

# General Terms and Conditions (GTCs) of Mechatronic Engineering Companies

## 1. Scope

1.1. These terms and conditions apply between us (\_\_\_\_\_) and natural or legal persons (hereinafter "the customer") for all current business transactions subject to law, as well as for any **future supplementary or follow-up orders**, even if, in individual cases, no explicit reference is made to them.

1.2. The applicable version of our terms and conditions is always the one current at the time the contract is made. This can be downloaded from our **website** (www.\_\_\_\_\_).

1.3. Any contract we enter into is **exclusively** subject to our own terms and conditions.

1.4. **Customer's terms and conditions** or any amendments/additions to our terms will have no applicability without our express written consent.

1.5. We will not be bound by customer's terms and conditions, even if we have not **expressly objected** to them upon receipt.

## 2. Offers and contractual obligation

2.1. Our offers are **non-binding**.

2.2. **Commitments**, representations and warranties on our part or agreements made during contractual negotiations that are contrary to these terms and conditions are non-binding until such time as we confirm them in writing.

2.3. The customer is obliged to draw to our attention any **information** about our products and services that is taken from catalogues, price lists, brochures, advertisements, trade show literature, newsletters, promotional mailings or other media and is not attributable to us if the customer uses this as the basis of his decision to place an order. This is so that we can take a stance on its accuracy. If the customer fails to observe this obligation, any such claims will be non-binding unless we expressly consent to their written inclusion in the contract.

2.4. **Cost estimates** are not binding.

2.5. We reserve the right to **charge** for providing estimates.

## 3. Prices

3.1. In principle, prices quoted are **not** to be understood as **all-inclusive**.

3.2. Should the customer request services that were **not covered by the terms of the original contract**, these are to be paid for at an appropriate rate in the absence of any other agreement.

3.3. Prices are quoted exclusive of **VAT** and ex works. Packaging, transportation, loading and despatch costs as well as customs and insurance are charged to the customer. We are only obliged to take back packaging if this has been expressly agreed in advance.

3.4. It is the customer's responsibility to arrange for the professional and environmentally sound disposal of **waste material**. If we are specifically asked to arrange for this and there is no prior agreement on payment, the customer is to reimburse us at an appropriate rate.

3.5. We are entitled at our own discretion and also obliged at the request of the customer to **adjust** the agreed prices and charges if changes of at least \_\_\_% arise after the contract has been signed in either a) labour costs as a result of law, regulation, collective wage bargaining, factory agreement, or b) other cost factors affecting performance such as cost of materials as a result of recommendations made by the PKPL (Austrian Joint Commission on Prices and Wages) or of changes in national or world commodity prices, exchange rates etc. The adjustment is to reflect the extent to which the actual production cost vary between the date on which the contract was signed and the date of actual performance, provided that we are not late in delivering.

3.6. The value of the amount payable in the case of continuous contractual obligations is to be **protected in real terms** on the basis of the 2005 CPI (= 100); this will be achieved by an adjustment of remuneration. The month in which the contract was signed is to be regarded as the starting point.

3.7. **Travel, living and overnight accommodation** costs will be charged separately. Transit time is considered as work time.

## 4. Customer's own goods

4.1. If equipment or other materials are supplied by the customer, we are entitled to levy a **handling charge** amounting to \_\_\_\_\_% of the value of the equipment or materials provided.

4.2. Any such equipment and other materials provided by customer are not covered by **warranty**.

## 5. Payment

5.1. One third of the total payment becomes due when the contract is signed, one third at the commencement of performance and the remaining third on completion of performance.

5.2. There is no entitlement to a **discount** without our express written agreement.

5.3. We are not bound to accept any **conditions/dedications on remittances** imposed by the customer.

5.4. If the customer is in arrears with us in connection with any other existing contractual relationships, we are entitled to **suspend** performance of our obligations under this contract until fulfillment by the customer.

5.5. We are also entitled to claim **immediate payment** from the customer for all services already rendered under the current business relationship.

5.6. If the customer **fails to meet the payment deadline**, even if only for a single part of the performance, all concessions granted (discounts, deductions etc) are forfeit and the invoice becomes payable in full.

5.7. In the event of default of payment, the customer agrees to reimburse us for all necessary and appropriate costs involved in **collecting the debt** (correspondence, debt collectors' and legal fees etc).

5.8. The customer has the right to **offset any such claim** only insofar as his counterclaim is accepted by the court or acknowledged by us.

