

**General Business  
and  
Delivery Conditions for Engineering Services  
and  
Trade of all Kinds of Goods**

of  
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English

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## **1. APPLICATION OF GBDC**

The following GBDC apply to all Contracts between the Client and MEESA Engineering GmbH as contractor for the provision of services in the field of technical conception, basic, detail and / or workshop planning, or calculations (statics, flow - and / or pressure loss or the like) or for the preparation of technical documentation, for assessment and / or findings or comparable delivery or services (in the following: engineering performance).

They govern the relationship between Client and Contractor, unless the individual agreement contains any provisions deviating from GBDC.

All engineering services provided by the contractor are exclusively based on these GBDC. Contrary or deviating from the GBDC of the Client conditions of the Contractor acknowledges only in the case of an express written consent.

Upon conclusion of the contract, the Client submits to this GBDC.

## **2. AMENDMENTS / ADDITIONS TO THE CONTRACT**

Amendments and additions of the contract require the written confirmation of the contractor to be valid. The contractor will only provide additional services and services deviating from the original contract content after concluding a written agreement both on the precise service content and on the price.

## **3. OFFER OF THE CONTRACTOR AND CHANGES OF PRICE**

The offer is to be understood as a definition of the scope of delivery or service in relation to quality, dates and prices.

Offers made by the Contractor shall be valid for a period of 14 days, subject to deviating contractual regulations.

The prices on which the contractor's offer is based are based on the costs at the time of first price offer. If a fixed price has been agreed, it shall apply (subject to other regulations in the offer) at the latest until the agreed, planned end of the engineering services.

In the event of an order of the Client deviating from the offer of the Contractor or a change, the Contractor shall be entitled to a corresponding price increase.

If the performance period agreed for the engineering services is prolonged by the event of circumstances which are not attributable to the Contractor's fault, the Contractor shall be entitled to invoice separately for the additional expenses caused thereby.

## **4. CONCLUSION OF CONTRACT**

The contract shall be deemed concluded when the Contractor, after receipt of the Client's order, has received a written confirmation from the Client.

The receipt by the Contractor of a payment security agreed in the contract is a condition precedent to the entry into force of the contract.

The Contractor's information contained in catalogues, brochures, price lists etc. shall only be authoritative if it is expressly referred to in the order confirmation.

## **5. VALIDITY OF THE CONTRACT COMPONENTS**

If contradictions arise from the contract, the contract components in the following sequence apply

- i. the documents by means of which the contract was concluded, consisting of:
  - a. Appointment of the AG, unless otherwise provided for in b. or c. or contradictory provisions
  - b. Order Confirmation and Offer of the Contractor
  - c. this AGLB
- ii. the description of the service or the price list of services;
- iii. Plans, drawings, samples;
- iv. Building description, technical report
- v. Special provisions for the individual case; information on deviations from technical standards
- vi. other standards of technical content;
- vii. Guidelines of technical content.

## **6. OBLIGATIONS OF THE CONTRACTUAL PARTNERS**

Any not insignificant change at the contractual partners, such as a change of the business name or the company name, a change to the name used for contract processing or the contracting party must be informed immediately of the appointment of a responsible representative and the initiation of reorganisation proceedings pursuant to the URG, insolvency proceedings or the rejection of an insolvency petition due to lack of cost-covering assets.

## **7. LANGUAGE OF THE CONTRACT**

Unless otherwise defined in the offer, the contract language shall be German. All documents and other documents relating to the contractual relationship shall be submitted in the language of the contract.

Foreign-language certificates shall be submitted to the Contractor in translation. Abbreviations and product-specific terms that deviate from the generally accepted technical terminology must be explained.

## **8. USE OF DOCUMENTS**

The Client and the Contractor may only use the documents handed over to them by the contractual partner for the fulfilment of the contract. Any other use requires the consent of the contractual partner.

## **9. SCOP OF SERVICES**

The services to be rendered by the Contractor shall in particular result from the technical specification in the offer, which forms an integral part of the contract.

