

# **General Terms and Conditions of Business**

**of**

## **MPA Dresden GmbH**

As at: 1st December 2014

### **I. Scope**

1. These terms and conditions of business shall apply between MPA Dresden GmbH of Fuchsmühlenweg 6f, 09599 Freiberg (hereinafter called "MPA") and companies, legal entities under public law or special funds under public law (hereinafter called the "Customer") for all offers, contracts and other performances in the course of commercial business.
2. By placing an order the Customer agrees to the following general terms and conditions of business or the respective applicable update thereof.
3. MPA objects expressly to the application of general terms and conditions of the Customer.

### **II. Conclusion of contract and content**

1. Unless expressly agreed otherwise, declarations by MPA in the internet site [www.mpa-dresden.de](http://www.mpa-dresden.de) and all associated subdomains and other TLDs which stand above mpa-dresden.de shall be understood as an invitation for the Customer to submit an offer to MPA. A contract between MPA and the respective Customer shall be concluded when this offer is confirmed in writing by MPA and thereby accepted.
2. The order confirmation describes, according to the requirements of the individual case, the remit in respect of the intended use, the content and scope of the necessary work, the processing period and the test and development objective. Should during the due implementation of the order alterations or extensions to the specified scope of the order arise then these are to be agreed in writing. Insofar as no separate remuneration is determined for this then the Customer shall pay a reasonable remuneration.
3. Should facts become known to MPA after order confirmation which with due commercial judgement lead to the conclusion that the claim for payment for the order in progress is at risk due to failure in performance on the part of the Customer then MPA shall be entitled after setting a reasonable period of grace to demand at their discretion payment in advance from the Customer or appropriate securities. Should the Customer not be prepared to do so or the grace period set expires without effect then MPA shall be

entitled to withdraw from the contract whereby any invoices for partial performances already rendered shall be presented for immediate payment.

4. Unless expressly agreed otherwise, the Customer can only cancel or retrospectively alter the order after issuance of the order confirmation on the basis of special agreement. These types of cancellation requests can only be considered by MPA as long as the processing of the order has not been started. Because the start of the processing depends on the agreed scope of testing this point in time is based on each individual case. Alterations to the scope of the order can only be considered provided that the part of the order affected by the alteration is not yet directly being processed.
5. MPA reserves the right to make changes to the contractual performances described in these general terms and conditions of business. Any eventual changes can result in particular for reasons of technical advancements, for example as a consequence of a change to or the new introduction of technologies. Each change is subject to the proviso of consideration of the interests of MPA and the reasonableness for the Customer.
6. Insofar as employees or other servants of MPA make verbal supplements to an agreement or give assurances which go beyond the written order confirmation then these must always be confirmed in writing. This rule does not apply to verbal statements by legal representatives, other managing employees or such persons who are either authorised to represent MPA in relation to the Customer through prior indicated authorisation or are otherwise empowered by MPA within the scope of the verbal supplement to the agreement.

### **III. Order processing**

1. MPA implements each order as a matter of fact and within the agreed scope.
2. It is incumbent on the Customer to ensure that all necessary documentation, information and test objects necessary for the implementation of the order are made available to MPA punctually and gratuitously prior to the commencement of the processing. This includes all the necessary specifications on the test objects and planned construction. Unless agreed otherwise, delivery of the test objects shall be made by the Customer to the headquarters of MPA (see par. I. 1). The requisite costs for this are to be borne by the Customer
3. A return of the test objects is, provided this is technically feasible, at the cost of the Customer. Provided nothing otherwise is agreed in writing prior to the test, the Customer can at the latest on the day of the test lodge a claim accordingly with MPA for the return of the objects tested on this day. Should a declaration not be made within the given deadline then the test objects shall be properly disposed of by MPA after the expiry of that deadline.

4. Storage of the test objects after the claim for return by the Customer is free of charge for up to two weeks after notification of the test results by MPA. Storage beyond this period shall be subject to charge. The requisite costs of storage beyond this period are dependent on the individual case and are to be borne by the Customer. The amount of the requisite costs shall be notified to the Customer without delay.
5. MPA shall be entitled within the agreed scope of the order to take all necessary steps in particular at the cost of the Customer to carry out the necessary and usual examinations and tests in accordance with due discretion or to have these carried out by a third party, to obtain information, make investigations and/or undertake journeys and surveys without the need for the separate consent of the Customer in each case. Should separate authorisations by the Customer be necessary for individual requisite measures then the Customer shall empower MPA accordingly in each case. Should there arise in proportion to the purpose of the service time and cost-intensive measures which were not apparent at the placing of the order then MPA shall inform the Customer of these and obtain their consent.

#### **IV. Fees**

1. The agreed remuneration constitutes a net sum which is then shown on the invoice plus the respective statutory applicable value added tax.
2. All payments shall be due for payment without deduction within a grace period of 14 days from the date of the invoice. Any payments made by cheque procedure shall be subject to the proviso of separate agreement.
3. The cost of bank fees necessary for settling the invoice shall be borne by the Customer.
4. Should the Customer fall wholly or partially in arrears with the settlement of the invoice then interest shall be charged on the outstanding sum during the period of arrears. In the case of legal transactions in which a consumer is not involved (see par. I. 1) then the interest rate for claims for payment shall be 8 percentage points above the current base interest rate. MPA are able to demand higher interest rates on other legal grounds. The enforcement of further damages is not precluded.
5. Should the Customer have to discharge interest and costs other than for the principal service then a payment which is insufficient to pay off the entire debt shall initially be set off against the costs, then the interest, and lastly the principal service. Should the Customer determine a different apportionment then MPA can decline the payment.

