



## **General terms of use of the Test Event Area GmbH & Co. KG for roadways, buildings and facilities**

### **1. Validity**

Applicable in the course of business with private persons, companies, legal persons under public law and of separate fund under public law.

(1) These general terms of use of the Test Event Area (in the following TEA) apply in conjunction with the regulations of use of the Test Event Area for the test and security centre for all contractual relationships, which comprise the use of roadways, buildings and other facilities of the test and security, Am Flugplatz 48, D-56743 Mendig (in the following the „object of use“) by a user.

(2) Characteristics or regulations, deviating or which are opposed to these conditions, do not apply, unless, TEA agreed to its validity expressly. The following conditions do nevertheless apply, if TEA effects a performance without reservation knowing about opposing conditions or deviating from the customer's conditions.

(3) The offers of the TEA are subject to confirmation and not binding up to the final conclusion of the contract or up to the written confirmation of the contract.

(4) These terms apply without reservation up to the coming into force of new terms, also for every future use.

### **2. Object of use; type of use; exercising the right of use**

(1) According to a corresponding agreement, TEA or their authorized representative leave to the user the object of use for the performance of road tests with cars, utility vehicles, trailers and motor cycles (in the following “vehicles”) in the scope of each registration of the user, confirmed by TEA.

(2) The user has no right to a sole use, granting of a sole right of use and/or to a granting of a certain period of surrender, unless an exclusive use is settled. The right of use cannot be exercised without a registration, confirmed in writing.

(3) The user has to treat the object of use carefully and to inform TEA or their authorized representative immediately about damages concerning the object of use, when getting to know this. In no way, structural changes of any kind by the user concerning the object of use are permitted.

(4) TEA is entitled to enter the object of use by authorized representatives, employees or other assistants at any time.

(5) The use is effected with the reservation of keeping official obligations / permits.

### **3. Transmission of rights and claims**

The transmission of rights of use to persons, who have nothing to do with the performance, is not permitted.

### **4. Statements of account; terms of payment, cancellation fees**

(1) For the use of the object of use, the user has to pay according to the valid price list, when registering, as far as no other payment is settled here. This payment is plus the turnover tax, valid any one time. The use is settled up directly after the use. Unless otherwise agreed in writing, the payment has to be effected within 8 calendar days after receipt of the invoice without any deduction. In case of delayed payment TEA can charge interest for delay amounting to 8 % beyond the basic interest rate of

the Deutsche Bundesbank. The enforcement of a further claim is not excluded. Objections to invoices of TEA are to be put forward as from date of invoice within 2 weeks in writing. It can only be offset against claims of the TEA by claims, which have become res judicata or without controversy.

(2) Cancellation fees are settled up with the applicant / user according to the scales mentioned in the following and are to be paid in full to TEA. In case of refusal of dates by the user TEA is entitled, to charge the payments agreed on described as follows, as far as there is no other leasing. In case of another leasing, the payments from this leasing will be deducted.

The cancellation fees are with multiple use, not exclusive:

- this is possible for the user without cost, when refusing in writing up to 24 hours before performance
- in case of non-appearance without prior refusal in writing 100% of the costs of use in general.

The cancellation fees are with exclusive booking:

- up to 6 weeks before performance 50% of the costs of use
- up to 4 weeks before performance 75% of the costs of use
- up to 2 weeks before performance 100% of the costs of use

It is expressly permitted to the user to furnish proof that no damage or a decrease in value has occurred at all or is considerably lower than the standard amount.

## **5. Liability**

(1) The contracting parties are liable for damages and compensation of the futile expenses as defined by § 284 German Civil Code BGB (in the following „damages“) because of violation of contractual or non-contractual duties only

- if done with intent or gross negligence,
- in case of violation of life, body or health, if done in a negligent or intentional way,
- in case of violation of essential contractual obligations, if done in a negligent or intentional way, or because of another binding liability.

The damages for the violation of essential contractual obligations as defined in clause 1 is however limited to the damage typical for a contract and to be foreseen, as far as no foregoing statement mentioned applies.

