

GENERAL TERMS AND CONDITIONS OF VZLU TEST NO. 2/2016

for the provision of services, the production of a work and the sale of products

valid from 01/11/2016

Company name: VZLU TEST a.s. (hereinafter called "VZLU TEST")

registered: in the Commercial Register of the Municipal Court in Prague, Section B, Insert 21044

Company Reg. No.: 04521820

registered office: Beranových 130, 199 05 Prague – Letňany

VAT Reg. No.: CZ04521820

I. General

1. These General Terms and Conditions of VZLU TEST pursuant to Section 1751 et seq. of Act No. 89/2012 Coll., the Civil Code, as amended, shall apply to cases where VZLU TEST provides services or produces a work or sells a product (hereinafter called the "Deliverables") to a customer, sometimes also referred to as a purchaser, client or buyer (hereinafter called the "Customer").
2. All contractual terms and dates relating to the Deliverables are contained exclusively in the present General Terms and Conditions of VZLU TEST. Any deviations from the General Terms and Conditions of VZLU TEST may only be agreed by contract, in written form. Deviations agreed in writing shall then be superior to the applicable provisions in the General Terms and Conditions of VZLU TEST.
3. VZLU TEST is an obliged entity pursuant to Act No. 340/2015 Coll., on special conditions for the effectiveness of certain contracts, the publication of these contracts and on the Contracts Register (Act on Contracts Register). The contract, excluding parts which are subject to commercial confidentiality, will be published in accordance with this Act in the register of contracts. All parts containing technical data, drawings or any other technical information, personal data of the Customer, identification of other Party, financial information, price, trade secrets and classified information will be obliterated in the agreement and its annexes.
4. A contractual relationship is established by the conclusion of a contract or confirmation of a Customer's order by VZLU TEST.
5. The rights and obligations of the Customer arising out of the contractual relationship are not transferable or assignable to a third party without the prior written consent of VZLU TEST.

II. Deliverables and place of performance

1. The Deliverables must be set forth in writing and approved by both Parties.
2. Unless stipulated otherwise, the place of performance shall be the registered office of VZLU TEST.

III. Price and terms of payment

1. The price of contract performance must be set in writing and must be approved by both Parties. A change in an agreed price may only be possible by a written agreement of both Parties.
2. The price shall always be set exclusive of value-added tax (hereinafter called "VAT").
3. The price does not include the cost of packing and transport of the Deliverables to the Customer.
4. VZLU TEST shall add the VAT to an agreed price amounting to rates in compliance with an applicable legal regulation of the Czech Republic.
5. In the case of foreign Customers and Customers-VAT payers from EU countries, the price is usually exempt from VAT in accordance with an applicable legal regulation. For an exemption of VAT, a foreign Customer and Customer-VAT payer from EU countries is obliged to provide VZLU TEST with all necessary documents. A Customer-VAT payer in EU countries is also obliged to provide VZLU TEST with an international tax identification number (hereinafter called "ITIN") and is also obliged to pay VAT under its national law. If the foreign Customer or Customer-VAT payer does not provide VZLU TEST with all necessary documents, they are obliged to pay VZLU TEST a contractual fine amounting to the applicable VAT.
6. After the Deliverables are delivered and accepted by the Customer or under conditions agreed differently, VZLU TEST shall issue an invoice meeting the requirements of a tax document. An invoiced amount shall equal the total agreed price increased by VAT and by agreed extra works, if any. An exception applies to foreign Customers and Customers-VAT payers from EU countries see Article III/5.
7. The payment period of advance, partial as well as final invoices shall be 14 days from the date of issue of the invoice.
8. The Customer shall use the invoice number as a variable symbol of the payment.
9. If the Customer defaults in the payment of invoices that have been legitimately issued, VZLU TEST may impose late charges on the Customer amounting to 0.05% of the due amount for each day.
10. If an invoice does not meet the agreed requirements or is issued without justification, the Customer is entitled to return or complain about the invoice by the due date thereof by post, fax or email (info@vzlutest.cz) to VZLU TEST. In the event that VZLU TEST has a legal claim to the payment of an invoice and only technical and content-related deficiencies of the document are involved, VZLU TEST is obliged to issue a new invoice with a new due date. In such a case, the Customer is not in default in the payment of the invoice.
11. Title to the Deliverables shall only pass to the Customer after the price of the Deliverables has been paid in full.

