
GENERAL TERMS AND CONDITIONS FOR SERVICES AND WORK PERFORMANCE

01.01.2015



CONTENTS

Scope	3
Object of Contract	3
Offer and Conclusion of Contract.....	3
Acceptance	4
Prices and Terms of Payment	4
Services	6
Warranty.....	7
Liability for Damages.....	7
Confidentiality.....	8
Ownership and Use Rights	8
Cancellation.....	9
Expiration.....	10
Concluding Provision.....	10

SCOPE

1. These general terms and conditions of the MHP Solution Group govern the completion of work and services by MHP or a company of the MHP Solution Group (MHP in the following). These terms and conditions apply exclusively. Deviating or contrary terms and conditions will not be recognised to the extent that MHP does not expressly agree to them in writing.
2. These general terms and conditions apply only to companies, legal persons under public law or public law special estates in the sense of § 310 Para. 1 BGB.
3. These general terms and conditions also apply for all future transactions between the parties as well as when MHP performs services in awareness of deviating or contrary terms and conditions.

OBJECT OF CONTRACT

1. The object of contract is the supervision, management, development, updating and controlling of performance of services (work performance) as well as providing the training, consulting, maintenance and support for customers (services).
2. Update will be carried out in such a way that there is a smooth connection with the existing MHP software package used by the customer.
3. MHP assumes responsibility for maintenance for the software products listed in the order confirmation under the point "Maintenance". Maintenance encompasses the remediation of defects and faults in the written program specification. MHP will then provide the customer with a cleaned version (update, patches) – assuming that the customer has sent MHP all of the required information and documentation of faults that are required for fault clearance, the fault is reproduceable and the customer –to the extent required- provides access to the IT system and the affected programs. It is also possible to set up remote monitoring. MHP delivers in each case the newest version (release) of the software product in question and the installation instructions. Maintenance refers only to the current version of the software. New version can have different functionalities.
4. The following maintenance services will be billed separately according to the price list in effect at the time that the order is issued. And will not be included in the point "maintenance" in the order confirmation:
 - Analysis and remediation of faults that arise from improper handling, incorrect operation of the software product, hardware or operating system defects and malfunctions.
 - Training and instructing the customer.
 - Any travel costs and expenses involved in trips that become necessary in connection with the installation of new releases or trouble-shooting at the customer's premises.
 - Adjustments of the newest version to the customer's individual modules or programs that were modified for the customer; to the extent that this service is not included in the order confirmation in written form.
5. During regular business hours, MHP's hotline will facilitate free assistance in the diagnosis and clearance of faults in the software that is the object of this contract.

OFFER AND CONCLUSION OF CONTRACT

1. A contract is established with the signing of an "order" or "order form" by the customer and the confirmation of order by MHP. The date of the order confirmation will be deemed the date on which the contract takes effect.

2. The customer's order constitutes a binding offer that MHP can accept within two weeks by sending an order confirmation or by sending the good. The "order form" includes the "description of services", the terms of performance, the performance characteristics of a work as well as information about the parts, programs and other products used.
3. Solely definitive for the legal relationship between MHP and the customer are the provisions of the order confirmation including the general terms and conditions, as well as any special contracts/applicable GTCs/other contract conditions concluded that go beyond these.
4. The customer will receive on making the first order the GTCs for performing work and services which will be in force for all subsequent orders. The customer can make subsequent orders for services up to an amount of EUR 5,000.00 without using a form, either in writing or orally.
5. Oral side-agreements to the order are only binding if they are confirmed in writing. This also applies to subsequent changes and amendments. Each contracting partner can request in written form changes to the agreed-upon scope of performance from the other contracting partner.
6. If a change request from the customer requires extensive review, this will be agreed upon separately. The time and cost required for this review can be billed by MHP. The modifications of the agreed upon terms of contract required for a review and/or amendment will be set down in writing in an additional change agreement or an additional order form and will take effect in accord with the contract.
7. The risk for errors in communication in the framework of oral orders will be borne by the customer.
8. A maintenance contract between the parties begins with the delivery of the software and remains in effect indefinitely.
9. To the extent necessary and relevant other responsibilities of the contracting partners will be listed in the order form.
10. MHP can transfer contracts to any other company in the MHP Group. Additionally, any assignment of rights or transfer of obligations from a contract requires the prior written consent of the customer and MHP. Consent may not be refused arbitrarily.
11. Before a contracting party initiates legal action for failure to fulfil a condition of contract, the other party must be granted a reasonable grace period to fulfil that obligation.

