

# General terms and conditions (GTC)

## for services and products of MEMS AG

### 1. Scope of application

The present general terms and conditions (GTC) govern the conclusion, content and processing of contracts between the customer (hereinafter: the Client) and MEMS AG (hereinafter: MEMS).

The GTC form an integral and binding part of an offer and of any possible subsequent contractual relationship. The following order of precedence applies:

- the conditions of the accepted offer;
- the conditions of any cooperation agreement;
- the present GTC;
- the provisions of the Swiss Code of Obligations.

Contrary terms of the Client shall only apply if they have been accepted expressly and in writing by MEMS.

### 2. Offers and conclusion of a contract

Offers shall be valid for a limited period. The term of validity can be extended by mutual agreement. The contract between MEMS and the Client is concluded upon receipt of the written acceptance of the offer / placement of the order by MEMS. The acceptance of the offer / placement of the order shall be transmitted by mail, by fax or email.

### 3. Scope of the contract and performance

**3.1** The contract governs the specific rights and duties defined in the offer or in the individual agreement between the parties.

**3.2** MEMS provides the necessary general equipment and staff to perform the contract in cases where the Client does not dispose of the required equipment or facilities. Special equipment, which has to be acquired specifically for the individual contract will be offered and charged separately to the Client.

**3.3** MEMS may make use of third parties for the purpose of performance.

**3.4** If staff of MEMS provides services on the premises of the Client, said staff members, as well as any third parties engaged by MEMS, are solely bound by the instructions of MEMS.

**3.5** MEMS shall inform the Client at regular intervals about the results of its activities.

**3.6** If MEMS is not able to perform the contract as agreed in the order, it shall inform the Client accordingly without delay.

**3.7** The parties undertake, to the best of their abilities, to assist each other in the performance of their respective obligations by providing information, data or experience to ensure a smooth and efficient work process for both parties.

**3.8** MEMS is entitled to provide services or deliver products to other clients as well.

### 4. Remuneration and terms of payment

**4.1** The services provided by MEMS shall be remunerated according to the time and effort spent on the work. Time spent on travels in connection with the performance of the contract will be charged as effort by MEMS.

**4.2** Payments are due without deductions within 30 days after the receipt of the invoice. In the event of a failure to meet the payment schedule, the Client shall be obliged to pay interest on arrears at the statutory rate without further notice. The right to assert claims for further damage remains reserved.

**4.3** Expenses and specific costs incurred by MEMS at the express request by or with the consent of the Client shall be charged to the Client at cost price.

**4.4** All services of MEMS are charged net of the applicable statutory VAT.

**4.5** The Client may not offset amounts due to MEMS with any counter claims of the Client without the consent of MEMS.

### 5. Term of contract

**5.1** Unless agreed otherwise, the contract ends upon provision of the contractually agreed performance.

**5.2** If the Client withdraws prematurely from the contract, MEMS shall be entitled to compensation for the investments specifically undertaken in connection with the order as well as to remuneration for the services provided up to the time of the cancellation of the contract. Claims for damages for the untimely cancellation of the contract remain reserved.

### 6. Confidentiality and proprietary rights

**6.1** The Contracting Parties undertake not to copy or otherwise multiply or abuse, or make in any way available to third parties, any confidential information, technical documents, samples, process descriptions or data of which they become aware in the course of the cooperation during the term of the contract and for a period of three years after the termination of the contract, or to give third parties access to the information or use it for own purposes, save where this is required for the performance of the contractually agreed services.

**6.2** In addition, the provisions of any separately concluded non-disclosure agreements (NDA) shall apply.

**6.3** Unless otherwise agreed, all intellectual property rights generated in the course or at the occasion of the performance of the contract shall be owned by MEMS.

### 7. Liability and warranty

**7.1** MEMS warrants faithful and careful performance. In the event of improper performance of a contractual obligation, the Client shall be entitled to rework.

**7.2** Any failure of MEMS to meet a deadline does not give rise to warranty claims on the part of the Client and does not entitle the Client to withdraw from the contract.

**7.3** MEMS shall be liable for damage caused through an intentional act/omission or gross negligence of its employees or of third parties engaged by MEMS in the exercise of their duties. The liability of MEMS is limited to CHF 2 million per damage incident. Any liability for indirect damage, consequential damage such as business interruption and for loss of profit is expressly excluded.

**7.4** The Client shall notify any damage incurred or any behaviour that amounts to a breach or impairment of the contract to MEMS in writing not later than 10 days after detecting such damage or behaviour, failing which any claims will be forfeited.

### 8. Amendments and supplements

**8.1** Amendments or supplements must be done in writing.

**8.2** The invalidity of one or more of the above provisions, or parts thereof, shall not affect the validity of the remaining provisions. The respective invalid provision is to be replaced by the parties by a provision that comes as close as possible to the economic interests of the contracting parties and which is not in conflict with the remaining contractual provisions.

**8.3** The Client is not authorised to assign its claims under the contract without the written consent of MEMS.

### 9. Place of performance

Unless otherwise agreed by the parties, the registered office of MEMS shall be the place of performance.

### 10. Applicable law and place of jurisdiction

The present general terms and conditions, subsidiarily the provisions of the Swiss Code of Obligations, shall apply.

**The place of jurisdiction shall be at the registered office of MEMS.**