

Terms and Conditions for Calibration Services

of CRT Cleanroom Technology GmbH, Carl-Zeiss Str. 25, 52477 Alsdorf, Germany

I. Scope of application

(1) These Terms and Conditions for Calibration Services ("Terms and Conditions") apply exclusively to any calibration services provided by CRT Cleanroom-Technology GmbH (hereinafter referred to as "CRT" or the "Supplier"). The Supplier's Terms and Conditions of Service apply to all other services that it offers and its Terms and Conditions of Sale apply to its sale of goods.

(2) Unless the Supplier has expressly approved them in writing, it will not recognise any terms and conditions of the Customer which conflict with or deviate from its own Terms and Conditions. Individual agreements remain unaffected by the above provisions.

(3) These Terms and Conditions only apply to persons who are entrepreneurs within the meaning of section 310(1) of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB).

(4) In the case of ongoing business relationships, these Terms and Conditions will also apply to future transactions which do not expressly refer to them provided that only the Terms and Conditions were incorporated into the previous contract.

(5) Additions, amendments and collateral agreements must be confirmed in writing by CRT in order to be effective. This also applies in respect of any waiver of this requirement of writing.

II. Quotations, conclusion of contract, documents

(1) Quotations made by CRT are non-binding and subject to change. After an order has been placed by the Customer, a contract is expressly concluded when CRT confirms it in writing or tacitly concluded when it accepts the equipment and carries out the work. The content of the contract will be determined by this written order confirmation.

(2) CRT reserves title to and copyright in its texts, plans, images, drawings, calculations and other documents. The Customer is not permitted to pass on any of the foregoing items to third parties without CRT's express written consent. Unless expressly agreed otherwise, the Supplier grants the Customer a non-exclusive and non-assignable right to use such documents for the purposes of the contract.

III. Scope of services and time of performance

(1) The Supplier will perform its calibration services at its place of business. The Customer will deliver the equipment for which calibration services are required at its own expense and risk.

(2) The scope of services is set out in the respective service contract. The Supplier will perform its services in accordance with the technical standards current at the time of the conclusion of contract and only deploy staff who are qualified to perform the agreed services.

(3) CRT will document the services performed in a reasonable form and in compliance with applicable laws and other provisions.

(4) Dates are only binding if CRT has expressly confirmed them in writing. The time specified by CRT for performance of the services does not begin to run until all technical and commercial questions have been resolved. Agreed time limits and dates for performance are always only estimates and are in principle non-binding unless there is an express agreement to the contrary in a specific case. The time for performance will be measured from the date that the order and the equipment are received by the Supplier (see section III.1 – if these do not occur on the same date, then the later date will apply) until the date when the equipment is sent back to the Customer. Where the Supplier exceeds a non-binding delivery date, it will be obliged to perform the agreed services within three weeks of receiving a written reminder from the Customer. At the end of this three-week time limit, the Supplier will be in breach of contract unless the delay was not due to fault on its part (e.g. long delivery times for replacement parts needed).

(5) In addition, the Supplier's compliance with its duty to perform under the contract is conditional upon the Customer's timely and proper performance of its obligations. CRT reserves the right to plead as a defence the Customer's failure to perform its obligations under the contract. In particular, the Supplier reserves the right to withhold any further services if the Customer has not settled its invoices for individual services already performed.

(6) CRT may use subcontractors for performing some or all of its services unless the Customer has good and just cause for objecting to this. The Supplier will only deploy as subcontractors persons who are adequately qualified and suitable for performing the work. CRT will impose the same contractual obligations of confidentiality on its subcontractors as it must adhere to itself.

III. Remuneration and payment

(1) CRT will be paid for its services in accordance with the agreements made. All prices are net prices and subject to VAT at the rate applicable at the time the invoice is issued.

(2) Unless the order confirmation provides otherwise, invoices are due and payable in full within 10 days from the date that they are issued. The statutory provisions govern the consequences of a default in payment.

(3) No discount for prompt payment may be deducted by the Customer unless this has been separately agreed in writing. Cheques are accepted only as conditional payment.

(4) The Customer only has a right of set-off if its counterclaims have been adjudged non-appealable, are undisputed or are recognised by CRT. Furthermore, the Customer is only entitled to assert a right of retention to the extent that its counterclaim arises from the same contractual relationship.

(5) Where CRT has a duty to tender performance first, CRT will be entitled to delay its performance until such time as the Customer's payment has been made or security for same has been provided if after the conclusion of contract the Customer's financial circumstances deteriorate so significantly as to endanger CRT's claim for payment or if CRT becomes aware that the Customer's liquidity is not adequate or if the Customer made false statements about its creditworthiness at the time of contracting. Where, in spite of a request from CRT containing a reasonable deadline for compliance, the Customer is unwilling to effect payment or to provide security reciprocally and simultaneously with performance of the services by CRT, CRT will be entitled to rescind the contract. CRT expressly reserves the right to claim damages in such case.

IV. Return of calibrated equipment after the performance of services

The Customer bears the cost of the packaging and return shipment of calibrated equipment. It will invoice the Customer for these costs separately. The risk of accidental loss or deterioration of the calibrated equipment passes to the Customer at the time when it is handed over to the freight forwarder. If the dispatch of the equipment is delayed due to the fault of the Customer, the risk will pass to it at the time that the Supplier gave notice that the equipment was ready for dispatch.