(3) A change of the burden of proof to the disadvantage of the user is not connected with the foregoing regulations.

## **6. Liability for defects**

In case of defects (defects as to quality or defects of title) of the work performance furnished by TEA the following regulations apply:

(1) The user has to give notice of defects as to quality without undue delay in writing after discovery.

(2) Discovered defects as to quality are to be described in a comprehensible and detailed way as accurately as possible.

(3) All those work performances are to be mended free of charge in a reasonable period of time, or are to be provided again (supplementary performance) according to the choice of TEA, which show a defect within the limitation period, as far as its cause has already existed at the time of the passing of risk.

(4) In case the supplementary performance goes wrong, the user can withdraw from the contract, or reduce the payment – without prejudice to eventual claims for damages.

(5) All claims based on defects are subject to a limitation period of 12 months after inspection.

(6) Claims based on defects do not exist with just an irrelevant difference from the condition agreed upon, when the usability is just derogated in an irrelevant way, when it is subject to wear and tear or damages, which arise after the passing of risk owing to improper treatment, excessive use, unsuitable means of operation, or because of special external influences, which are not required according to the contract.

(7) In case changes or repair work are carried out in an improper way by the user or a third person, thus do not exist for these and the consequential harm, any claims based on defects either.

(8) Concerning claims for damages of the user, because of possible damages of the performance, the regulations in § 5 apply.

## **7. Conclusion and evidence of insurance contracts; indemnity by the user**

(1) The use of the object of use with vehicles requires, that for these exists a motor vehicle insurance with a minimum insured sum of 50 million EUR overall, concluded by the user. It is up to the user to insure the vehicles against damage during the use no matter for what reason.

(2) In addition, it has to be made sure, that the user concluded for commercial events or road tests, which serve this purpose, a thorough commercial / organizer third party liability insurance with a minimum insured sum of 5 million EUR for personal injury, damage to property and financial damage, which also offers a cover for damage to the environment.

(3) The insurances mentioned explicitly here are to be proven on demand to TEA or their representative on presenting a copy of the insurance policy or comparable documents before the execution of the road tests/event.

(4) TEA or their representative is entitled to refuse the execution of the road tests or the event up to the proof of a sufficient insurance coverage as defined by these terms. In this case possible claims for damages of the applicant/user, particularly because of delay, are excluded.

(5) The user exempts TEA or their representative from all claims of third parties, which can be asserted against TEA as operator of the test and security centre Eifel, because of a reason, the user, his assistants, other vicarious agents, as well as other third parties authorized by him, are responsible for.

## **8. Waste disposal**

(1) As far as in the scope of the use of the object of use by a user waste is caused (particularly scrap tires, waste oil, bodywork and components of spare parts of any kind) the user has to recycle or dispose of this waste at his own expense pursuant to the regulations of the waste legislation, unless the parties agreed upon s.th. else in writing.

(2) The recycling or the disposal of waste can be executed against payment by TEA or their authorized representative as well – prior to a written agreement.

(3) In case the user fails to fulfill his obligations concerning the disposal or recycling of waste pursuant to item 8 (1) and no relevant assignment with regard to TEA or their authorized representative exists, TEA reserves the right to execute this work for the user. The user will be charged for the costs resulting from this.

## **9. Force majeure**

(1) In case of force majeure, obligations by authorities or breakdowns occurring unexpectedly, which prevent TEA temporarily or permanently, to carry out the contrac-

tual performances, both parties are released from their contractual obligations for the duration of the incident.

(2) Moreover both parties are entitled to withdraw from the contract in case TEA is prevented for more than 5 days from carrying out the performance, because of force majeure, obligations by authorities or a breakdown occurring unexpectedly. The performance carried out by TEA up to the withdrawal is to be paid proportionally.

(3) Claims for damages because of the circumstances mentioned in item 9 (1), are absolutely excluded.

