

GENERAL TERMS AND CONDITIONS OF mils electronic gesmbh & cokg

1. Scope and validity of contract

All contracts and agreements are only legally binding if they have been signed by the Contractor with the company's name and only obligate the Contractor within the scope agreed upon in the acceptance of order. The Customer's conditions of purchase are therefore excluded from the legal transaction in hand and from this entire business relationship. In principle, offers are without engagement.

2. Performance and examination

2.1. The subject matter of an order can be:

- The delivery of hardware, spare parts, entire systems comprising hardware and software, standard software products, mils software products
- Training for operating personnel
- Consulting over the telephone
- Maintenance agreements
- Other services

2.2. By ordering hardware and software products, the Customer acknowledges the scope of the performances of the products ordered.

2.3. Should the Contractor establish in the course of his activities that there is either an absolute or legal impossibility to complete the contract, he must notify the Customer immediately. If the impossibility of completion is due to the default of the Customer or to subsequent alterations to the performance description by the Customer, the Contractor is entitled to cancel the contract. The costs and expenses incurred by the Contractor for his activities up to this point in time must be settled by the Customer.

2.4. Dispatch is to proceed at the Customer's own cost and risk if no other written agreement has been concluded. An insurance shall only be taken out at the Customer's request.

3. Prices, taxes and charges

3.1. All prices are in EURO without VAT if no other currency is stated. They only apply to the contract in hand. The prices are ex Contractor's premises.

3.2. The prices for standard software products are those applicable on the day of delivery. The charges for all other services (programming, training, consulting over the telephone, repairs, etc.) shall be calculated according to the fees applicable on the day the performance is completed. Additional working hours which have not been included in the contract price, at no fault of the Contractor, shall be charged according to actual expense.

3.3. Travel expenses and daily and nightly expense allowances shall be charged separately according to the rates applicable. Travel times are deemed to be working hours.

3.4. Unforeseeable changes to border taxes and charges on imports and exports and currency imparities entitle the Contractor to adapt prices correspondingly.

4. Date of delivery

4.1. The Contractor shall do his utmost to meet the completion deadline.

4.2. The completion deadline can only be met if the Customer completes all the work, provides all the documentation necessary to this end and fulfils his duty to co-operate. See article 10.

Delays in delivery and increases in costs which have been caused by incorrect or incomplete information or subsequent alterations to documentation provided by the Customer are not the Contractor's responsibility and shall not be deemed to be default of delivery. The additional costs caused must be settled by the Customer.

4.3. As regards orders which comprise several units or programs, the Contractor is entitled to complete part deliveries and make out partial invoices.

4.4. The delivery data supplied by the Contractor erely serve as estimates. Delivery periods start from the date of acceptance of order. If a binding date of delivery is required, this must be arranged separately in writing. Performance by successive instalments is admissible within reasonable scope and can be invoiced separately.

The Contractor is only in default of delivery if the Customer has called upon the Contractor in writing to complete delivery within a reasonable extension of the delivery period.

4.5. If the Contractor is prevented from effecting delivery on time due to force majeure or other unforeseeable circumstances which were not the Contractor's fault, e.g. amendments to legal regulations and licensing procedure, national unrest, breakdowns, strikes, lockouts, the failure or delay of suppliers or subcontractors to deliver, then the delivery period shall be extended by the length of time required to overcome the impediment and by a reasonable start-up period. If such circumstances make delivery impossible or unacceptable, the Contractor can be released from his delivery obligations.

4.6. The damage caused by default of delivery is restricted to 5 % of the net contract price of the deliveries and performances which have been delayed.

5. Payment

5.1. The invoices including VAT made out by the Contractor are to be settled according to the terms of payment without any deductions and free of expense. The terms of payment agreed upon for the entire contract shall also apply to partial invoices.

5.2. As regards orders which comprise several units, the Contractor is entitled to make out an invoice after the delivery of each individual unit or performance.

5.3. Adherence to the terms of payment agreed upon is a fundamental prerequisite for the execution of delivery and/or completion of contract by the Contractor. Non-adherence to the terms of payment entitles the Contractor to discontinue work and cancel the contract. All costs incurred and loss of profit shall be borne by the Customer.

In the event of default in payment, interest shall be charged according to customary bank rates. If the Customer fails to settle two part payments, the Contractor is entitled to claim default in payment and accelerate the maturity of any outstanding payments as well as accepted bills of exchange.

5.4. The Customer is not entitled to withhold payments on the grounds of the incompleteness of total delivery, claims under a warranty or guaranty or on the grounds of defects. An avoidance with counterclaims is excluded.

5.5. In the event of default in payment, the Contractor is entitled to take the Customer's assets in pledge.

5.6. The Customer is obligated to pay all reminder and collecting charges as well as costs accrued in preparation of proceedings.

