completed,
  - the Contractor has informed the Customer thereof with reference to the acceptance under Section V.6 and requested him to perform the acceptance,
  - 12 working days have passed since the delivery or assembly and the instruction, if any, or the Customer has begun to use the delivery item (e.g. started up the delivery item) and, in such case, six days have passed since the delivery or assembly and the instruction, if any, and,

during said period, the Customer has failed to perform the acceptance for any reason other than a defect reported to the Contractor which makes the use of the delivery item or service impossible or affects it adversely to a considerable extent.

## **VI. Warranty, Material Defects**

1. The warranty period shall commence one year from the delivery date or, if an acceptance must be performed, from the acceptance date. Said period shall not apply to damage claims of the Customer arising from any injury to life, body or health or from any wilful or grossly negligent breaches of duty by the Contractor or his performing agent, each of which shall lapse in accordance with the provisions of the law.
2. The delivered items shall be examined thoroughly immediately after their delivery to the Customer or the third party designated by him. With regard to obvious defects or any other defects which would have been identifiable during an immediate, thorough examination, the items shall be considered approved by the Customer if the Contractor does not receive a written complaint within seven working days after the delivery. With regard to other defects, the delivery items shall be considered approved by the Customer if the complaint is not received by the Contractor within seven working days from the time at which the defect became apparent.

However, if the defect was already identifiable to the Customer at an earlier time in the case of normal use, such earlier time shall be applicable to the commencement of the period for complaints. On the Contractor's request, a delivery item complained about shall be returned to the Contractor freight paid. In the case of justified complaints, the Contractor shall reimburse the costs for the most favourable dispatch route. This shall not apply insofar as the costs are increased because the delivery item is located at a place other than the place of its proper use.

3. In the case of material defects of the delivery item, the Contractor shall initially be obliged and entitled to perform a repair or replacement at his choice; such choice shall be made within an adequate period. In the case of failure, i.e. if the repair or replacement is unsuccessful or not reasonably acceptable or if it is refused or inadequately delayed, the Customer may withdraw from the contract or reduce the agreed price adequately.
4. If a defect has occurred through the fault of the Contractor, the Customer may claim damages under the conditions defined in Section VIII.
5. In the case of defects of other manufacturer's components which the Contractor cannot rectify for licensing or practical reasons, the Contractor shall, at his choice, assert his warranty claims against the manufacturer or supplier for the account of the Customer or assign such claims to the Customer.

For such defects, warranty claims against the Contractor shall exist – provided that the other prerequisites are fulfilled and in accordance with these General Terms and Conditions – only if the judicial enforcement of the above-mentioned claims against the manufacturer or supplier was unsuccessful or has no prospect of success, e.g. due to insolvency. For the duration of the legal dispute, the lapse of the Customer's warranty claims against the Contractor which are concerned shall be suspended.

6. The warranty shall cease to exist if the Customer changes the delivery item, or has it changed by third parties, without the Contractor's consent and the rectification of defects becomes impossible or unacceptably more difficult as a result. In any case, the Customer shall bear the additional defect rectification costs resulting from the change.
7. Any supply of used items which may be agreed with the Customer in individual cases shall be performed with any and all warranty for material defects being excluded.

## **VII. Liability for Damages Based on Fault**

1. The Contractor's liability for damages, regardless of the legal cause – including, but not limited to, impossibility, default, defective or incorrect delivery or performance, breach of contract, breach of duties during contract negotiations, and tort – shall be limited in accordance with the following provisions insofar as fault is decisive in each case.
2. The Contractor shall not be liable in cases of any ordinary negligence of his bodies, legal representatives, employees or other performing agents insofar as no breach of essential contractual obligations is concerned. An essential contractual obligation shall be an obligation whose fulfilment is a prerequisite for the proper performance of the contract being possible and whose fulfilment the Customer may rely on.
3. If the Contractor is liable for damages on the merits pursuant to Section VIII.2, such liability shall be limited to damage which the Contractor foresaw as a possible consequence of any breach of contract when concluding the contract or which he would have had to foresee by using due diligence.

Furthermore, compensation for indirect or consequential damage resulting from defects of the delivery item or performance shall only be possible insofar as such damage can typically be expected in the case of the proper use of the delivery item or the service performed.