The Contractor's scope of services shall also include ongoing coordination and coordination activities with the Client's representatives as well as participation in project meetings at the Contractor's headquarters, if and to the extent this is defined in the offer.

The engineering service is completed and fulfilled when the engineering service is handed over to the Principal for the first time in its entirety and essentially without errors.

## **10. DELIVERY DEADLINE**

In the absence of any deviating provision in the offer or mutual agreement, the delivery and performance period shall commence at the latest of the following dates:

- Date of order confirmation by the Contractor;
- Date of fulfilment of all technical, commercial and financial prerequisites, provisions, existence of all technical and commercial details and the like incumbent upon the Principal by agreement;
- Date on which the Contractor receives an advance payment to be made prior to delivery and/or performance and/or a payment guarantee to be issued or otherwise provided has been opened.

The contractor is entitled to carry out partial and advance deliveries.

If the Contractor is prevented from performing his delivery/service by circumstances which are not attributable to the Contractor's fault, the delivery period shall be extended by the duration of the hindrance.

## **11. DELAY / RESIGNATION**

In the event of subjective delay on the part of the Contractor, the Client shall be entitled to rescind the contract after the unsuccessful expiry of the reasonable grace period to be set, but at least 14 days. Both the setting of a grace period and the exercise of the right of withdrawal must be made by registered letter. § 1298 ABGB is not applicable.

The contractor is entitled to withdraw from the contract,

- if the Client fails to provide the necessary cooperation by setting a grace period (cf. also § 1168 para. 2 ABGB);
- if the Client grossly impedes or even thwarts the performance of the Contractor;
- if the Client's financial circumstances and/or creditworthiness deteriorate and the Client does not provide appropriate security for the Contractor's claims;
- if insolvency proceedings are opened against the AG or its assets;

If the Client is in arrears with a contractual payment or other obligation, the Contractor shall be entitled to

- i. either insist on performance of the contract and
  - postpone the fulfilment of his own obligations until the outstanding payments or other services have been settled, or
  - otherwise claim a reasonable extension of the delivery period, or
  - the full purchase price still outstanding, or else
- ii. withdraw from the contract by setting a grace period of 14 calendar days.

The Contractor shall in any case be entitled to charge default interest from the due date at the rate of 8 percentage points above the respective base interest rate of the ECB; interest shall be capitalised at the end of the quarter (31. 3., 30. 6., 30. 9., 31. 12.). In addition, the Contractor shall be entitled to compensation for the damage actually suffered.

Irrespective of any further claims for damages by the Contractor, in the event of rescission, services already rendered and partial services shall be invoiced and paid for in accordance with the contract. If the Contractor is entitled to withdraw from the contract or if the Client withdraws from the contract without justification, the Contractor shall retain the claim to the entire agreed remuneration. Any further claims of the Contractor shall remain unaffected.

## **12. TERMS OF PAYMENT**

Payments shall be made in accordance with the agreed terms of payment. If no terms of payment have been agreed, one third of the price shall be due upon receipt of the order confirmation and a further third at the latest of the following dates:

- for half delivery time
- three months after conclusion of the contract.

The remaining third of the contract price is due upon completion of the engineering service.

At the Contractor's discretion, the Contractor shall be entitled to invoice the deliveries and services rendered on a monthly basis.

The Client shall be entitled to withhold or offset payments due to warranty claims or other counterclaims, provided that the Contractor has acknowledged these in writing in terms of reason and amount.

Payment of the individual invoices shall be made within 21 calendar days of the invoice date. Invoice receipt without any deduction.

Unless otherwise stated in the offer, all prices are exclusive of VAT in Austria. The Client assumes responsibility for taxes, duties and levies outside of Austria.

### **13. CURRENCY / PRICE GUIDANCE**

All services of the Contractor shall be rendered on the basis of hourly rates measured in EUR. The prices contained in the Contractor's quotations are therefore also - unless expressly agreed otherwise in writing - Euro amounts. In the event of the express agreement to use other currency units as a basis, conversion shall take place at the daily exchange rate; the Client shall bear the associated currency risk in all cases.