## 6. Credit check

6.1. The customer expressly agrees that, for the sole purpose of creditor protection, his details may be sent to the state-approved **credit rating organisations** AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsauskunftei Kubicki KG and Kreditschutzverband von 1870 (**KSV**).

## 7. Customer's duty of cooperation

7.1. Our duty of **performance begins** at the earliest, as soon as  
a) all technical details are clarified,  
b) the customer has fulfilled the technical and legal preconditions (which we will clarify upon request)  
c) we have received agreed payments or security deposits, and  
d) the customer fulfils his contractual obligations in terms of preparation and cooperation, particularly those mentioned in the following subsections.

7.2. Where we are responsible for installation, the customer is obliged to ensure that our employees are able to commence work **as soon as they arrive on site**.

7.3. The customer has to arrange for all necessary **permission** from third parties as well as registration with and permits from the relevant authorities at his own expense. We will be pleased to assist in clarifying what these are.

7.4. **Energy** and water supplies that are necessary for performance of the contract, including trial operation, are to be provided by the customer at his own expense.

7.5. For the duration of performance, the customer must make available to us, free of charge, **lockable rooms** that are not accessible to third parties where our employees may take their breaks and where we can store our tools and materials.

7.6. The customer is responsible for ensuring that the necessary **structural, technical and legal requirements** are met for the system to be installed or for the purchase item, as described in the contract or in information given to the customer before the contract was signed or which the customer should in any case be familiar with from pertinent expertise or experience.

7.7. The customer also warrants that the technical facilities such as mains, cabling and networks are in a technically faultless and operational condition and are compatible with the system to be installed by us or with the purchase item.

7.8. We are entitled (but not obliged) to **inspect** these **facilities** for an extra fee.

7.9. The customer specifically undertakes to provide without prompting all necessary information on the location of **concealed electric power, gas and water lines** or similar systems, escape routes, other impediments of a structural nature, potential hazards and the necessary structural (statics) data before we commence installation work.

7.10. Details of the type of information that is required can be obtained from us on request.

7.11. The customer bears sole responsibility for the design, construction and correct functioning of **parts supplied** by him. There is no audit requirement with regard to any **documents, details or instructions submitted by the customer** in connection with the item to be supplied, over and above the creation of a technical dossier and certification of compliance with the Machinery Directive (Maschinenrichtlinie) as well as any other applicable directives, and to this effect, our liability is excluded. The duty to issue the certificate may be contractually bound over to the customer who resells the purchase item.

7.12. The customer is not entitled to **assign** any claims or rights under the contract without our written consent.

## 8. Rendering of performance

8.1. The client grants prior approval for any **minor changes in performance**, provided that these are justified by the circumstances and reasonable in nature.

8.2. If for any reason whatsoever it is necessary to make an **amendment** or addition to the order after it has been placed, the delivery/performance period is to be extended by a commensurate period of time.

8.3. If, after placing the order, the client wishes the contract to be fulfilled in a **shorter period of time**, this will constitute an amendment to the contract. This is because overtime may be necessary and/or acceleration of the materials procurement process may increase costs. Consequently, the price charged will increase commensurate with any additional expense incurred.

8.4. **Partial deliveries and services** that become necessary for technical reasons (e.g. size of system, construction progress) are permissible and can be billed separately.

8.5. If **call-off delivery** is agreed, the item/service purchased is to be delivered no later than six months after the order is placed.

## 9. Delivery and performance deadlines

9.1. We will consider any delivery/performance deadlines and dates as **binding** only if they were specified in writing. Any departure from this formal procedure would in any case require written confirmation.

9.2. We reserve the right to adjust dates and deadlines to take account of force majeure, of strikes and of delays caused by our suppliers or by other unforeseen circumstances that are not our fault and lie outside our control. The adjustment will be by the same length of time as the circumstance that caused the delay. This does not affect the customer's right to terminate the contract due to delays that make the continuation of the contract unreasonable.

9.3. If the commencement of performance or the performance itself is **delayed** or interrupted by circumstances attributable to the **customer** – in particular due to breach of the duty to cooperate in accordance with Clause 7 – performance shall be extended and completion dates adjusted commensurately.

9.4. For the **storage** of materials, equipment and the like at our premises caused by any such delay or interruption, we are entitled to charge an additional \_\_\_% of the invoiceable amount per month or part month. This shall not affect the customer's obligation to pay or to accept delivery.

9.5. In the event that the customer chooses to cancel the contract due to delay, he must first send by recorded delivery notice of intent stating **a period of grace**.

