

## **General Terms and Conditions of HAVER ENGINEERING GmbH (Version 11/2019)**

### **I. General provisions**

1. The Terms and Conditions stated hereinafter apply to all orders placed to HAVER ENGINEERING GmbH (hereinafter referred to as "HEM" or "Contractor") concerning rendering of engineering work or services (hereinafter referred to as "Service").
2. General Terms and Conditions of the client (hereinafter referred to as the „Company“) shall not apply, even if the Contractor does not separately object to their validity in individual cases. Even if the Contractor refers to a letter that contains or refers to General Terms and Conditions of the Company, this does not constitute an acceptance of the validity of these terms and conditions.
3. These General Terms and Conditions only apply to business persons.

### **II. Type and scope of engineering services**

1. The special type and scope of the Service which the Contractor has to provide are finally specified in the offer of the Contractor (if accepted by the Company) or in the order (if accepted by the Contractor).
2. At the request of the Company, the Contractor is willing to provide additional Services. Before inclusion, the type and scope of the additional Services shall be mutually agreed upon and fixed in writing by the Company and the Contractor. Delays resulting from negotiations and/or performance of the additional Services shall be added to the contractual dates to be observed by the Contractor.
3. The Company is obliged to support the Contractor in the fulfillment of the contract by providing him with all necessary materials/documents free of charge upon request. The Company is responsible for providing the Contractor with any necessary information regarding the Service within a reasonable period of time in order to perform the Service in accordance with the contract.
4. The Contractor reserves the ownership and copyrights to samples, cost estimates, drawings and similar information of physical and non-physical nature - including in electronic form; they may not be made accessible to third parties.
5. Unless otherwise agreed, the provision of the Service takes place on the basis of the EN standards valid at the time of effective date of the respective contract. For the EN standards which are not yet available, the corresponding German rules of technology, e.g. standards according to DIN and/or VDE apply.
6. The Contractor undertakes, when agreed, to create a written report after completion of the Services and submit this to the Company in a single copy. The Parties will establish an individual regulation regarding the means of submission of the report (post, email, etc.).

### **III. Remuneration and payment**

1. All Services are invoiced as agreed according to the terms and conditions of the respective contract.
2. Unless otherwise agreed, the Company shall pay the contractually established price without deduction within 30 days of receipt of respective invoice.
3. Payments shall only be made by bank transfer.
4. Value-added tax in the applicable legal amount is added to the prices.
5. The Company has only the right to the retention of payments insofar as its counterclaims are undisputed or have been ascertained as legally binding.
6. The Company has only the right to offset with counterclaims insofar as they are undisputed or have been ascertained as legally binding.

### **IV. Obligations to cooperate on the part of the Company**

1. The Company shall provide the Contractor with all information and data required for the performance of the Service in a timely unsolicited manner. The Company shall also grant the Contractor access at any time to any already existing plants (components), if this is necessary or appropriate for the provision of the Service.
2. The Company shall appoint a contact person who is available for necessary information and takes decisions or to have these decisions made without delay.
3. The Company is obliged to immediately inspect and accept the Service, unless material defects are evident. The acceptance shall be deemed to have taken place within 4 weeks after completion or notification of completion of the Service at the latest. This does not apply if there are material defects the Company has notified in writing.

### **V. Contractual Dates**

1. Contractual dates shall be determined in writing between the Company and the Contractor.
2. The observance of an agreed time schedule assumes that the Company duly fulfills its obligations of cooperation, i.e. that the Contractor obtains all necessary and, in particular, any documents, permits, data, specifications, approvals, down payments etc. to be provided by the Company in such a timely manner that the Contractor can fulfill his contractual obligations without delay. Otherwise, the agreed contractual dates shall be extended by these delay times. Additional costs incurred due to delays shall be reimbursed by the Company to the Contractor after corresponding evidence by the Contractor.
3. If the Company incurs damages due to the non-compliance of the Contractor with the deadline for the completion of the Service for reasons the Contractor is responsible for, the Company may be entitled to claim for liquidated damages for delay at a rate of 0,5 % for each full week of delay in total, however, maximal limited to 5 % of the proportionate contract price for the Service, which cannot be used for the intended purpose as a result of the delay.

4. If the Company grants the Contractor - taking into account the statutory exceptions - a reasonable period of time for the Service after the due date and the deadline is not observed, the Company shall be authorized to terminate the contract within the framework of the statutory provisions.
5. Further rights and claims resulting from delay are excluded or limited according to clause VII. of these Terms and Conditions.