6. Reservation of ownership, copyright and use

- 6.1. The Contractor shall remain the owner of all the products and performances he supplies until the total sum due from this business transaction has been settled.
- 6.2. The Customer administers the products and performances he has purchased under the reservation of ownership in a fiduciary capacity until the Contractor's reservation of ownership has expired. Thus the Customer must notify the Contractor immediately of any encumbrance (e.g. pledge, transfer of property by way of security, etc.) of the products, of imminent or pending insolvency procedure with regard to his assets, or the legal claims of third parties to the products supplied under the reservation of ownership. Simultaneously, the Customer is obligated to inform anyone who puts forth a claim to these products of the Contractor's reservation of ownership. The Customer and his legal successor (administrator of bankrupt's estate) are obligated to return the products immediately upon the Contractor's request. Taking back the products does not, however, mean that the Contractor has cancelled the contract. The Contractor can therefore still claim for damages due to failure of performance.
- 6.3. All copyrights for the performances agreed upon (programs, documentation, etc.) are held by the Contractor and his licensors. Once the Customer has paid the charge agreed upon for the software, he is entitled to use it for his own purposes and within the framework of the number of licences he has purchased only. The contract in hand only entitles the Customer to the use of the software. Distribution through the Customer is not permitted in compliance with the copyright law. The Customer's participation in the production and development of the software does not give him any additional rights of usage as stipulated by this contract. Any infringement of the Contractor's copyright shall lead to claims for damages in which case the Customer shall indemnify the Contractor in full. Customisation of Hard- / Software, including local languages, has to be implemented by the Contractor within doors of Contractor.
- 6.4. The Customer is allowed to make copies for keeping on file and for securing data on the condition that this is not expressly forbidden by the licensor or a third party in the software, and that all comments on copyrights and ownership are also maintained in the copies.

7. Right to rescind a contract

- 7.1. In the event of default of delivery due to the sole fault or wrong of the Contractor, the Customer is entitled to rescind the contract by means of a registered letter if the essential contents of the performance agreed upon have not been completed within a reasonable period of grace and the Customer himself is not at all responsible for this default.
- 7.2. Force majeure, labour disputes, natural disasters, transport stoppages and other circumstances which lie beyond the Contractor's control release the Contractor from his delivery obligations and/or allow the Contractor to set a new delivery deadline. This particularly applies in the event that authorities fail to grant export authorisation (see article 10).
- 7.3. Cancellation by the Customer is only possible with the written consent of the Contractor. If the Contractor agrees to cancellation, he is entitled to a cancellation charge of 30 % of the contract value of the entire project which has not yet been invoiced in addition to the charge for performances and costs which have been incurred up to this point in time.

8. Warranty, notice of defects, limitation

- 8.1. The notice of defects is only valid if it applies to reproducible defects and if these defects are documented in writing within the period agreed after receipt of products or performances. If complaints are justified, the defects shall be remedied within a reasonable period. The Customer must, however, ensure that the Contractor is able to take all the measures needed to investigate the matter and rectify the defect. The defect can be remedied through rework or substitute delivery (as requested by the Customer).
- 8.2. A component which was defective before delivery but not immediately noticed (latent defect) must be reported to the Contractor upon discovery without delay, within 4 weeks at the latest.
- 8.3. If the Customer does not comply with the above mentioned duty to examine and obligation to give notice of defect on receipt of goods, or fails to do so before the deadline expires, his rights of claim with regard to defects, wrong quantities, etc. shall be invalidated.
- 8.4. Furthermore, the Contractor shall assume no liability for faults, malfunctions and damages caused by misuse, improper installation, alterations or processing, the use of unsuitable organisational means and data media, if these are stipulated, abnormal operating conditions (particularly deviations from installation and storage conditions) and damage through transportation.
- 8.5. The Contractor shall not furnish a guaranty for programs which have been modified at a later date by the Customer's own programmers or by a third party.
- 8.6. If the subject matter of this contract is to modify or upgrade an already existing program, then the guaranty covers modifying and upgrading. The guaranty on the original program is not, however, renewed.
- 8.7. The Contractor can cede the warranty claims it has for parts provided by suppliers to the Customer and refer the Customer to the supplier with regard to guaranties.
- 8.8. All claims due to or in connection with defects cease to be enforceable 12 months after the delivery of products.
- 8.9. Warranty claims made against the Contractor cannot be ceded and have to be asserted by the Customer.

9. Liability

- 9.1. If not otherwise expressly stated in these General Terms and Conditions, any claims for damages, especially for consequential damages or an unlawful act, are excluded. This also applies to claims made against the Contractor's employees. Liability for gross negligence, warranted qualities and liability according to the Product Liability Act remain, however, unaffected.

10. Export regulations

In general, the products and performances of mils electronic need an export license to be exported from Austria. For this reason, the Customer must either fill in and sign (or have signed) an end user certificate or submit an import certificate signed by the relevant authorities of the country of final destination.

Delivery periods (see article 4) for exports therefore start from the certificate's date of issue.

11. Miscellaneous

Should individual terms of this contract be or become partly or entirely ineffective, the remaining contents of the contract shall be unaffected. The parties to the contract shall co-operate in the manner of a partnership in order to try to reach a settlement, the contents of which shall come as close as possible to these ineffective terms.

12. Final provisions

If not otherwise stipulated, the legal provisions which fully qualified merchants are subject to according to Austrian law shall be applied even if the contract is concluded abroad. Any disputes shall be settled by the court having jurisdiction as to the subject matter at the Contractor's principal place of business.