ACCEPTANCE

1. On acceptance the customer approves the contractually fulfilled obligation as essentially conforming to the contract.
2. In the case of work performed, MHP will demonstrate to the customer the fulfilment of the performance criteria according to specified acceptance criteria and test data and test scenarios to be provided by the customer in an acceptance test. This test will be completed by the end date to the extent agreed on in the order form. MHP will notify the customer of the deadline for the specific final acceptance and transfer of the ordered programs as soon as the programs have been run once without fault on the agreed-upon system using appropriate input data provided by the customer.
3. The customer will accept the work performed without delay after a successful acceptance test and/or contractual hand-over.
4. Insignificant deviations from the agreed-upon performance characteristics and acceptance criteria do not entitle the customer to refuse acceptance.

PRICES AND TERMS OF PAYMENT

1. The prices apply to the scope of service and deliveries listed in the order confirmation and according to the price list in force at the time the contract is concluded.
2. Work and service performance will be billed at the fixed price listed in the order form or on a time-and-materials basis after the completion and/or acceptance of the services to the extent that another method of billing is not agreed-upon in the order form.
3. In the case of work and service performance billed on a time-and-materials, the accumulated work and travel time will be billed at the respective billing rates in effect for the performance period as well as any parts used. Other services including lodging and travel costs will be billed additionally at the price list in effect at the time that the performance was carried out. Billing will be completed at the end of the month.
4. The billing rates stated in the order form for the work and services done on a time-and-materials basis can be changed by MHP with a notice period of three months, first four months after the entry into force of a contract. If the increased price is 20% or more than the agreed-upon price, the customer has the right to withdraw from the contract. This right must be asserted immediately after the increased price is communicated.
5. Estimated prices for work and services billed on a time-and-materials basis given in the order form are non-binding. The assumed quantities that provide a basis for the estimate are given according to an assessment of the scope of performance done to the best available knowledge. If in the course of completing performance MHP determines that the assumed quantities will be exceeded, the customer will be informed of this immediately. Until a written consent is presented by the customer, MHP will not exceed the assumed quantities that form the basis of the estimated price.
6. MHP is entitled to make partial shipments, which can each be billed after they are completed. MHP explicitly reserves the right to demand instalment payments. This applies especially in cases in which the contract also includes adapting the software to the customer's system or creating special software.
7. All prices stated by MHP are net prices without VAT; the VAT will be added in the legally mandated amount in each case unless the prices are stated expressly as gross prices including the VAT in the legally mandated amount. Costs for special packaging and transport will be borne by the customer to the extent nothing else is agreed upon. The VAT will be billed at the tax rate in force at the time the service is performed. If the tax rate is changed during the contract period, the periods with their individual tax rates will be deemed separately agreed upon.
8. Software prices do not include installation and initial use training as well as any required adjustment to hardware and/or software. Such services are to be ordered by the customer separately and will then be billed separately; separately billed instructional sessions will inform about the most important performance characteristics of an object of delivery without being able to replace an extensive course of training. MHP offers the customers separate service, care and training agreements for such services.
9. In the case of adapting and consulting services as well as software development billing of the services performed by MHP will be billed monthly at the currently valid or agreed upon rates for hourly work.
10. Waiting times for which MHP is not responsible will be billed as consulting services.
11. In the case of significant changes to the proposed work that are initiated by the customer (e.g. in the type of problem, the configuration, the available system, the object of the solution being pursued or of quantities), the agreements about deadlines and compensation will be adjusted commensurate to the changed circumstances. MHP will communicate the necessity of an adjustment to the customer within two weeks of its being identified.
12. The billed honoraria are due and payable on receipt without any discount.
13. Travel costs and expenses will be borne solely by the customer.
14. Travel times will be billed to the customer are 50 % of the agreed-upon hourly rate of compensation.
15. The customer will pay MHP an annual fee for maintenance. This fee is due and payable annually in advance and without discount after the billing statement is issued by MHP. MHP can adjust the maintenance fee to the general course of prices after one year at the earliest.