4. In the case of liability for ordinary negligence, the Contractor's obligation to pay compensation for property damage and any resulting financial damage shall be limited to the following amounts per damaging event, even if a breach of essential contractual obligations is concerned:
  - 3 million euros (lump sum) for personal injury and/or property damage
  - 100,000.00 euros for financial damage
  - The maximum compensation for each individual person shall be limited to 2 million euros.
5. The above exclusions and limitations of liability shall also apply in favour of the Contractor's bodies, legal representatives, employees or other performing agents to the same extent.
6. If the Contractor provides technical information or performs consulting activities and such information or consulting is not part of the owed, contractually agreed scope of services, he will do so free of charge and with any and all liability being excluded.
7. The limitations of liability under Section VII shall not apply to the Contractor's liability due to wilful acts, for guaranteed characteristics, due to injury to life, body or health, or under the German Product Liability Act.

### **VIII. Intellectual Property Rights**

1. The Contractor warrants that the delivery item is free from third parties' industrial property rights or copyrights. The Customer shall immediately inform the Contractor in writing if claims are made against him due to the infringement of such rights.
2. In case the delivery item infringes a third party's industrial property right or copyright, the Contractor shall, at his choice and at his own expense, change or replace the delivery item so that no third-party rights are infringed any more but the delivery item can still perform the contractually agreed functions, or procure a right of use for the Customer by concluding a licence agreement. If the Contractor does not succeed in doing so within an adequate period, the Customer shall be entitled to withdraw from the contract or reduce the agreed price adequately. Any damage claims of the Customer shall be subject to the restrictions under Section VIII of these General Terms and Conditions.
3. In the case of infringements of rights by other manufacturers' products supplied by the

Contractor, the Contractor shall, at his choice, assert his claims against the manufacturers or presuppliers for the account of the Customer or assign them to the Customer. In such cases, claims against the Contractor shall only exist if the judicial enforcement of the above-mentioned claims against the manufacturers or presuppliers was unsuccessful or has no prospect of success, e.g. due to insolvency.

#### **IX. Special Terms and Conditions for the Delivery of Test Software**

1. In accordance with the provisions of Art. 434ff. of the German Civil Code (BGB), the Contractor warrants that the software corresponds to the specifications mentioned by the Contractor in the programme documentation pertaining to it and that it has been prepared with the due diligence and expert knowledge. However, according to the state of the art, it is not possible to exclude software faults completely.
2. The software (programme, libraries, language files, graphics and user manual) is protected by law. In the relationship between the Parties, only the Contractor shall be entitled to the copyright, patent rights, trademark rights and all other intellectual property rights to the software and to any other items which the Contractor delivers or makes accessible to the Customer in connection with the preparation or performance of the contract. Insofar as third parties are entitled to said rights, the Contractor shall have appropriate exploitation rights.
3. The Contractor may use the programme only to process his own data himself on his own premises and for his own purposes. The Contractor hereby gives the Customer the authorisations which are necessary for such use in the form of a non-exclusive right of use, which shall include the right to eliminate faults.
4. The Customer may produce backup copies of the software to the extent necessary for a safe operation. The backup copies must be kept safely and, insofar as this is technically possible, must be provided with the copyright notice of the original data carrier or of the version of the software which has been transmitted online. Copyright notices, trademarks and product identifications may not be deleted, changed or suppressed. Copies which are no longer needed shall be deleted or destroyed. Any user manual and any other documents delivered by the Contractor may only be copied for internal purposes.
5. All other forms of exploitation, including, but not limited to, the sale, leasing, hiring out and dissemination in corporeal or incorporeal form and the use of the software by or for third parties (e.g. by outsourcing), shall not be permitted without the Contractor's prior written consent. In the case of any transfer of the right of use to third parties, the Customer shall oblige the third party to adhere to the terms of the contract and not to retain any copies of the software (including any previous versions) for itself. The Contractor and the third party may neither reverse-engineer nor decompile or disassemble the software. Apart from the aforesaid, the provisions of Art. 69d and 69e of the German Copyright Act (UrhG) shall remain unaffected.
6. Contractual items, documents, proposals, test programmes etc. of the Contractor which become accessible to the Customer before or after the conclusion of the contract shall be considered as intellectual property and business and company secrets of the Contractor. They shall also be subject to the Customer's obligation of secrecy.
7. To any changed, extended or newly developed software, the Customer shall be granted the same rights as to the software initially delivered.
8. The ownership of the delivered items and the rights of use shall not be transferred to the Customer until the full payment of the remuneration under the contract. Before that, he shall only have a provisional, revocable right of use.

