

Standard Terms and Conditions for Services and Project-Services of Matworks GmbH (Agent)

1. Applicability

- (1) These standard terms and conditions shall apply to all contracts between the agent and its principals in respect of services, in so far as not otherwise explicitly agreed upon in writing.
- (2) These standard terms and conditions shall only apply, if the principal is an entrepreneur or if the principal is a legal person or a special fund under Public Law in the meaning of § 310 para. (1) Sentence 1 BGB (German Civil Code).
- (3) The standard terms and conditions of the agent shall apply exclusively. Contrary or deviating terms of the other party shall only be binding if and to the extent that the agent explicitly consents to their validity in writing. The standard terms and conditions of the agent apply, even if the agent fulfills the order of the principal without reservation in the knowledge of contrary or deviating terms of the principal. Deviating agreements apply only to a particular agreement and not to future agreements, unless otherwise explicitly agreed upon in writing.
- (4) The standard terms and conditions shall also apply to all future agreements between the agent and its principals for services.

2. Scope of orders

- (1) The services of the agent will be provided in any one case within the scope determined in the offer which remains open until the conclusion of the contract as services (*Dienstleistungen*) and/or project-services (*Werkleistungen*) in accordance with the applicable statutory requirements unless otherwise provided in these standard terms and conditions. The agent provides services (*Dienstleistungen*) (consultation and support of the principal) at its own responsibility. The principal is, however, himself responsible for the results desired and achieved by him. In the case of project-services, the agent is responsible for the results to be achieved as well as the management, control, and observation of the provision of the service.
- (2) The agent and the principal are each authorized to apply in writing for modifications to the agreed upon scope of services. The agent and/or the principal shall examine the possibility of implementing this modification after service of the application therefore. The result of this examination shall be communicated to the other party in writing without delay. The agent is authorized to invoice its costs to the ordering party, in so far as the ordering party's application for modification requires a comprehensive and costly examination. The contractual adjustments necessary for such an examination and/or for a modification to the agreed upon scope of services shall be set forth in a supplementary agreement.

3. Fulfillment of orders

- (1) Orders shall be fulfilled observing the current state of science and technology.
- (2) Only the agent is authorized to direct its employees.
- (3) The agent is authorized to obtain the services of third parties for the fulfillment of orders. The agent alone, however, remains directly obligated to the principal.
- (4) For project-services, delivery times shall be counted from the date the agent acknowledges the order but not before all details of the order have been fully clarified; accordingly, this applies to delivery dates as well. All delivery times and dates shall be conditional on availability and the timely receipt of vendor deliveries.
- (5) Unless stipulated otherwise, the criterion for adherence to the delivery times and dates is the day of placing the service (*Leistung*) at the disposal of the principal at the registered office of the agent.
- (6) In cases of force majeure the contractual obligations of both parties are suspended and the delivery times and dates for the fulfillment of such contractual obligations shall be postponed accordingly; force majeure shall include, but is not limited, to strikes in internal and external companies, freight forwarding delays, machinery breakdown, government actions as well as other circumstances beyond the control of either party. Any occurrence of force majeure shall be immediately reported to the respective other party. Three months at the earliest after the receipt of such notification, both parties shall have the right to withdraw from this contract.
- (7) In the event of non-adherence to the delivery times and dates in case of project-services the principal shall be entitled to claim damages in lieu of performance for non-performance or failure to render performance as owed according to § 281 BGB (German Civil Code) and to raise a plea of lack of performance of the contract according to § 323 BGB (German Civil Code) but only after having given the agent a reasonable grace period for the delivery in combination with a caveat - notwithstanding the provisions of §§ 281, 323 BGB (German Civil Code) - stating that, after expiration of the grace period, acceptance of the project-services will be rejected; once the grace period has expired without success, any claim for delivery shall be excluded.

4. Duties of the principal

- (1) The principal shall provide the agent in sufficient time before the fulfillment of the order, without charge, all information, materials, devices, documents and things, plans, etc., necessary for the fulfillment of the order, and shall do so, if necessary, at its own cost.
- (2) In so far as the agent carries out its duties at the location of the principal, the principal shall provide the personnel of the agent, or of the third parties mandated by the agent access to all space, installations (hardware, software, networks, etc.) and other instrumentalities, during the usual business hours and within operational rules of access without cost, which is ordinarily necessary for the agent to provide the service. If need be, the principal will obtain functional work stations (*Arbeitsplätze*), at no cost to the agent, for the employees of the agent or for third parties mandated by the agent.
- (3) The principal will furthermore participate in anyway necessary in the fulfillment of the order.
- (4) If the principal does not or does not timely fulfill his obligations under paras. (1) - (3) and if this leads to delays and/or additional work, the agreed upon time frame and/or the agreed upon remuneration shall increase accordingly.

