

GENERAL TERMS AND CONDITIONS OF BUSINESS of CE cideon engineering Schweiz AG

As of 13.04.2016

1. Conclusion of the contract

- 1.1** CE cideon engineering Schweiz AG (hereinafter referred to as "CE") provides its services exclusively on the basis of these general terms and conditions of business. Deviating agreements or general terms and conditions of business of the Customer shall only apply if CE has been expressly informed of such in writing in advance and CE has issued its express agreement in writing. Should the Customer by means of reference to its own terms and conditions of purchase or general terms and conditions of business have issued the order for services which CE previously offered with reference to these terms and conditions of business and should CE then provide performance with renewed reference to these general terms and conditions of business and should the Customer accept deliveries and services from CE anyway, this shall be deemed to represent a conclusive acceptance by the Customer to the inclusion and sole applicability of these general terms and conditions of business.
- 1.2** Oral ancillary agreements and any guarantee concerning properties, as well as any contractual amendments or additions shall only apply if these have been expressly confirmed in writing.
- 1.3** References to technical regulations, norms and similar shall only represent a description of the goods. This does not represent an undertaking concerning properties in relation to the general norms etc.

2. Scope of the deliveries and services

- 2.1.** The Customer hereby assigns to CE the independent and autonomous carrying out of plans, constructions, drawings and calculations within the framework of the respective individual contract. The mutual written declarations (1) shall be decisive in relation to the scope of the deliveries and services. Should this not be present, (2) the order confirmation of CE shall determine the scope of service or, should this not be issued, (3) the written order of the customer shall be decisive. In case of objections, (1) shall take precedence over (2) and (2) shall take precedence over (3).
- 2.2.** Should the Customer request alterations and/or additions to the order confirmation or engagement in relation to the scope of services during the performance of an order, CE shall be entitled to additional remuneration in accordance with its respectively applicable prices.

3. Copyright / protected know-how

- 3.1.** Should CE and its employees or subcontractors create plans, drawings, computer programs or other copyright protected works or create files following an engagement by the Customer, it is hereby being expressly pointed out the CE will retain the unrestricted copyright related rights of use or other rights of exploitation. The Customer shall not have a claim to the transfer of documents, programs, files etc which CE created or developed in connection with the performance of the contract, unless this represents an express performance obligation of the engagement.
- 3.2.** Furthermore, CE will claim protected operational and commercial know-how in relation to the objects referred to above. In particular, this shall also apply if archived data is then further transferred to other database software due to the performance provided by CE. Such copying services represent technical know-how of CE. Therefore, the Customer shall not be entitled to transfer such newly created database software to third parties without the prior written agreement of CE. Third parties also include any subsidiary companies of the Customer.

4. Performance

- 4.1.** CE shall be entitled to issue sub-engagements in order to provide the contractual services.
- 4.2.** Should employees or representatives of CE work at the premises of the Customer, the Customer itself shall not have any right of instruction in relation to such persons.
- 4.3.** CE shall reserve the right to carry out product alterations within the framework of technical necessities or technical improvements, should these be reasonable for the Customer in relation to the subject matter of the engagement.

5. Prices

- 5.1.** Offers of CE shall be non-binding and subject to confirmation, unless the offer is expressly specified as "binding".
- 5.2.** The prices shall be subject to the respectively applicable statutory value added tax, unless this is already stated in the offer.

6. Payment terms

- 6.1.** Payment shall be due within 14 days of the date of the invoice and must be made to CE without a discount deduction. Should the service of CE include the delivery of objects or standard software, the invoice amount must be made as a single payment at least in relation to the said order components.

Should the service of CWE include the provision of services or work services, 30% of the invoice amount due in this respect shall be paid at the time of order confirmation or issuing of the engagement, a further 20% following the time of commencement of performance and the remainder of the payments according to a separate contract.

- 6.2. Should doubt concerning the payment capacity of the Customer arise following an assessment by a bank, CE shall be entitled to demand bank security or payment in advance.

7. Delivery terms

- 7.1. The delivery of objects and the carrying out of plans etc shall take place at the place of business of CE, therefore shipping shall take place at the risk and expense of the Customer. Should CE be required to provide services and work services, CE can determine the location of the service provision. Should the Customer request work at its business premises, this shall require an express agreement with CE.
- 7.2. The agreement of a fixed date shall require an express indication and written confirmation by CE. Delivery deadlines stated in the contract shall be extended by a reasonable extent in case of non-timely and/or incorrect self-supply on the part of CE, as well as in cases of force majeure or should unforeseeable hindrances occur in relation to the provision of services by CE, which are outside of its area of influence. The compliance with deadlines on the part of CE shall also require that the Customer provides all necessary documents, devices and necessary co-operation actions for the performance of the agreed service free-of-charge. Should this be necessary for the attainment of the requested successful performance, the Customer shall be obliged to provide the necessary information for the provision of services by CE from and in relation to its area of business.
- 7.3. In case that a reasonable extension of the delivery deadline is not feasible for CE due to the extent of the circumstances stated in Number 7.2 above, CE shall be entitled to rescind the contract in full or in part following prior notification. In such cases, damages claims shall be mutually excluded.
- 7.4. CE shall be entitled to provide partial deliveries.

8. Assembly services

- 8.1. Should the scope of service of CE include assembly services, the Customer shall provide the necessary assistance personnel and necessary objects such as work tools and computer time, as well as energy at its own expense. In addition, the Customer shall ensure that materials and work tools of CE can be securely stored at the assembly location.
- 8.2. Prior to the start of the assembly work, the Customer must provide the necessary information concerning the locations of completed electricity, gas and water lines or similar facilities, as well as the necessary statistical details, without the need for a request to be issued.
- 8.3. Should assembly or putting into operation be delayed for reasons for which the Customer is responsible, it shall bear the costs of downtime and additional time, as well as of any travel time of the personnel of CE which becomes necessary.