16. To the extent that MHP works for the customer outside of regular business hours, this work will be billed and compensated according to a separate written agreement.
17. Billing statements are due and payable on receipt. The customer enters into default at the latest 30 days after due date. The date of payment is determined by the date the payment is received by MHP. Cheques are only deemed payment after once they have been honoured.
18. If the customer does not pay by the due date MHP is entitled to charge default interest in the amount of 9 %-points above the prime lending rate. If it can be demonstrated that the interest is higher, MHP is entitled to charge the demonstrated percentage rate. The documentation and assertion of additional damages is not affected by this.
19. If a customer's cheque or bill of exchange is not honoured, MHP is entitled to call the entire residual debt due and payable immediately even if additional cheques or bills of exchange have been accepted.
20. MHP is entitled to execute or carry out still-outstanding deliveries or services only on a pre-payment basis or on payment of a security if it becomes aware after the conclusion of the contract of circumstances that are likely to significantly reduce the customer's credit worthiness and which endanger the payment of MHP's open claims deriving from the specific contractual relationship.
21. The customer can only offset to the extent that his counter-claims or assert a right of retention are not disputed or are legally established.

SERVICES

1. MHP will complete the agreed upon services strictly during normal business hours from Monday through Friday.
2. The customer will provide all MHP employees who are working at its premises with adequate rooms in which they can store their papers, documents and data storage devices. It will support MHP's work in every phase of the order.
3. The customer will furthermore provide MHP all necessary work equipment, provide MHP employees access at all times to all information needed for their work, provide them with the required papers in a timely fashion and, in the case of programming work, with computing time, test data and data storage capacities that are timely adequate scope.
4. The customer is entitled to review the work done by MHP at any time in order to keep track of progress on the work.
5. During performance of this work MHP depends on the customer fulfil the responsibilities it assumes in a timely fashion. If this does not happen and there are consequently delays and/or added costs, MHP can, without prejudice to legal rights going beyond this-demand changes in the schedule and the price.
6. The organisational integration of the services done by MHP into the customer's operational sequence must be undertaken by the customer on own responsibility. The customer is responsible for the results it aims to achieve through the work or services done by MHP; they must be feasible.
7. The contracting partners will each appoint a contact person for mutual coordination and clarification of all questions that arise in the course of completing the service. The contracting partners are each responsible for the selection, supervision, guidance and monitoring of the employees they assign during the performance of services.
8. MHP can have the work or services performed entirely or partly by sub-contractors it specifies.
9. MHP committed for the related and for the duration of the contract on the basis of the minimum wage law (Milog) obligations incumbent observed. MHP is obliged to pay the statutory minimum wage to their workers and possible in the context of the above Contract commissioned subcontractors to comply with the minimum wage law to oblige.

WARRANTY

1. The relevant provisions of law apply to the customer's warranty claims to the extent that nothing to the contrary is specified in the following.
2. The basis for any liability for defects is the performance characteristics specified in the order form. To the extent that there are any gaps in the rules, regulations under law must determine if there is a defect.
3. At MHP's discretion, any defect will be corrected by remediation or by manufacture of a new product/replacement. The right to refuse subsequent fulfilment under the legal preconditions remains unaffected.
4. The customer is aware that it is not possible under the state of the art to remedy faults in programs in information technology under all terms and conditions of use.
5. If a remediation is necessary, MHP will make every effort to meet the customer's suggested deadlines.
6. If the defect cannot be remediated within a reasonable time, the customer can, at its discretion, remedy the defect itself and demand compensation for the expenses that were objectively incurred in this action or reduce payment or withdraw from the contract. Legal claims that go beyond this are not affected.
7. The warranty is void if the customer intervenes in the product program or in the separately created programs in a way that makes the remediation of the defect impossible or makes it unreasonably difficult. The assertion of warranty claims is also excluded if operating and maintenance instructions are not followed, if changes are made to the delivered good, parts replaced or consumable materials used that do not match original specifications. On request in a warranty case the customer must send the product subject to the complaint to MHP postage paid with an exact statement of the complaint and the invoice number. If the complaint of defect is justified MHP will reimburse the costs of the least expensive shipping mode. In any case the customer must bear the added costs of the remediation of the defect that arise due to this change.

