

# GENERAL TERMS AND CONDITIONS

for sales and service provision by  
Merlin Technology GmbH

As of: 1 July 2022

## 1. Scope

- 1.1. These General Terms and Conditions (hereinafter: GTC) shall apply for legal relationships between the buyer or customer (hereinafter: Customer) and Merlin Technology GmbH as the seller or agent (hereinafter: Agent).
- 1.2. These GTC shall also apply for all future legal relationships according to item 1.1. between the Customer and the Agent, and must not be agreed upon anew.
- 1.3. Any deviations from these GTC and any terms and conditions of the Customer shall be ineffective and will not be part of any contract, unless the Agent has acknowledged them fully or in part in writing.
- 1.4. In the case of any contradictions, the contractual bases shall apply in the following order of precedence:
  - 1.4.1. The written order or order confirmation
  - 1.4.2. These GTC
  - 1.4.3. The Austrian ÖNORM standards (in the currently valid version) that are relevant for the goods or services and have been agreed on, and the agreed-upon relevant guidelines (e.g. VDI, etc.)
  - 1.4.4. Customary industry-specific practices
  - 1.4.5. Non-mandatory provisions of the law

## 2. Conclusion of a contract

- 2.1. A contract between the Customer and the Agent only comes into existence upon transmission of the order confirmation to the Customer by the Agent or, if no such order confirmation is transmitted by the Agent, when the goods ordered by the Customer are sent by the Agent, or in the case of installation, commissioning, servicing and repair work performed by the Agent, at the point the Agent's staff members leave the premises to perform the contract.



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- 2.2. The Customer is required to check the execution documents (such as layouts, descriptions and survey documents) provided to them before conclusion of the contract, in particular with regard to their completeness, factual correctness and suitability, and to immediately inform the Agent in writing of any defects that are noticeable upon dutiful control and any concerns regarding the intended design. By concluding the contract, the Customer grants their approval of the execution documents.
- 2.3. Additional services that the Customer does not request in the context of performance of the original contract will only become part of the contract if the conditions indicated in item 2.1. are met. For this reason, the Agent will usually only assume contractual responsibility for such services upon transmission of the order confirmation (see item 2.1. above). Notwithstanding this, the Agent shall be entitled to claims against the Customer from the title of negotiorum gestio and/or enrichment law if work is carried out on a non-contractual basis.

### 3. Prices and terms of payment

- 3.1. The cost estimates and prices quoted by the Agent are non-binding. All prices are quoted excluding value added tax and ex works, and do not include costs for loading, delivery (shipping), installation, commissioning and servicing in particular, unless these items are listed separately.
- 3.2. The Agent reserves the right to adjust the prices accordingly if labour costs change due to collective wage arrangements in the industry or to internal works agreements, or if other cost items that are relevant to price calculation or costs necessary for service provision change, in particular those for materials, energy, delivery (shipping), third-party services, financing, etc.
- 3.3. If the Agent has drawn up a cost estimate by the Customer's request and no contract is concluded, the Agent shall be entitled to request adequate compensation from the Customer for preparing the cost estimate. No fee applies for preparation of the cost estimate if a contract is concluded between the Customer and the Agent.
- 3.4. If no particular payment conditions were agreed upon, any invoices by the Agent shall be due immediately and in full. Any discount deductions require an explicit written agreement.
- 3.5. If the Customer falls behind schedule in meeting any payment liabilities, the Agent shall reserve the right to call due all of their claims, including those from other contracts with the Customer, and any discount agreements will lapse. The same rule shall apply if the Customer stops their payments or if the Agent becomes aware of any circumstances that give rise to justified concerns regarding the Customer's creditworthiness.



- 3.6. If payment in instalments or partial payments are agreed upon, the entire outstanding amount shall become due if a single instalment or partial payment is not paid on time by the Customer (immediate maturity); this rule shall apply notwithstanding the legal consequences pursuant to item 3.5.
- 3.7. Payments made by the Customer are credited first to operating costs, then to interest and finally towards the capital. If claims are based on different legal relationships, the Agent shall determine how any cash received from the Customer shall be used, even if such payments are earmarked for a particular purpose and also after receipt of such payments.
- 3.8. If insolvency proceedings are initiated with regard to the Customer's assets, or if such proceedings are rejected due to insufficiency of assets to cover costs, or if circumstances become known that justify doubts concerning the creditworthiness of the Customer, the Agent will only perform any further services after receiving advance payment from the Customer.