9. Acceptance, transfer of risk

- 9.1. The Customer shall accept the service provided by CE within three weeks of the written notification concerning the readiness for acceptance of the services or partial services which have been supplied and shall sign an acceptance protocol which will be drawn up in this respect. Should acceptance not take place for reasons which can be attributed to the area of risk of the Customer, the work or partial work shall be deemed to have been accepted by the Customer at the latest three weeks following the notification of readiness for acceptance or, if earlier, at the time of putting into use by the Customer.
- 9.2. In case of the delivery of objects, as well as drawings, plans etc, the risk shall be transferred to the Customer at the time of shipping or collection or at the time of entry into acceptance default. In case of work services, the same shall apply at the time of acceptance or implied acceptance.

10. Warranty

- 10.1. CE shall provide a guarantee for 12 months that the object of delivery, drawings etc or the work service correspond to the recognised rules of technology at the time of conclusion of the contract. This shall commence at the time of transfer of risk.
- 10.2. In case of justified complaints, CE shall be obliged to provide improvement or a replacement delivery. In order to carry out all improvements or replacement services which become necessary according to the equitable discretion of CE, the Customer must also provide CE with sufficient time and opportunity during usual working hours, also at its place of business or production location. In case of repeated failures concerning improvement within a reasonable period of time, the Customer shall be entitled either to reduce the agreed remuneration or to rescind the contract.
- 10.3. The guarantee provided by CE requires that the Customer provides an immediate written complaint in relation to recognisable defects at the time of transfer of risk or acceptance or in case of deliveries. In case of acceptance these must be noted in the protocol and hidden defects which do not become apparent until a later time must be notified immediately after their discovery.

11. Liability

- 11.1. CE, its legal representatives and vicarious agents shall only incur liability in case of breaches of pre-contractual obligations (culpa in contrahendo), in case of breaches of ancillary obligations, delay and impossibility or for other legal reasons in case of intent, gross negligence and in case of breaches of essential contractual obligations.

In case of delay and impossibility, the Customer shall have the alternative right to rescind the contract following a reasonable period of grace.

- 11.2. No liability shall be assumed for data, loss of profit or other indirect or consequential losses, unless intent, gross negligence, a breach of essential contractual obligations or the lack of guaranteed properties are present.
- 11.3. Except in case of intent and gross negligence, in particular also in case of a simply negligent breach of essential contractual obligations, the amount of liability per loss event shall be limited to 20% of the order value and to a maximum of 75,000.00 CHF or, in case of continuation of offence, to a maximum of 150,000.00 CHF.
- 11.4. The liability in accordance with the Product Liability Act (Produthaftpflichtgesetz - PrHG) shall remain unaffected.
- 11.5. No claims which go beyond the warranty assumed in Numbers 10 and 11 and the agreed liability shall exist.

12. Right of retention / assignment of claims

- 12.1. Delivered objects, including drawings, plan documents etc shall remain the property of CE until fulfilment of all claims to which it is entitled against the Customer under the business relationship. Pledging or provision as security is not permitted. Should a sale be permitted in ordinary business dealings and within the framework of these general terms and conditions of business, the Customer hereby now assigns to CE its claim against the respective consumer to the payment of the purchase price and compensation for work. Should the value of all security rights exceed the claims of CE by more than 20%, following a request by the Customer CE will release a corresponding part of the security rights.
- 12.2. CE shall not notify the customers of the Customer of the said assignment, provided that the Customer is not in payment default. The Customer shall remain entitled to collect the assigned claims. However in case of default, CE shall remain entitled to notify the customers of the Customer of the assignment and to collect the claims itself. The Customer shall provide CE with all necessary information concerning the claims in this respect, in particular concerning the customer, the state of the claim and any prerequisites for the claims, and shall hand over the necessary documents.

13. Confidentiality

The Contracting Parties shall be mutually obliged to only make the documents and information handed over within the framework of the co-operation accessible to third parties with the agreement of the respective other contracting partner, unless deliveries or service are lawfully transferred to such third parties. This confidentiality agreement shall not apply should the transferred documents and information be obviously known already or can be subsequently proven to have been made accessible to the respective other party without a breach of this confidentiality obligation having taken place. In the latter case, the respective contracting party must be immediately informed of such in writing. The Customer shall be obliged to also include its employees and any vicarious agents in this confidentiality agreement.

14. Other

- 14.1. CE shall be entitled to use the name and address of the Customer in a list of references.
- 14.2. Setting off by the Customer with counterclaims or a right of retention by the Customer shall be excluded, unless the claims are undisputed or have been acknowledged by a court.
- 14.3. Amendments and additions to the subject matter of the contract and these general terms and conditions of business shall require written form to take effect. This shall also apply to the validity of any decision to forego the written form requirement in an individual case.
- 14.4. The ineffectiveness of one or more provisions of these general terms and conditions of business shall not affect the validity of the remaining clauses. The Partners shall endeavour to replace an ineffective provision by such a clause which comes as close as possible to the economic purpose pursued by the ineffective provision.
- 14.5. The place of performance for all mutual claims under the contractual relationship shall be the place of business of CE cideon engineering Schweiz AG, unless otherwise agreed.
- 14.6. **Swiss law** shall apply. The applicability of UNCITRAL shall be excluded.
- 14.7. The **place of jurisdiction** for all claims under the contractual relationship shall be the place of business of CE cideon engineering Schweiz AG in **Basel, *****