

1. Scope of Application

The following Terms and Conditions shall apply unless anything else has been agreed in writing between the contractual parties. Standard terms and conditions referred to in the purchaser's order shall not be applicable. Any extensions, restrictions or modifications of the Standard Terms and Conditions and/or of the order must be made in writing. This shall also apply to the cancellation of this clause.

2. Scope of Deliveries and Services

2.1 The scope of deliveries or services shall be determined by the mutual written representations, in particular by the relevant specifications. If there are no such written representations, either the written order confirmation from MESA Systemtechnik or, if there is none, the written order from the purchaser shall be decisive.

2.2 The agreed price and completion date shall be binding. If the specification turns out to be incomplete or faulty, or if it is subsequently modified or supplemented, the contractual parties shall revise the contract with respect to costs and contents accordingly and use their best endeavours to agree on an appropriate modification of prices and delivery date or on an adjustment of the contractual performance. If no agreement can be reached, both parties shall be entitled to terminate the contract. MESA Systemtechnik may request payment of the agreed remuneration less the expenses which MESA Systemtechnik saves due to the cancellation of the contract or gains by employing the manpower otherwise or which it failed to gain by malicious intent.

3. Delivery Time

3.1 Unless anything else has been agreed in writing, the performance or delivery time shall start with the placement of the order or, if any ancillary technical or commercial conditions are still open at the time when the order is placed, as soon as these conditions are settled by mutual agreement; if the purchaser does not deliver agreed provisions or does not perform contributing work or does not fulfil secondary contractual obligations in due time, the performance or delivery time shall be extended accordingly. The same shall apply if the purchaser is in default with down payments or partial payments.

3.2 If the performance or delivery time is delayed due to force majeure, the deadlines shall be extended by the time required to overcome the effects caused by such force majeure. Acts of force majeure shall be in particular war, public riot, strike, lock-out, embargo, refusal or revocation of approvals by public authorities, sabotage or similar events which are beyond the control of MESA Systemtechnik.

3.3 If MESA Systemtechnik is in default with its deliveries and/or services, its unrestricted liability shall be limited to cases of deliberate action and gross negligence. Otherwise, the liability for damage caused by delay shall be limited to 5 % of the order value. The limitation shall not apply if essential contractual obligations are violated in such a way that the purpose of the contract is jeopardized.

3.4 If the purchaser is a merchant, MESA Systemtechnik shall be fully liable in case of default or in cases where the impossibility to perform is due to deliberate action or gross negligence on the part of MESA Systemtechnik. If the delay or the impossibility to perform is only due to a negligent or slightly negligent violation of essential contractual obligations, the damages for non-performance shall be limited to direct damage. Otherwise, Paragraph 3.3, Clause 2 shall apply accordingly.

3.5 The purchaser's right to cancel the contract in case of default or impossibility to perform for which MESA Systemtechnik is responsible shall remain unaffected.

4. Provisions and Cooperation by the Purchaser

4.1 Unless anything else has been agreed, the purchaser, at his own expenses and risk, shall provide all data and information attributable to the sphere of his enterprise which are required for performing the services as well as, in case of programming work, all computing times, data collection capacities and test data that are needed for this purpose.

4.2 If the purchaser is wholly or partly in default with the provision of material or his cooperation and this causes additional expenses for MESA Systemtechnik, the purchaser shall bear the additional costs that are required, including the costs for waiting times and any additional travel expenses.

5. Execution of the Order

5.1 MESA Systemtechnik warrants that it will provide its work and services on the basis of the latest state of science and technology that is generally recognized and on the basis of its own experience and knowledge. Services, studies, plans, analyses, evaluations and similar things shall be prepared and implemented according to the principles of proper professional practice. The achievement of a specific economic success is not warranted.

5.2 If the subject of the contract, as a whole or in parts, is the content of

research and/or development work, MESA Systemtechnik shall have fulfilled its contractual obligations with respect to the part of the contract representing the research and/or development work if MESA Systemtechnik has used its best endeavours to achieve the optimum result within the framework of the agreed remuneration and in compliance with Paragraph 5.1 above.

5.3 In so far as the type of work to be performed permits it, MESA Systemtechnik shall be entitled to partial deliveries.

6. Prices

Unless anything else has been explicitly agreed in writing, prices are quoted net, ex works and including packing.

7. Terms of Payment

7.1 Unless otherwise provided, payments are to be made without any deductions to the account of MESA Systemtechnik indicated on the invoice. For delivered products payment shall be due within 30 days after the invoice date, for engineering/services payment is due to service provision (cash on delivery). Irrespective of the agreed terms of payment, payment shall be due immediately if the acceptance of the goods or services delivered by MESA Systemtechnik is delayed for reasons for which MESA Systemtechnik is not responsible.

