

# Terms of Service and Delivery

## I.

### General Provisions

The general and special terms of service and delivery set out under nos. II and III shall apply to the services and deliveries rendered under private law by the Materialprüfungsamt für das Bauwesen der Technischen Universität München (MPA BAU).

## II.

### General Terms of Service and Delivery

#### 1. Written Orders

All orders must be in writing. Oral agreements shall not be considered valid.

#### 2. Services and Deliveries to Foreign Clients or Abroad

(1) Services and deliveries to foreign clients or abroad are subject to advance payment or subject to surety granted by a German bank excluding the defence of unexhausted remedies.

(2) The chancellor of Technische Universität München will have the right to grant exemptions from subsection (1). The chancellor may make the granting of such exemption dependent on the client providing collateral security (§ 232 BGB [section 232 of the German Civil Code]).

#### 3. Advance Payment and Collateral Security

MPA BAU will also have the right, in cases other than those set out in section 2 above, to demand either advance payment in the amount of the estimated total costs or collateral security (§ 232 BGB).

#### 4. General Terms of Payment

(1) Unless advance payment was made, the total invoice amount, without deduction, must be transferred within the stipulated payment term (if no payment term is indicated, no later than 14 days from receipt of the invoice) to "Staatsoberkasse Bayern"

Account no. 24866 Bayer. Landesbank - Girozentrale - (BLZ 700 500 00),

IBAN: DE1070050000000024866 BIC: bylademm

indicating the payment reference number.

(2) Client will not be permitted to deduct any discount.

#### 5. Delayed Payment

(1) If client is in arrears with part or all of the payments due, interest in the amount of 5 percentage points above the base rate will be charged to the benefit of the Free State of Bavaria. For legal transactions not involving a consumer, interest will be charged at 9 percentage points above the base rate. In addition, a lump sum of EUR 40 will be charged for each delayed payment.

(2) Moreover, any other damage caused by the delay shall be reimbursed to the Free State of Bavaria.

#### 6. Deferred Payment

(1) For the period of deferment, interest in the amount of 2 percentage points above the base rate will be charged.

(2) If payment by instalments has been granted and the client is in arrears by two instalments, in whole or in part, the total amount still owed including incidental charges will be due for immediate settlement. In addition, interest on the arrears will be charged in accordance with section 6 sub-section 1 (see above) from the date of commencement of the delay.

#### 7. Reservation of Title

(1) Until receipt of all payments in full, all products manufactured/processed inclusive of the embodiment of all produced reports, graphics, files and/or any services will remain the property of MPA BAU. In the event of breach of contract by client, including, without limitation, default in payment, MPA BAU will have the right to take possession of the product.

(2) In the event that the purchase prices has not been paid in full, client shall inform MPA BAU without delay if the product delivered is encumbered by third-party rights or subject to other encumbrances.

(3) Client will have the right to resell the product subject to reservation of title in the ordinary course of business. For this case the client hereby assigns all claims arising out of this resale, irrespective of whether made prior to or after any processing of the product subject to reservation of title, to MPA BAU. Notwithstanding MPA BAU's right to claim direct payment, client will remain entitled to collect the payment even after the assignment. To this end MPA BAU agrees not to demand payment on the assigned claims to the extent that client complies with its payment obligations and does not become subject to an application for insolvency or similar proceedings or ceases to make payments.

#### 8. Liability:

(1) In the event of a breach of material contractual obligations (i.e. obligations the non-performance of which would make it impossible to duly perform the Agreement and compliance with which can, as a rule, be relied upon by client), MPA BAU, its statutory agent and persons employed to perform obligations on behalf of MPA BAU, shall be liable for intent and for any negligence; however, in the event of slight negligence, liability shall be limited to the contract-typical, foreseeable damage.

(2) In all other cases, MPA BAU, its statutory agent and persons employed to perform obligations on behalf of MPA BAU, shall be liable only for damage caused by intent or gross negligence, however, in the event of slight negligence, liability shall be limited to the contract-typical, foreseeable damage.

(3) Any liability pursuant to subsection (2) for indirect and consequential damage shall be excluded in the event of gross negligence.

(4) The limitation of liability and/or exemption from liability provided for hereinabove will neither apply in the event of injury to life, body, or health nor in the event of claims under the German Product Liability Act.

(5) In the event that client has to indemnify third parties, any recourse claims against MPA BAU will be excluded.

#### 9. Taking of Samples on Building Sites or from Buildings, Examinations

(1) When samples are taken on building sites or from buildings, client or client's agent will determine the sampling locations. When samples are taken from building parts that are essential for the stability of the structure, an expert (structural engineer) authorized by client will determine the sampling locations, in each case upon factual agreement with the MPA BAU.

(2) Liability in the case of taking samples will be governed by the provisions in section 8 of these Terms of Service and Delivery. This will also apply in the event that building materials are completely or partly removed in the course of taking samples, or if electric cables, water pipes, etc. are damaged or destroyed through unawareness of their exact positioning.

(3) Barriers, scaffolding, supports required and the closure of the removal sites will be Client's responsibility.

(4) MPA BAU will not be liable for any interruptions of work for which Client is accountable.

#### 10. Handling of Test Material

Remnants of samples and tested material which is, as a rule, destroyed will become the property of MPA BAU and, unless otherwise agreed, will be disposed of immediately.

#### 11. Confidentiality

The MPA BAU is responsible for all information obtained or created during the processing of an order and the performance of testing. This information will be treated confidential except otherwise agreed with the client or except for information that the client himself makes publicly available. This also concerns information about the client obtained from other sources. The source of this information is also treated confidential and will not be shared with the client unless agreed by the source. If the MPA BAU for its part intends to make information public available it will inform the client in advance even if the MPA BAU is required by law or authorized by contractual arrangements to release confidential information.

#### 12. Handling of Work Results and Reports

Work results obtained on the basis of orders of clients, may be used by the MPA BAU anonymously and for scientific purposes. They may also be published, e.g. in research reports and theses. The utilization of results by the MPA BAU naming the client requires written consent of the client. The provision of test results by the client to a third party is only permitted using the full wording and stating the author (Copyright by Technische Universität München (TUM)/MPA BAU). The publication of results or excerpts thereof by the client requires the prior written authorization of the MPA BAU. In deviation thereof the MPA BAU has the right to inform the building supervisory board of the results if this may concern issues regarding public safety.

#### 13. Privacy Statement

The provisions on data protection are included in the privacy statement for orders to the MPA BAU of Technische Universität München ([www.bgu.tum.de/mpa/leistungsverzeichnis/](http://www.bgu.tum.de/mpa/leistungsverzeichnis/)).

#### 14. Exclusive Applicability of MPA BAU Terms and Conditions

This Agreement shall be governed exclusively by the terms, conditions, and provisions stipulated by MPA BAU. Any terms, conditions, and provisions other than those shall not apply even if not expressly objected to.

**15. Place of Jurisdiction and Performance**

- (1) Where permissible under applicable law, exclusive place of jurisdiction for any disputes arising out of or in connection with this Contract including its validity shall be the seat of MPA BAU. MPA BAU reserves the right to bring an action against Manufacturer at Manufacturer's seat.
- (2) Place of performance shall be Munich.

**III.**

**Special Terms of Service and Delivery**

Any fees will be charged in accordance with the *Leistungsverzeichnis des Materialprüfungsamtes für das Bauwesen (LV)* as amended.