LIABILITY FOR DAMAGES

1. MHP is liable according to provisions of law.
2. Liability for breaches of contractual obligations as well as for delinquency is limited to intentional malice and gross negligence. This applies also to intentionally malicious or grossly negligent acts of employees, management personnel and temporary employees.
3. This liability limitation does not apply in the case of loss of life, limb or health as well as in the case of damages arising from delay and claims deriving from the breach of so-called primary (cardinal) obligations from this contract. These are essential contractual duties whose fulfilment per se makes the proper execution of the contract possible in the first instance and on whose fulfilment the customer may regularly rely and depend and whose breach endangers the purpose of the contract itself. In these case MHP is liable for every degree of culpability. To the extent that these are not damages that result from the loss of the customer's life, limb or health, MHP is only liable for damages of types that typically occur.
4. In the case of liability for simple negligence, MHP's obligation to provide compensation is limited to an amount of EUR 25,000.00 per instance, in total however to EUR 75,000.00 even if it is a case of breach of essential contractual obligations. This limitation however does not apply to liability owing to injuries to life, limb or health.
5. To the extent that typical, foreseeable damages would exceed a liability sum of EUR 25,000.00 per loss event or a total of EUR 75,000.00, the customer must notify MHP of this so that additional insurance against the risk can be arranged.
6. Liability for loss of data is limited to the typical cost of recovery and restoration that would arise with regular creation of back-up copies commensurate with the risk.

7. Liability on the part of MHP in cases of force majeure, especially strikes or lock-outs, is excluded by mutual agreement. MHP accepts no obligation to assume liability for damages of any kind that arise from a supplemental software used by the customer (especially malfunctions or incorrect data) or a pre-system of this kind.
8. The liability exclusions and limitations stated above apply in the same scope in favour of the organs, legal representatives, employees and other persons working for MHP.
9. Claims deriving from guarantees and the Product Liability Act remain reserved.
10. With respect to liability from the operation of the computing centre, the ASP terms and conditions also apply.

CONFIDENTIALITY

1. The contracting partners will treat essential and not generally known matters of the other contracting partner with confidentiality. Any protection of especially confidential information going beyond this and the therewith associated establishment of prerequisites and conditions require in each case the conclusion of a separate written agreement (confidentiality agreement). Confidential information that is given by one partner to the other in the framework of this contract must be clearly labelled as confidential. The legal provisions concerning data protection must be observed. Sharing this information with third parties is prohibited.
2. The customer will make neither the programs nor the documentation accessible to third parties, neither wholly nor in part. The customer is liable for all damages that MHP suffers from the breach of this obligation.
3. Ideas, designs, know-how and techniques that are related to information processing can be used freely by the contracting partners to the extent that no protected rights intervene.
4. The customer agrees that he will be included in the MHP reference list.
5. The customer agrees that MHP will save the customer's personal data, process it and communicate it to companies in the corporate group to the extent that this is required for the fulfilment and settlement of the order/commission.
6. The contracting parties are obligated to treat as confidential all objects (e.g. documents, information) that are sent to them before or during the execution of the contract from their respective other contracting partner or of which they become aware and which are legally protected, and any business or commercial secrets that they receive and are designated as confidential, even beyond the end of the contract unless they are publicly disclosed absent a breach of obligations of confidentiality. The customer will instruct employees or other third parties to the extent necessary concerning the need for confidentiality concerning the corresponding objects.