9. The Contractor may revoke the rights of use upon the expiry of the contract or for cause. A cause for revocation shall exist if, in consideration of the circumstances of the individual case and with both Parties' interests being weighed, it is not acceptable to the Contractor that the software will remain with the Customer permanently, particularly if he violates the terms and conditions of use of the software considerably. After the expiry of the contract, the Contractor may require the Customer to return the provided items or to assure in writing that they have been destroyed, and to delete or destroy all copies of the items and to assure in writing that this has been done.

#### **X. Retention of Title for the Delivery of Machines and Machine Parts**

1. The retention of title agreed in the following shall serve as security for any and all present and future claims of the Contractor against the Customer arising from the supply contract existing between the Parties.
2. The item delivered to the Customer by the Contractor shall remain property of the Contractor until the full satisfaction of all secured claims. The delivery item as well as the goods covered by the retention of title which may replace it under the following provisions are hereinafter referred to as "goods subject to retention of title".
3. The Customer shall store the goods subject to retention of title for the Contractor free of charge.
4. The Customer shall be entitled to process or sell the goods subject to retention of title in the ordinary course of business until the occurrence of the enforcement event (Paragraph 9). No pawning or transfer of ownership by way of security shall be permitted.
5. In case the goods subject to retention of title are processed by the Customer, it is hereby agreed that the processing shall take place on behalf and for the account of the Contractor as the manufacturer and that the Contractor directly acquires the ownership or – if the processing is performed using materials of several owners or the value of the processed item is higher than that of the goods subject to retention of title – the co-ownership of the newly created item in the ratio of the value of the goods subject to retention of title to the value of the newly created item. In case no such acquisition of ownership by the Contractor takes place, the Customer hereby transfers his future ownership or co-ownership – in the above ratio – of the newly created item to the Contractor by way of security. If the goods subject to retention of title are combined or mixed inseparably with other items and the other item is to be considered as the main item, the Customer shall, insofar as he owns the main item, transfer a co-ownership share of the single item in the ratio mentioned in Sentence 1.
6. In the case of any resale of the goods subject to retention of title, the Customer hereby assigns the Contractor the resulting claim against the purchaser by way of security; in the case of the Contractor's co-ownership of the goods subject to retention of title, such transfer shall be performed on a pro-rata basis according to the co-ownership share. The same shall apply to any other claims which substitute the goods subject to retention of title or are otherwise created in connection with the goods subject to retention of title, e.g. insurance claims or claims arising from tort in the case of loss or destruction. The Contractor hereby revocably authorises the Customer to collect the claims assigned to the Contractor on his own behalf. The Contractor may only revoke this authorisation to collect if the enforcement event occurs.
7. If third parties take possession of the goods subject to retention of title, particularly by pawning, the Customer shall immediately inform them of the Contractor's ownership and inform the Contractor thereof in order to enable him to enforce his rights of ownership. If the third party is unable to reimburse the Contractor the court and out-of-court costs which are incurred in connection with this, the Customer shall be liable to the Contractor for such reimbursement.
8. The Contractor shall release the goods subject to retention of title as well as the items or claims substituting them insofar as their value exceeds the amount of the secured claims by more than 50%. The items to be released according to this provision shall be chosen by the Contractor.

9. If, in the case of the Customer acting contrary to the contract – particularly in the case of default in payment – the Contractor terminates the contract, e.g. by withdrawal (enforcement event), the Contractor shall be entitled to require the surrender of the goods subject to retention of title.

