

General Terms and Conditions (GTC) of MBM Industry & Rail Tech GmbH

1. Applicability

1.1 These terms and conditions apply between us, MBM Industry & Rail Tech GmbH, and natural and legal persons (customer for short) for the present legal transaction as well as for all future transactions, even if no express reference has been made to them in individual cases, in particular with **future supplementary or follow-up orders**.

1.2 The current version of our General Terms and Conditions, available on our **homepage**, **applies at the time the contract is concluded**.

www.mbm-tech.at.

1.3 We contract **exclusively** on the basis of our General Terms and Conditions.

1.4 **Customer's terms and conditions** or amendments or supplements to our General Terms and Conditions require our express written consent to be valid.

1.5 The customer's terms and conditions will not be accepted even if we do not expressly object to them **after receipt by us**.

2. Offers, Conclusion of contract

2.1 Our offers and estimates are **non-binding and subject to change**.

2.2 **Promises**, assurances and guarantees on our part or agreements deviating from these General Terms and Conditions in connection with the conclusion of the contract only become binding upon our written confirmation.

2.3 Information about our products and services stated in catalogues, price lists, brochures, advertisements on exhibition stands, circulars, advertising mailings or other media (information material) is not binding unless these have been expressly declared as part of the contract in writing.

2.4 Cost estimates are **chargeable**.

3. Prices

3.1. Prices are generally understood to be **not flat rate**.

3.2 For services requested by the customer which **are not covered in the original order**, the customer shall be entitled to reasonable remuneration in the absence of a work remuneration agreement.

3.3 Prices are quoted exclusive of the applicable statutory **VAT** and ex works MBM (EXW Incoterms 2010). Packaging, transport, loading and shipping costs as well as customs and insurance shall be borne by the customer. We are only obliged to take back packaging if expressly agreed.

3.4 The customer shall arrange for the professional and environmentally sound disposal of **old material**. If we are commissioned to do so separately, this shall be remunerated appropriately in the absence of a remuneration agreement.

3.5 We are entitled, as well as at the request of the customer, to **adjust** the contractually agreed fees if changes to the extent of at least 3% occur with regard to

a) wage costs by law, ordinance, collective agreement, works agreements or

b) other cost factors necessary for the provision of the service, such as procurement costs of the materials to be used which have occurred since the conclusion of the contract due to recommendations of the Joint Commissions or changes in national or world market prices for raw materials, exchange rates etc. The adjustment is made to the extent to which the actual production costs change at the time of conclusion of the contract compared to those at the time of actual performance, unless we are in default.

3.6 The fee for continuing obligations is agreed as **value-secured** according to the CPI 2005 and is thus adjusted. The starting point is the month in which the contract was concluded.

3.7 Costs for **travel, daily and overnight allowances** will be charged separately. Transit time is accounted for as working time.

4. Provided goods

4.1 Devices and other materials provided by the customer are not subject to **warranty**.

5. Payment

5.1 Unless otherwise stated in the order confirmation, the net purchase price (without deduction) is due for payment within 30 days of delivery or supply and provision of invoice.

5.2 Entitlement to **discount deduction** requires of an express written agreement. Any discount agreement does not apply to freight, postage, insurance or other expenses.

5.3 If the customer is in default of payment within the framework of other contractual relationships existing with us, we are entitled to **suspend** the fulfilment of our obligations under this contract until rectification by the customer.

5.4 We are then also entitled to make all claims for services **due** already rendered from the current business relationship with the customer.

5.5 In the event of **the payment deadline being exceeded**, even if only with regard to an individual partial performance, any remuneration granted (discounts, reductions, etc.) shall lapse and shall be added to the invoice.

5.6 In the event of default in payment, the customer undertakes to reimburse us for the necessary and appropriate costs (reminder costs, collection fees, lawyer's fees, etc.) of **collection**.

5.7 The customer is only entitled to **authorisation to offset** to the extent that counterclaims have been legally established or acknowledged by us.