#### 4. Collection, delivery (shipping), installation, commissioning, servicing and repairs

- 4.1. The Agent shall make the goods available to the Customer for collection at the agreed upon time ex works on the Agent's premises, and must pack the goods in the standard commercial manner designed to prevent damage to the goods on the way to the agreed-upon destination under normal delivery and transport conditions. The Agent is not required to take back the packaging.
- 4.2. The Agent shall only arrange for delivery (shipping), installation, commissioning, servicing and repairs on behalf of the Customer under a corresponding agreement.
- 4.3. The Agent shall be free to choose the shipping method for delivery (shipping), unless a particular shipping method or means of transportation is agreed upon in writing by the Customer's request. Unless otherwise agreed, the Agent shall act on behalf of and for the account of the Customer. Loading and unloading of the transport vehicle shall take place at the Customer's risk, even if staff members of the Agent are carrying out any activities or if the transport company is commissioned by the Agent.
- 4.4. The actually incurred costs plus an appropriate administrative fee are charged for delivery (shipping), however no less than the normal freight and carriage charges for the chosen shipping method that apply on the day of shipping. Labour costs for installation, commissioning, servicing and repairs are charged based on the work actually done at customary hourly rates plus an appropriate administrative fee.
- 4.5. In all cases, (delivery) vehicles must be able to approach the agreed-upon place at the agreed time safely and without hindrance, and it must be possible for them to be unloaded there without delay.



- 4.6. The Agent is only obligated to perform the contract after the Customer has fulfilled all preliminary work and preparations that are necessary for the Agent to perform their services; this applies in particular for all technical and contractual details and for obtaining any required approvals under public law in good time before the agreed-upon delivery deadline or delivery appointment.
- 4.7. In the context of performing delivery (shipping), installation, commissioning, servicing and repair work, the Agent's staff will prepare a daily activity report that must be signed by the Customer or by individuals named by the Customer upon completion of the work carried out.
- 4.8. The staff members of the Agent are not authorised to make or accept any declarations on behalf of the Agent in the context of performing delivery (shipping), installation, commissioning, servicing and repair work.
- 4.9. The Agent endeavours to provide their services at the agreed-upon time, the agreed-upon place and in the way stipulated. The Agent may exceed agreed-upon delivery dates or deadlines by up to one week if important reasons apply. After the end of this deadline, the Customer has the right to declare their withdrawal from the contract after granting a reasonable deadline extension of at least four weeks. Withdrawal from the contract by the Customer shall be communicated to the Agent by registered letter. The arrangements of item 13 shall apply concerning payment of any damages.
- 4.10. The Agent's obligation to deliver shall be suspended if delivery is hindered by factors beyond the Agent's control (such as shortages experienced by a sub-supplier, other external obstacles affecting production or delivery conditions). If such conditions render the Agent unable to perform the contract, the Agent shall be released from the obligation to render the service without any compensation obligations towards the Customer.

## 5. Minor changes in performance

- 5.1. At their reasonable discretion, the Agent may make minor changes or changes that are reasonable for the Customer to the Agent's service obligation (in particular deviations in relation to the project, for example concerning dimensions, colours, weight, measuring results, the moisture range, etc.). Furthermore, the Agent reserves the right to make changes to designs, carry out minor changes, in particular due to further development and implementation guidelines, provided that these are necessary and beneficial or legally required, for example owing to agreed-upon relevant guidelines (e.g. VDI, etc.). Any such changes to performance shall not constitute a deviation from the Agent's contractually owed duties.



## 6. Risk assumption

- 6.1. If the Customer picks up the goods, the risk is transferred to the Customer at the point at which the Agent makes the goods available to the Customer for collection ex works on the premises of the Agent at the agreed-upon time. If the goods are delivered (shipped), the risk is transferred to the Customer at the start of the process to load the transport vehicle.
- 6.2. In the case of installation, commissioning, servicing and repair work, the risk is transferred to the Customer upon completion of the respective service. If work is carried out in multiple stages (partial performance), the risk is transferred to the Customer upon completion of each stage (partial service).

