

General terms and conditions of Qualitätssicherung SQS GmbH

1. General terms and conditions: scope of application

1. Qualitätssicherung SQS GmbH provides services of quality assurance for their clients from the industry (hereinafter “customer”). All car work, supply and customer services (Hereinafter collectively referred to as “services”) and offers of Qualitätssicherung SQS GmbH are subject to these General Terms and Conditions (hereinafter “GTC”).
2. The validity of any of these GTC of differing or conflicting conditions of the customer is hereby expressly prohibited. Such conditions are not part of the contract, unless Qualitätssicherung SQS GmbH has expressly agreed in writing their validity.
3. These GTC apply only to legal transactions with companies within the meaning of § 14 BGB, legal persons of public law or public special assets.
4. Qualitätssicherung SQS GmbH and the customer agree that these GTC have validity not only for the first transaction between them. The application of these GTC for all other transactions is hereby expressly agreed.
5. Additional agreements, assurances and changes to the contracts, in particular unilateral declarations, must be in writing. This also applies to the waiver of the written form.

2. Offers, offer documents and conclusion of contract, scope of supply and services

1. Offers from Qualitätssicherung SQS GmbH or cost estimates are subject to change and not binding, unless Qualitätssicherung SQS GmbH has explicitly expressed them as binding.
2. A contract is only valid when Qualitätssicherung SQS GmbH receive an order from the customer in writing, by phone, by e-mail, or through other written order confirmation (also e-mail or fax), other printable confirmation or actual performance of the work in accordance with the GTC.
3. At the request of Qualitätssicherung SQS GmbH the customer is legally obliged to confirm once again the imparted order confirmation with a handwritten signature.
4. The scope of supply and services results from the specifications in the order confirmation. It is defined and clarified on the basis of the customer’s information and specifications.
5. The scope of supply and services may include the following service modules which can be charged for completely or individually:
 - Sorting work, inspection work and troubleshooting of the provided parts on the basis of quality requirements established and documented by the customer as a service (check can be commissioned as functional testing, visual inspection or measure testing and also full examination and sampling inspection.)
 - The reworking of defective parts as work performance to meet the customer’s established and documented quality requirements
 - Procurement / production of required tools as work performance
 - New production of parts on the basis of the customer’s established and documented quality requirements as work delivery performance
 - In single cases defined services, either as a service or work performance.

6. If during the execution of an order, changes or extensions of the scope of supply and services are commissioned, they are to be made known in advance and agreed in writing (also by e-mail or fax).

3. Contract implementation

1. Qualitätssicherung SQS GmbH carries out the undertaken work with the use of the latest technology and with a team of qualified professionals. The supervision and authority over employees of Qualitätssicherung SQS GmbH are alone in this.
2. Qualitätssicherung SQS GmbH can have services owed carried out by third parties. The third party are bound to the obligations of the customer entered into by Qualitätssicherung SQS GmbH.

4. Obligations and cooperation of the customer

1. The customer provides Qualitätssicherung SQS GmbH with all information needed for the execution of the contractual services, documents, data, drafts and plans in time for the start of execution, procures all official or other special authorisation and also approvals and provides all necessary actions otherwise required (eg instructions). The customer shall provide Qualitätssicherung SQS GmbH with all requested and necessary information.
2. The customer has to ensure that necessary requirements such as workrooms, systems and equipment are made available to Qualitätssicherung SQS GmbH at their premises before the contracted work begins and are also available to the employees of Qualitätssicherung SQS GmbH or for the use of agencies for the duration of the contracted work.
3. The customer has to ensure that the work location meets the general and specific safety measures standards. In the event that special official safety regulations or other provisions are required at the location, which are relevant to the on-site tasks of Qualitätssicherung SQS GmbH, the customer of Qualitätssicherung SQS GmbH will make this known in advance before the carrying out of the required work and also inform the staff of Qualitätssicherung SQS GmbH or their agents accordingly.
4. The customer shall provide the employees and agents of Qualitätssicherung SQS GmbH with adequate working and recreation rooms, sanitary equipment and special protective clothing and protective equipment free of charge.
5. The customer agrees not to recruit employees of Qualitätssicherung SQS GmbH and not to hire employees of Qualitätssicherung SQS GmbH for a period of up to 12 months after the employment relationship with Qualitätssicherung SQS GmbH has ended.

The customer further agrees not to employ employees of Qualitätssicherung SQS GmbH in the context of a temporary employment agreement for a 12-month period after the employment relationship with Qualitätssicherung SQS GmbH has ended.

If the customer violates the recruitment and/or employment clause outlined above, the customer agrees to pay a contractual penalty in the amount of €15,000 (in words: fifteen thousand euros) to Qualitätssicherung SQS GmbH.

