

## General terms and conditions for services of SGK

As of September 2015

### 1. General

- 1 These general terms and conditions regulate the conclusion, content and performance of contracts between SGK and the customer. Differing and additional conditions will only be valid when agreed upon in writing.

### 2. Completion of the contract

- 2 The offer presented by SGK is considered to be a proposal. The contract between the customer and SGK is completed by the return of the legally valid duplicate offer to SGK.

### 3. Nature and scope of the services

- 3 The scope of SGK's services complies with the quote including possible annexes. In the event of any conflict or inconsistency between the offer and these general terms and conditions, the provisions of the offer shall prevail.
- 4 As a rule the services entail the positioning of measuring instruments for data collection, analyzing the collected data and compiling reports. The installation of the measuring instruments can follow the customer's consultation with or through SGK; the offer is decisive.
- 5 The final report will be submitted to the purchaser.
- 6 The report will principally be compiled in German. If the customer

would like the report to be written in a different language, this must be communicated to SGK when the order is placed. Added costs for translation and additional copies of the report will be billed to the customer.

### 4. Involvement of the customer

- 7 The customer is obliged to cooperate in accordance with the offer, in that they:
  - a. must make all necessary documents and information available to SGK;
  - b. must pay for the delivery of any possible sample materials from SGK;
  - c. if need be, must install and monitor measuring instruments in accordance with SGK's instructions;
  - d. must guarantee the accessibility of the analyzed objects up to the respective measuring points under observation of all relevant safety regulations;
  - e. must carry out further services termed "on-site services" in accordance with the offer.
- 8 If safe access to the object as well as the respective definite measuring points is not guaranteed, SGK is then free to reject or cancel the service until safe access is guaranteed. SGK shall not be delayed by the cancellation.

9 With regards to the customer's obligation to cooperate, the customer is liable to pre-performance by the contract (Art. 91 OR).

## **5. Legal requirements in the country of destination**

10 The customer must notify SGK, at the latest at the time the offer is accepted, of the legal requirements and norms of the country that the report is destined for. Without prior notification, the request will be carried out according to the provisions of Swiss law and the norms of the SN (the Swiss Norms Association).

## **6. Delivery deadlines**

11 SGK guarantees the on-time performance of the contract in accordance with the offer, subject to the punctual performance of the customer's obligations and/or the punctual delivery of the services from third parties agreed by contract.

12 Should the offer not name a delivery deadline, there will be a customary and appropriate deadline for the performance of the contract.

## **7. Performance of the contract**

13 Through the preparation of the report in accordance with para. 5, SGK has entirely fulfilled the duties of the contract.

14 The instruction of any possible measuring instruments and the analysis of the compiled data underlie the experts' judgment and has no entitlement to objective correctness. The objective correctness of the statements contained in the report is therefore irrelevant to the question of whether the contract is fulfilled.

## **8. Use of the report by the customer**

15 The report shall only be valid when duly signed (Art. 14 OR) by SGK.

Drafts or unsigned copies of the report shall not be valid.

16 The report is meant exclusively for the sole use of the customer. The sale or any other kind of transfer of the report to third parties, in part or in full, is prohibited.

## **9. Warranties**

17 SGK guarantees a thorough drafting of the report, corresponding to scientific and technical standards.

18 There will no guarantee for the objective correctness of the report. In particular, the test and measurement data and the analysis thereof refer to the samples made available to the customer and investigated by SGK. SGK makes no guarantee that the test results relating to such samples can be transferred to the source materials or the same materials used for other purposes. For on-site investigations the measuring instruments will be installed in consultation between SGK and customer. Due to the measurements, the results for the whole component, e.g. the whole structure, will be extrapolated. Solely the data from the measuring points is needed. The extrapolation may be incorrect.

19 There will then be no temporal guarantee. The report is limited to the time of the execution of the measurements and the conditions controlled at that time. An estimation of the life expectancy of the components or structures can be given based in the report based on the experience of the experts. This estimation may be incorrect.