## 7. Customer default

- 7.1. The Customer is obligated to meet all payment conditions and to fulfil all preliminary work and preparations that are necessary for the Agent to perform their services; this applies in particular for all technical and contractual details and for obtaining any required approvals under public law in good time before the agreed-upon service deadline or service appointment, and to accept the goods and services that are correctly provided by the Agent. The Customer is obliged to accept partial services of the Agent as partial performance.
- 7.2. In the event of default by the Customer, the Agent shall be entitled – without prejudice to any further claims and at the Agent’s free choice – to declare withdrawal from the Contract in full or in part either immediately or after granting a reasonable extension of no more than 14 days, or to insist on fulfilment of the contract and to suspend provision of their own obligations for as long as the Customer is in default.
- 7.3. The Agent is entitled to demand compensation (including missed earnings) in the event of withdrawal from the contract due to culpable default of the Customer, and to demand compensation for losses due to the delay if the contract is maintained.
- 7.4. Notwithstanding item 7.3., if the Agent chooses to withdraw from the contract in the event of culpable default of the Customer, the Agent continues to be entitled to demand a contractual penalty of 15% of the amount indicated in the order confirmation instead of the amount to be charged and otherwise to demand such penalty in addition to the amount to be charged in case of default. Irrespective of the above, the Agent can claim damages exceeding the contractual penalty; this rule shall also apply if the Agent has already accepted the delayed payment.
- 7.5. In the event of payment default by the Customer, 10% default interest per year shall be deemed as agreed.



- 7.6. In the event of payment default by the Customer and if requested by the Agent, the Customer shall be obliged to provide a suitable form of security for all outstanding claims including operating costs and interest, for example in the form of a bank guarantee, and the Agent shall be entitled to make use of any bank guarantee provided to the Agent in the past.
- 7.7. In the event of payment default by the Customer, the Agent shall be entitled to demand a lump sum of EUR 40.00 from the Customer for enforcement costs. The Agent can demand compensation for enforcement costs above this lump sum that the Agent incurred and were caused by the Customer, provided that such costs are appropriate in relation to the demanded amount.
- 7.8. In the event of delayed acceptance by the Customer, the Agent shall – without prejudice to any further claims – have the right to either store the goods on their own premises and charge a storage fee of 0.1% of the gross invoice amount per calendar day started, or to store the goods at an authorised commercial warehouse at the Customer's expense and risk.

## 8. Warranty

- 8.1. The Agent shall assume warranty pursuant to the provisions of §922 et. seq. of the Civil Code of Austria (ABGB) in consideration of the following points.
- 8.2. The Agent shall be liable for the expressly ensured properties only if these were assured to the Customer in writing before conclusion of the contract. Particular properties due to public statements (e.g. advertising) made by the Agent, manufacturer or distributor or based on samples or specimens shall therefore only be part of what is contractually owed if these are promised to the Customer in writing by the Agent.
- 8.3. The Agent's warranty obligations shall not apply for defects caused by the Customer. The Agent shall therefore not be liable for any defects (in particular regarding functionality or usability) that are caused due to instructions (e.g. design specifications, drawings, etc.) or materials (e.g. preliminary work, materials specifications etc.) provided by the Customer. Any duty of the Agent to cooperate or provide a warning shall be excluded.
- 8.4. The defect must exist at the time of handover (see item 8.5. below) and the Customer must provide proof of this.
- 8.5. The time of handover for goods is the time the risk is transferred to the Customer (see item 6.1.). For services provided by the Agent, the time of handover shall be the time the respective service is completed. If performed in multiple stages (partial performance), the time of completion of each stage (partial service) shall be deemed the time of handover (see item 6.2.).



- 8.6. At their discretion, the Agent reserves the right to fulfil warranty claims of the Customer through an improvement, replacement, price reduction or contract dissolution.
- 8.7. The Customer must inspect the delivered goods or rendered service immediately upon delivery or completion and provide immediate demonstrable notice of any defects to the Agent in writing. If the Customer fails to provide such notice of defects, the goods or service shall be deemed accepted. Failure to provide notice in time or in the correct form gives rise to the loss of entitlement to any warranty claims, compensation (in place of warranty) or due to misapprehension as to whether the object was free of defects.
- 8.8. The limitation period for the Customer's warranty rights shall be six months from handing over of the goods or completion of the service. This period will not be extended or interrupted by an (unsuccessful) attempt of the Agent to improve the goods or service.
- 8.9. Improvement or replacement of goods shall take place on the premises of the Agent. Improvement of services shall take place in the place the services were provided.
- 8.10. The Customer must bear the costs for transport, shipping and travel in the context of the improvement or replacement.
- 8.11. Any replaced parts of goods become the property of the Agent.