5. Performance time and Force Majeure

1. The compliance with agreed dates and deadlines for services requires that the customer, in particular in accordance with clause 3, duly carries out all deliverables of the participation agreement. If interruptions or delays in performance are caused due to the customer's neglect, the agreed service periods will be extended and – dates according to the period of delay or interruption.
2. Unpredictable, unavoidable and constraints beyond the control of the parties or force majeure such as war, natural disasters or labour disputes, release Qualitätssicherung SQS GmbH for the duration of the obligation from providing their services. Agreed work performance shall be extended for the duration of the disturbance; when the fault occurs, the customer shall be informed in an appropriate fashion.
3. If delays or interruptions arise, which the customer is responsible for, then he has to bear the cost of any delays and additional incurred travel costs, as well as any other additional costs.
4. Damages claims by the customer due to delay in delivery or service shall be excluded. This does not apply if Qualitätssicherung SQS GmbH in cases of willful misconduct, gross negligence or due to injury to life, limb, health or substantial breach as necessarily liable, in particular where major delays then put the fulfilment of the contract at risk. In the case of culpable violation of an essential contractual duty or gross negligence, liability for damages to Qualitätssicherung SQS GmbH for delayed delivery to the foreseeable typically occurring damage is then limited.
5. The customer can only withdraw from the contract under the statutory provisions if the delay time to work performance is the responsibility of Qualitätssicherung SQS GmbH. In cases of delay the customer is obliged, at the request of Qualitätssicherung SQS GmbH, to declare within a reasonable period of time whether he would like to withdraw from the contract or insists on the work being carried out.
6. Qualitätssicherung SQS GmbH always tries to carry out agreed delivery / service completion dates on time. If Qualitätssicherung SQS GmbH through government action and / or events of other kinds, which are not the responsibility of Qualitätssicherung SQS GmbH, is prevented or demonstrably not supplied through no fault of itself, Qualitätssicherung SQS GmbH is entitled to rescind the contract. The withdrawal has to be made in writing to the customer. There shall be no claim for damages in such a case.

6. Responsibility of Qualitätssicherung SQS GmbH in provision of services

1. Decisive for the audit scope of Qualitätssicherung SQS GmbH is – unless otherwise agreed – the tolerances of Qualitätssicherung SQS GmbH by the customer provided documents and drawings, in particular those mentioned here.
2. Qualitätssicherung SQS GmbH checks and sorts the parts provided with the utmost care, however, no guarantee for the complete (100%) sorted or examined parts being free of defects can be provided.

7. Warranty, examination and approval of deliveries and services

1. Qualitätssicherung SQS GmbH guarantees that the reworked or newly fabricated parts or tools meet the objectives set by customer technical parameters, taking into account allowable tolerances. An examination by Qualitätssicherung SQS GmbH as to whether the requirements of the customer are appropriate or suitable does not take place.
2. Qualitätssicherung SQS GmbH in particular does not guarantee that a re-worked or newly finished part which meets the requirements of the customer, functionally or visually fits in into a composite object of the customer or a third party.
3. Qualitätssicherung SQS GmbH does not check whether the drawings, documentation or design documents provided by the customer contain errors or construction mistakes regarding parts to be reworked or newly finished according to the specifications of the customer.
4. The customer must examine and also accept the reworked or newly fabricated parts or tools immediately after notification of completion by Qualitätssicherung SQS GmbH. If the customer does not register a complaint regarding apparent defects within the delivered batch immediately – at the latest after 5 days – then the delivery is thus approved and officially accepted.
5. If a defect appears later, the defect must be reported immediately upon its discovery to Qualitätssicherung SQS GmbH; otherwise the customer loses his warranty rights.
6. The customer's warranty claims expire one year from the notification of completion or delivery of parts, insofar as the law does not implement a longer limitation period, for example in cases of fraudulent concealment of defects or assumption of a guarantee, where further claims of the customer remain unaffected.
7. In order to correct defects Qualitätssicherung SQS GmbH is to be granted at least twice the opportunity of subsequent performance within a reasonable period of time. If the customer refuses this, Qualitätssicherung SQS GmbH is exempt from the obligation to remedy the defect.
8. Customer claims arising from necessary supplementary performance, in particular transport, labour and material costs are excluded if the expenses increase because the object of the subsequent delivery was brought to another location later, unless the transfer corresponds to its intended use. Insofar as parts or peripherals, which were the subject of the work performance of Qualitätssicherung SQS GmbH and are part of the reworking and have been delivered and thereby preclude rectification of Qualitätssicherung SQS GmbH, rectification of defects by a third party can take place with the written consent of Qualitätssicherung SQS GmbH. Herewith, the scope and complexity of the repair work is to be clearly defined and the necessity of the reworking to be proven by the customer.
9. If subsequent performance fails despite two opportunities, the customer may, without prejudice to any claims for compensation, rescind the contract or reduce the remuneration.
10. The removal of defect claims do not relate to significant deviations from the agreed quality or insignificant impairment of usability, accessible only to the natural wear and tear or damage arising after the transfer of risk from faulty or negligent treatment, excessive use, unsuitable equipment or due to external influences that are not foreseen in the contract. If the customer or a third party has made improper modifications, processing or repairs, then there are no claims rights existing for the consequences of these actions.
11. The customer must not cede warranty claims against Qualitätssicherung SQS GmbH without their prior consent.