IV. Time of performance

1. The time of performance must be set in writing.
2. The necessary condition for meeting an agreed time of performance is the fact that the Customer performs all of its obligations towards VZLU TEST. The Customer must supply VZLU TEST with information, objects and documents necessary for the correct and complete performance of the order. The Customer is obliged to advise VZLU TEST of extraordinary risks that may, in connection with the Deliverables, cause damage to the property or to the health of the VZLU TEST employees or to the property and health of third parties.
3. VZLU TEST is entitled to suspend work on the Deliverables on the basis that the Customer has filed for insolvency in accordance with applicable laws and regulations. In the event that an insolvency petition to the insolvency court is rejected, VZLU TEST will continue its work on the Deliverables without undue delay. Agreed performance deadline is extended by the length of the suspension of work on the Deliverables.
4. VZLU TEST is entitled to terminate work on the subject of the contract, if the insolvency court in accordance with applicable legislation issues a decision on bankruptcy of the Customer.
5. In the event that the Customer defaults in its performance which will prevent the performance on the part of VZLU TEST, the Customer is obliged to indemnify demonstrable damages that have been incurred by VZLU TEST. The agreed time of performance shall be extended by the duration of default on the Customer's part (delay in approving background documents, late delivery of inputs for the performance, default in payment of an advance invoice and so forth).
6. If VZLU TEST defaults in the delivery of the Deliverables by more than two weeks against the agreed time of performance, the Customer may exercise a contractual penalty amounting to 0.05% of the contract price a day up to the maximum amount of 10% of the total contract price.

V. Delivery terms

1. The place of delivery must be set in writing.
2. The standard delivery terms of VZLU TEST are EX WORKS (EXW) pursuant to INCOTERMS 2010.
3. The risk of loss shall pass to the Customer upon the acceptance of the Deliverables by the Customer.
4. Along with the Deliverables, VZLU TEST shall also hand over all documents to the Customer associated with the delivery and, at the Customer's request, the documentation provided by the Customer as well.

VI. Termination of contractual relationship

1. It is possible to terminate the contractual relationship by written agreement of both Parties.
2. In the event of a material default in the performance of obligations by any of the Contracting Parties the rectification of which is not commenced within 30 calendar days of the delivery of a notice in writing, the other Contracting Party may terminate the contractual relationship in accordance with applicable legal regulations.
3. VZLU TEST is entitled to withdraw from the contract especially if:
 - the Customer has failed to pay an overdue amount even after having received a written reminder;
 - the Customer is not fulfilling contractual or other obligations.

In such cases, the Customer shall refund demonstrable costs, within 30 days of a written demand, incurred by VZLU TEST as a result of the termination of the contractual relationship. The right of VZLU TEST to assert further claims arising from applicable legal regulations of the Czech Republic shall remain hereby unaffected.

4. VZLU TEST is entitled to terminate the contractual relationship if the performance being supplied by the Customer underlies a great risk of possible damage to the health or property of its employees or to the health and property of third parties.
5. VZLU TEST is also entitled to terminate the contractual relationship at any time if it fails to obtain all licences and statutory permits of any type that are necessary for the performance of the contract.

VII. Warranty period and claims

1. VZLU TEST gives a warranty for the quality of a work for a period of 6 months.
2. The validity of the warranty is conditional upon the Deliverables being used in a correct manner and only for the purposes for which it was made, and the warranty shall not cover shortcomings due to improper use, inadequate maintenance, repairs carried out by an unauthorised person, overloading and other improper use. The warranty also does not cover cases where the Deliverables are altered by the Customer or by third parties.
3. In the event of a claim, the Customer is obliged to notify VZLU TEST in writing of reasons immediately after the defect has been found. If a deliverable supplied is demonstrably defective, VZLU TEST must supply a replacement to the Customer or ensure that the work is repaired. If VZLU TEST is unable for objective causes to arrange for the repair or removal of a defect or secure a replacement delivery, the Customer is entitled to arrange a price reduction, the acceptance of financial compensation with VZLU TEST or to withdraw from the contract. However, the amount of financial compensation is limited by the price of the contractual order.

VIII. Liability and exclusion of liability

1. VZLU TEST is liable for the correct execution of the Deliverables.
2. VZLU TEST shall protect the Customer's work and property taken over.

3. VZLU TEST is not liable for damage or a defect in a work that has occurred in connection with errors in documentation taken over from the Customer or through the use of improper data handed over by the Customer or through the following of improper instructions given by the Customer as well as for damage incurred in connection with actions or errors of the Customer or its employees.
4. If damage is inflicted on a work or other property of the Customer for which VZLU TEST is not liable, VZLU TEST may rectify the damage only if the Customer requests it.

IX. Limits of liability

1. Unless stated otherwise below, in the event of a professional mistake, product defect, defect in work performed or mistake due to negligence, the liability of VZLU TEST shall be limited to the amount of CZK 5 million. The liability of VZLU TEST exceeding CZK 5 million is excluded in terms of the amount and reason.
2. The above limitation of liability shall not apply to personal injury or property damage incurred as a result of gross negligence or wilful misconduct.
3. VZLU TEST shall not be liable for unforeseeable damage, force majeure, lack of economic success, indirect or consequential loss (especially financial loss) and it shall not be liable for any damage arising from the claims of third parties provided that such liability is not laid down by the law.
4. The liability of VZLU TEST for material damage caused due to a professional error or negligence to test samples and devices that are provided by the Customer to VZLU TEST under the contract shall be limited by the amount of CZK 10 million.
5. If the price of samples and devices provided is higher than CZK 10 million, the Customer is obliged to inform VZLU TEST of such fact in writing before the contract is concluded. In this case, the Contracting Parties shall agree on liability or insurance cover on a case-by-case basis. If this does not happen, the liability of VZLU TEST shall be limited by the amount of CZK 10 million.