5. Remuneration and payment times

- (1) The services and project-services will be invoiced at the unit price stated in the offer or based on a time-and-materials basis as set forth in the offer after rendering of services (*Dienstleistungen*) or acceptance of the project-services, unless another form of invoice and payment is agreed upon in the offer. In the case of services (*Dienstleistungen*) and project-services on a time-and-materials basis, the accruing hours worked and travel time shall be invoiced at the applicable hourly rates and the used materials at the prices applicable at the time of the service (*Leistung*). Other costs, especially commuting, food, and lodging, will be additionally invoiced. Estimated prices for services (*Dienstleistungen*) and project-services on a time-and-materials basis contained in the offer are non-binding.
- (2) Value-added tax shall be invoiced separately at the applicable value-added tax rate.
- (3) Invoices are payable upon receipt and in full. Unless otherwise agreed, the principal shall be in default of payment, if invoices are not paid within 14 days after the date of invoice.
- (4) In case of default, interest shall be payable at the rate of nine percentage points above the base rate of the European Central Bank. The right to claim further damages shall not be excluded.
- (5) Multiple principals are jointly liable.
- (6) The principals can only set off non-appealable or unchallenged counterclaims or counterclaims recognized by the agent.

6. Acceptance

- (1) Project-services shall be accepted by the principal as soon as the agent has demonstrated compliance with the agreed-upon description of services (*Leistungsbeschreibung*). Immaterial deviations do not authorize the ordering party to refuse acceptance. The obligation to cure defects within the scope of liability for warranties remains unaffected thereby.
- (2) Confirmation of compliance with the agreed upon description of services shall be prepared by both parties by the mutual execution of a protocol of acceptance.
- (3) Placing the result of the project (*des Werkes*) in operation and/or the productive use of the project or of parts of the project shall be deemed to be an acceptance.

7. Warranties in the case of project-services

- (1) The agent warrants that project-services are performed free from defects of material or of title. In particular the project-services performed are in accordance with the agreed-upon description of services (*Leistungsbeschreibung*) and with the agreed-upon scope of services (*Leistungsumfang*).
- (2) In case of defects of the project-services, the agent shall be liable as follows:
 - a) At the discretion of the agent, the agent shall cure the defects or perform new project-services.
 - b) In the case of failure to cure within a reasonable time, the principal may at his own choice reduce the payment or, insofar as the value or usability of the project should be substantially reduced, demand rescission of the contract, provided that claims for further damages and claims for reimbursement of expenses remain unaffected hereof.
 - c) In the case of defects of material or of title, the principal shall notify the agent immediately hereof in writing.

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- (3) The limitation period for warranty claims shall be twelve months from rendering of the respective service and acceptance of the project respectively. In case the legal provisions in § 438 para. (1) No. 2, § 479 para. (1) or § 634a para. (1) No. 2 BGB (German Civil Code) provide for longer limitation periods, these shall prevail.
- (4) Statements in documentation, prospectuses, project descriptions, etc. do not constitute warranties or guarantees. Warranties or guarantees require the explicit written confirmation of the agent in any case.
- (5) Apparent errors such as typographical errors, calculation errors, defects of form, etc., which are contained in a report, expert opinion, or other professional utterance of employees of the agent may be corrected by the agent at any time.

8. Liability

- (1) Claims for damages and for reimbursement of expenses of the principal (hereinafter claims for damages), based on whatever reason, in particular for breach of contractual obligations and based on tort, shall be excluded.
- (2) Notwithstanding it. 8 para. (1) the agent shall only be liable, based on whatever reason, if:
 - a) the agent acts with intent or gross negligence,
 - b) the agent fraudulently concealed the defect or warranted the quality of services and project-services,
 - c) the agent has willfully or negligently caused damage to life, body or health of persons,
 - d) the agent has violated essential contractual obligations. Essential contractual obligations are obligations, the fulfillment of which is a prerequisite of the proper implementation of the contract and the principal is justified in relying on routinely.
- (3) In the event of violation of essential contractual obligations, according to it. 8 para. 2 (d) the agent's liability shall be limited to the typically foreseeable amount of damages in cases of ordinary negligence. This claim of damages is subject to the limitation period applicable for warranties under it. 7. para. (3) above.
- (4) The exclusion of liability shall not be applicable to claims arising out of the German Product Liability Act (Produkthaftungsgesetz).
- (5) The aforementioned regulations shall not imply a change of burden of proof at the expense of the principal.
- (6) In the event the agent defaults on project-services, the principal shall be entitled - as far as he proves that he has suffered damages therefrom - to claim a compensation in the amount of 0.5% for every accomplished week of delay, totaling however not more than 5% of the total payment for that part of the service not timely completed. The provision of this it. 8 para. (2) remains unaffected. The principal shall be obliged, upon the request of the agent, to declare within a reasonable time, whether he rescinds the contract because of the delay of the project-services and/or claims damages instead of performance or requests continued performance of the services; once the grace period has expired without success, any claim for delivery shall be excluded.
- (7) In so far as the liability of the agent is limited, this shall also apply to the employees of the agent and to any third parties mandated by it.
- (8) The principal shall notify the agent without delay in writing of any damages for which the agent may be responsible, and give the agent the opportunity to examine the damages and their cause.

