

## General Terms and Conditions

of the

### Merkle CAE Solutions GmbH

Engineering office for simulation  
and development

Friedrichstraße 1, 89518 Heidenheim

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#### 1. scope of application

**1.1** These General Terms and Conditions (GTC) apply to all our business relationships with our customers. The General Terms and Conditions shall only apply if the customer is an entrepreneur (Section 14 BGB), a legal entity under public law or a special fund under public law within the meaning of Section 310 (1) BGB.

**1.2** Our General Terms and Conditions apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the customer shall only become part of the contract if and to the extent that we have expressly agreed to their validity. This requirement of consent shall also apply if the customer refers to its own general terms and conditions in the order and we have not expressly objected to the customer's general terms and conditions.

**1.3** These General Terms and Conditions apply to contracts for engineering services offered by us. Unless otherwise agreed, the General Terms and Conditions shall also apply in the version valid at the time of the customer's order or in the version last communicated to him in text form as a framework agreement for similar future contracts, without us having to refer to them again on a case-by-case basis.

**1.4** Individual agreements made with the customer in individual cases (including collateral agreements, supplements and amendments) and information in our order confirmation shall take precedence over these General Terms and Conditions. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

**1.5** Legally relevant declarations and notifications by the customer with regard to the contract (e.g. notifications of defects, deadlines, withdrawal or reduction) must be made in writing, i.e. in written and text form (e.g. letter, e-mail, fax). Further statutory formal requirements and further evidence (if necessary in case of doubt about the legitimacy of the declaring party) remain unaffected.

**1.6** If references are made to the validity of statutory provisions, it should be noted that these are only of clarifying significance. The statutory provisions shall apply - even if no corresponding clarification has been made - to the extent that they are not amended or excluded by the General Terms and Conditions.

#### 2. offer and conclusion of contract

**2.1** Our offers are subject to change and non-binding. This shall also apply if we have provided the customer with technical documentation (e.g. drawings, plans, calculations, costings, references to DIN standards) and other product descriptions or documents (including in electronic form). We reserve ownership rights to all documents provided to the customer in connection with the order placement. These documents may not be made accessible to third parties unless we give the customer our express written consent to do so.

**2.2** An order placed by the customer with reference to a non-binding offer made by us constitutes a binding contractual offer in accordance with Section 145 BGB. In the event that nothing to the contrary results from the order, we shall be entitled to accept this contractual offer within two weeks of its receipt by us.

**2.3** Acceptance of the customer's contractual offer shall be declared by us in writing, i.e. in written and text form (e.g. letter, e-mail, fax) by means of an order confirmation. The contract is concluded upon receipt of the order confirmation by the customer. In the event that we do not accept the customer's offer within the period specified in section 2.2, the documents sent by us to the customer must be returned to us immediately.

#### 3. obligation of the customer to cooperate

**3.1** The customer shall provide us with the information and documents required for the proper and professional provision of the service. The customer must also inform us of any special risks that may arise for us or our employees due to the nature of the respective project.

**3.2** If the customer does not fulfill its obligation to cooperate in accordance with Section 3.1, we may request the customer to cooperate by setting a reasonable grace period. If the customer nevertheless fails to comply with his obligation to cooperate, we shall be entitled to withdraw from the contract and to demand compensation from the customer for the expenses incurred up to that point.

#### 4. acceptance obligation

**4.1** Pursuant to § 640 BGB, the customer is obliged to accept the service provided by us in accordance with the contract. Acceptance cannot be refused due to insignificant defects.

**4.2** Our service shall be deemed to have been accepted if we have set the customer a reasonable deadline for acceptance after the service has been provided and the customer has not refused to accept the service within this deadline, stating at least one defect.

#### 4. rights of use

**4.1** We would like to point out that our services may be protected by copyright or otherwise legally protected. If this is the case, we grant the customer a non-exclusive, non-transferable right of use to the service, unlimited in terms of time and space.

**4.2** The remuneration for granting the rights of use in accordance with section 4.1 is included in the remuneration agreed for the service.

#### 5. confidentiality

We ourselves and the customer are obliged to maintain confidentiality vis-à-vis third parties about what is designated as confidential by the other contracting party during the preparation and execution of the contract or what is obviously confidential.

#### 6 Prices and payment agreements

**6.1** Our offers generally contain fixed prices. Unless otherwise agreed in writing in individual cases, our current prices at the time of conclusion of the contract shall apply, plus statutory VAT.

**6.2** Payments must be made exclusively to the account specified on our invoices. The deduction of a cash discount is only permitted with a special written agreement.

**6.3** Unless otherwise agreed, payments are due within fourteen days of acceptance of the service and receipt of the invoice issued by us.

**6.4** The customer shall be in default if the above payment period expires. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate in accordance with Section 288 (2) BGB at a rate of nine percentage points above the respective base interest rate. We reserve the right to assert further claims for damages caused by default. Our claim against merchants for commercial maturity interest in accordance with § 353 HGB remains unaffected.

**6.5** If it is foreseeable after conclusion of the contract that our payment claim is at risk due to the customer's inability to pay (e.g. due to an application for the opening of

insolvency proceedings), we are entitled to refuse performance in accordance with the statutory provisions and, if necessary after setting a deadline, to withdraw from the contract (Section 321 BGB). The statutory provisions on the dispensability of setting a deadline shall remain unaffected in this respect.

## 7. rights of retention

The customer shall only be entitled to set-off or retention rights in the event that his claim has been legally established or is undisputed and his counterclaim is based on the same contractual relationship. In the event that defects occur during the provision of the service, the customer's counter-claims, in particular in accordance with Section 9 of these General Terms and Conditions, shall remain unaffected.