6. Credit check

6.1. The customer expressly declares his agreement that his data will be used exclusively for the purpose of creditor protection by the privileged **creditor protection associations** AKV EUROPA Alpenländischer Kreditorenverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsankunft Kubickei KG and Kreditschutzverband von 1870 (**KSV**).

7. Commitments to cooperate

7.1 Our obligation to **delivery and performance begins** as soon as

- a) all technical details have been clarified,
- b) the customer has created the technical and legal requirements (which we will be happy to provide on request),
- c) we have received agreed deposits or securities, and
- d) the customer fulfils his contractual obligations to provide advance services and to cooperate, in particular also those specified in the following sub-items.

7.2 The customer is liable for the fact that the necessary **technical and legal requirements** for the work to be produced or the delivery item are given, which were described in the contract or in information given to the customer before conclusion of the contract or the customer had to know due to relevant expertise or experience.

7.3 The customer shall also be liable for ensuring that the technical interfaces, such as mechanical interfaces, supply lines, cabling, networks and the like, are in a technically perfect and operational condition and compatible with the works or delivery items to be manufactured by us.

7.4 We are entitled, but not obliged, to check these **interfaces** for a separate charge .

7.5 The customer is solely responsible for the design and functionality of **parts provided** .

7.6 The customer is not entitled to **assign** claims and rights from the contractual relationship without our written consent .

8. Service performance

8.1 Reasonable **objectively justified minor changes** of our performance of services are deemed to have been approved in advance.

8.2 If, for whatever reason, a **change** or addition to the order occurs after the order has been placed, the delivery or service period shall be extended by a reasonable period of time.

8.3 If the customer wishes services to be performed within a **shorter period** after conclusion of the contract, this shall constitute a contractual amendment. As a result, overtime may become necessary and/or additional costs may arise due to the acceleration of material procurement, and the appropriate remuneration increases in proportion to the additional expenditure required.

8.4 Objectively justified (e.g. plant size, construction progress, etc.) **partial deliveries and services** are permissible and can be invoiced separately.

8.5 If delivery **on-call** has been agreed, the service/purchased item shall be deemed to have been called no later than six months after order.

9. Delivery and service deadlines

9.1 Delivery/service periods and dates are only **binding** for us if they have been specified in writing. Any departure from this formal requirement must also be in writing.

9.2. Deadlines and dates **move** in the event of force majeure, strike, unforeseeable delay for which we are not responsible by our suppliers or other comparable events beyond our control, in the period during which the corresponding event lasts. This shall not effect the customer's right to withdraw from the contract in the event of delays which make a commitment to the contract unreasonable.

9.3 If the commencement of performance or execution is delayed or interrupted by the **customer** causing circumstances to change **delayed** or, in particular due to breach of the duties to cooperate pursuant to Item 7, performance periods shall be extended accordingly and completion dates accordingly postponed.

9.4 We shall be entitled to charge 1.0% of the invoice amount per month of delay in delivery performance for the **storage** of the requisite materials and equipment and the like in our company, whereby the obligation of the customer to pay and his obligation to accept remains unaffected.

9.5 In the event of withdrawal from the contract due to default, the customer shall set a **period of grace** by registered letter with simultaneous threat of withdrawal.

10. Risk and shipment

10.1 The risk passes to the customer as soon as we have the purchased item/work ready for **collection at the factory or warehouse** , or hand it over to a haulier or carrier. Shipment, loading and unloading as well as transport are always at the customer's risk.

10.2 The customer approves any proper **mode of shipment**. We undertake to conclude transport insurance at the customer's written request and at his expense.

10.3 We are entitled to charge the customer for packaging and shipping costs as well as the fee for **Cash On Delivery** if the customer is in arrears with a payment from the existing business relationship with us or if a credit limit agreed with us is exceeded.

10.4 The customer is responsible for the safety of the materials and equipment delivered by us and stored or assembled at the place of performance. **Losses and damages** are at their expense.

