

manroland web produktionsgesellschaft mbH

General Conditions for Contract and Make-to-Order Manufacturing Agreements

I. General

These conditions shall apply to any type of work the performance of which is agreed under an agreement on contract and make-to-order manufacturing, unless any divergent conditions have been agreed between the contracting parties in writing (hereinafter referred to as „Service“). Any conflicting and/or supplementary conditions, in particular any general business conditions of the Customer, shall not become part of the agreement, even if mrwp executes an agreement without expressly objecting to such conditions. If, in particular due to technical conditions on the Customer's side, the respective acceptance of the mrwp offer (for instance in the form of orders) is accompanied by any purchasing conditions or similar clauses of the Customer, such conditions shall not become valid, even if they are not expressly excluded in the acceptance of the offer itself. If the parties wish to deviate from the conditions of the present General Business Conditions in an individual agreement, this shall only be possible in an express and written manner, each time by reference to the relevant clause of the General Business Conditions.

II. Offer and Conclusion of the Agreement

1. All offers shall be without engagement.
2. Any details given in technical and advertising documents as well as any details on weights, Services, operating costs etc. shall be binding only if this is expressly agreed in writing. Any cost estimates, drawings and other documents are subject to mrwp's property rights and copyrights; they shall not be disclosed to any third party and shall be returned immediately to mrwp upon request or in case of no order placement.
3. These conditions shall also be deemed to be accepted by the Customer if he accepts the Services of mrwp or if he furnishes services himself (for instance, payments).
4. Third-party terms and conditions will not become part of the agreement without the written consent of mrwp, even if they are brought forward against the present conditions, unless the parties expressly agree on any divergent conditions in writing.

III. Scope of Service

1. For the scope of Service, the agreement on contract and make-to-order manufacturing made between the parties (hereinafter referred to as „Agreement“)

shall be exclusively binding. Services under the Agreement shall only be those Services which have been expressly included in the description of Services as such and which are expressly designated as such. On the basis of these conditions, mrwp undertakes to perform the Service set forth in detail in the Agreement.

2. mrwp shall decide at its own discretion on the manner of performing the Services, unless any divergent condition has been agreed in writing.
3. Any services and deliveries going beyond the Services shall be charged separately.
4. If mrwp furnishes Services with the consent of the Customer going beyond the scope of the Agreement, the provisions and conditions of the individual agreement shall be deemed to be agreed for such Services performed.

IV. Prices and Terms of Payment

1. The price for the Services of mrwp shall be exclusively determined on the basis of the Agreement concluded between the parties.
2. If mrwp has to perform extra work because the Customer fails to fulfil his obligations under this Agreement, mrwp shall be entitled to charge such extra work separately under the conditions customarily used by mrwp. In addition, the relevant valid rates of offsetting of mrwp shall be applied.
3. In case of changing costs for wages, material or other costs relevant for the performance of the Agreement, mrwp shall be entitled to reasonably increase the agreed price at one month's notice. The increase must not exceed 20 percentage points of the price agreed under the Agreement.
4. Payments shall be effected after receipt of the invoice without any deduction to the bank account of mrwp. The value added tax shall be due and payable upon presentation of the invoice. In case of advance payments, the value added tax shall be due and payable on a pro rata basis at the agreed dates of payment. Any agreed acceptance of bills of exchange shall take place on account of performance. Any correction of the invoice by mrwp and any complaint of the Customer must be made in writing within four weeks after receipt of the invoice, at the latest.
5. Any offsetting or right of retention may be asserted by the Customer only in case of undisputed or judicially determined counter-claims.
6. When exceeding the date of payment – without prejudice to any other legal claims – interest in the amount of 8 percentage

points above the base interest rate of the European Central Bank shall become due without the need of any special reminder.