9. Confidentiality

- (1) The parties shall not make economic, technical and other information and knowledge, either made available by the respective other party in the preparation and execution of orders or otherwise having come into the knowledge of the parties, available to third parties or use it for their own purposes beyond the purposes of the order without the prior written consent of the respective other party for the duration of the mandate.
- (2) The obligation in accordance with para. (1) does not apply to information and knowledge, which
 - was known to the receiving party before the issuance of the mandate,
 - the receiving party legally received from third parties,
 - was generally known upon the issuance of the mandate,
 - became known subsequently without a breach of the obligation in accordance with para. (1)
- (3) The obligation under para. (1) applies to both parties after the expiration of the mandate for another two years.
- (4) The principal recognizes the necessity of scientific presentations and publications by the agent and will therefore not unreasonably withhold any consent necessary under para. (1).

10. Data Protection

The parties shall process or use personal data of the respective other party only for contractually agreed upon purposes under the observation of statutory requirements.

11. Inventions

- (1) Inventions, which are jointly made by the employees of the agent and the principal during the execution of a mandate as well as protected privileges issued therefore stand at the joint disposal of the parties.
- (2) Inventions which are made during the fulfillment of an order by employees of the agent as well as protected privileges issued therefor belong to the agent. Inventions which are made during the execution of a mandate by the employees of the principal as well as protected privileges issued therefor belong to the principal.
- (3) The grant of licenses to inventions in the sense of paras. (1) and (2) and to the protected privileges issued therefor requires a special written agreement.

12. Work product

- (1) The transfer of ownership (*Eigentum*) and use rights in work product of any kind achieved during performance of the contract within the agreed scope of services (*Leistungsumfang*) and notified to the principal by the agent (as, for example, documentation, reports, planning documents, evaluations, drawings, program materials, etc.) requires a special written agreement. The agent reserves, however, in any case, a non-remunerated and non-exclusive right to use such work product for the purposes of research and education.
- (2) The agent carries no responsibility if technical documentation provided to him by the principal or within the principal's mandate breaches existing copyrights, industrial property rights, or other rights of third parties. The principal is alone liable if rights of third parties are violated by the fulfillment of its mandate. The principal shall indemnify the agent against all claims of third parties for any such violation upon demand. Item no. 8 herein remains unaffected.

13. Termination

- (1) Contracts can be terminated at any time on 30 days' notice to the end of a calendar month. In the event the agent performs project-services, the agent is not entitled to exercise the aforementioned right to terminate the contract.
- (2) The termination of contracts for good cause is possible at any time.
- (3) In those cases of termination under paras. (1) and (2) the principal shall pay the remuneration minus that part of the remuneration for the agreed-upon scope of services, which was saved by the termination. The agent has an additional claim to payment for the services and costs which accrue in connection with the termination, also in respect of third parties.
- (4) If the termination occurs for reasons to be attributed to the agent, then the agent has a claim to payment for the services (*Leistungsumfang*) brought up to that time only in so far as they can be used by the principal.
- (5) Termination requires the written form in any case.

14. Issuance of documents and things, retention right

- (1) The principal may demand the return by the agent of the documents and things issued to it after expiration of a mandate. The agent may refuse this return, until all of its claims under the agreement have been satisfied, in so far as such retention of particular documents and things in light of the facts and circumstances, especially in terms of the relative immateriality of the amounts owed, does not violate public policy.
- (2) The agent can produce and retain duplicates or copies of documents which it returns to the ordering party.

15. General provisions

- (1) Agreements are concluded in written form. Side agreements are only effective if they have been confirmed in writing by the agent.
- (2) The transfer of rights and duties under the agreements by the principal to third parties requires the prior written consent of the agent.
- (3) Jurisdictional venue is the registered office of the agent.
- (4) These standard terms and conditions and any contract hereunder between the agent and the principal shall be governed by and construed exclusively in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby expressly excluded.