## 9. Liability exclusions

- 9.1. Any claims of the Customer for warranty, compensation or error, etc. shall be excluded for used goods.
- 9.2. Any claims of the Customer for warranty, compensation or error, etc. due to faulty installation instructions shall be excluded.
- 9.3. Any claims of the Customer for warranty, compensation or error, etc. shall be excluded once the Customer has defaulted.
- 9.4. Any claims of the Customer for warranty, compensation or error, etc. shall be excluded if the Customer, or a third party instructed by them, carries out any changes or (assumed) repairs etc. on the handed over goods or services of the Agent without the Agent's written approval. The same rule shall apply if the Customer fails to properly comply with their operator's duties described in the corresponding operating instructions provided by the Agent.
- 9.5. Any claims of the Customer against the Agent due to improvement measures taken (prematurely) by the Customer shall be excluded.
- 9.6. Rescission of the contract on the ground of laesio enormis shall be excluded to the disadvantage of the Customer.



## 10. Other forms of withdrawal from the contract and termination

- 10.1. The Agent has the right to withdraw from the contract with immediate effect at any time if important reasons apply.
- 10.2. If a continuing obligation is established with the contract for an unlimited period, it can be terminated by giving six months' notice to the last day of any calendar month.

## 11. Cancellation

- 11.1. The Customer has the right to withdraw from the contract without giving reasons by paying a forfeit of 40% of the agreed-upon price. The right of mitigation by court is excluded.
- 11.2. The Agent's right to assert additional damages shall remain unaffected.
- 11.3. The Agent reserves the right to withdraw from the contract without giving reasons if they compensate the Customer for any actual costs incurred due to such withdrawal. The Customer undertakes to bindingly inform the Agent about such costs by the Agent's request before the Agent withdraws from the contract.

## 12. Reverse transaction

- 12.1. In the case of (partial) withdrawal from the contract, the Customer undertakes to return the received goods to the Agent without delay or to pay market-oriented compensation (in view of the customary hourly rate) for the Agent's services.
- 12.2. In the case of (partial) withdrawal from the contract, the Customer is required to pay an adequate usage fee.
- 12.3. The Customer bears the risk of accidental loss of the goods to be returned until they have arrived with the Agent.
- 12.4. In the case of (partial) withdrawal from the contract, the Agent shall not owe a usage fee (interest).
- 12.5. The Customer shall pay for and is responsible for the delivery and transport costs and organisation of delivery of the goods to be returned to the Agent. The Customer must inform the Agent immediately in writing, and no later than within two weeks of termination of the contract.
- 12.6. The Customer bears the risk of accidental loss of the Customer's payment that is to be returned until it arrives with the Customer.



## 13. Compensation

- 13.1. The burden of proof for the existence of conditions that give rise to compensation obligations of the Agent is on the Customer.
- 13.2. The Agent's compensation obligations shall be limited to compensation for damage immediately attributable to the defect. Compensation for lost income, consequential damages, indirect damages and damages to third parties is excluded (due to the lack of predictability).
- 13.3. The Agent shall only be liable for any culpably caused material damage in cases of intent or gross negligence.
- 13.4. The Agent's compensation obligation shall be limited to the value of the order.
- 13.5. The Agent's compensation obligation becomes time-barred six months after the damage and the damaging party became detectable, and notwithstanding the above within four years of handing over the goods or of completing the respective services in the case of installation, commissioning, servicing and repair work, or of the respective stage (partial performance) in the case of performance in multiple stages (partial services).
- 13.6. Before connecting any IT products or installing computer programmes, the Customer is obliged to adequately secure the data that already exists on the computer system. The Agent shall not be liable for any loss of data and damage related to such loss.
- 13.7. In the event of a contract violation by the Customer, the Agent has the right to demand compensation based on the generally accepted standards or a contractual penalty of 15% of the amount indicated on the order confirmation. The Agent's right to assert additional damages beyond the contractual penalty shall remain unaffected.
- 13.8. In the case of a violation of third-party rights (in particular of intellectual property rights) that is attributable to the Customer, the Customer must indemnify the Agent and hold them harmless.

## 14. Product liability

- 14.1. Recourse claims of the Customer against the Agent in the spirit of §12 of Austrian product liability law (PHG, BGBl I 1988/99 as amended) are excluded.

## 15. Retention of title

- 15.1. The Agent retains ownership of the goods which are delivered by them until the full charge has been paid.



