

General Terms and Conditions

valid for services provided by our Engineering Office (Consulting Engineers) for mechanical engineering



1. General information

- a) The following General Terms and Conditions (GTC) apply to all current and future contracts between the Client and the Engineering Office (referred to as "EO"). These terms and conditions replace any previous agreements.
- b) Any agreements that deviate from the present terms and conditions shall be legally effective only if expressly confirmed by us in writing.
- c) Agreements concluded by non-authorized EO employees shall be void in any case. The legal representative of the EO is deemed to be authorized.

2. Proposals / side agreements

- a) Proposals made by the EO, unless stated otherwise, are non-binding with respect to all information provided including the fee.
- b) An exclusivity obligation, i.e. the exclusion of other clients, cannot be inferred from the placing of orders.
- c) If the order confirmation issued by the EO contains any changes compared to the order, these shall be deemed approved by the client unless he objects to them promptly in writing.

3. Placing of orders

- a) The type and scope of the agreed performance arise from the contract and these GTC.
- b) Any changes and amendments to the order (so-called author's changes) are subject to written confirmation by the EO. Author's changes shall be considered an additional project and shall be invoiced separately according to effort.
- c) The EO undertakes to properly carry out the order in accordance with the generally recognized rules of engineering and the principles of efficiency.
- d) The EO may consult other correspondingly authorized parties for the fulfillment of the contract and place orders with them on behalf of and for account of the client. However, the EO shall be obligated to inform the client of its intention and give the client the opportunity to object to this placing of orders with a third party within 10 days.
- e) The EO may also consult other correspondingly authorized parties as subplanners for the fulfillment of the contract and place orders with them on behalf and for account of the EO. However, the EO shall be obligated to inform the client if it intends to have orders fulfilled by a subplanner and to give the client the opportunity to object to this placing of orders to the subplanner within one week; in this case, the EO shall have to complete the task itself.

4. Warranty / compensation

- a) In case of research and development orders, the EO fulfils the contract by ensuring that the research and development works are carried out in accordance with the newest state of science and technology. There can be no liability or guaranty whatsoever for specific results or the meeting of dates or deadlines. In particular, the EO does not guarantee that results of the research and development orders are economically exploitable and/or free from third parties' rights. Therefore, in case of such orders, the client bears the research and development risk.
- b) Otherwise, warranty claims may only be raised after notice of

defects has been given exclusively by registered letter and within 14 days from delivery of the performance or the partial performance.

- c) Claims for conversion or price reduction are excluded. Claims for revision or supplementing missing performance shall be fulfilled by the EO within a reasonable period of time which in general should be one third of the period of time agreed to execute performance. A claim for loss due to delay cannot be asserted within this period.
- d) Before starting production or batch production, the client shall put the output (design) provided by the EO to an extensive and appropriate quality and function test. Subsequent complaints (after acceptance) shall not be admitted.
- e) Services shall be rendered by the EO with the diligence expected of an expert (§1299 ABGB [Austrian General Civil Code]). The EO may itself define technical requirements not defined in more detail in the order. For essential requirements, however, the EO shall first confer with the client.
- f) Liability for compensation is restricted to intent and gross negligence.

5. Withdrawal from the contract

- a) Withdrawal from the contract is permitted for cause only.
- b) If the EO defaults in performance, the client cannot withdraw from the contract before a reasonable final deadline has been set; the final deadline shall be set via registered letter.
- c) If the client falls behind with a partial performance or an agreed contributory activity (e.g. prototype construction) which makes it impossible for the EO to fulfill the order or significantly impedes order fulfillment, the EO shall be entitled to withdraw from the contract.
- d) If it turns out in the course of the development project that the project is not feasible according to generally recognized rules of engineering and physics, and applying standard methods, the EO shall be entitled and obligated to withdraw from the contract.
- e) If withdrawal from the contract is justified, the EO shall retain the right to the full fee as agreed, likewise if the client unjustifiably withdraws from the contract. §1168 ABGB shall apply. If the client justifiably withdraws from the contract, the client shall pay for the services provided by the EO.

6. Fee / property rights / place of fulfillment

- a) Unless otherwise specified, all fees are stated in EURO. Sales tax (value-added tax) is not included in the stated fee rates and shall be paid separately by the client.
- b) If package deals are prepared, the justified exceedance by up to 15 % of the project sum total shall be accepted by the client in any case.
- c) Any change requests after the order is placed by the client (so-called author's changes) are invoiced in addition and by the hour.
- d) The EO reserve the right of ownership in deliverables supplied until the purchase price and all accessory claims have been paid in full and the EO exclude any liability until all and any accessory claims (e.g. default interest, overdue fines) have been paid in full. If payment including the payment of accessory claims is not made in full by a final deadline, the EO shall assume no responsibility for the service provided even if payment is received after the deadline.