## 8. delivery date and delay in delivery

**8.1** The delivery date shall be agreed individually or communicated in our offer and confirmed in the order confirmation upon acceptance of the order. It is generally calculated from the start of the project and the duration of the project.

**8.2** In the event that we are unable to meet contractually agreed delivery dates for reasons for which we are not responsible, we shall inform the customer of this circumstance without delay and at the same time notify the customer of the expected or new delivery dates. If a delayed delivery cannot be made even on the newly announced delivery date, we shall be entitled to withdraw from the contract in whole or in part. In this case, we shall immediately reimburse any consideration already paid by the customer.

**8.3** Whether there is a delay in delivery shall be determined in accordance with the statutory provisions. However, the prerequisite for a delay in delivery is a reminder from the customer.

**8.4** The rights of the customer pursuant to Section 9 of these General Terms and Conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

## 9. claims for defects of the customer

**9.1** The statutory provisions shall apply to the customer's rights in the event of material defects and defects of title, unless otherwise specified below. This shall not affect the customer's rights arising from separately issued guarantees.

**9.2** Agreements that we have made with customers regarding the quality and intended use of the service regularly form the

basis of our liability for defects under the warranty. A quality agreement includes all service descriptions that are the subject of the individual contract. In the event that no quality has been agreed, it shall be assessed in accordance with the provision of Section 633 (2) sentence 2 BGB whether a defect exists.

**9.3** If the customer accepts a defective work in accordance with clause 9.2 although he is aware of the defect, he shall only be entitled to the rights specified in § 634 nos. 1 to 3 in accordance with § 640 para. 3 BGB if he reserves his rights due to the defect at the time of acceptance.

**9.4** If the service is defective, we shall be entitled to choose whether we provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free work (subsequent delivery). In the event that the type of subsequent performance chosen by us is unreasonable for the customer in the individual case, the customer may refuse it. However, we reserve the right to refuse subsequent performance under the statutory conditions.

**9.5** The customer shall grant us the necessary time and opportunity for the subsequent performance to be rendered.

**9.6** We may demand reimbursement from the customer for costs incurred due to an unjustified request to remedy a defect in the event that the customer knew or could have recognized that there was in fact no defect.

**9.7** The customer has the right to remedy the defect himself and to demand reimbursement of the expenses objectively necessary for this if there is an urgent case (e.g. to prevent disproportionate damage). The customer must inform us immediately in the event of self-remedy.

**9.8** The customer may withdraw from the contract or reduce the purchase price in accordance with the statutory provisions if a deadline to be set by the customer for subsequent performance has expired unsuccessfully or is dispensable in accordance with the statutory provisions. In the event of a minor defect, however, the customer shall not be entitled to withdraw from the contract.

**9.9** Even in the event of a defect, claims for damages or claims for reimbursement of futile expenses on the part of the customer (Section 284 BGB) shall only exist in accordance with Section 10 and Section 11.

## 10. statute of limitations

**10.1** The general limitation period for claims resulting from material defects or defects of title is one year from acceptance, in deviation from Section 634 (1) No. 1 BGB.

**10.2** In accordance with the statutory provisions, the limitation period is 5 years from acceptance (Section 634 (1) No. 2 BGB) in the event that the service is a building or a work whose success consists in the provision of planning or monitoring services for this.

**10.3** The above limitation periods of the law on contracts for work and services shall also apply to contractual and non-contractual claims for damages by the customer that are based on a defect in the service, unless the application of the regular statutory limitation period pursuant to Sections 195, 199 BGB would lead to a shorter limitation period in individual cases. Claims for damages by the customer in accordance with sections 11.1 and 11.2.a) as well as those in accordance with the Product Liability Act shall lapse exclusively in accordance with the statutory limitation periods.

## 11 Other liability

**11.1** Unless otherwise stated in these General Terms and Conditions, including the following provisions, we shall be liable for breaches of contractual and non-contractual obligations in accordance with the statutory provisions.

**11.2** Within the scope of fault-based liability, we shall be liable for damages, irrespective of the legal grounds, only in the event of intent and gross negligence. In the event of simple negligence, we shall only be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty):

a) for damages resulting from injury to life, limb or health,

b) for damages resulting from the breach of an essential contractual obligation (obligations whose fulfillment is essential for the proper execution of the contract and on whose compliance the contractual partner relies and may also rely). In this case, however, our liability shall be limited to compensation for foreseeable, typically occurring damage.

**11.3** The limitations of liability arising in accordance with clause 11.2 shall also apply to third parties and in the event of breaches of duty by persons whose fault we are responsible for in accordance with statutory provisions. Insofar as a defect has been fraudulently concealed and/or a guarantee has been assumed, the limitations of liability shall not apply. This also applies to claims of the customer under the Product Liability Act.

**11.4** The customer may only withdraw from or terminate the contract due to a breach of

duty that does not result from a defect if we are responsible for the breach of duty.

**12 Choice of law and place of jurisdiction**

**12.1** These General Terms and Conditions and the contractual relationship between us and the customer shall be governed by the law of the Federal Republic of Germany, excluding the conflict of laws rules of private international law and the UN Convention on Contracts for the International Sale of Goods.

**12.2** If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, our registered office in 89518 Heidenheim/Germany shall be the exclusive, and also international, place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same applies if the customer is an entrepreneur within the meaning of § 14 BGB.

**12.3** In addition, we are entitled to bring an action at the place of performance in accordance with these General Terms and Conditions or an overriding individual agreement or at the customer's general place of jurisdiction. This shall not affect overriding statutory provisions (exclusive places of jurisdiction).