

Terms and Conditions of the MMF GmbH

1 GENERAL

1.1 Validity

All deliveries, services and offers by MMF GMBH are exclusively subject to these terms and conditions even if they are not explicitly referred to in individual cases.

These terms and conditions also apply to all future business transactions between clients and MMF GMBH in their respective valid version.

Any purchase stipulations or other terms and conditions by our contract partners are not part of the contract even if MMF GMBH does not expressly exclude them.

These terms and conditions only apply to business transactions, i.e. legal transactions that are undertaken with businesses as defined in KSchG (Austrian Consumer Protection Law).

1.2 Changes to the terms and conditions

The terms and conditions can be changed by the MMF GMBH at any time. As long as the client does not object in writing, these changes apply to already existing contracts as well. MMF GMBH will inform clients of their right to object to changes in the terms and conditions within a three week period. In the case of an objection the previously valid terms and conditions will continue to hold.

The respective current version of the terms and conditions can be found on the website www.focuson.eu and will be sent to the client upon request.

2 CONCLUSION OF THE CONTRACT

2.1 Offers

Client orders (order confirmation) constitute a legally binding offer that obligates the client for a period as determined by iSd § 862 ABGB (Austrian General Civil Code).

Verbal disclosures and promises, brochures and statements contained in advertising (in particular descriptions, statements about quality, composition, configuration, and usability) by MMF GMBH, no matter of what kind, are non-binding and subject to confirmation as long as they have not been expressly identified as binding. They do not represent an assurance of any particular property. Information, technical advice, and other statements are non-binding and preclude liability.

2.2 Acceptance

The contract is made effective by either an order confirmation by MMF GMBH or by the performance of the service. MMF GMBH is entitled to accept the client offer in part if this is feasible for the type of transaction in question.

3 SERVICE REQUIREMENTS

The extent of the contractual service requirements is dependent on the respective specification of services in the client order (order confirmation).

The services to be rendered by MMF GMBH are restricted to the proper and careful performance of the stipulated services for the duration of the contract and are not success-dependent.

3.1 Changes to service

Changes to and/or deviations from the stipulated services are considered acceptable for the customer if they are factually justified. In particular changes due to production materials may be factually justified.

3.2 Deadlines and time limits

Stipulated deadlines and/or time limits are only binding if they were explicitly confirmed in writing.

3.3 Provision of materials and retention of title

Materials provided by MMF GMBH remain their property until paid in full (retention of title). MMF GMBH obtains co-ownership of all objects that are created from processing or integration of materials provided by MMF GMBH. Said co-ownership is proportional to the ratio of the value of the materials supplied to other materials used at the time of processing or integration.

Objects covered by the retention of title clause can not be mortgaged or used as securities.

In case an object with retained title is re-sold by the client, the retention of title extends to any future revenue and/or the asking sale price from this transaction. In the case of such a re-sale the client is obligated to notify MMF GMBH without delay and to store the earnings separately.

If MMF GMBH produces tools, moulds, or similar items for a task, MMF GMBH retains all property rights, intellectual property rights, and other rights of use even after the completion of the task.

3.4 Location of service

Depending on the requirements, all work will be performed either on the premises of the client, the premises of contractual partners of the client, or the business premises of MMF GMBH.

If the client is not authorized for the use of all properties, buildings, and rooms needed for the performance of the service he is required to obtain permission from the authorized individual or institution. If services are provided on the premises of a contractual partner of the client, the client undertakes to ensure that MMF GMBH and/or associates of MMF GMBH have unobstructed access during the performance of the services and that the staff members of MMF GMBH have sufficient space and materials to complete their services.

The client will indemnify MMF GMBH from necessary billed expenses and/or undertakes to carry all expenses passed through by MMF GMBH (in particular space and logistics expenses).

4 CLIENT'S OBLIGATION TO PARTICIPATE

The client undertakes to provide MMF GMBH with all instructions - in particular work instructions - necessary for the performance of services in a timely manner and to provide other information upon request. If the client neglects to deliver work instructions on time and in writing, MMF GMBH is entitled to coordinate its services with the contractual partner of the client. In this case instructions received from the contractual partners of the client will be considered instructions from the client.

During an active contract the client is obligated to inform MMF GMBH of all altered or new circumstances that may be of significance to the performance of services immediately after becoming aware of them. The client will nominate an authorized contact person who is entitled to make and receive all statements necessary for the execution of the contract. If the client neglects to nominate an authorized contact person in a timely manner, the contract partner of the client and/or a representative thereof will be considered authorized to make and receive the statements necessary for the execution of the contract.

5 PRICING AND ESTIMATES

5.1 Pricing

All remuneration is assumed to exclude sales tax in the amount prescribed by law. MMF GMBH reserves the right to demand down payments and/or security deposits for the payment without declaration of reasons. If down payments and/or security deposits are not made, MMF GMBH is entitled to withdraw from the contract and to demand compensation for all damages incurred as a result of the contract cancellation.

5.2 Pricing changes

If increases in expenses necessary to the provision of services, increases in manufacturer and whole-sale prices, increases in salary expenses predicated by laws, regulations or labour agreements, increases in taxes and fees, increases due to real estate value retention stipulations, or increases of the calculation base occur due to reasons outside the influence of MMF GMBH, the respective prices increase commensurately.

5.3 Estimates

Estimates are only given in writing and do not obligate MMF GMBH to accept a contract or to perform the services described in the estimate, unless they were expressly identified as binding. If a binding estimate is compiled, MMF GMBH is bound to the pricing laid out therein for a period of two weeks. All estimates are subject to a fee. The prices depend on the price lists valid at the time at which the services are to be provided.