#### **10. Risk and despatch**

10.1. The risk passes to the customer as soon as we make the purchase item available for **collection from our factory or warehouse** or sign the item (alternatively materials and equipment) over to a freight carrier or forwarder. Despatch, loading/unloading and transport is always at the customer's own risk.

10.2. The customer authorises us to use any **method of despatch** that we deem appropriate. We agree to take out transport insurance at the written request of the customer and at his expense.

10.3. We are entitled to have the full price of the purchased item plus packaging and shipping costs collected on a **cash-on-delivery** basis if the customer is in default on payment from the existing business relationship or has exceeded an agreed credit limit.

10.4. The customer is responsible for the security of materials and equipment delivered, installed or stored by us at the place of performance. The customer bears the cost of any **loss or damage**.

#### **11. Default of acceptance**

11.1. If the customer is more than \_\_\_\_ weeks in default of acceptance (refusal to accept, delay with preparatory work, failure to request delivery within a reasonable time in case of call-off order), and the customer has not, after a reasonable **period of grace**, managed to remedy the circumstances which are preventing or delaying performance and are attributable to him, we are entitled under the terms of the contract to make use of equipment and materials reserved for performance **for other purposes**, on condition that we resupply these within a reasonable period of time when it is possible to recommence performance.

11.2. If the customer is in default of acceptance and we nonetheless insist on fulfilment of the contract, we are entitled to store the goods at our own premises and to charge a **storage fee** in accordance with Clause 9.4.

11.3. In the case of a justified cancellation of the contract, we are entitled to claim a flat-rate **compensation sum** from the customer in the amount of \_\_\_\_% of the gross value of the contract without being called to account for the precise value of losses incurred.

11.4. This does not affect our right to claim compensation to a greater amount.

#### **12. Retention of title**

12.1. All items delivered, installed or otherwise transferred by us remain our property until payment has been received in full.

12.2. **Resale** is only permitted if we have been informed in advance. The name and precise address of the buyer must be disclosed, and our

consent to the sale must be obtained. Should our agreement be forthcoming, the purchase price counts as already assigned to us.

12.3. Until the customer has settled up with us in full, he is to record this **assignment** in his books and on his invoices and to **draw the attention** of his debtors to the same. Upon request, he is obliged to make available to the supplier all documents and information required to assert the assigned claims.

12.4. The customer declares his express consent for us to enter the **premises** at which the goods subject to retention of title are located.

12.5. All necessary and reasonable **costs** arising from recourse through the courts are to be borne by the customer.

12.6. Asserting retention of title does not in itself constitute **cancellation of the contract**; this will only be the case if explicitly stated.

12.7. Having repossessed the goods to which we retain title, we may **dispose** of these in any way we see fit.

12.8. Until all of our claims have been settled in full, the purchased item may not be pledged as security or otherwise encumbered with **third-party rights**. In the event of seizure or attachment, the customer has an obligation to inform the relevant agents of our retention of title and to notify us immediately.

#### **13. Rights of third parties**

13.1. In the case of items delivered by us which have been manufactured **according to customer documentation** (design details, drawings, models or other specifications), the customer bears sole responsibility for warranting that the production of these goods does not infringe the rights of third parties.

13.2. Should third parties nonetheless assert infringement of their rights, we are entitled to **cease production** of the goods to be delivered at the risk of the customer until such time as the courts have ruled on the claim unless it is manifestly spurious.

13.3. Furthermore, we are entitled to reclaim from the customer any legitimate **costs** that we have incurred.

13.4. We are also entitled to **claim in advance** for any reasonable legal costs.

#### **14. Our intellectual property**

14.1. Delivery items and related design documents, **plans**, sketches, cost estimates and other documents and software that are provided by us or have been created in connection with fulfilling our side of the contract shall remain our intellectual property.

14.2. Use of the same – particularly disclosure, duplication, publication and forwarding to third parties (including extracts), as well as imitation, adaptation or utilisation – requires our express **consent**.

14.3. The customer further undertakes to maintain **confidentiality** in dealings with third parties with respect to information acquired from this business relationship.

#### **15. Warranty**

15.1. The warranty period for our products/services is one year after delivery.

15.2. Unless otherwise agreed (e.g. formal acceptance), **delivery** is officially deemed to have taken place on the date of completion, and at the latest, when the customer has either taken possession of the product or has refused to accept delivery without giving any reason. The customer is considered to have accepted delivery on the date when completion is reported to him unless he refuses to accept delivery and gives good reason why.

15.3. The fact that we have **attended to a fault** reported by a customer does not in itself constitute an acknowledgment of the alleged defect.