## **10. Confidentiality**

(1) With this agreement, the parties are committed to handle any confidential information which become known during a test or an event as well as confidential information about third parties who use the TEA as follows:

The parties shall assure each other that this information will not be passed on to third parties nor made available in any manner to third parties and that all reasonable precautions are taken to prevent third parties from gaining access to this information. Affiliate companies of the partners (according to §§ 15 of the German Stock Corporation Act, AktG) are not considered as third parties. Before transmitting confidential data, the parties will impose to these companies a similar confidentiality agreement which complies with this agreement in its entirety.

(2) Confidential information as stated in paragraph 1 are in particular: All tests, test arrangements, developments, new products, plans, any technical equipment, procedure, construction and material and any business transaction related to them.

This includes in particular:

- Information on vehicles, components or parts of the vehicles which do not comply with the series production status;
- Technical documents, in particular drawings, models etc.;
- IT-supported information and calculations.

(3) The parties agree in particular to avoid misuse of information by third parties by:

- Covering vehicles requiring confidentiality, prototypes, vehicle components or parts with an opaque tarpaulin or keep them in closed rooms outside of the time of use.
- Planning the vehicle operation according to the degree of confidentiality to prevent insight for third parties, especially companies also using the test site, as far as possible.
- Informing the respective other contracting party immediately about any incident related to confidentiality issues, in particular about contacts with journalists, photographers or other people in corresponding positions.

(4) The parties shall independently initiate appropriate measures for the data transmission via a public network accessible to anyone to protect the data against unauthorized access by third parties.

(5) Upon termination of this contract, the parties undertake to return to the other party immediately any document made available in the scope of the cooperation which contains confidential information according to this agreement together with copies or extracts made thereof.

(6) Both parties agree not to process or use the personal data outside the purpose stated in this agreement. This commitment shall also apply for an unlimited period of time after the conclusion of the cooperation under the terms of this contract.

(7) The receiving party will only make available the confidential information of the revealing party to those assistants, who need it for the execution of performance in

the scope of the purpose of this agreement. The receiving party will oblige these assistants to the same degree to treat the information in a confidential way.

(8) The confidentiality obligations under this agreement shall not apply if and in as far as such information is proven to be

- Public knowledge,
- Common knowledge without any fault on the party committed to confidentiality or
- Legally provided to a third party or
- Already available to the receiving party prior to the cooperation.

The burden of proof rests with the party who refers to the derogation from the obligation of confidentiality.

(9) The parties agree that the transmission of oral or written information does not transfer or grant any property rights or licenses of any kind to the other party under this agreement, unless other provisions differing from this contract have been agreed upon.

(10) The parties know that the breach of trade and commercial secrets according to §§ 17, 18 of the Unfair Competition Law (UWG) is liable to prosecution and the party who breaches the trade and commercial secrets is bound to compensate the damages incurred according to § 19 of the Unfair Competition Law. In cases of breach of obligations resulting from this confidentiality agreement related to confidential information of the parties, the infringing party shall pay a penalty of € 10.000,00 for every case of breach without recourse to denial of continuation of offence. Further claims for compensation shall be reserved, although the penalty is set off against the claims for compensation.

(11) The agreement of confidentiality can be terminated in writing with 6 months notice to the end of the year. In case of termination, the rights and obligations shall remain for another period of 3 years. This shall also apply in cases where the parties terminate their business relations.

## **11. Other regulations**

(1) Amendments and supplements of these terms require a written form to be effective. This applies also for amendments and supplements of this regulation concerning the written form itself. Oral collateral agreements do not exist.

(2) Should any provision of this agreement of confidentiality and other stipulations be or become invalid, this shall in no way affect the validity of the remaining provisions. The contracting parties are obliged to substitute the invalid provision by a regulation as similar as possible in the economic success.

(3) The place of jurisdiction is the domicile of the respective defendants.

(4) This contract is subject to the law of the Federal Republic of Germany without regard to the private German or international law, as well as without regard to the Law on the International Sale of Goods of the UN.

Dating from 04 - 2014