- e) The place of fulfillment for all office services is the registered office of the EO.

7. Payment terms

- a) In the absence of agreements to the contrary, our invoices are payable net without deductions within 30 days – the payment time starts on the invoice date. Payment shall not be deemed to have been made until we have received the complete credit advice by the financial institution without reservation. Notwithstanding any provision to the contrary, we shall be entitled to collect payments to pay off prior liabilities. Bills of exchange are not accepted as a means of payment.
- b) Upon exceeding the 30-day payment term, the client is in default without any further reminder while simultaneously losing all claims under warranty agreements concluded in addition to statutory requirements. In the event of default, the client shall pay default interest in the amount of 15 % p.a. plus sales tax.
- c) If default in payment occurs, the client shall be obligated to refund the dunning costs of the EO (incl. additional administrative expenses) as well as all costs associated with collecting the amount due (lawyer's fees, legal expenses, etc.).
- d) The EO is entitled to implicitly discontinue ongoing projects temporarily (until receipt of payment) or completely. In case of default, payments shall first be set off against expenses, then to interest and finally to invoice of the EO.
- e) If the amount due on an invoice is not paid in full despite two overdue notices, all other outstanding invoices shall promptly be due for payment as well.
- f) Any changes in terms of the client's creditworthiness shall entitle the EO to make future goods and services (production, deliveries, etc.) subject to prepayment.
- g) In case of default, the client undertakes to refund any operating costs of the Austrian credit bureau (Kreditschutzverband von 1870) or another debt collecting institute in accordance with the regulation on fees raised by debt collecting institutes issued by the Federal Ministry for Economic Affairs, Federal Law Gazette [BGBl] No. 141/1996.
- h) The client shall not be permitted to withhold payments on account of alleged warranty claims or any other counterclaims not expressly recognized by the EO in writing. Offsetting any asserted counterclaims not recognized by the EO in writing shall be excluded.

8. Non-disclosure

- a) The EO and the client shall be bound to maintain secrecy on all information provided by the other party.
- b) The EO shall also be bound to maintain secrecy on its planning activities if and as long as the client has a legitimate interest in non-disclosure and requests it explicitly. Upon executing the contract, the EO shall be entitled to publish the work covered by the contract for advertisement purpose wholly or in part unless otherwise provided in the contract.

9. Protection of plans / intellectual property rights and trademark rights

- a) Plans, design drawings, brochures, reports, technical documents, inventions, new developments and the like by the EO are protected by copyright. The EO reserves all rights to use the documents prepared by it for itself.
- b) Any full or partial use (especially editing, implementation, reproduction, public presentation, and provision), disclosure and repeated use of the documents by third parties or by the client himself shall not be permitted without the explicit consent of the EO.

- c) The EO shall be entitled but the client shall be obligated to state the name (company, trade name) of the EO in all publications and announcements regarding the project.
- d) If the client acts contrary to these provisions to protect the documents, the consulting engineers shall be entitled to claim a contractual penalty in the amount of twice the charges of unauthorized use and enjoyment; the enforcement of further claims for compensation shall remain reserved. This contractual penalty shall not be subject to the court's right to reduce or abate the fines. The burden of proof that the client did not use the consulting engineers' documents lies with the client.

10. Consumer protection

- a) These terms and conditions shall also apply to legal transactions with a contractual partner for whom the transaction is not associated with the business of his enterprise unless individual regulations are contrary to mandatory provisions of the Consumer Protection Act.
- b) Where contracts are concluded with consumers within the meaning of the KSchG [Consumer Protection Act], the mandatory provisions of this Act take precedence over these GTC.

11. Bindingness of the GTC / choice of law and proper venue / place of jurisdiction

- a) If the contract is or becomes partially void, the remaining contract shall remain effective. In this case, the contracting parties shall be obligated to conclude a valid replacement agreement which approximates the intended economic success of the void provision as closely as possible.
- b) Austrian law shall apply exclusively to contracts concluded between the client and the EO.
- c) The court having subject-matter jurisdiction at the headquarters of the EO (currently: Salzburg) shall be the competent court for all disputes arising from this contract as agreed.