

# General Terms and Conditions VDE SMART Manual

of the VDE Global Services GmbH

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# General Terms and Conditions

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## **1 Scope of Application**

These General Terms and Conditions shall apply to the design of user manuals (VDE SMART Manual) and related services.

## **2 Scope of Service**

The VDE Global Services GmbH provides the following services within their VDE SMART Manual concept:

- Design of user manuals
- Application-specific risk analyses
- Consumer tests
- Printing, translation and production
- Other services

### **2.1 Design of User Manuals**

This refers to a simplified description of complex processes in the form of user manuals, mounting instructions, etc. Accordingly, the user is guided through the technical procedures step by step on the basis of a clear structure, descriptive images, easy-to-understand illustrations and self-explanatory diagrams. The omission of long and complex texts and the use of visuals simplify the use of the relevant equipment.

The customer usually receives the so designed user manuals in electronic format. Additional hardcopies will be provided upon request.

### **2.2 Application-specific Risk Analyses**

Within the frame of the application-specific risk analyses, the risks resulting from the interaction of user, appliance and user manual are examined.

The application-specific risk analyses consider only those dangers that arise from the interaction of the user and the appliance. A safety technological evaluation of the appliance is not included.

The customer receives an informational test report respectively an expert opinion as a result.

### 2.3 Consumer Tests

Consumer tests serve the purpose of observing, analyzing and assessing the way in which consumers use a product. They are aimed at recognizing and eliminating possible weaknesses in the user manual in order to guarantee best practices at the time of commissioning and during operation.

As a result the customer receives a test report or expert opinion for information purposes.

### 2.4 Printing, Translation and Production

Printing, translation into various languages or production can be agreed upon between the customer and the VDE Global Services GmbH.

### 2.5 Other Services

Extending services may be agreed upon within the context of the VDE SMART Manual concept.

## **3 General Provisions**

- 3.1 The actual extend of the services to be provided by the VDE Global Services GmbH is subject to the agreements between the two parties. The basis for this is the placement of the order by the customer, including the enclosures, as well as the respective order confirmation of the VDE Global Services GmbH. The VDE Global Services GmbH is not required to disclose circumstances, which are outside of the ordered service. The services to be provided by the VDE Global Services GmbH do not include the work to be rendered by the customer himself.
- 3.2 The VDE Global Services GmbH is authorized to commission third parties with services to be provided.
- 3.3 The information obtained within the frame of the activities will be treated confidentially. However, a transfer of these information to authorities is permissible, as far as the aim of the contract requires this, or it serves the purpose of fulfilling legal obligations. The customer consents to the forwarding of such information by the VDE Global Services GmbH.
- 3.4 If documents or records will be supplied by the VDE Global Services GmbH to the customer (e.g. drafts), they still remain the property of the VDE Global Services GmbH. The customer commits himself to treat these documents confidential, not to use them for his own purposes and not to forward them to a third party without the consent of the VDE Global Services GmbH.

- 3.5 The customer may only make informational test reports, expert opinions and the like available to a third party in their complete wording, including the preambles and with the stating of the publication date. Informational test reports, expert opinions and the like are not transferable.
- 3.6 User rights of licensors, which will be allocated to or arranged for the customer by the VDE Global Services GmbH, may only be used by the customer in accordance with the valid user or license arrangements of the licensor. The customer indemnifies the VDE Global Services GmbH from all claims resulting from an infringement of license arrangements.
- 3.7 In case the VDE Global Services GmbH receives objects protected by licenses the customer has the obligation to ensure that the VDE Global Services GmbH can use the material without limitation within the frame of the order. The customer indemnifies the VDE Global Services GmbH from all claims resulting from an infringement of license arrangements.
- 3.8 If the safety of the appliance described in the VDE SMART Manual is proven by a VDE certification, the „VDE SMART Manual“ reference can be affixed on the user manual or the mounting manual.
- 3.9 In the event of insolvency proceedings or foreign creditor protection proceedings similar to the German insolvency procedure of the customer, the VDE Global Services GmbH is entitled to cease providing services without this giving rise to any claims on the part of the customer.
- 3.10 The customer accepts the electronic storing of his data and documents within the EDP systems of the VDE Global Services GmbH.
- 3.11 The results are subject to the copyright law and the applicable laws for the protection of intellectual property.
- 3.12 Delivery dates will be communicated to the customer to the best of the knowledge. However, they can always be only approximate delivery dates. A delivery is considered to be concluded, if the documents were verifiably forwarded to the customer. All given time specifications are related to the Central European Time (CET/CEST).
- 3.13 Any statements contained herein relating to legal conditions merely represent the result of thorough research; in no event, however, can they replace expert legal advice.

#### **4 Customer's Obligations**

The customer is required to provide the VDE Global Services GmbH with all required information and documents. This includes, among others:

- Information concerning project details;
- Notification of all known damage that have been caused by the use of the product;
- All end-customer complaints known to the customer;
- A declaration as to the countries in which the product (e.g. the user manual) is being marketed.

#### **5 Placement of Orders and Accounting**

- 5.1 Reasonable advance payments may be requested. Partial invoices for any services already rendered may be issued.
- 5.2 Any fees shall be exclusive the statutory value added tax (VAT) and other applicable taxes in the respectively valid amount.
- 5.3 Payments are due upon receipt without deduction. In case the customer is in default a surcharge of 5 % above the basic interest rate will be due.
- 5.4 Any rights of retention and any rights of set-off on the part of the customer are excluded.