6 PAYMENT CONDITIONS, DEFAULTS

6.1 Payment conditions

Objections about the correctness of a bill have to be directed to MMF GMBH in writing within two weeks of receipt of the invoice. Otherwise the bill is considered approved. Unless otherwise specified, all bills are to be paid in full and without deductions of any kind within 14 days of the billing date. Bills are considered paid when payment has been posted to the MMF GMBH account. MMF GMBH is entitled to render account at any time, at the very least on a weekly basis.

6.2 Non-cash payments

If non-cash payments are agreed upon, a bank transfer to the account indicated on the invoice has to occur in a manner so that the invoiced amount is posted to the account at the latest on the due date indicated on the invoice. Payments are only considered as having occurred when they have been posted to the MMF GMBH account.

6.3 Amortization

Payments received are applied first to compounded interest, interest, incidental costs, and then to the principal, starting with the oldest debt.

6.4 Default

In the case of a payment default, including instalment payments, all discount agreements are null and void. Discounts for subsequent invoices are also inadmissible until all receivables, including interest and fees, have been paid in full. In the case of payment default MMF GMBH is entitled to charge default interest in the amount of 8% above the base interest rate starting from the date of default, irrespective of further claims. Default interest is capitalized two months after becoming due.

In the case of a payment default the client is obligated to compensate MMF GMBH for reminder fees in the flat amount of EUR 5.00 plus postage for each reminder sent, as well as a record keeping fee of EUR 15.00 twice annually.

In addition, the client will be obligated to replace all reminder and collection costs for legal measures pertaining to the debt, in particular the costs for collection agencies (in keeping with the regulations of the BMwA (Austrian Ministry for Economy and Labour) regarding maximum rates for collection agencies) and legal consultation costs conforming to the general compensation criteria (AHK), each in their respective valid version.

6.5 Loss of Schedule

If the client is paying in instalments it is agreed that a late payment of even one instalment will result in all still outstanding instalments becoming due immediately without grace period.

7 WARRANTY AND LIABILITY

7.1 Warranty

If defects are attributable to specific instructions by the client, to implementation documentation provided by the client, or to materials provided by the client then MMF GMBH can not be held liable for these defects if MMF GMBH warns the client and he fails to act on the stated concerns or if MMF GMBH did not or could not recognize these defects despite following all principles of due diligence.

In variation to the regulations of the General Civil Code (ABGB) a warranty of 6 (six) months is agreed upon. The warranty and warranty period start with the acceptance of the service provided. The client carries the burden of proof for the presence of a defect. The suspicion of a defect according to § 924 ABGB is considered excluded.

7.1.1 Tolerances

The tolerances MMF GMBH has to satisfy are specified in the order confirmation. If an explicit agreement can not be reached, those error tolerances are implicitly agreed upon that are customary to the trade and congruent to state of the art.

Tolerances for inspection and manual processing can only be given after the tasks to be performed are specified. For such services those error tolerances are implicitly agreed upon that are customary to the trade and congruent to state of the art. A tolerance of 0% can only be specified through an explicit agreement in writing.

7.1.2 Inspection and Reapproval Obligations

The client must immediately inspect the service rendered for completeness and absence of defects. Possible defects must be reapproved immediately, no later than three business days after rendering of the service, and in writing. If a reapproval is not submitted, or is submitted too late, the service is considered approved.

7.1.3 Warranty fulfilment

If a defect covered by the warranty is found, MMF GMBH has the choice of either repairing the defect or offering an appropriate reduction in the price. If repair is excluded or impossible, MMF GMBH will grant a pro-rata reduction of the agreed-upon remuneration. The reduction applies only to the portion of the service for which the error tolerance that was agreed-upon or that is customary to the trade was exceeded.

7.2 Liability

Claims for damages are subject to the generally applicable laws. However, they expire one year after the point in time that the claimant became aware of the damage. Liability is restricted to cases in which MMF GMBH caused damage through malicious intent or gross negligently. The client carries the burden of proof that gross negligence or malicious intent was the case. MMF GMBH is not liable for consequential damages and financial losses, lost revenue, missed savings, interest losses and damages resulting from third-party claims against the contractor.

According to the completed professional liability insurance, MMF GMBH is maximally liable up to EUR 1,500,000.00, where the actual liability is restricted to the insurance amount available for the specific instance of damages.

8 OTHER REGULATIONS

8.1 Offset with counter-claims

The client may offset his claims against claims by MMF GMBH only if his counter-claim is legally connected to MMF GMBH' liability and the claim was approved in writing or by a court.

8.2 Written form

Alterations and amendments of contracts need to be in writing in order to be valid. All statements concerning the contractual relationship must also be in writing.

8.3 Deliveries and declarations of intent

The client is obligated to specify all relevant data completely and correctly at closing of the contract. The client shall be liable for all damages incurred by MMF GMBH due to incorrect, incomplete, and vague specifications. Deliveries and declarations of intent will be sent legally binding to the address provided by the client in the order until notified of a different address in writing.

The client is obligated to inform MMF GMBH immediately and in writing of any changes in name, address, or of a change of the registered office. Otherwise, all deliveries to the last known address are considered valid.

8.4 Invalidation, safeguarding clause

If individual clauses of these terms and conditions become invalid, all other stipulations and all contracts based on these stipulations remain valid.

It shall be considered agreed that all invalid clauses are replaced by valid stipulations that come closest to the meaning and function of the corresponding invalid clause.

8.5 Choice of law, jurisdiction

Austrian law applies. The applicability of UN convention on contracts for the international sale of goods is expressly excluded. In keeping with § 88 Sec. 1 of the jurisdiction norm, the agreed-upon place of delivery and the location of the chosen legal venue is the capital of the federal state in which MMF GMBH has its registered office.