## **VI. Warranty**

1. The Contractor has to provide his Services free of material and legal defects. In case of material and/or legal defects, the relevant legal provisions of the Swiss Civil Code (Code of Obligations) shall apply unless otherwise agreed hereinafter.
2. The Contractor shall be liable for defects in the Service in accordance with the legal provisions in such a way that he repairs or replaces his Engineering Service proven to be defective at his own discretion at his own expense. The detection of such defects is to be notified to the Contractor in writing without delay.
3. The Contractor shall not be liable if the defect is irrelevant for the interests of the Company or is based on circumstances for which the Company is to be held responsible.
4. In the event of improper modifications undertaken by the Company or third parties without the prior approval of the Contractor, Contractor's liability shall be excluded for the consequences resulting therefrom.
5. In case of a justified complaint, the Contractor shall bear the costs necessary to remedy the defect, insofar as no unreasonable burden for the Contractor arises thereby.
6. Only in urgent cases that endanger operational safety and to prevent unreasonably high damages, whereby the Contractor is to be informed without delay, or if the Contractor - taking into account the statutory exceptions - fails to meet the reasonable deadline set to him for remedy of the defect, the Company shall be entitled within the framework of the statutory provisions to remedy the defect itself or to have the defect remedied by a third party and to demand reimbursement of the necessary expenses from the Contractor.
7. If the Contractor - taking into account the statutory exceptions - fails to meet the reasonable deadline set to him for remedy of the defect, the Company shall also be entitled within the framework of the statutory provisions to a right of reduction in the contractual price. Only if the Service is proven not to be of interest for the Company despite the reduction in the contractual price, the Company may terminate the contract.
8. Further rights and claims are exclusively based on clause VII. of these Terms and Conditions.

## **VII. Limitation of Liability**

1. The Contractor shall be liable for breaches of duty in the performance of the contract exclusively in accordance with the provisions of these Terms and Conditions. This shall not apply to damages resulting from injury to life and limb; Statutory entitlements apply in this regard.
2. Notwithstanding anything to the contrary, there shall be no liability for the Contractor towards the Client, for whatever legal reason, for loss of production or business interruption, loss of profit, loss of use, loss of contracts or for any consequential or indirect loss whatsoever.
3. The Contractor's maximum liability, for whatever legal reason, will not exceed 100% (one-hundred percent) of the price (net).
4. This limitation of liability does not apply in case of intent or gross negligence or insofar mandatory law provides otherwise (e.g. under the Product Liability Act).

## **VIII. Limitation of Actions**

All claims of the Company – for whatever legal reason – shall become statute-barred in 12 months.

## **IX. Force Majeure**

1. If the non-fulfillment in whole or in part of the contract is due to force majeure such as mobilization, war, weather conditions, riots or other events that cannot reasonable be avoided, such as strike or lockouts, the Contractor shall be entitled to adjust the agreed deadlines.
2. Should the effects of such events last more than 30 working days in total, the Company is obligated at Contractor's request to declare within a reasonable period of time as to whether it terminates the contract due to delay or insists on performance. In case of a continuation of more than 30 working days, the Company may terminate the contract.
3. Should such events significantly change the economic importance or the content of the Service or have significant effect on Contractor's operation, the contract shall be adjusted appropriately in good faith. Insofar as an adjustment is economically unreasonable for the Contractor or an agreement on the adjustment cannot be reached, the Contractor has the right to terminate the contract.

## **X. Right of Use and Confidentiality**

1. The Parties hereby grant each other the right to use existing knowledge, experience, property rights and inventions (hereinafter "Prior Knowledge") belonging to the other party free of charge within the framework of the participation in the fulfillment of the contract.
2. The Contractor and the Company will treat the information obtained within the framework of this contract, in particular all commercial and technical information, whether oral or embodied by documents, as trade secrets and accordingly confidential. The organs, employees and vicarious agents and assistants of the contractual parties are to be obligated accordingly. The obligation of confidentiality shall not apply or end if and to the extent that the Contractor or the Company provides evidence that the information in question will become generally known without own fault, has been rightfully received from third parties, must be presented in legal proceedings or was already generally known at the time of its disclosure. The right of the

Contractor and the Company to the disclosure of information received within the framework of this contract to third parties is subject to the respective approval of the other contractual party and third party to be obligated to maintain confidentiality. The Contractor and the Company shall refuse approval only for important reason. In terms of this provision third parties shall not mean: employees of the Contractor and the Company as well as their vicarious agents and assistants, licensing authorities and official experts. However, such persons are to be obligated to maintain confidentiality in accordance with the above provisions.

#### **XI. Final Provisions**

1. Amendments and additions to this contract must be made in writing. This also applies to any waiver of the written form requirement.
2. Any kind of assignment of rights and obligations arising out of this contract to third parties as well as changes thereof shall be deemed null and void, unless agreed and confirmed in writing by both contractual parties.
3. In case any provision of this contract should be void or become invalid, this shall have no effect on the validity of the remaining provisions. In this case a provision which is closest to the legal and economic purpose of the invalid provision is deemed as agreed between the parties. Should these Terms and Conditions contain a gap, a provision is deemed to be agreed, the parties would have been agreed according to the meaning and purpose of the contract if they had considered the gap in advance
4. In addition to these provisions the substantive law of Switzerland shall apply to all legal relationships between the Company and the Contractor.
5. The Parties will endeavour that any dispute or difference which may arise from or in connection with the contract will be settled amicably and in mutual agreement. Should a mutual agreement not be possible, any dispute or difference arising out of or in connection with the contract or its validity shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by an Arbitration Tribunal of three Arbitrators nominated according to these rules. The arbitration tribunal shall meet in Zurich/Switzerland. The language for arbitration proceedings shall be English. The decision of the Arbitration Tribunal shall be binding for both Parties.