In the absence of specific instructions from the Purchaser, CRT will at its discretion select the best transport route and mode of transport. At the Customer's request, CRT will arrange for transport insurance for the shipment; any costs for this will be borne by the Customer.

V. Warranties, retraction of calibration reports

(1) CRT will carry out the calibration services in a professional and workmanlike manner in accordance with recognised technical standards.

(2) If a service performed by CRT does not meet the contractual requirements/recognised technical standards or is deficient, CRT may elect whether it will, free of charge, repeat or remedy its performance (cure).

(3) If CRT fails to cure its performance in spite of the reasonable grace period granted by the Customer for this purpose or if it is objectively not possible to cure performance or if it cannot reasonably be expected to effect a cure, the Customer will be entitled to terminate the contract insofar as it cannot reasonably be expected to adhere to the contract in view of the seriousness of the breach of duty or it may rescind the contract or reduce payment in accordance with the statutory provisions. The Customer is also entitled to these rights where CRT fails to effect a cure. It must, however, allow CRT at least two attempts at curing its breach.

(4) The Customer may cure the breaches itself in cases where its operational safety is at risk or to prevent the occurrence of significant damage. The Customer will only have rights to damages or reimbursement of expenses in accordance with section VII.

(5) Unless the Customer undertakes its own measures to ensure that the necessary prerequisites are met, CRT will be entitled to retract or declare invalid a calibration report issued by it if it later determines that – for any reason whatsoever – the prerequisites for the issue of the report do not or no longer exist. CRT will give the Customer an opportunity to voice its opinion before retracting a calibration report. The Customer will only be entitled to damages after CRT retracts or declares a validation report invalid if the Customer can demonstrate that it has suffered damage due to intentional wrongdoing or gross negligence on the part of CRT.

VI. Liability

(1) In all cases in which the Supplier is contractually or legally bound to pay damages or reimbursement of expenses, it will only be liable to the extent that it, its legal representatives or its vicarious agents are guilty of intentional wrongdoing or gross negligence or cause injury to life, limb or health. Similarly, liability based on mandatory statutory provisions will not be affected. In addition, the foregoing is without prejudice to the Supplier's liability for any intentional or negligent breach of a material contractual obligation (= a duty whose fulfillment is of the very essence for the proper implementation of the contract and upon whose fulfillment its contractual partner may regularly rely); thus, except in cases covered by the first and second sentences, the Supplier's liability will be limited to the usual and foreseeable damage. The aforementioned provision does not reverse the burden of proof in a way which would be detrimental to the Purchaser's interests.

(2) The Customer is responsible for duly performing data backups. The Supplier is not liable – subject to any liability pursuant to subsection 1 – for the recovery of data where the Customer has failed to comply with its obligations under this contract to ensure that data can be reconstructed, at reasonable expense, from data material maintained in machine-readable form. If the Customer wishes to have the Supplier make backups, it must engage it to do so separately.

(3) To the extent to which the Supplier's liability for damages is excluded or limited, this also applies in respect of the personal liability for damages of its employees, workers, staff, representatives and agents.

VII. Force majeure

Where a force majeure event occurs, CRT will be entitled to suspend the performance of its services for the duration of the impediment and for a reasonable start-up period thereafter, or CRT will be entitled, due to the unperformed portion of the contract, to rescind the contract, wholly or in part. Strikes, lockouts as well as unforeseen and unavoidable circumstances, e.g. business disruptions, will be the equivalent of force majeure events if they make it impossible for CRT to deliver on time in spite of its making a reasonable effort to do so. CRT will bear the burden of proving that this is the case. The same applies if the aforementioned impediments occur during a delay or in relation to a subcontractor. The Purchaser may request that CRT notify it within a period of two weeks as to whether CRT wishes to rescind the contract or perform its obligations under the contract within a reasonable grace period. If CRT fails to respond, the Customer may rescind the unperformed part of the contract.

In the event that a force majeure event, as described above, occurs, CRT will notify the Customer without delay.

VIII. Confidentiality

CRT is subject to a duty of confidentiality for an indefinite term in respect of all information marked confidential as well as in respect of trade and business secrets to which it becomes privy during the execution of the contract. The duty of confidentiality does not apply to information (i) that was already known to CRT without an obligation of confidentiality, (ii) that was or becomes publicly available without any fault on the part of CRT, (iii) that is lawfully disclosed to CRT by a third party without restriction as to disclosure, (iv) that was demonstrably developed independently by CRT, or (v) whose release has been authorised by the Customer in writing. Similarly, the duty of confidentiality does not apply in the case of and to the extent that information is required by judicial or governmental order.

IX. Final provisions

(1) If the Customer is a merchant, public-law entity or special fund under public law, the courts at CRT's place of business will have jurisdiction; CRT will, however, also be able to take legal action against the Purchaser before the courts at its place of domicile.

(2) The law of the Federal Republic of Germany applies to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

(3) In the event that an individual provision of these Terms & Conditions is or becomes invalid or void, or if the parties mutually agree not to implement a provision, this will not affect the validity of the remaining provisions hereof. The same applies in the event of any omissions. The invalid or unenforceable provision or the omission will be replaced with the provision which is as close as legally possible in its commercial intent to the provision that it is replacing.