The hourly rates on which the Contractor's quotations are based for the implementation of the Engineering services are based on the currently applicable rates of remuneration in accordance with the collective agreement of the Austrian Association of the Machinery and Metal Goods Industry (Fachverband der Maschinen- und Metallwarenindustrie) applicable to the Contractor. For contracts concluded between the contractor and the client on the basis of these GBDC, a price escalation in accordance with and on the basis of the annual collective agreement increases shall be deemed to have been agreed. The effective date for price adjustments resulting from collective wage and salary increases is 1 November of the year in question.

### **14. RETENTION OF TITLE**

Until all financial obligations of the Client arising from or in connection with this contract have been fulfilled in full, the Contractor reserves the right of ownership to the performance rendered. The contractor is entitled to mark his property externally on the service. The AG must comply with the necessary formal requirements to safeguard the retention of title. In the event of seizure or other claims, the Principal shall be obliged to assert the Contractor's right of ownership and to notify the Contractor immediately.

### **15. WARRANTY**

The Contractor warrants that its services will be rendered in an appropriate, professional and timely manner in accordance with the statutory provisions and the recognized rules of technology valid at the time of conclusion of the contract. The warranty period begins with the delivery of the respective service (including individual partial services), to which the Contractor's declared readiness for delivery is equivalent and ends 24 months after this date.

§ 924 second sentence ABGB is not applicable.

The client shall immediately examine the services (including individual partial services) provided to him by the Contractor and give written notice of any defects within 7 calendar days, stating concrete defects.

If the Contractor produces a service on the basis of construction data, drawings or models of the Client, the Contractor's warranty obligation shall not extend to the correctness of the construction, but to the fact that the execution was carried out in accordance with the Client's data.

To the exclusion of all other claims, the Contractor's warranty shall extend only to replacement free of charge by remedying the defects in the services or partial services provided; to the extent that this is not possible, this shall apply to the replacement of the defective services or partial services within a reasonable period of time. Only in the event of objective impossibility of improvement or replacement shall a reasonable price reduction be agreed upon by mutual consent.

Excluded from the warranty are those defects which are due to misuse or improper use of the delivery item by the Client or by third parties, contrary to the agreement or otherwise, or are due to special instructions of the Client or to interventions carried out contrary to the instructions of the Contractor or contrary to official orders.

Any warranty, in particular for improved and/or newly created deliveries and/or services, shall end no later than thirty months after the original commencement of the warranty period. The regulations listed in this point 15 represent a complete enumeration, any further obligations of the Contractor arising from the title of defectiveness are excluded.

## **16. LIABILITY**

If the Contractor provides a delivery and/or service on the basis of certain specifications of the Client, e. g. design specifications, drawings or models, the Contractor shall not be liable for the correctness of the design, but only for the fact that the execution was carried out in accordance with the Client's specifications. When performing his services (activities) within the scope of § 347 of the Austrian Commercial Code (UGB), the Contractor warrants and is liable for compliance with the care required due to mandatory regulations (e. g. approval regulations, if applicable), written operating instructions of the Client and/or regulations of the Contractor regarding the handling of the service (such as prescribed inspections, for example).

The Contractor's liability under the title of default shall be limited to the payment of a lump-sum compensation. In the event of culpable delay, the Contractor shall pay the Client a lump-sum compensation of no more than 0. 1% of the total order value (excluding value-added tax) per working day of the delay, but no more than 5% of the total order value (excluding value-added tax) in total. Any further claim for damages by the Client arising from the title of the Contractor's default shall be excluded.

Claims for damages by the Principal arising from culpa in contrahendo, from breaches of contractual accessory obligations including pre-contractual accessory obligations are excluded.

