

**RW205****General Business Terms and Conditions for the Fee-Based Use of the Climatic Wind Tunnel of Modine Europe GmbH****1. Validity of These Terms and Conditions**

These General Business Terms and Conditions shall apply for all services of Modine Europe GmbH (Operator) provided to the Customer in conjunction with the use of the wind tunnel (WT) and/or climatic chamber (CC) at the Filderstadt site (services). With the awarding of the order, the Customer declares itself to be in agreement with these business terms and conditions. Any deviating business terms and conditions of the Customer shall be expressly excluded.

**2. Orders and Contractual Conclusion**

A written order, which is to be agreed upon between the Customer and the Operator before the rendering of services begins, shall be prevailing for the manner and scope of the services that must be rendered by the Operator.

**3. Occupancy Times**

Regular usage timeframes for the WT and the CC are from Monday to Friday respectively from 7:00 a.m. to 7:00 p.m. with a break from 9:00 a.m. to 9:15 a.m. and from 12:15 p.m. to 12:45 p.m. Usages outside of the afore-mentioned occupancy times require prior approval.

**4. Timeframes and Deadlines**

For the long-term planning of both parties, a non-binding written reservation (timeframe option) of the WT and/or the CC by the Customer is to be striven for as early as possible before the planned timeframe. The Operator must confirm the timeframe option. Upon the request of the Operator, the Customer must convert its option within 3 working days into a binding order if another customer would like to award an order in the same timeframe. The Customer must convert every timeframe option no later than 25 working days before the beginning of the rendering of services into binding orders. Otherwise, the timeframe option ceases to apply.

As soon as the Operator or the Customer recognizes that a certain timeframe cannot be met, the other contractual party must be immediately notified.

Production timeframes and deadlines specified in the order shall be deemed to be general target timeframes unless the Operator has specifically confirmed them in writing.

**5. Cancellations of Binding Orders**

Cancellations of binding orders by the Customer must be made in writing.

In the event of a cancellation up to 20 working days before the agreed-upon timeframe, the Customer shall owe no cancellation fee.

In the event of cancellations between 10 and 19 working days before the agreed-upon timeframe, the Customer must pay a cancellation fee of 30 % of the agreed-upon usage fee. In the event of cancellations between 3 and 9 working days before the agreed-upon timeframe, the Customer must pay a cancellation fee of 60 % of the usage fee. In the event of cancellations that are made less than 3 working days before the agreed-upon timeframe, the full amount is due for payment. If the operator can prove the test otherwise the cancellation costs are reduced accordingly. The Customer reserves the right respectively to attempt to prove a smaller amount of damages actually suffered by the Operator.

**6. Cooperation Obligations of the Customer**

The Customer must provide the Operator with all information relevant for the carrying out of services in a complete and timely manner, among others, the testing program or testing requirements as well as technical documents regarding the testing items.

The Customer shall provide the necessary testing items and replacement parts as well as other agreed-upon products or services (provisions). It is responsible for ensuring that all provisions are made in a timely manner and free of defects, particularly free of leakages. It is responsible for the transport of and insurance for the testing items and is liable to the Operator or third parties for all damages that they suffer from the provision.

If, for the rendering of services, one or more cooperative actions of the Customer are required, it must render them at its own expense. It shall only be reimbursed for expenditures if this has been expressly agreed upon. If it does not fulfill its cooperation obligations at all, not in a timely manner or not properly, then the Operator shall be entitled to terminate the agreement without providing notice after the setting of an appropriate notice period and charge it for the additional expenditures or loss of profits that it incurs.

**RW205****7. Prices and Payments**

Provided that nothing to the contrary has been agreed upon, the prices submitted by the Operator that include the statutory value-added tax applicable at the time of invoicing shall be prevailing. Invoices of the Operator are payable within 30 days from the invoicing date without any deductions. The payment of the invoiced amount shall be made in euro. The Operator reserves the right to demand appropriate installment payments or advance payments.

**8. Liability**

For damages to provisions, the Operator shall be liable only in the event of intentional wrongdoing or gross negligence. The Customer must assume damages of the Operator or third parties that are caused by provisions.

For the duration of their stay at the Operator's place of business, the Customer, its employees or authorized third parties work at their own risk. They must adhere to the usage rules and policies and the safety guidelines as well as the other instructions of the Operator.

In the rendering of the services, the Operator shall ensure that due care is exercised in its own duties. If the Operator is behind schedule due to reasons for which it is responsible, or the performance becomes impossible due to reasons for which the Operator is responsible or the Operator must provide damage compensation due to other reasons, the damage compensation obligation of the Operator is limited to direct and foreseeable damages in the event of simple negligence, in each case to a maximum of three times the agreed-upon usage fee. If the performance is delayed due to unforeseeable circumstances or circumstances for which the Operator is not at fault, the Operator shall be entitled to suspend the rendering of services for the duration of the impediment.

It is in no way liable for consequential damages that the Customer or its authorized third parties suffer in conjunction with the services rendered, regardless of the reasons.

**9. Liability for Defects**

Liability for defects is assumed for the measurement results to the extent that the measurements will be taken again free of charge in the event that there is a flaw. No more substantial defect liability claims of the Customer exist.

**10. Obligations to Maintain Secrecy and Confidentiality**

The Operator shall be obliged, for the duration of 5 years after the conclusion of the agreement, to treat all knowledge with confidentiality that has been acquired about third parties in connection with the rendering of services and will only make such data accessible to third parties if this is necessary for the execution of the order. The Customer shall be obliged to pass on the knowledge about the WT or the CC that has been obtained in the execution of the order to third parties only after having received the prior written approval of the Operator. The Customer is not allowed to bring image-recording devices onto the premises of the Operator. Exceptions to this are possible only with the permission and in the presence of the manager of the climatic wind tunnel department or his authorized representative.

**11. Place of Performance and Assignment Ban**

The place of performance for all services rendered is Filderstadt.

The assignment of claims that the Customer is entitled to from the business relationship with the Operator is prohibited.

**12. Legal Venue**

The legal venue is Stuttgart.

For all of the legal relationships between the Customer and the Operator in connection with the services rendered, exclusively the law of the Federal Republic of Germany shall apply with the exception of the conflict of laws provisions.

**13. Final Provisions**

In the event that individual provisions of the aforementioned business terms and conditions should be legally invalid, this shall not affect the legal validity of the remaining provisions. The legally invalid terms and conditions should be replaced by such provisions that most closely correspond to the commercial purpose of the agreement and the appropriate safeguarding of the interests of both parties.

**Note in accordance with §33 BDSG [German Data Protection Act]: Customer data shall be processed electronically.**

Filderstadt, February 22, 2012

Modine Europe GmbH  
Climatic Wind Tunnel