

General Terms and Conditions of Business

of

MPA Dresden GmbH

As at: 1st July 2020

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. Individual agreements with the Customer (including side agreements, additions and changes) to cover special circumstances have priority over these terms and conditions. If no evidence to the contrary can be produced, a written agreement or written confirmation from MPA shall be definitive in determining the content of such agreements.
3. MPA objects expressly to the application of general terms and conditions of the Customer.
4. In case of doubt, only the German-language version of these General Terms and Conditions of Business shall apply

II. Conclusion of contract and content

1. Unless expressly agreed otherwise, declarations by MPA in the internet site 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. MPA reserves the right to change these terms and conditions. Any such changes will be communicated in writing to the Customer with a notice period of six weeks in advance. It will further be ensured that the Customer can save and print the updated version of the terms and conditions in a legible form. Changes come into force one month after MPA has informed the Customer of the planned changes. If the Customer does not object within four weeks of receiving the notice of change, the modified terms and conditions will apply with immediate effect. When informing the Customer of the proposed change(s), MPA will specifically draw attention to the right of objection and the associated legal consequences. If the Customer objects, MPA is entitled to terminate the existing contract immediately with effect from the time when the amended terms of contract would have come into force. If no notice of termination is given, the previous contract conditions will continue to apply. The provisions in Section X remain unaffected.
7. 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.
6. MPA cannot be held liable for the impossibility of fulfilling orders or for delays in performance, insofar as these are due to force majeure or other unforeseeable events at the time of signing the contract that MPA is not responsible for, e.g. disruptions of any kind; difficulties in obtaining materials or energy supplies; delays in transport; strikes; legitimate lockouts; insufficient labour, energy or raw materials; difficulties in obtaining necessary regulatory approvals; regulatory action; or failure on the part of suppliers to deliver in full or on time. If such circumstances make fulfilment by MPA significantly more difficult or impossible and the hindrance is not only temporary, MPA is entitled to withdraw

from the contract. In the case of hindrances of temporary duration (e.g. unavailability of laboratory conditions derived from an accreditation, such as temperature or winds), the fulfilment period is to be extended or the delivery dates postponed by a period equivalent to the duration of the hindrance plus a reasonable start-up period. Insofar as the Customer cannot reasonably be expected to accept the delivery or service as a result of the delay, he/she can withdraw from the contract by means of an immediate written declaration to MPA. Otherwise, the liability provisions in Section VIII shall apply.

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 six 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 despatch 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 shall have right of set-off and retention only in circumstances where a claim is legally established, acknowledged or undisputed.

IX. Data protection / Confidentiality

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), and the Basic Data Protection Ordinance (DSGVO).

We further refer the Customer to the Privacy Policy issued by MPA

(<https://www.mpa-dresden.com/privacy-policy.html>) as well as the generally applicable data protection provisions.

As an accredited provider, we also maintain client confidentiality to DIN EN ISO/IEC 17020, DIN EN ISO/IEC 17025 and DIN EN ISO/IEC 17065 standard.

X. Termination

1. The Customer may terminate the contract at any time before the completion of the order, but will in such an eventuality be obliged to pay MPA the agreed remuneration. MPA must, however, adjust the agreed remuneration to take into account any savings made as a result of the premature termination of the contract and, where appropriate, any other revenue arising. MPA is entitled to charge five percent of the agreed remuneration for the part of the order that has not yet been performed. MPA and the Customer may present evidence justifying a higher or lower amount respectively.
2. Notice of termination must be given in writing..
3. Both parties to the contract may terminate the agreement for good cause without observing a notice period. A valid reason for termination would exist if, taking into consideration all the circumstances of the individual case and weighing the interests of both parties, the party proposing termination cannot reasonably be expected to see the contract through to completion.
4. If the Customer terminates the agreement for a valid reason for which MPA is responsible, the latter can only claim remuneration that is due for the part of the order completed prior to receiving notice of termination.
If the Customer bears responsibility for termination for good cause, MPA may demand compensation for any other damage or loss resulting from this in addition to the full agreed amount of remuneration.

XI. Concluding provisions

1. Legally relevant declarations by and notifications from the Customer in relation to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) are to be made in writing, i.e. the standard form of a letter, e-mail or fax. Statutory formal requirements and further proof, especially in case of doubt about the legitimacy of the declarant, remain unaffected.
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).