- 15.2. The Customer must fulfil any required form-related provisions for safeguarding the retention of ownership rights as far as such provisions apply based on the legislation of the state in which the Customer is based or to which the goods are to be delivered. If the Customer fails to do so within an adequate period of time, the Agent shall be entitled to do so at the Customer's expense. For this purpose, the Agent also has the right to enter the Customer's premises at any time, for example for marking goods.
- 15.3. If goods under reservation of title by the Agent are processed or inseparably combined, merged or mixed with items belonging to the Customer, the Agent shall acquire co-ownership in proportion to the value of the Agent's goods and the value of the processed or combined, merged or mixed items at the time of processing, combining, merging or mixing. Retention of title by the Agent will then also apply for the item that is created through processing, combining, merging or mixing.
- 15.4. The Customer shall not be authorised to dispose of the Agent's ownership of the goods for which the retention of title applies.
- 15.5. The Customer shall not be entitled to sell their expectant right to the goods for which the retention of title applies.
- 15.6. The Customer must inform the Agent without delay if the goods under retention of title are seized, confiscated or otherwise claimed by third parties. The Customer shall bear any intervention costs for enforcing the Agent's property rights.
- 15.7. In the event of authorised resale of the goods under retention of title, the Customer shall assign their claims from such a resale to the Agent to the amount still owed to the Agent. This rule shall also apply if the goods under retention of title were processed or inseparably combined, merged or mixed with items belonging to the Customer. The Customer undertakes to document such assignment of their claims in their accounts – as far as possible in the form of a (a priori) note on each new ledger sheet – to inform the third-party buyer about the assignment at the Agent's request and to name the third-party buyer to the Agent by request. Any claims against an insurer shall already be deemed assigned to us within the limits of §15 of the Austrian insurance contract law (VersVG, BGBl 1959/2, as amended).

## 16. Right of retention

- 16.1. The Customer's right of retention is excluded.

## 17. Offsetting

- 17.1. Any offsetting by the Customer against counter-claims is excluded.



## 18. Place of performance, governing law and place of jurisdiction

- 18.1. The place of performance is the corporate seat of the Agent.
- 18.2. Austrian law applies. The United Nations Convention on the International Sale of Goods (BGBI 1988/96, as amended) shall not apply.
- 18.3. The competent court in charge of commercial matters for the corporate seat of the Agent shall be agreed as the sole place of jurisdiction for any (legal) disputes that arise from or in connection with the contract. However, at their discretion, the Agent also has the right to take any claims from or in connection to the contract to any court that is factually and geographically responsible according to the relevant legal provisions of the state in which the Customer has their residential or business seat.

## 19. Address changes

- 19.1. The Customer undertakes to inform the Agent immediately of any changes to their residential or business address. If the Customer fails to provide such notification, any declarations by the Agent will be sent to the most recent residential or business address communicated by the Customer.

## 20. Copyright

- 20.1. All layouts, drawings, other technical documents, samples, catalogues, brochures, images and the like shall remain the intellectual property of the Agent at all times. The Customer does not receive any rights of use and exploitation.
- 20.2. Drawings and samples provided to the Agent by the Customer, including those that did not lead to an order, shall be available to the Agent for their use. The Agent reserves the right to destroy these on prior notice.

## 21. Data protection

- 21.1. Any processing of personal data (e.g. name, gender, date of birth, delivery and billing address, email address, phone number, data concerning creditworthiness) by the Agent will take place only in line with the applicable legal provisions, in particular the GDPR and the Austrian data protection act (DSG, BGBI 1999/165, as amended).



- 21.2. The Customer's data is only processed as far as this is necessary for fulfilling contractual or legal duties (art. 6 sect. 1 lit. b and c GDPR) if processing is required in the context of considerations for safeguarding legitimate interests of the Agent (e.g. in the case of consultation of and data exchange with credit agencies to determine creditworthiness and default risks) (art. 6 sect. 1 lit. f GDPR), or if the Customer has agreed to such processing (art. 6 sect. 1 lit. a GDPR).
- 21.3. The Customer can revoke such consent with effect for the future at any time.
- 21.4. If the corresponding conditions apply, the Customer has the right to information, correction, erasure, restriction, data portability, objection and complaint to the Austrian data protection authority.
- 21.5. Further information about data protection, in particular about the individual processing procedures, the duration of data storage, data recipients and technical and organisational measures is available to the Customer here: <https://www.merlin-technology.com/de/Datenschutz>. If requested by the Customer, the Agent will also mail the data protection information to them without delay.

## 22. Final provisions

- 22.1. Conclusion of, amendments and additions to the contract (including of a provision of these GTC) and any declarations in the context of handling the contract must be made in writing – unless it is provided by law that other formal requirements must be met. This rule shall also apply for the decision to depart from this written form requirement.
- 22.2. If a provision of the contract is not legally effective (including a provision of these GTC), this shall not affect the remaining parts of the contract (including these GTC) which will remain binding, and the Customer and Agent agree to replace the ineffective provision with a provision that is effective and comes as close as possible to the purpose of the ineffective provision. The same rule shall apply in case of any gaps in the contract.