V. Time of Service

1. The time of Service shall be exclusively determined by the provisions of the Agreement. This shall not apply if the parties have expressly agreed any other condition in writing.
2. There shall be no claim to performance of the Service at a given date. If the performance of a Service is not possible during the period set forth in the Agreement because the Customer fails to fulfil an obligation under the Agreement or under these conditions, the Customer shall be obliged to reimburse mrwp for all additional costs.
3. If the performance of a Service is delayed – also during an existing delay in performance – in cases of force majeure (including epidemic, war, civil war or conditions similar to war or civil war or the imminence of such conditions) or by measures within the framework of industrial disputes, in particular strike and lockout, as well as by the occurrence of circumstances for which mrwp cannot be held responsible, the Service may be performed subsequently within a reasonable period of time after the end of the event concerned, provided that these events have affected the timely fulfilment. In important cases, mrwp will inform the Customer about the occurrence and expected duration of such events. The Service will also be reasonably postponed if the Customer is in arrears with his payment or other obligations under the Agreement.
4. If the performance of the Services is delayed for reasons other than those for which the Customer is responsible or for reasons other than those set forth in Clauses V 2 and V 3, subsequent performance of the Service shall be made within a reasonable period of time to be granted by the Customer. If the Service is not made up for within the granted reasonable period of time and if the Customer incurs losses as a result of such delay, any related claims for damages shall be limited to 5% of the price attributable to one calendar year. The limitation of liability shall not apply in case of intent on the part of corporate bodies or vicarious agents of mrwp. Any further claims shall be exclusively determined by Clause XI of these conditions.

VI. Customer's Duty to Cooperate

1. The task to be performed shall be defined by the Customer. On that basis, the performance of tasks shall be planned jointly. The Customer shall be obliged to immediately check the jointly prepared basis for any errors and discrepancies. Any further details shall be stipulated in the Agreement.
2. The Customer shall bear the risk as to whether the Service ordered corresponds to his wishes and needs.
3. The Customer shall provide mrwp with all data and documents required for the performance of the Service, prior to the commencement of the Service.
4. The Customer shall be obliged to deliver all data and documents in a form and quality that would also allow an independent qualified and audited manufacturing company to perform a faultless production without any further intermediate steps.
5. mrwp shall be entitled to make discussion notes on the talks held in order to state precisely or change any requirements under the Agreement, in particular with regard to the Service. The Customer shall immediately check the notes and inform mrwp about any changes or additions that may be required.
6. The Customer shall provide required auxiliary staff for the execution of the Service, at his own expense. Whether and to which extent such staff is provided shall be stipulated in the Agreement.

VII. Customer's Right of Termination

1. The Customer shall be entitled to terminate this Agreement for cause and without notice if:
 - a. mrwp becomes completely unable to fulfil the Agreement,
 - b. mrwp is in arrear with the performance of Services under the Agreement (Clause V) and if the Customer has thereupon granted a reasonable period of time expressly threatening that he will withdraw from or terminate the Agreement after the expiration of the period, and if mrwp has culpably failed to observe the extension of time.
2. Any claims for damages in case of termination shall be exclusively governed by Clause XI,
3. Any statutory rights of termination of the Customer, in particular pursuant to Section 649 of the German Civil Code (BGB) shall be excluded.

VIII. mrwp's Right of Termination

mrwp shall be entitled to terminate the Agreement for cause, without prejudice to any further legal claims or claims under this Agreement, if:

1. the Customer fails to fulfil his obligations under this Agreement, in particular Clause V 4 and Clause VI, upon request and setting of a date,
2. the Customer is under the threat of insolvency, or

3. the payments owed under the Agreement are not effected after reminder and announcement of termination.

IX. Acceptance

1. For all Services eligible for acceptance, mrwp shall be entitled to request from the Customer a written acceptance declaration. The Customer shall promptly accept the Service in accordance with this Clause IX. In this respect, mrwp shall be entitled to request that the Customer sign a record of acceptance.
2. The Customer shall check the Service within 3 working days and either declare the acceptance in writing or make notification of the defects identified together with a precise description and identification of the defects ascertained. If he does not make any declaration in this period of time or if he uses the Service without complaint, the Service shall be deemed accepted. Insignificant defects shall not give a right to refuse acceptance. In any case, the productive use or productive commissioning of the Service by the Customer shall be deemed as acceptance of the Service concerned.
3. If the Service consists of several partial Services, such partial Services shall be accepted separately. In any later acceptance of a partial Service, such partial Service shall be accepted alone, and there shall be no overall acceptance together with the other partial Services.
4. mrwp will remedy the defects complained about in accordance with para. 2 in a period of time that is reasonable with regard to the seriousness of the defect. Upon notification of the remedying of the defect, the Customer shall check the result of the Service within three working days. Otherwise, Section 2 shall apply accordingly.