7.2 For services which are to be paid on a time and effort basis, the agreed hourly or daily rates shall be charged immediately or upon agreement, at the option of MESA Systemtechnik. These invoices shall be due immediately upon reception. Any ancillary costs or any other costs incurred in connection with the performance of the contract shall be charged according to the actual expenditure plus an overhead percentage of 20%.

7.3 Offsets with any counter-claims shall not be admissible.

7.4 If the purchaser is in default with a payment, MESA Systemtechnik shall be entitled to charge interests at a rate of 2 % above the Bundesbank discount rate valid at that time. The purchaser's right to provide evidence that the damage is only a minor one shall remain unaffected.

8. Acceptance

8.1 The purchaser shall be obliged to accept the work performed in accordance with the contractual provisions unless acceptance is precluded because of the type and/or quality of the work.

8.2 If formal acceptance has been agreed, the purchaser shall check that the work corresponds to the specification as soon as MESA Systemtechnik has informed him that the work has been completed and is available for acceptance. In connection with EDP planning and software creation, the test data to be provided by the purchaser are to be used for this purpose. If during the acceptance tests no defects or deficiencies are found which make the work worthless or unfit for its usual or agreed purpose or which mean more than a minor deviation, acceptance shall be given without delay.

8.3 If defects or deficiencies are found during the acceptance tests, MESA Systemtechnik shall remedy the defects or deficiencies, free of charge, within an appropriate period of time; then acceptance must be granted. Defects or deficiencies which are due to information, data etc. provided by the purchaser for the performance of the work or which are caused by insufficient supplies of material from the purchaser or, in the case of programs, which cannot be reproduced, shall not entitle the purchaser to refuse acceptance.

8.4 If acceptance is not given for reasons which are outside MESA Systemtechnik's responsibility, acceptance shall be deemed as granted after the expiry of four weeks after the work has been made available for acceptance. The same shall apply if the acceptance certificate is not issued immediately. MESA Systemtechnik agrees to point out the importance of this way of acting to the purchaser when making the work available for acceptance. If partial deliveries are provided in the framework of executing the contract, the purchaser shall be obliged to accept these partial works.

9. Warranty

9.1 Subject to the provisions below, MESA Systemtechnik shall warrant, in the framework of the statutory regulations, that the work produced and/or delivered is free from any defects which nullify or reduce its value or its fitness to be used for the usual or contractually agreed purpose. Section 459, Para. 1, Clause 2 and Section 634, Para. 3 BGB (German Civil Code) shall remain unaffected.

9.2 If the work to be performed by MESA Systemtechnik, wholly or partly, pertains to planning work, studies, analyses or similar things, MESA Systemtechnik shall provide warranty to the effect that the work has been performed and implemented in accordance with the principles of proper professional practice. Should any defects become evident which nullify or reduce the value of the work or its fitness to be used for the usual or contractually agreed purpose, (Section 634, Para. 3 BGB remains unaffected), MESA Systemtechnik shall, free of charge,

correct or newly draw up the plans, drawings, reports, measurements or any other documentation submitted and remedy the errors. A specific economic success is not covered by the warranty.

- 9.3 If the contract, wholly or partly, involves development work, MESA Systemtechnik shall provide warranty for the part to be developed as regards
- observance of the acknowledged rules of technology,
 - the quality of the material in so far as it is not the object of the development,
 - professional and good workmanship,
 - compliance with the minimum requirements which are explicitly characterized as such in the individual case.
- 9.4 For the creation of software, MESA Systemtechnik shall warrant that the software is free from reproducible errors, runs on the hardware specified for this purpose in the contract and performs the functions as described. In case of reproducible errors which do not impair the functionality but only mean that the handling is somehow restricted, MESA Systemtechnik shall be entitled to provide a bypass solution by modifying the configuration provided that the functionality is maintained unless performance by means of this bypass is of no interest to the purchaser.
- 9.5 The warranty claims, at the option of MESA Systemtechnik, shall be fulfilled either by repairing the defect within an appropriate period of time or by new delivery. If the repair does not produce the desired result or the new delivery is not provided within an appropriate period of time, the purchaser shall be entitled to cancel the contract or to demand a reduction of the purchasing price.
- If the deficiency is due to circumstances for which MESA Systemtechnik is responsible, liability (Section 635 BGB) shall be restricted to deliberate action and gross negligence. This restriction shall not apply in case of a breach of fundamental contractual obligations. In connection with planning works, the liability in the latter case shall, however, be restricted to damage on the object itself as well as to the costs for modifying, newly creating or revising the object.
- Any further claims for consequential damage, such as loss of profit, temporary cessation of work or loss of production or for any costs that would have incurred anyway in connection with an adequate fulfilment of the contract shall be excluded.
- 9.6 The warranty period shall be 24 months from the delivery of the work if no formal acceptance has been agreed, otherwise from the acceptance date.
- If acceptance is excluded, the warranty period shall start with the delivery. Goods that are returned shall only be accepted in their original packaging.

