

## **General Terms and Conditions [AGB]**

### **1. Validity of the General Terms and Conditions**

The below mentioned general terms and conditions are exclusively applicable to business transactions of the company MGE-tech GmbH, Dorfstrasse 75, A-6271 Uderns, FN 382066m (hereafter: "MGE", presenter, we or us). Hereafter, our contractual partner is referred to as client ("buyer", "transferee" or "contractual partner"). These general terms and conditions are obligatory for the entire present and future business transactions with us, even if it is not particularly referred to.

Regulations which differ from, or are supplementary to these general terms and conditions – especially business or purchasing conditions of the buyer - become an integral part only if this has been particularly confirmed in writing by us.

### **2. Offer and Contract Completion, Cost Estimation**

#### **2.1. Offer**

Offers of MGE are non-binding, provided that they have not been particularly denoted as obligatory. The contractual partner's order is deemed as accepted with the order confirmation by MGE, by which a contract becomes effective.

#### **2.2. Cost Estimate**

A cost estimate is created by MGE according to the best expertise. However, no liability will be assumed for its accuracy. If there is an increase in the costs to the extent of more than 15% after placing an order, then the MGE will immediately inform the contractual partner about this. If it deals with inevitable cost increases of less than 15%, a separate agreement is not necessary and the adjusted fees may be charged accordingly. Unless otherwise agreed, changes in the assignment or in additional assignments may be invoiced at appropriate prices.

Cost estimates are chargeable.

### **3. Privacy**

The client hereby irrevocably undertakes to keep all the trade and business secrets by MGE, which are made available, provided or otherwise which are in connection to or because of a business relation or contact with MGE and not to make these available to any third party under any circumstances without an approval by MGE. Further, the client commits to use the information only on a "needtoknow"-basis and only within the context of the contract.

The confidentiality obligation remains active for 3 years after termination of the business relationship with MGE or independently of a business relationship for 3 years after submission of the bid by MGE.

#### 4. Price and Terms of Payment

Our prices are indicated in EURO. The legal value added tax shall be charged in addition to the applicable amount. Any fees are to be paid by the buyer.

The listed prices are applicable “Ab Werk” or “ex works” INCOTERMS 2010 and do not include costs for packaging, transport, assembling or installation.

Services including training and instruction of the employees of the contractual partner are invoiced according to the applicable service price list. For services performed on Saturdays/Sundays and other than normal working time, (Monday - Thursday 7.30 to 16.30, Friday 7.30 to 12.00), as well as on holidays, a surcharge of § 10 paragraph 1 item 1 of the Austrian Working Hours Act is charged, whereby the calculation is based on the standard hourly rate from the price list.

The travel costs and expenses incurred while executing the order are to be borne by the clients, in addition to the agreed price.

**Price adjustment:** Value stability of the claim plus additional claims is particularly agreed. The Consumer Price Index published monthly by the Austrian Bureau of Statistics or an equivalent index is used to calculate the value stability (VPI 2011 = 100). The index number calculated for the month of the contract conclusion serves as the basis for this contract. Fluctuations in the index number by up to 3% either way are not taken into account. This range shall be recalculated each time it is exceeded; the first index number beyond the limit shall represent the base [...] for the rest of the amount receivable, as well as for the calculation of the new limit. Amounts thus calculated are to be rounded to one decimal.

In the event of partial deliveries, partial calculations are always permissible. In case of agreement of partial payment, there is a default of payment, if even a partial payment is unpunctual or is not made in full. In the event of failure to meet the deadline, the full outstanding amount is immediately due for payment. In the event of failure to meet the deadline, the MGE has the right to take charge of any goods supplied under reservation of ownership without a previous repudiation, until the entire debt is covered, including additional costs.

#### 5. Place of Delivery and Risk

Place of Delivery is **MGE-tech GmbH**, Dorfstrasse 75, A-6271 Uderns.

The buyer bears the risk of transport. For data, the risk of loss or data alteration while downloading and sending via internet will be passed to the contractual partner after exceeding the MGE network interface.

## **6. Reservation of Proprietary Rights, Rights of Use**

The good remains our property until payment is made in full.

For possible standard software supplied, the license provisions which the contractual partner directly finalizes with the respective software manufacturer shall apply, such as Microsoft, SAP or third parties.