15.4. The customer always has to **prove** that the defect was already present when the delivery took place.

15.5. **Notification** of faulty workmanship and complaints of any kind should be made in writing and addressed immediately, and in any case within \_\_\_\_ working days (otherwise, the warranty is void), to the registered offices of our company, **describing the defect** as accurately as possible and indicating the possible cause(s). The customer is to return to us the goods that are subject to complaint to the extent that this is practicable.

15.6. If the **report of faulty workmanship** by the customer is subsequently shown to be **without justification**, he is obliged to reimburse us for expenses incurred by us in establishing the absence of defect or eliminating the fault.

15.7. We are entitled to arrange for an **inspection** either by us or by our agents as we see fit, even if the goods supplied are rendered unusable by any such inspection. In the event that this investigation demonstrates that we are not responsible for faulty workmanship, the customer has to bear any reasonable costs incurred in performing this inspection.

15.8. Transport and travel costs arising from the rectification of defects are to be borne by the customer. Upon our request, the customer is to make available for our use, free of charge, the necessary labour, energy supplies and facilities, and to cooperate in the process in accordance with Clause 7.

15.9. The customer is to give us at least **two opportunities** to rectify any defect.

15.10. In the event that the customer wishes to **cancel the contract and return the goods**, we are entitled to avert this by improving the item or by offering a price reduction, providing that the fault is neither major nor irremediable.

15.11. If the purchased items have been manufactured according to **design details**, drawings, plans, models or other specifications supplied by the **customer**, we will warrant only that the performance has been carried out according to customer's specifications.

15.12. We will not accept as a legitimate defect the claim that the item is not fully fit for the agreed purpose if this is based solely on properties or characteristics that **deviate** from the **information** given to us at the time of performance, i.e. caused by failure of the customer in his duty of cooperation in accordance with Clause 7.

15.13. Likewise, we will not accept as legitimate any alleged defect that arises because the customer's **technical facilities** (e.g. supply lines, cabling, networks etc) are not in proper working condition or are not compatible with the items to be delivered.

#### **16. Liability**

16.1. If we are found to be in breach of contractual or of pre-contractual obligations – particularly in the event of impossibility, delay etc – we are liable for **financial loss** only if wilful misconduct or gross negligence can be demonstrated.

16.2. Liability is **limited** to the maximum amount payable under the terms of our liability insurance cover.

16.3. This restriction also applies in respect of damage to any item that we have **taken into our care for processing**.

16.4. Claims for damages that are not legally asserted within six months shall be **forfeit**.

16.5. Limitations/exclusions of liability also apply to claims against our **employees**, representatives and vicarious agents based on losses incurred by the customer where recourse cannot be made to contractual obligations separately entered into with the customer.

16.6. We cannot be held liable for damage or loss caused by **improper handling** or storage, overloading, failure to follow operating and installation instructions, improper set-up, start-up, servicing or maintenance by the customer or by

third parties not authorised by us. Also excluded is normal wear and tear, to the extent that this may be shown to have contributed to the loss or damage. We will also not be held liable for damage or loss caused by failure to perform necessary maintenance.

16.7. If and to the extent that the customer can claim on an **insurance policy** taken out either by him or on his behalf (e.g. third party insurance, comprehensive insurance, transportation, fire, business interruption etc) for loss or damage for which we would otherwise be liable, the customer undertakes to use the insurance cover available and to limit our liability to any losses that are incurred by him as a result of making a claim under this policy (e.g. increased insurance premiums).

16.8. With regard to licensing regulations, user manuals and other product-related guidelines and information (especially monitoring and maintenance), we undertake to supply to a standard that the customer might reasonably expect from us (alternatively from third-party manufacturers or importers), taking full account of his expertise and experience. The customer as a reseller has to take out adequate insurance for **product liability claims** and indemnify us against claims of recourse.

#### **17. Severability**

17.1. Should individual parts of these terms and conditions be rendered void, the validity of the remaining provisions shall not be affected.

17.2. The parties hereby commit themselves to work together in the spirit of this agreement to devise a **substitute clause** that is most likely to lead to the intended outcome, taking into account custom and practice within the industry.

#### **18. General**

18.1. **Austrian law** shall apply.

18.2. Recourse to the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

18.3. **Place of performance** is the headquarters of the company (\_\_\_\_\_).

18.4. **Place of jurisdiction** for all disputes arising from this contract or from future contracts between the supplier and the customer shall be the local court for the supplier's registered company offices.

18.5. The customer is obliged to inform us immediately in writing of any **changes** in his name, company, address, legal form or other **relevant information**.

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