X. Claims based on Defects

1. Defective Service
mrwp will perform the Service with the available specialist staff. Any defects of the Services will be remedied by mrwp free of charge. Any Service not furnished will be subsequently performed by mrwp.
2. Prerequisites
 - a) The Customer may assert a claim against mrwp only if the defect is reported to mrwp immediately after it has been identified and if no own attempts at remedy have been made without the consent of mrwp. Only in urgent cases of danger to safety of operation and of prevention of excessive damage shall the Customer have the right to eliminate the defect himself or to have it eliminated by a third party.
 - b) When performing the necessary remedy work, the Customer shall support mrwp at his own expense and perform ancillary work to the extent that the Customer is obliged to perform such duties also within the framework of the Agreement.
3. Additional Rights of Customer

Any additional rights of the Customer shall be exhaustively stipulated in Clauses VII and XI – excluding in particular the right of price reduction.

XI. Liability

1. mrwp shall be liable:
 - a) in case of intent or gross negligence or
 - b) in case of a slightly negligent violation of material obligations under the Agreement, limited, however, to the damage foreseeable for this type of Agreement or
 - c) in case of a culpable violation of life, body and health or
 - d) in case of defects which have been fraudulently concealed or
 - e) in the scope of a guarantee granted or
 - f) if and to the extent that liability exists under the Product Liability Act for damage to persons or to property of privately used items,
 - g) if the liability insurance taken out by mrwp reimburses the damage. The liability insurance shall be governed by the General Conditions for Liability Insurances.A condition/quality of the Service shall be deemed to be guaranteed within the meaning of the law only if such condition/quality is expressly designated as such in the text of the Agreement, e.g. as a „guaranteed condition“.
2. Any claims for damages of the Customer going beyond the liability stipulations of these General Conditions, including those resulting from a slightly negligent violation of non-material obligations under the Agreement and those which are not provided for in these conditions or under the claims and rights stipulated in the text of the Agreement, shall be excluded.
3. To the extent that mrwp is liable under Clause XI 1 a) and b) for gross negligence or for the culpable violation of material obligations under the Agreement, the replacement of economic loss, such as, for instance, loss of production, reduced production or lost profits, shall be limited by the general principles of good faith, such as in cases of disproportion between the amount of the price for the Service to be provided in an individual case and the amount of the damage.

XII. Prescription

1. The rights and claims of the Customer under this Agreement based on defects shall become time-barred after 12 months as of delivery. In all other cases, in particular in case of intent or in case of fraudulent concealment of defects, the statutory limitation periods shall apply.
2. The prescription rules pursuant to Clause XII 1 shall not apply to the extent that mrwp is liable within the meaning of Clause XI 1 a) and c). In these cases, the statutory provisions shall apply.

XIII. Transfer of Rights under the Agreement

1. The Customer may not transfer his rights under the Agreement to any third party without the express written consent of mrwp.
2. mrwp shall be entitled to transfer the Agreement, in whole or in part, to a third party, provided that the obligations vis-à-vis the Customer are complied with and are not prejudiced. A transfer shall be permissible, in particular, to specialised firms as well as subcontractors.

XIV. Place of Jurisdiction

1. The exclusive place of jurisdiction for all disputes arising from the Agreement – including legal proceedings related to bills of exchange, cheque proceedings and legal proceedings based on deeds – shall be Augsburg.
2. If arbitration proceedings are agreed with a Customer having his registered office outside the Federal Republic of Germany, all disputes arising from or in connection with the Agreement or its validity shall be determined definitely and finally, without recourse to the ordinary courts of law, in accordance with the rules of arbitration of the International Chamber of Commerce, by an arbitration panel formed in accordance with the rules of arbitration of the International Chamber of Commerce in Paris. The place of arbitration shall be Augsburg.

XV. Governing Law

The contractual relations shall be governed exclusively by German law, excluding the UN Convention on Contracts for the International Sale of Goods.

XVI. Written Form

In order to be valid, any amendments and additions shall be made in a written form. The same shall apply to any amendment or waiver of this clause.

XVII. Severability Clause

Should any part of this Agreement be invalid, this shall not affect the validity of the remaining part, provided that said invalidity does not affect the basic principles of the Agreement.