The burden of proof for a contractual liability of the contractor (§ 1298 ABGB) lies with the client. Liability for consequential harm caused by a defect, pure financial loss, unrealised profits and savings, loss of interest, production stoppage, loss of use, loss of contract, other economic or indirect consequential damage and for damage arising from third-party claims against the customer is excluded to the extent permitted by law.

Otherwise, the Principal shall be entitled to claim damages within one year of becoming aware of the damage and the injuring party, but at the latest within three years after the occurrence of (primary) damage due to the event giving rise to the claim. However, all claims for damages shall become statute-barred at the latest 10 years after performance by the Contractor.

The Contractor's total liability towards the Client, regardless of the legal title, shall be limited to the maximum amount of the total order value (excl. value added tax) on which the contractual relationship establishing liability is based.

All limitations and/or exclusions of liability shall not apply if the damage is attributable to grossly negligent conduct on the part of the Contractor or if personal injury or any other case of mandatory statutory liability exists.



## **17. INSURANCE**

Within the bounds of his possibilities, the Contractor shall have an insurance programme customary in the industry, including business and planning liability insurance. At the Client's request, the Contractor shall submit a confirmation of cover.

The Contractor shall only be liable to the extent that the Contractor itself receives payment from its liability insurance.

## **18. SCOPE OF DELIVERY**

The scope of delivery shall be determined by a written order confirmation.

## **19. CANCELLATION OF THE CONTRACT**

Termination shall only be possible in the event of good cause which cannot be remedied within a reasonable period of time. Good cause shall be deemed to be the refusal to take up or resign from the contractual activities as well as the breach of essential contractual obligations, insofar as this is due to intent or gross negligence and further adherence to the contract would be unreasonable. Termination without a cause is excluded.

## **20. SPECIAL REGULATIONS FOR THE PROVISION OF PERSONNEL**

If the Contractor's offer expressly refers to the provision of personnel, which is to be assumed in the use of terms such as Temporary Staffing; Temporary Employment Temporary, Provision of Personnel or the like, all provisions of these Conditions for Engineering Services shall apply with the proviso that the Contractor's responsibility shall lie in the provision of the personnel with the agreed qualifications in accordance with the contract and that the Contractor's responsibility for success, e. g. , success or failure of the work, shall exceed the Contractor's responsibility. B. for a certain final result, a certain quality of the technical execution, etc. does not exist.

The legal regulations are valid. The division of the work for the personnel provided shall be the sole responsibility of the Principal.

## **21. DATA PROTECTION / INTELLECTUAL PROPERTY RIGHTS**

The Contractor is entitled to store, transmit, revise and delete personal data of the Client within the scope of business transactions.

The parties undertake to maintain secrecy vis-à-vis third parties with regard to the information they receive from the business relations.

All intellectual services of one contractual partner - in particular plans, drawings, calculations, concepts, solutions, methods, processes and other objects - may only be used by the other contractual partner for the agreed purposes (granting of a work usage permit).

## **22. THIRD RIGHTS**

The Client undertakes to ensure that the use of the Principal's services by the Contractor is in no way impaired by the assertion of third-party rights (copyrights, trademarks, samples, patents, territorial protection etc. ) and that no existing boycott clauses, blacklists etc. are violated as a result.

The Client undertakes to indemnify and hold the Contractor harmless without limitation against any claims of third parties resulting therefrom.

## **23. RELIABILITY OF THE CLIENT**

In the event of impending or initiated insolvency proceedings against the Client, in the event of non-opening of insolvency proceedings against the Client or its assets concerning the Client for lack of cost-covering assets or in the event of a change in the ownership structure of the Client, the Client shall inform the Contractor immediately and completely.

## **24. CHOICE OF LAW**

Austrian law shall apply exclusively to the exclusion of reference standards and the UN Convention on Contracts for the International Sale of Goods.

## **25. PLACE OF JURISDICTION**

Any legal disputes shall be brought in front of the competent court in Linz, Austria.

## **26. PLACE OF PERFORMANCE**

For delivery and payment, the place of performance shall be the registered office of the Contractor, even if the delivery is made at a different location in accordance with the agreement.