#### **XI. Participation and Technical Assistance of the Contractor during Assembly, Repair and Maintenance Work and for the Instruction on the Testing System and Training Activities outside the Contractor's Works**

1. The Customer shall support the Contractor's personnel with the performance of the assembly, repair and maintenance work and for the instruction and training activities at his own expense.
2. The Customer shall take the special measures necessary for the protection of persons and objects at the workplace. He shall inform the Contractor's staff members about any existing special safety regulations insofar as they are important for the performance of the work. He shall inform the Contractor of any violation of such safety regulations by the staff members.
3. The Customer shall be obliged to give technical assistance at his own expense, particularly to:
  - a) provide the necessary suitable supporting staff, in the number necessary for the performance of the work and for the necessary time; the supporting staff shall follow the instructions of the Contractor's staff members. The Contractor shall not assume any liability for the supporting staff. If the supporting staff has caused a defect or damage due to instructions of the Contractor's staff members, the provisions on liability contained in Sections VI and VII of these General Terms and Conditions shall apply.
  - b) perform all construction, bedding and scaffolding work, including the procurement of the necessary construction materials,
  - c) provide the necessary devices and heavy tools (e.g. crane, lifting devices) as well as the necessary utensils and materials,
  - d) provide heating, lighting, operating power and water, including the necessary connections,
  - e) provide any necessary dry and lockable rooms for keeping the Contractor's tools,
  - f) protect the workplace and the working materials against harmful influences of whatever nature; clean the workplace,
  - g) provide suitable thief-proof recreation and working rooms (with heating, lighting, washing facilities and sanitation facilities) and first-aid facilities for the Contractor's staff members,
  - h) provide the materials and perform the other activities that are necessary for adjusting the item to be worked on and for performing the tests to be performed under the contract.
4. The Contractor's technical assistance must guarantee that the work can be commenced immediately after the arrival of the Contractor's staff members and can be continued without delays until the acceptance by the Customer. If special plans or instructions of the Contractor are necessary, the Contractor shall provide them to the Customer in a timely manner.
5. If the Customer does not fulfil his obligations, the Contractor shall, after fixing a deadline, be entitled but not obliged to perform the acts of which the Customer is in charge instead of the Customer and at the Customer's expense. Apart from the aforesaid, the legal rights and claims of the Contractor shall remain unaffected.

#### **XII. Special Terms and Conditions for Repair and Maintenance Work (e.g. Servicing, Calibration), Training and Instruction**

1. At the time of the conclusion of the contract, the Contractor shall indicate the expected price to the Customer. Otherwise, the Customer may set cost limits. If the work cannot be performed at said costs or if, during the performance of the work, the Contractor deems it necessary to perform

additional work, the Customer's consent shall be obtained if the indicated costs are exceeded by more than 15%. If a quotation with binding price indications is desired before the performance of the work, it shall be requested expressly by the Customer. Unless otherwise agreed, such a quotation shall only be binding if it is submitted in writing. It shall be paid for. The services performed in order to submit the quotation shall not be billed to the Customer insofar as they can be utilised for the performance of the work.

2. The services performed in order to submit a quotation as well as the other time and expenses which have been spent and must be proved (troubleshooting time = working time) shall be billed to the Customer if services cannot be performed for reasons for which the Contractor is not responsible, particularly because
  - the fault complained about did not occur during the inspection,
  - spare parts cannot be procured,
  - the Customer has culpably failed to comply with the agreed date,
  - the contract was terminated during the performance of the services.

The original condition of the item worked on only needs to be restored, against reimbursement of the costs, on the Customer's express request, unless the work which has been performed was not necessary. In the case of work which cannot be performed, the Contractor shall be liable for any damage only pursuant to Section VII of these General Terms and Conditions.

### **XIII. Final Provisions**

1. If the Customer is a trader, a corporate body under public law or a special fund under public law or if he does not have any general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all disputes which may arise from the business relationship between the Parties shall be the Contractor's place of business. Mandatory legal provisions on exclusive places of jurisdiction shall remain unaffected by this provision.
2. Only the law of the Federal Republic of Germany shall apply to the relationships between the Parties. The United Nations Convention on Contracts for the International Sale of Goods dated 11/04/1980 (CISG) shall not apply.
3. Should an individual provision of the above General Terms and Conditions be or become ineffective, the effectiveness of the other provisions or the contract shall remain unaffected otherwise. The Parties shall then perform the contract with an effective substitute provision which comes closest to the economic purpose pursued with the omitted provision. The same shall apply, mutatis mutandis, to regulatory gaps.
4. The Parties agree that the personal data may be stored, used and processed for the performance of this contract. A transmission of data shall also be permitted insofar as it is necessary for the performance of the contract.

Nossen, 01/07/2016

Hegewald & Peschke Meß- und Prüftechnik GmbH