X. Force majeure

1. Neither Party shall be liable for default in the performance of its obligations arising from the contractual relationship if this was due to circumstances that exclude liability (hereinafter called "force majeure").
2. Force majeure shall be considered as extraordinary circumstances that prevent, permanently or temporarily, the fulfilment of set obligations provided that they occurred after the conclusion of the contract, independently of the will of the liable Party and provided that they could not be averted even if maximum effort that can be reasonably required in the given situation was exerted. Force majeure shall be considered to include in particular war, terrorism, earthquake, floods, accidents of widespread extent and other catastrophic events. Shortages of material and labour shall not be recognised as an instance of the effects of force majeure.
3. Cases of force majeure shall extend the delivery times correspondingly.
4. If any instance of force majeure occurs, the affected Party shall notify the other Party in writing within 48 hours of the moment when force majeure manifested itself and shall subsequently present documents confirming that it is an instance of force majeure.
5. In the event of force majeure, both Parties shall jointly agree on what measures they will take. Should the force majeure occurrence last more than 60 calendar days without the Parties reaching any agreement, any of them may terminate the contract.

XI. Confidentiality

1. Both Parties are obliged to maintain the confidentiality of all facts relating to the contractual relationship or to the matters of the other Party of which they learn during the performance of this contract. This also includes the duty to do their utmost to protect such facts. The confidentiality obligation shall not apply to cases where the fact in question is generally known or there exists a statutory obligation to disclose or publish such fact.
2. The Customer agrees that the name of its company and other data or information be stated during the promotion of VZLU TEST and VZLU TEST's products in printed, electronic as well as verbal form without details being given about the subject-matter of the contract. The Customer agrees that pictorial materials made during tests or during the making of products be exploited for the promotion of VZLU TEST unless a confidentiality agreement or similar agreement excluding the making of such pictorial materials has been concluded with the Customer.

XII. Intellectual and industrial property

1. VZLU TEST reserves the right to intellectual property relating to all of its documentation or transmitted information and, in particular, relating to technical drawings made by VZLU TEST in connection with an offer unless contractually agreed otherwise. The Customer may not use, reproduce or make available the abovementioned documents to third parties without the prior written consent of VZLU TEST.
2. If a delivery by VZLU TEST contains the intellectual and industrial property rights of third parties, the use of such rights by the Customer must be provided for in detail in the contract.

XIII. Governing law and dispute resolution

1. Other rights and obligations not provided for by these General Terms and Conditions of VZLU TEST shall be governed by Act No. 89/2012 Coll., the Civil Code, and by other generally binding legal regulations of the Czech Republic.
2. The governing law shall be the law of the Czech Republic.

3. In the event of a dispute where no agreement of the Contracting Parties is reached on the basis of mutual negotiations even within 30 days of the moment when it arose, the dispute shall be decided by a competent court according to the registered office of VZLU TEST based on the initiative of VZLU TEST or of the Customer.

XIV. Final provisions

1. All changes, amendments to and deviations from the General Terms and Conditions of VZLU TEST may only be made in writing.
2. If any of the Contracting Parties does not apply any of its rights that may belong to it in accordance with these General Terms and Conditions of VZLU TEST, this shall not mean that the given Party is waiving such right.
3. Should any of the provisions of the present General Terms and Conditions of VZLU TEST be or become invalid or ineffective, this shall not affect the validity and effect of the other provisions hereof. In this case the Contracting Parties shall undertake to conclude an agreement without delay that will replace the invalid and/or ineffective provision by a new provision that shall best suit the originally intended purpose of the original provision.
4. By entering into a contract or by sending and confirming an order, the Customer agrees to the processing and collection of its personal data in a database, until it expresses its disagreement in writing about such processing. The Customer shall have the right of access to its personal data and the right to correct it including other statutory rights relating to such data. The data shall be secured as required by the law and used in communication with the Customer or, where appropriate, presented only to such inspection bodies that have appropriate authorisation. Personal data (especially name, surname and address) of Customers shall be stored in accordance with applicable legal regulations of the Czech Republic, particularly with Act No. 101/2000 Coll., on the protection of personal data, as amended. VZLU TEST shall use all data obtained from Customers exclusively for its internal purposes and shall not disclose it to third parties, and it shall not be utilised for advertising purposes of business, either. An exception applies to carriers to whom personal data of Customers are given to a minimum extent that is necessary for the trouble-free delivery of goods or if the Customer expressed its consent in a contract to it being stated. The data shall be stored and not shared with third party applications.

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