

General Terms and Conditions for Business (GTCB) Engineering Services

1. Scope

If not agreed otherwise, these provisions apply to contracts between MatCalc Engineering GmbH and clients with respect to engineering services. By placing an order with MatCalc Engineering GmbH (hereafter referred to as MCEng), the client accepts these provisions. The version valid at the time the Contract is concluded shall be applicable.

2. Services and Client's Obligation to Provide Information

2.1. MCEng's order confirmation in writing is decisive for the scope of the services. If MCEng has made an offer that is limited in time, the timely acceptance of the offer is decisive. Collateral agreements and changes require MCEng's approval in writing.

2.2. The Client is required, without specific prompting, to provide MCEng with all documents required or of importance for performing the assignment, and to inform MCEng in due time about all circumstances and events that could be of importance for performing the assignment. If the client fails to inform MCEng as required or agreed, or fails to assist MCEng in the latter's tasks, any possible extra costs incurred by MCEng as a consequence will have to be reimbursed.

2.3. If such a failure to act makes contract fulfilment unreasonably difficult or impossible for MCEng, MCEng can refuse to fulfil the contract.

3. Price

Quoted prices are to be understood as net prices and exclusive of VAT.

4. Delivery and performance deadlines

4.1. The delivery period does not start before all documents, permits and approvals to be provided by the client and any agreed down payment (if applicable) are received.

4.2. Upon discovering that an agreed deadline cannot be complied with, MCEng is required to immediately inform the client correspondingly in writing, stating the reasons as well as the expected duration of the delay.

4.3. Partial delivery/fulfilment is possible insofar as the service scope permits this and the client agrees.

4.4. The delivery period is appropriately extended in case of measures associated with occurrence of unforeseen obstacles that are outside MCEng's sphere of influence, insofar as such obstacles have a demonstrable major impact on the completion or delivery of the required services. This also applies if the circumstances affect subcontractors. MCEng will also not be liable for above circumstances if they come about during an already existing delay. In important cases, MCEng is required to immediately inform the client about the beginning and end of such obstacles.

4.5. If damages arise for the client from a delay caused as a consequence of MCEng's own fault, any possibly applicable compensation for the delay will be agreed in the contract in a project specific manner.

5. Execution, subcontractors, assignment

5.1. MCEng is at liberty to assign the performance of the respective contract to third parties in parts or entirely.

5.2. MCEng is required to name these subcontractors to the client upon the client's request.

5.3. MCEng cannot transfer claims against the client to third parties or have them collected by third parties.

6. Acceptance of services

6.1. Rendered services are accepted when paid for by the client to MCEng. Services count as accepted if the client asserts no claims within a period of 14 working days.

6.2. If the client wishes that an acceptance report be signed, this will be agreed in the contract specifically for the project.

7. Protection of Intellectual Property

7.1. MCEng shall retain all copyrights to any work done by it and by persons working for MCEng and by third parties employed by it (including but not limited to tenders, reports, analyses, expert opinions, organization charts, programs, performance descriptions, drafts, calculations, drawings, data media, etc.). During the Contract period and after termination thereof, the Client may use these materials exclusively for the purposes described under the Contract.

8. Warranties

8.1 MCEng shall be entitled and obligated to correct any errors and/or inaccuracies in its work which have become known subsequently. MCEng shall immediately inform the Client thereof.

8.2 This right of the Client expires six months after completion of the respective service.

8.3. The warranty period for newly created and/or corrected works or documents is 3 months, but extends to the end of the original warranty period for the entire performance as a minimum.

9. Liability for defects and services

9.1 MCEng shall be liable to the client for damages - with the exception of personal injury - only to the extent that these are the result of serious fault due to intention or gross negligence. Correspondingly, this also applies to damages resulting from third parties employed by MCEng.

Any liability of MCEng for indirect damage or for costs of consequential damage, including loss of profit, recall, loss of availability is explicitly excluded.

