

MPA Dresden GmbH - General Terms and Conditions (as of: 01.02.2008)

1. Scope

These Terms and Conditions apply to all offers, contracts and any other services, including consultancy services, performed in dealings with non-consumers in the sense of § 310 (1) BGB (German Civil Code) within the framework of both ongoing and future business relationships as well as in connection with any future follow-up contracts concluded with the client.

All deviating purchase conditions and general terms and conditions from the client are hereby expressly rejected.

Any agreements and stipulations deviating from or in addition to the above provision shall require the contractor's (MPA Dresden GmbH) express written confirmation to be effective.

By placing his order, the client expressly accepts the contractor's General Terms and Conditions applying at the time the order is placed.

In cases of doubt, only the German version of the General Terms and Conditions shall apply.

2. Conclusion of contract

Unless expressly designated as binding, the offers contained in our catalogues or any other documents as well on the Internet are always without engagement, that is, they shall be deemed to represent invitations to ask for submission of an offer. Orders shall become binding only after they have been confirmed by us in writing. Depending on the requirements existing in a given case, the order confirmation will contain a description of the service to be provided in respect of the concrete application, content and extent of the works, the completion period as well as the test and development objective. If any alterations or extensions of the specified scope of the order become necessary in the course of the proper execution of the order, they shall be agreed in writing. If no separate payment had been agreed for such a case, the contractor shall be entitled to a reasonable payment from the client.

Any oral collateral agreements or undertakings given by our employees in addition to the undertakings contained in the written order confirmation shall always require our written confirmation. This requirement shall not apply to oral representations made by MPA's management or by persons who have been authorised by us without any restrictions imposed, of which authorisation the client has been advised by us in advance.

If, following confirmation of the order, we obtain knowledge of facts – in particular facts relating to default of payment in respect of earlier orders – from which can be reasonably judged that our claim for payment of the current order may be at risk on account of the client's inadequate capacity to pay, we shall be entitled to require the client to make an advance payment or at his option to furnish appropriate securities within a reasonable time limit set by us.

If the client refuses our request, we shall be entitled to withdraw from the contract and to demand immediate payment for any part of the services that have already been completed by that time.

Any requests of the client to have the order cancelled or subsequently altered can be complied with only on the basis of a separate agreement and only as long as we have not yet commenced processing of the order in question.

3. Execution of order

The contractor will carry out the order impartially and in accordance with generally recognised engineering practice.

The client shall ensure that the contractor will be provided in due time and free of charge with any documents and information needed for the execution of the order, in particular, all details concerning materials to be tested and the construction project. Unless agreed otherwise, the test samples shall be delivered by the client to the contractor's principal place of business. The related costs shall be borne by the client.

The client warrants that the test materials made available are free from the rights of third parties. The client shall indemnify and hold the contractor harmless from any claims raised for any legal reason whatsoever against the contractor by a third party in respect of the material to be tested.

The materials to be tested will be returned only if this has been expressly agreed, and at the client's expense. If the return of the materials tested has not been requested by the client within 2 days of the communication of the test results at the latest, unless already agreed upon otherwise on placement of the order, the materials will be properly disposed of by the contractor on completion of the order.

For up to 2 weeks after communication of the test results, the contractor will store the materials tested free of charge after the client has requested their return. Any storage beyond this period will be at the client's expense. The client will be advised after expiry of the free storage period of the costs charged.

For executing the order, the contractor will be entitled, without requiring the client's prior approval, to carry out or have carried out by a third party at his reasonable discretion and at the client's expense any required and common examinations and tests, to seek information, make inquiries, undertake travels and inspections. Should an extra authorisation from the client be required for this purpose, the client shall execute a separate power of attorney for the contractor.

If the measures to be taken for performing a service appear to be out of proportion in terms of extraordinary time and costs, given the purpose for which the service is intended, the client shall be informed and his prior approval shall be obtained before any measure is taken.

4. Payment

The payment agreed shall always be plus the statutory value-added tax.