20 Apparent omissions and miscalculations in the report will be corrected upon the customer's request. A new report will then be compiled.

21 In all other cases, the legal provisions of Art. 363 ff. OR will apply.

## **10. Liability**

- 22 SGK shall be liable solely for willful or grossly negligent acts. Liability for ordinary negligence shall be excluded.
- 23 The customer can only request a new report if there are deficiencies in the report. The liability of SGK for indirect damages such as lost profits, consequential damages, etc. will be explicitly waived.

## **11. Remuneration**

- 24 Except when otherwise stipulated, the services of SGK are to be reimbursed. The offer states the hourly rates which are to be applied. The hourly rates are valid for services during customary business hours. Surcharges will apply for work which must be carried out outside of business hours in consultation with the customer. The time requirement for waiting periods which SGK is not accountable for will be applied according to the respective hourly rate of the employees entrusted with the work. Travel time is fully considered as working time.
- 25 If a fixed price is agreed upon, this is based on the principles known at the time of the conclusion of the contract and under the condition that the prerequisites agreed at that time will be performed. If these principles and prerequisites change, the fixed price can be redefined.
- 26 The quoted prices are exclusive of value-added tax, provided that this is charged.
- 27 Additional costs such as travel costs, accommodation and catering (in the case of work outside the customer's registered office) and the like are payable by the customer.
- 28 Invoices from SGK are payable within 30 days after the date of the invoice without deduction. Any agreed-upon account payments are to be

paid immediately, or on an agreed date.

## **12. Sample materials**

- 29 The customer must communicate to SGK, at the latest when accepting the offer, if the materials, products or equipment are to be returned upon the completion of the contract. Otherwise, SGK is entitled to dispose of these freely.
- 30 Transport to and from the site as well as any costs for waste disposal is payable by the customer.
- 31 The sample materials may be damaged by the investigation.

## **13. Privacy and protection obligations**

- 32 SGK commits to treating the data and information of or about the customer, which is made available to them in the context of their work for the customer, as confidential.
- 33 If the investigation of the test, component or structure gives a result where important public interests are endangered or legal requirements will be violated, SGK is obliged to notify the relevant authority. The customer will also be given notice of this violation.

## **14. Force majeure**

- 34 SGK will not be liable for events of force majeure which complicate the performance of the contract for SGK or temporarily impede or make impossible the execution of the contract.
- 35 Force majeure shall include circumstances outside the will or influence of the contract parties such as natural disasters, governmental measures, decisions by the authorities, blockades, war and other military conflicts, mobilization, internal unrest, terrorist attacks, strikes, lockouts and other industrial disturb-

ances, confiscations, embargos or other circumstances, which are unforeseeable, serious and not caused by the contract parties and occur after the completion of the contract.

36 Insofar as one of the contract parties is prevented from performing their contractual duties by force majeure, this is not considered a violation of the contract, and the deadlines determined in the contract or due to the contract will be extended according to the duration of the impediment. The same applies, insofar as SGK depends on prior performance by third parties and this is delayed.

37 Each contract party shall do everything in their power, as far as is necessary or reasonable, to reduce the scale of the consequences of force majeure. The contract party affected by force majeure will inform the other contract party of the beginning and end of the impediment in writing. If it is established that the force majeure will last longer than six months, each contract party is

obliged to terminate the contract by means of a registered letter.

## **15. Sundry items**

38 Any amendments and additions to this Agreement, including this clause, shall be valid only if made in writing. This also applies to any amendment to this requirement for amendments to be made in writing. There shall be no verbal side-agreements.

39 Should individual conditions of the contract or this clause be declared invalid or void, the contract as a whole shall be considered invalid. Invalid or void conditions should be replaced through conditions which are as close as possible in their effect to the no longer applicable conditions.

## **16. Applicable law, jurisdiction**

40 Substantive Swiss law is applicable under the exclusion of conflict-of-law rules of private international law.

41 The place of jurisdiction shall be Zurich.