11. Delay in acceptance

11.1. If the customer defaults in acceptance for longer than 8 weeks (refusal of acceptance, delay with preliminary services or otherwise, no call-off within a reasonable time in the case of an order on call-off), and despite a reasonable **period of grace** the customer has not provided for the elimination of the circumstances attributable to him, which delay or prevent the performance of the service, we may, in the case of an honourable contract, dispose of the devices and materials specified for the performance of the service **elsewhere**, provided that, in the case of the continuation of the performance, we provide these within a period appropriate to the respective circumstances.

11.2 If the customer is in default of acceptance, we are also entitled to store the goods in our facilities if the contract is fulfilled, for which we are entitled to a **storage fee** according to item 9.4.

11.3 In the event of a justified withdrawal from the contract, we may demand a flat-rate **compensation** in the amount of 5.0% of the gross order value from the customer without proof of the actual damage.

11.4 The assertion of a higher value of damage is permissible.

12. Reservation of title

12.1 The goods delivered, assembled or otherwise handed over by us remain our property until full payment.

12.2 A **resale** before full payment is only permissible if we have been informed of this in good time in advance, stating the name and exact address of the buyer and we agree to the sale. In the event of our consent, the purchase price claim shall immediately be assigned to us.

12.3 The principal must note this **assignment** in his books and invoices until full payment of the consideration or purchase price and **refer** his debtors to this. Upon request, he must provide the contractor with all documents and information necessary to assert the assigned debts and claims.

12.4 The customer expressly agrees that we may enter the **location** of the reserved goods to assert our retention of title.

12.5 Necessary and reasonable **costs** for appropriate legal action shall be borne by the customer.

12.6 The assertion of the retention of title shall only constitute **rescission of the contract** if this is expressly declared.

12.7 We may dispose of the reserved goods that are recovered freely and for the best possible means of **utilisation**.

12.8 Until full payment of all our claims, the object of performance/purchase may not be pledged, assigned as security or otherwise encumbered with **rights of third parties**. In the event of seizure or other claims, the customer is obliged to point out our ownership rights and to inform us immediately.

13. Proprietary rights of third parties

13.1 For delivery items which we manufacture **according to customer documents** (design data, drawings, models or other specifications, etc), the customer alone assumes the warranty that the manufacture of these delivery items does not infringe industrial property rights of third parties.

13.2 If industrial property rights of third parties are nevertheless asserted, we are entitled to **discontinue the production** of the delivery items at the client's risk until the rights of third parties have been clarified, unless the claims are obviously unjust.

13.3 We may also claim reimbursement of necessary and useful **costs** from the customer.

13.4 We are entitled to demand reasonable **cost advances** for any legal costs.

14. Our intellectual property

14.1 Delivery items and related execution documents, **technical drawings**, sketches, cost estimates and other documents and software provided by us or created by our contribution shall remain our intellectual property.

14.2 Their use, in particular their passing on, duplication, publication and making available including also only partial copying, as well as their imitation, processing or utilisation requires our express **agreement**.

14.3 Furthermore, the customer undertakes to keep the knowledge gained from the business relationship **secret** in respect to third parties.

15. Warranty

15.1 The **warranty period** for our deliveries and services is one year from delivery.

15.2 The time of **handover** or **provision of delivery** is the time of completion, unless otherwise agreed (e.g. formal acceptance), at the latest when the customer has taken over control of the service or has refused acceptance without giving reasons. On the day on which the customer is notified of completion, the service is deemed to have been taken over into his power of disposal in the absence of a justified refusal of acceptance.

15.3 **Revisions** of a defect claimed by the customer do not constitute an acknowledgement of a defect.

15.4 The customer must always **prove** that the defect was already present at the time of delivery.

15.5. **Notices of defect** and complaints of any kind must be made immediately (at the latest after 10 working days) known to the registered office of our company **in writing** with the most precise possible **description of the fault** and possible causes. The rejected goods or works are to be handed over by the customer, if this is possible.