All payments shall be due without any deductions within 14 days of the invoice date. Any payments effected using the so-called cheque-bill procedure shall always be subject to a separate agreement. Any bank charges falling due shall be for the client's account.

The client may only setoff if his counterclaims are undisputed or if client has a final and binding legal title. Any right of the client to withhold performance and right of retention shall be expressly excluded.

Provided that no consumers are party to the contract, the client shall, if he defaults in payment, be obliged to pay interest on payments from the due date at a rate of 8 percentage points above the respective current base interest rate of Deutsche Bundesbank in accordance with § 1 DÜG (German Discount Rate Transitional Act).

A higher interest rate shall apply if the contractor can submit an appropriate bank confirmation proving a higher interest burden.

Payments effected by the client will always be used for settling the oldest debts owed plus any dunning costs, expenses and interest accrued in accordance with § 367 BGB.

5. Test and development result

On completion of the order, we will make the test and development result achieved by us in fulfilment of the order available to the client in accordance with the order and order confirmation. The result shall be deemed to be accepted unless the client has raised objections within 4 weeks of the receipt of the result.

6. Delivery and dispatch

The processing and delivery times indicated by us in the order confirmation are without engagement and will commence when the client receives the order confirmation, however, not before the receipt of any possibly agreed advance payment and before any preconditions to be met on the part of the client have been met, including, for example, the submission of documents, provision of materials to be tested etc. No processing and delivery times shall be binding unless they have been expressly mutually agreed.

The dispatch route and the means used for dispatching test and development results will be chosen by us at our own discretion.

The risk of accidental loss of plants etc. will pass to the client on handing over of the consignment to the carrier, irrespective of the place of performance that has been agreed, whether the carrier has been commissioned by us or the client, and irrespective of who will have to bear the costs of transport under the contract. This shall also apply to partial deliveries.

If the dispatch is delayed at the contractor's request or for reasons attributable to the contractor, the plant etc. will be stored at the contractor's risk.

If delivery is delayed for reasons not attributable to us, risk will pass to the client upon his notification that the consignment is ready for dispatch. He will then have to bear the storage costs. The client will be informed immediately about the storage costs applying in an individual case .

7. Warranty

The contractor's warranty applies exclusively to the services covered by the contract. Any further warranty claims shall be excluded. The contractor will not be liable, in particular, for the serviceability of buildings, constructional facilities and structures in which the tested parts and construction materials are incorporated or used. Neither will the contractor be liable for the materials chosen by the client, unless this question has been expressly agreed to form part of our obligations under the contract.

As for the rest, the legal regulations shall apply.

Obvious defects shall be advised without delay to the contractor. Any failure to comply with this requirement will make the warranty claim in question null and void.

8. Liability

Any claims for damages shall be excluded, irrespective of the kind of violation of obligations, including tortuous acts, unless the contractor has acted with intent or in wilful negligence.

9. Termination

Either contracting party may terminate the contract for cause. Termination shall require the written form.

If the contract is terminated for an important reason not attributable to the contractor, the contractor shall be entitled to the payment less any saved expenditures. There is agreement between the parties that, if the client is unable to prove that a higher share of the expenditures has been saved, this share will be deemed to amount to 30% of the payment due to the contractor.

If the contract is terminated for an important reason attributable to the contractor, he shall only be entitled to payment of the partial services provided up to the time of termination, provided that the result of the partial services provided by this time is actually suited for use by the client. The client shall be informed about the result of the partial services provided within two weeks.

10. Jurisdiction, place of performance

Freiberg, the contractor's domicile, shall be the place of jurisdiction for any claims raised by either contracting party as well as the place of performance of any services to be provided under the contract.

The contractual relationship and any legal relations resulting thereof shall be exclusively governed by the law of the Federal Republic of Germany.

11. Severability

Should individual provisions of these General Terms and Conditions be invalid or unenforceable, this shall not affect the validity of the remaining provisions.

The invalid or unenforceable provision shall be replaced by a valid or enforceable provision which comes as close as possible in its economic effect to that intended by the contracting parties when setting forth the invalid or unenforceable provision.