9.2 Any claim for damages on the part of the client may only be enforced by law within six months after those entitled to assert a claim have gained knowledge of the damage and the liable party, but not later than one year after the finalization and delivery of work or services as agreed by Contract, upon which the claim is based.

9.3 The Client shall furnish evidence of MCEng's fault.

10. The Client's right to withdraw and other MCEng liabilities

10.1. If MCEng is delayed in providing the services and the client grants the delayed MCEng a reasonable grace period with an explicit statement that acceptance of the performance will be refused after the expiry of this period and the deadline is not complied with, the client is entitled to withdraw.

10.2. If an impossibility of the performance arises during an acceptance delay or by fault of the client, the client remains liable for consideration.

10.3. The client's right to withdraw also applies in other cases where the elimination of defects by MCEng fails.

11. Confidentiality

11.1 MCEng shall be obligated to maintain complete confidentiality concerning all business matters made known to it in the course of services performed, especially trade and company secrets and any other information concerning type and scope of business and practical activities of the Client.

11.2 Furthermore, MCEng shall be obligated to maintain complete confidentiality towards third parties concerning the content of the work completed, as well as any information and conditions that contributed to the completion of the work, particularly concerning data on the client's customers.

11.3 MCEng shall not be obligated to maintain confidentiality towards any person working for it or representatives of MCEng. MCEng is required to obligate such persons to maintain complete confidentiality and shall be liable for any violation of confidentiality on their part in the same way as if MCEng had breached confidentiality.

11.4 The obligation to maintain confidentiality shall persist indefinitely even after termination of the Contract.

11.5 MCEng shall be entitled to use any personal data entrusted to MCEng only for the purposes of the services performed. MCEng shall guarantee the Client that all necessary measures will be taken, especially those regarding data protection laws, e.g. that declarations of consent are obtained from the persons involved.

11.6. MCEng is authorized, however, to use the performance of the services for own promotional purposes upon the client's explicit approval in writing.

12. Return of documents

After contract fulfilment, MCEng is upon the client's request required to surrender all documents received from the client or third parties in the name of the client by reason of the assignment –related work. The correspondence between client and MCEng is excluded from this.

13. Invoicing, payment

13.1. Payment is made as agreed. The performance of a delivery/service before the agreed deadline has no effect on the payment period associated with this deadline.

13.2. The withholding of payments or their setting off against counterclaims on the part of the client that are being disputed by MCEng is not permitted.

13.3. Invoices are payable by the client at the end of the delivery/performance as well as invoice receipt with a term of payment of 30 calendar days.

13.4. Part payments or instalment payments are principally admissible and agreed in the contract specifically for the project.

13.5. Changes in payment terms require the approval of both parties in writing.

14. Electronic Invoicing

The Client agrees explicitly to accept invoices transmitted electronically by MCEng.

15. Termination

The Contract may be terminated for good cause by either party at any time without notice. Reasons for premature termination include the following:

One party breaches major provisions of the Contract,

One party opens insolvency proceedings or the petition for bankruptcy is denied because of insufficient assets to cover expenses.

16. Partial invalidity

If any provision of these General Terms and Conditions is or becomes invalid, the other provisions and any Contracts concluded pursuant to these provisions shall not be affected thereby. The invalid provision shall be replaced by a provision which best corresponds to the intention and economic purpose of the invalid provision.

17. Final Provisions

17.1. The Contracting parties declare that all information contained herein is accurate and made in good conscience. They shall be mutually obligated to immediately inform the other party of any changes.

17.2. Modifications of and amendments to this Contract or these General Terms and Conditions shall be made in writing. This shall also apply to a waiver of this requirement of written form.

17.3. This Contract is governed by the substantive law of the Republic of Austria excluding the conflict-of-law rules of international private law. Place of fulfilment is the registered business establishment of MatCalc Engineering GmbH. Jurisdiction in all disputes is the court in the place where MatCalc Engineering GmbH is based. The MatCalc Engineering GmbH is also entitled to institute legal action at the location of the client's main office.

Status as of: January 2017