## **7. Acceptance and Partial Delivery**

The contracting partner is obliged to accept the deliveries and services provided by MGE. With the delivery "Ab Werk" or "ex works" INCOTERMS 2010, the delivered goods or software is deemed as accepted. Provided installation services are agreed, the service for the earliest date is deemed as accepted; if the acceptance is confirmed by the buyer or the end customers; if the installed delivery or service has been put into operation by the buyer or the end customers; or latest 4 weeks after an installation.

Service and administrative work are deemed as accepted when they are actually carried out.

If the contractual partner determines substantial defects after approval, then he is authorized to get it corrected by MGE in the scope of warranty. Our deliveries and services are always separable. In case of partial deliveries, partial acceptances are allowed.

## **8. Delay**

### **8.1. Delay in Delivery**

The delivery deadlines and dates are adhered to by the MGE, as far as possible: they are nonbinding, in case they have not been particularly agreed upon as mandatory and is understood as anticipated time for provision and transfer to clients. Withdrawing from the contract by the buyer due to delay in delivery is possible only after setting a suitable - at least weeks - deadline. The withdrawal is deemed applicable by means of a registered letter. The right to withdraw is only related to the delivery or service part which is concerned with the delay.

### **8.2. Default of Acceptance**

Goods which are not accepted at the agreed date are stored at the risk and expense of the client, for which MGE charges a storage charge of EUR ... per calendar day. At the same time, MGE is authorized to insist upon the fulfilment of the contract or to withdraw from the contract after setting an appropriate period and sell the goods to somebody else. In the event of exploitation, a contract penalty of 5% of the invoice amount is deemed applicable.

## 9. Warranty

The warranty period is 6 months after acceptance according to point 7 of this General terms and conditions. The existence of defects is to be proved by the contractual partner. § 924 General Civil Code does not apply.

Defects are to be rebuked by the contractual partner immediately, specifically and in a written manner. In this case, MGE is authorized to determine the type of warranty (improvement, replacement, price reduction or conversion) itself.

If MGE repairs defects outside of the warranty or creates other service or administrative work, then these are to be calculated according to the applicable price list MGEs according to actual cost. § 933b General Civil Code does not apply.

## 10. Compensation for Damages

MGE is obliged to compensation for damages only in case of wilful act or gross negligence in all cases taken into account. In case of simple negligence, MGE is particularly liable for personal injuries. The liability will expire in 6 months after the client becomes aware of the damage and the party causing the damage.

The liability of MGE is **limited** per damage case with 10% of the total order value (net, without value added tax and without packaging, transport, assembly and installation costs). MGE is not liable for indirect damages, loss of profits, losses of interest, stopped savings, consequential and pecuniary damages, damages resulting from third party claims as well as for loss of data and programs and their recovery. If a contractual penalty has been agreed, then this is subject to right to reduction. The enforcement of compensation for damages going beyond the penalty is excluded.

## 11. Data Protection - Notice to clients

The clients data is saved and processed related to EDV within the guidelines of the permitted act. The data is used only for filling the legal requirements and for developing the transactions. Client data is not forwarded to third parties, unless it is absolutely necessary for executing the contract. In order to ensure a proper business development, the client explains his agreement iSd § 107 TKG (telecommunications act 2003), so that MGE can contact him by way of telecommunication and with electronic post every time without any limitations. In case data is lost or is distorted during telecommunication or through electronic post, then MGE does not assume any liability.

## 12. Court of Jurisdiction and Governing Law

For decisions of all disputes resulting from this contract - including one such about its existence or nonexistence - exclusive authority is given to the headquarters of MGE. This agreement shall be governed exclusively by the republic of Austria, with the exclusion of the UN-purchasing law.

## **13. Further Provisions**

### 13.1. Severability Clause

Should any provision of these general terms and conditions of business be fully or partially void or unenforceable, this will not affect [...] the effectiveness of the remaining provisions. The contract parties will replace the ineffective or unenforceable provision by an effective and enforceable provision, which comes as close as possible according to the context and purpose of the void or unenforceable provision.

### 13.2. Formal Requirement

Changes or modifications of a contract must be in writing. The same applies to any change in the requirement for the written form.

### 13.3. Compensation

Any offset with counterclaims against our claims, irrespective of what type, is excluded.

### 13.4. Subcontractor

The use of subcontractors is always allowed.