15.6 If customer **complaints** are **unjustified**, the customer is obliged to reimburse us for expenses incurred for the determination of freedom from defects or the elimination of defects.

15.7 We are entitled to stop or have stopped any **investigation** that we deem necessary, even if this makes the goods or workpieces unusable. In the event that this investigation reveals that we are not responsible for any errors, the customer shall bear the costs of this investigation for an appropriate fee.

15.8 Transport and travel costs incurred in connection with the rectification of defects shall be borne by the customer.

15.9 The customer shall grant us at least **two attempts** to remedy the defect.

15.10. We can head off a **request for change** by improvement or appropriate price reduction, provided it does not concern a significant and irremediable defect.

15.11. We only warrant for conditional execution if the goods are manufactured on the basis of **data**, drawings, plans, models

or other specifications of the **customer** ,.

15.12. The fact that the work is not fully suitable for the agreed use does not constitute a defect if this is based exclusively on **different** actual circumstances of the **information** present at the time of performance.

15.13. This also does not constitute a defect if the customer's **technical systems** such as mechanical interfaces, supply lines, cabling, networks, etc. are not in technically perfect and operational condition or not compatible with the items delivered.

16. Liability

16.1 We shall only be liable for breach of contractual or pre-contractual obligations, in particular due to impossibility, delay, etc., for **property damage** and only in cases of intent or gross negligence.

16.2 Liability is **limited** to the maximum liability amount of any liability insurance concluded by us.

16.3 This limitation also applies with regard to damage to an item which we have accepted **for processing** .

16.4 Claims for damages must be asserted in court within six months in cases of other **forfeiture** .

16.5 The limitations or exclusions of liability also include claims against our **employees**, representatives and vicarious agents for damages which they in turn inflict on the customer without reference to a contract with the customer.

16.6 Our liability is excluded for damage caused by **improper handling** or storage, overuse, non-observance of operating and installation instructions, faulty assembly, commissioning, maintenance, servicing by the customer or third parties not authorised by us, or natural wear and tear, provided that this event was causal for the damage. Likewise, there is an exclusion of liability for the omission of necessary maintenance.

16.7 If and to the extent that the customer has taken out insurance benefits for damages for which we are liable through our own insurance or in his favour (e.g. liability insurance, collision, transport, fire, business interruption and others), the customer undertakes to claim the insurance benefit and limits our liability towards the customer in this respect, to the disadvantages incurred by the customer through the claim on this insurance (e.g. higher insurance premium).

16.8 Those product features are due that can be expected from us, third-party manufacturers or importer clients of the customer, taking into account their knowledge and experience with regard to the licensing regulations, operating instructions and other product-related instructions and information (in particular also inspection and maintenance). The customer as a reseller must take out sufficient insurance for product liability claims and indemnify and hold us harmless with regard to claims for recourse.

17.4. Severability Clause.

17.1 Should individual parts of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining parts.

17.2 The parties undertake to make a **replacement provision** - based on the good faith of honest contractual parties - which comes closest to the economic result, taking into account the customary industry practice of the invalid condition.

18. General

18.1 **Austrian Law** is applicable.

18.2 UN sales law is excluded.

18.3. **Place of performance** is the registered office of the company at Tullnerbachstrasse 36, 3002 Purkersdorf, Austria.

18.4 **Place of jurisdiction** for all disputes arising from the contractual relationship or future contracts between the Customer and MBM is Vienna.

18.5. The customer must notify us immediately in writing of **changes** of name, company, address, legal form or other **relevant information** .

18.6 **DSGVO (Data Protection Act)**: the Customer as a person unrestrictedly agrees to the processing of "non-sensitive data" for the execution of pre-contractual measures or for the performance of a contract to which the Customer or the person concerned is a party.

In doubt, the current German version called AGB will prevail !

Valid as of 03/18