8. Prices, Terms of payment

1. Unless the parties have not agreed upon prices for the services agreed, then the current price list of Qualitätssicherung SQS GmbH at the time of the agreed contract shall be valid. Prices are exclusive of VAT.
2. Qualitätssicherung SQS GmbH is entitled to provide weekly payment invoices.
3. The accounts of Qualitätssicherung SQS GmbH are payable within ten days of the invoice date without any deductions, unless a longer term of payment has been expressly agreed. Upon expiry of this payment period, the customer is then in default of payment without the required indication of the invoice or a reminder. In case of default the Qualitätssicherung SQS GmbH is entitled to charge default interest according to § 288 BGB. If Qualitätssicherung SQS GmbH has been subjected to higher damage claims, it is entitled to assert those claims.
4. A payment is only considered complete when the full amount of the invoice has been irrevocably credited to the bank account of Qualitätssicherung SQS GmbH.
5. The assignment of a claim against Qualitätssicherung SQS GmbH to a garnishee or a factoring bank is excluded.

9. Compensation and retention

1. The customer may only offset undisputed, legally established or recognized by Qualitätssicherung SQS GmbH counterclaims against claims of Qualitätssicherung SQS GmbH.
2. A customer lien may be asserted only with counterclaims from the same contractual relationship.

10. Other liability

1. Qualitätssicherung SQS GmbH is liable for damages claims by the customer:
 - based on intent or gross negligence, including intent or gross negligence of the representatives or agents of Qualitätssicherung SQS GmbH,
 - based on injury to life, limb or health,
 - if the Qualitätssicherung SQS GmbH fraudulently concealed the defect or a guarantee for the quality of the goods has assumed, according to the statutory provisions.
2. In the case of a breach of contract, which is not based on intent or gross negligence, the liability of Qualitätssicherung SQS GmbH is limited in amount for the typical, foreseeable damage.
3. Material contractual obligations are those whose performance to achieve the objective of the contract is necessary. Indirect damages, lost profits and other consequential damages, the consequences of defects of the delivery item are only eligible for compensation if they were typically foreseeable.
4. In addition, the liability of Qualitätssicherung SQS GmbH is – Where it is not otherwise mentioned in these terms – excluded.
5. A change in the burden of proof to the detriment of the customer is not connected with the above provisions.
6. If the insurance company of Qualitätssicherung SQS GmbH vouch for the damage, Qualitätssicherung SQS GmbH will make the insurance payment figures available in full detail to the customer. The above provisions apply to the personal liability of legal representatives and the people, which Qualitätssicherung SQS GmbH uses to fulfill its obligations.

7. The above rules and regulations apply to all claims for damages by the customer, regardless of the legal reason, including breach of duty from obligation and tort; with the exception of claims for damages due to delay which are regulated separately in point 5.
8. Any own claims against third parties will cede Qualitätssicherung SQS GmbH to the customer, provided that this has been taken into account.

11. Protection rights, drawings, samples

1. The customer is liable to Qualitätssicherung SQS GmbH in that the execution of the contracted services and through the use of the provided drawings, samples or similar design rules or devices, domestic or foreign rights of third parties, particularly patents, trademarks and design rights are not violated.
2. The customer shall indemnify and hold harmless Qualitätssicherung SQS GmbH in the event of third parties making infringements of their rights.
3. Qualitätssicherung SQS GmbH accepts no liability for loss or damage to the tools made available, and drawings, samples, devices and other articles handed over. Should the customer require insurance, such an insurance will only be taken out on behalf and at the expense of the customer.

12. Final provisions

1. The exclusive jurisdiction for all disputes arising from agreements concluded by Qualitätssicherung SQS GmbH based on these GTC, or indirectly arising disputes is Leipzig. Qualitätssicherung SQS GmbH is also entitled to sue at the customer's location or any other jurisdiction.
2. The contracts concluded by Qualitätssicherung SQS GmbH based on these GTC and closed contractual relationships apply to the law of the Federal Republic of Germany, excluding the UN Sales Convention.
3. If any provision of these terms and conditions or a provision of other agreements are or become invalid, this shall not affect the validity of the remaining provisions and agreements.