#### **6 Warranty, Liability, Cancellation**

- 6.1 Any warranty given by the VDE Global Services GmbH covers only those services that were explicitly ordered.
- 6.2 The VDE Global Services GmbH warranty obligation is limited to rectification of performance within a reasonable time frame. If such rectification of performance is not achieved, i.e. if it becomes impossible or if the customer cannot be reasonably required to accept rectification or if rectification is unreasonably refused or delayed by the VDE Global Services GmbH, the customer is entitled to request a fee reduction or cancel the contract.
- 6.3 The warranty period shall be one year from the passing of the risk. The passing of the risk is the time of service provision.
- 6.4 Any liability for a service's suitability for the customer's purposes shall be assumed by the VDE Global Services GmbH solely in the event that a relevant express warranty has been given in writing.

- 6.5 The VDE Global Services GmbH does not warrant that the product or commodity used by the customer is free from defects or suitable for use, neither towards the customer nor any third parties. Thus, the VDE Global Services GmbH is not liable for any damage caused by the product or commodity or any use thereof.
- 6.6 The VDE Global Services GmbH is not liable for delay or defective implementation that have been caused by an unclear, wrong or incomplete placing of an order or faults respectively mistakable or false formulation on the side of the customer. The same holds true for subsequently presented changes or modification requests.
- 6.7 The VDE Global Services GmbH excludes any liability, which may arise on account of the following circumstances:
- The end consumer was injured as a consequence of a product fault or defect. When designing and assessing user manuals, the VDE Global Services GmbH does not test the product's safety.
  - When using the product, the end consumer did not comply with the user manual and was injured as a consequence of such non-compliance. This also applies in the event of a foreseeable misuse.
  - The customer uses the user manual or the VDE SMART Manual for products that were not submitted to the VDE Global Services GmbH for assessment.
  - The customer did not provide sufficient information to the VDE Global Services GmbH regarding complaints made to it, losses already incurred or the information of already pre-existing hazards.
  - Incorrect product information was provided by the customer to, and was incorporated by, the VDE Global Services GmbH. This particularly applies with regard to medical equipment and incorrectly stated quantities.
  - The customer does not commission the VDE Global Services GmbH with the performance of the risk analyses and/or consumer tests.
- 6.8 The VDE Global Services GmbH shall be liable solely for gross negligence and willful misconduct. Any liability for slight negligence shall be excluded except in the case of injury of life or health or the VDE Global Services GmbH is in breach of a material contractual obligation (cardinal obligation).
- 6.9 Any claims for damages due to a breach of material contractual obligations shall be limited to the foreseeable damage that is typical in such cases.
- 6.10 The commissioning of the VDE Global Services GmbH and the services provided by the VDE Global Services GmbH shall not inure to the benefit of third parties. Such services are exclusively for the customer's information.

6.11 If any third parties still assert claims against the VDE Global Services GmbH, the customer shall indemnify the VDE Global Services GmbH thereof.

6.12 The VDE Global Services GmbH hereby excludes any liability in excess of that set out in previous clauses, regardless of the legal grounds giving rise thereto.

6.13 The limitations on liability also apply with regard to the personal liability of the employees of the VDE Global Services GmbH and any agents acting on behalf of the VDE Global Services GmbH.

6.14 The VDE Global Services GmbH is entitled to rescind the contract without having the customer to claim damages in the following events:

- Impossibility of performance
- Default or material breach of obligations by the customer
- Force Majeure
- Strikes
- Natural disasters

## **7 Appeals Procedure**

7.1 Any disputes between the customer and the VDE Global Services GmbH shall be first submitted to an Appeals Committee with the objective of reaching an amicable settlement. So long as the aforesaid procedure has not been concluded, recourse to the ordinary courts shall be excluded. This shall not apply with regard to provisional (preliminary) remedies. These shall be decided upon by the competent court.

7.2 Either party may have recourse to the Appeals Committee, which shall meet within three weeks after the receipt of a founded appeal. It shall consist of:

- one or two members appointed by the customer,
- one or two members appointed by the VDE Global Services GmbH and
- the Chairman or Vice Chairman of the Appeals Committee.

7.3 The Chairman or Vice Chairman of the Appeals Committee shall use his best efforts in accordance with his duty to reach an amicable settlement between the parties.

7.4 Any achieved settlement shall be logged and signed by the Chairman or the Vice Chairman. If a settlement cannot be reached within a period of six weeks after the first meeting of the Appeal Committee, the parties may have recourse to the courts.

## **8 Contractual Penalty**

In the event of any established breaches of these General Terms and Conditions the VDE Global Services GmbH may claim a reasonable contractual penalty.

## **9 Additional Regulations**

- The laws of the Federal Republic of Germany shall apply excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- The place of jurisdiction is Offenbach / Main.

These General Terms and Conditions shall become effective on the 1st of June 2009.

## **10 Severability Clause**

Should any provision of these regulations be or become invalid, this shall not affect the validity of the remaining provisions. The invalid provision rather shall be replaced by another, which corresponds to the same or at least the similar intention of these regulations.