#### **V. Test and development result**

The test and development result determined by MPA in the proper execution and fulfilment of the order shall be made available to the Customer after conclusion of the

order in accordance with the agreements met. Should the Customer not object within four weeks after the consignment of the result this will be considered to have been accepted.

## **VI. Delivery and dispatch**

1. The processing and delivery periods specified by MPA within the scope of the order confirmation are estimates based on many years of experience. These are non-binding and begin with the receipt of the order confirmation by the customer but not before the receipt of an agreed advance payment or before the Customer has fulfilled their resultant obligations under par. III. 2.
2. For the consignment of test and development results the selection of dispatch method and dispatch medium shall be at the discretion of MPA.
3. As soon as MPA has handed over for consignment the test objects, development results or other subject matter or goods encompassed by the order to the carrier, shipper or other specified person or company to execute the dispatch then the risk shall pass to the Customer. This regulation applies correspondingly to part deliveries.
4. Should the dispatch be delayed for reasons for which MPA is liable then the specific artefacts to be dispatched and in particular the test objects shall be stored at the risk and cost of MPA.
5. Should the delivery be delayed for reasons for which MPA is not liable then the risk shall pass to the Customer with the notice of preparedness to dispatch. The requisite costs for the storage from this point in time shall be borne by the Customer. The amount for the respective requisite costs for the storage shall be determined according to the requisite expense in the individual case and shall be notified to the Customer without delay.

## **VII. Warranty rights**

The warranty rights of the Customer solely cover the services specified in the order and confirmed by MPA. The customer shall not be entitled to additional claims for defects and in particular MPA shall assume no responsibility for the functionality of buildings, physical structures and constructions into which the tested components are built or used. It shall be otherwise only where this has been an express constituent part of the contract (see par. II.).

## **VIII. Liability, offsetting, retention**

1. Subject to additional liability provisions in these general terms and conditions of business the liability of MPA for claims for damages and compensation for futile expenditure shall be based on this section. The legal nature of the claim is in this respect not decisive.

2. MPA shall be liable without limitation in the case of an intentional or grossly negligent breach of obligations by its legal representatives, managing employees or other servants. The liability for damages to life and limb or health is unlimited. For the rest MPA shall be liable in the case of simple negligence solely for breach of fundamental contractual obligations. This liability is limited in the amount to the contract-typical foreseeable risk. A contractual obligation is fundamental where it is necessary for the fulfilment of the contract and where the breach of which would call into question the purpose of the contract and to the adherence of which the Customer regularly relies upon and may rely upon. In these cases the liability is limited to typically foreseeable damages. An additional liability for ordinary negligence does not exist.
3. The liability according to statutory provisions which contain a responsibility without culpability remains unaffected.
4. The Customer can only offset claims by MPA with undisputed or legally established claims. The Customer can only assert a right of retention due to counterclaims arising directly from the contractual relationship described herein.

## **IX. Data protection**

MPA attaches the greatest importance to data protection and observes in handling personal data of the Customer the respective applicable accreditation constraints in addition to the statutory provisions and thereby in particular the Federal Data Protection Act (BDSG), the Federal Telemedia Act (TMG) and the Telecommunication Act (TKG). To the extent permitted in law MPA shall also be entitled to use the data after the end of the contractual relationship.

## **X. Termination**

1. The parties to the contract can terminate the contract for good cause at any time. The termination requires to be in written form.
2. Should the contract be terminated for good cause for which MPA is not liable then MPA shall be entitled to the agreed remuneration. MPA must nonetheless deduct that which they have saved in expenses as a consequence of the cancellation. Should the Customer terminate it will be assumed thereafter that MPA shall be entitled to 5 % of the as yet unperformed portion of the service dispensed with. MPA can provide evidence of a higher sum and the Customer of a lower sum.
3. Should the contract be terminated for good cause for which MPA is liable then MPA shall only be entitled to remuneration for the portion of service performed up until the point in time of the termination provided that the result rendered up to that point can be utilised objectively by the Customer. The result of the portion of service performed shall be notified to the Customer in writing within two weeks.

## **XI. Concluding provisions**

1. Should individual provisions of these general terms and conditions of business become wholly or partly void or ineffective then the effectiveness of the remaining provisions shall remain unaffected. In the place of void or ineffective provisions the statutory regulations shall come into force. Insofar as there exists a loophole in the statutory regulations or the strict application of the law in the specific individual case leads to intolerable outcomes then the contracting parties shall negotiate over a supplementary ruling which comes as close as economically possible to the void or ineffective provision.
2. These general terms and conditions of business as well as the underlying contract are subject to the Law of Germany. The application of the UN Sales Convention is excluded.
3. The sole place of jurisdiction for all disputes arising from these general terms and conditions of business as well as the underlying contract shall be the place of business of MPA (see par. I. 1).