10. Rights of Use

- 10.1 It is agreed that MESA Systemtechnik has the sole right of use to its offer and the corresponding attachments. These documents must neither be reproduced nor made available to any third party, as a whole or in parts. The same shall apply to the use of these documents for bids or any other kind of allocation procedure or for any other processing purposes.
- 10.2 The purchaser shall be granted the non-exclusive right to use all written and machine-readable results created in connection with the performance of the contract, free of charge and for an unlimited period of time.
- 10.3 MESA Systemtechnik shall be entitled to exploit the results for other purposes free of charge. MESA Systemtechnik shall, in particular, not be prevented from developing programs for a third party which are similar to but not identical with the subject of this contract.
- 10.4 In so far as the subject of the order, in its entirety or in parts, is some research or development work, the purchaser shall be granted the non-exclusive right to use the development results not protected by property rights that were created in performing this contract, free of charge and for an indefinite period of time.
- The same shall apply to inventions made in the process of performing the research and development work. MESA Systemtechnik shall be entitled to make use of them and file the relevant applications.
- 10.5 If existing industrial property rights and/or unprotected know-how that is a business secret are used in the framework of contract performance and if these are required for exploiting the development results, the purchaser shall be granted a non-exclusive right of use against remuneration and under the usual market conditions to be agreed separately, if necessary.

11. Third Party Property Rights

- 11.1 MESA Systemtechnik shall apply the usual due diligence to check that the results of its work do not interfere with or violate the rights of any third party.
- 11.2 Should a third party assert claims against the purchaser concerning the programs created by MESA Systemtechnik for the purchaser or

the development results, MESA Systemtechnik shall indemnify the purchaser against any such claims. This indemnification shall be conditional on the fact that the purchaser informs MESA Systemtechnik in good time so that MESA Systemtechnik has the opportunity to take all measures required for legal defence.

- 11.3 If, within the period of one year, MESA Systemtechnik cannot repel these claims or come to an agreement with the third parties to the effect that the purchaser may continue using the programs or the development results in an economically sensible way, the contractual parties shall endeavour to agree on a modification of the contract that comes closest to the economic interests of the parties.
- 11.4 MESA Systemtechnik shall be entitled to alter the results of its work and/or development in such a way that the infringement of any third party rights is prevented provided that the fitness of the work to be performed by MESA Systemtechnik for its usual or contractually agreed purpose is not nullified or reduced by this alteration. Section 459, Paragraph 1, Clause 2, BGB shall apply accordingly.
- 11.5 Except for cases of deliberate action or gross negligence, the value of the liability and/or indemnification shall be limited to the user fees customary in the industry. The purchaser's right to withdraw from the contract shall remain unaffected.

12. Warranty and Damages

- 12.1 The liability of MESA Systemtechnik shall be limited to deliberate action and gross negligence on the part of its organs, executives and authorized agents. In case of ordinary negligence, the liability shall be restricted to the violation of primary obligations. Compensation for untypical, unforeseeable damage shall be excluded.
- 12.2 Unless a shorter period of time is provided for by law, claims for damages shall become time-barred at the latest 12 months after all primary obligations under the contract have been fulfilled or after the term of contract has expired, whichever is the earliest.

13. Retention of Title

Until all work and services provided by MESA Systemtechnik under this contract have been fully paid,

- a) MESA Systemtechnik shall retain the title to the items delivered and any other results of its work. In case of a resale, the purchaser shall assign his claims towards the third party for the purchase price corresponding to the value of this contract to MESA Systemtechnik.
- b) If the materials or items delivered by MESA Systemtechnik are used for further processing, the purchaser shall assign to MESA Systemtechnik a co-ownership share of the new object thus created by him proportional to the value of all services rendered by MESA Systemtechnik under this contract and grant to MESA Systemtechnik the right of joint possession.

14. Miscellaneous

- 14.1 If one provision of these Terms and Conditions or of any other contractual agreement is or becomes invalid or has not become part of the contract, this shall have no effect whatsoever on the validity of the remaining provisions. Section 6, Paragraph 2 and 3 AGBG (German Standard Contract Terms Act) shall remain unaffected.
- 14.2 If the purchaser is a merchant entered into the commercial register, the parties agree that the legal venue shall be Konstanz.