OWNERSHIP AND USE RIGHTS

1. MHP will specify the materials that are given to the customer. MHP or third parties hold all ownership or use rights (including copyright) to the materials that are created during the execution of the services or that already existed beforehand. To the extent that nothing else is specified in the order the customer will receive a copy of these specified materials and for them the irrevocable, non-exclusive, world-wide right to execute, reproduce, display, transfer and distribute copies of these materials in the company for the duration of the contract period. The customer is obligated to affix the copyright label and other indications of ownership on each copy that is made under these conditions.
2. The materials are written works or other copyright protected works (products of work) that are handed over to the customer according to the agreed-upon scope of performance in

- written, machine-readable or other form of presentation. The term "materials" does not include programs that are subject to their own license conditions.
3. Modifications and changes to existing materials are classified as "processing" in the order form. The customer will present a consent from the rights holder of the existing materials to MHP prior to processing.
 4. The following applies to inventions that are created during the performance of services by one of the contracting partners or were developed and for which the protected rights were registered: Inventions of employees of the customer will be claimed by the customer and those by employees of MHP will be claimed by MHP. The contracting partners grant each other a non-exclusive, irrevocable, world-wide and free license for the period of the contracted collaboration. In the event that the contractual collaboration is terminated, both contracting parties will enter into negotiations to determine the extent to which a non-exclusive (ir-)revocable, world-wide and free license will continue to be granted.
 5. Inventions that were made jointly by employees of the customer and of MHP and protected rights issued for these belong to both contracting partners. Each contracting partner has the right to issue licenses for such inventions to third parties or to assign its rights, without informing the other contracting partner or making payments to it. The right to register joint inventions is held by MHP.
 6. MHP will defend the customer against all claims that arise from a breach of a commercially protected right or copyright through contractually proper use of work results and assume for the customer legally imposed costs and compensation for damages, to the extent that the customer has informed MHP of such claims without in writing and without delay and all legal defensive measures and settlement negotiations remain reserved. If such claims have been asserted or are expected, MHP can, at own cost, modify or replace the materials. If this or the arrangement of a use right is not possible with a reasonable expenditure, the customer agrees to return the material to MHP. In this case, MHP will reimburse the customer at most for the amount paid.
 7. The rules stated above do not apply if the claims of a third party base on the fact that the materials were modified by the customer or were used under use conditions differing from those specified or that products not delivered by MHP were used with the materials or were used outside of the system delivered by MHP.
 8. The customer indemnifies MHP and its sub-contractors against every liability for third-party claims that arise from unauthorised hand-over for processing corresponding to Number 3, to the extent that there is no gross negligence or malicious intent on the part of MHP. In other respects the standards of § 8 apply.
 9. The use of trademarks, trade names or other designations in advertising or in other publications requires prior written consent of the rights holder.

CANCELLATION

1. The customer can cancel the contract with a notification period of one month (regular cancellation).
2. Furthermore both MHP and the customer can cancel a contract for due and sufficient cause if the counter-party in each case fails to meet its contractual obligations - even after being granted a grace period (extraordinary cancellation).
3. After cancellation, MHP will immediately terminate all work aimed at fulfilling the affected scope of service or will terminate them followed a schedule arranged with the customer. The customer will pay the agreed-upon price minus any expenses saved by the cancellation.
4. If the customer cancels for reasons for which MHP is responsible, it will pay the price only for those parts of the services received that it can use.
5. To the extent that the contract's terms and conditions are not by their nature time-limited, they continue to be in force after the termination of the contract and this applies for possible legal successors.

6. A maintenance contract can be terminated by both contracting partners with a notice period of 3 months to the end of any contract year, for the first time however after 24 months. The right to cancel without notice for due and sufficient cause remains unaffected.
7. MHP can cancel the contract with immediate effect if bankruptcy proceedings are initiated against the customer's assets or the initiation of such proceedings was refused due to lack of assets sufficient to cover the costs of the proceedings or if the proper unwinding of the contract is called into question due to the initiation of bankruptcy proceedings against the customer, for example, or the customer halts payments even temporarily. MHP is entitled to dissolve the contract already on the submission of a petition to initiate bankruptcy proceedings to a court.

EXPIRATION

Claims from this contract expire within three years if the law does not prescribe any other expiration period.

CONCLUDING PROVISION

1. The obligations from the contract are exclusively fulfilled in the Federal Republic of Germany. German law under exclusion of the UN CISG [UN Convention on the International Sale of Goods].
2. Should differences of opinion arise from this business relationship, the business partners will make every effort to resolve them in an amicable fashion. For all disputes arising from the contractual relationship, the headquarters of MHP in Neustadt am Rübenberge is the sole court of jurisdiction. Moreover, MHP is entitled to bring legal action at the court responsible for the customer's headquarters.