

GENERAL TERMS AND CONDITIONS for engineering work

of Ebner GmbH & Co. KG, Plants and Apparatus
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1. Scope

These General Terms and Conditions shall apply to any orders for engineering work placed with Ebner. Any conflicting general terms and conditions of the customer shall not become part of the contract, even if they are contained in the confirmation of the order. These General Terms and Conditions shall continue to apply in case of long-term business relationships and shall also apply to any future business transactions, even if they are not expressly included in the respective contract.

Should individual provisions of these General Terms and Conditions be or become ineffective, this shall not affect the validity of the remaining provisions hereof.

2. Offer, collateral agreements and contractual relationship

Our offers are without engagement unless a validity period for the offer is stated therein. Should one of our order confirmations contain any changes of the order, such changes shall be deemed to be approved by the customer unless the customer immediately objects in writing.

Ebner undertakes to perform the work described in the confirmation of the order. To the extent an order represents a contract for work and services for the purposes of sections 631 et seqq. of the German Civil Code, the completed work shall be deemed to be work protected by copyright.

Unless otherwise expressly agreed upon, the prices do not include:

- the costs for the manufacture of models, if any;
- general travel expenses and costs incurring in connection with meetings at any place other than Ebner's seat.

The subject matter of the contract, the scope of work and services and the time period during which such work and services are to be rendered shall be agreed in writing between Ebner and the customer before the execution of the order is commenced. Any changes and amendments of the order shall not become part of the present contract unless confirmed in writing by Ebner.

Ebner reserves the right to use sufficiently skilled third party service providers for the fulfilment of the contract and to place orders with such service providers in the name and for the account of Ebner.

3. Execution of the order

The customer shall provide the technical, business-specific and other details and guidelines required for the execution of the order. The customer shall confirm the progress of the work by signing the work records presented to it. Upon completion of the order, an acceptance certificate shall be prepared which must be signed by the customer and Ebner; this shall also apply to any self-contained partial performance. To the extent Ebner uses or leases to the customer IT systems and other hardware and software required for the execution of the order, the customer shall be liable for any direct damage resulting from improper use and for any loss, destruction or damage of the systems and hardware and software used for the execution of the order. This shall not apply in case such loss, destruction or damage is attributable to Ebner.

4. Confidentiality obligation and proviso

In connection with an enquiry and/or order, the customer will provide Ebner with documents, including drawings, sketches and samples, oral information, know-how and experience (hereinafter referred to as "Information").

Ebner undertakes:

- not to disclose such Information to any third party and not to publish such Information;
- not to use the Information and any know-how resulting therefrom except for the purposes of this contract, and in particular not to use such Information for Ebner's own production or for deliveries to any competitor;
- not to disclose such Information to its employees, except on a need-to-know basis in connection with this contract;

- to take suitable measures to ensure that Ebner's employees comply with these confidentiality obligations and only use the Information for the purpose of this contract.

The above obligations shall remain in force after the fulfilment of the contract unless such Information becomes part of the public domain without any fault on Ebner's part.

All documents provided by the customer, including any drawings, sketches and samples, shall remain the exclusive property of the customer. Ebner undertakes to treat such documents, drawings, sketches and samples with due care, to preserve them and, after fulfilment of the contract, to return them to the customer upon the customer's written request.

Any provision of Information by the customer to Ebner shall not be deemed to be a licence granted by the customer to Ebner. The customer reserves any right to new features originated by the customer, in particular in case a patent is granted or a utility model is registered.

Any promotion based on this contractual relationship or the subject matter of this contract shall be subject to the customer's written consent. The placement of the order by the customer shall be deemed to be the customer's consent to the inclusion of the customer's name in our list of references.

5. Remuneration

Prices (daily or hourly rates) may be agreed upon as a binding fixed price or as a price indication, based on hours required. If Ebner and the customer agree on invoicing on the basis of the hours required, Ebner shall prepare and present for approval a management report for the work completed which shall form the basis for the invoice to be issued after completion of the order.

In case Ebner and the customer made no express price agreement, Ebner shall be entitled to receive an adequate remuneration in accordance with local custom.

The calculation of expenses (hotel accommodation, travel expenses and per diem expenses) shall be subject to a separate agreement with the customer. To the extent no separate agreement was made, such calculation shall be based on the statutory provisions applicable.

Orders shall be invoiced in accordance with the progress of the work and in partial amounts to be agreed upon separately.

All prices are stated net of applicable statutory VAT.

6. Time of payment, payment and delay

The purchase price shall be due net within 14 days upon delivery and acceptance of the work and/or part thereof, without any discounts. In case of any delay in payment by the customer, Ebner shall be entitled to demand default interest amounting to 8 percentage points above the applicable base rate.

7. Retention of title

The subject matter of the contract, in particular any construction and development work, shall remain Ebner's exclusive intellectual property until full payment. Should the customer resell the work delivered by Ebner (in particular any construction and development work) to any third party, the customer shall assign to Ebner any rights it has vis-à-vis such third party.

Any exceptional dispositions such as a pledge or transfer by way of security shall be subject to Ebner's consent. If any third party attaches a claim to the subject matter of the contract, the customer shall be obliged to point out Ebner's title to the goods upon execution and to inform Ebner immediately of the attachment and send a copy of the report of execution.

8. Protection of documentation and right of use

Ebner's plans, brochures, technical documents and documentation etc. are subject to copyright protection. Without Ebner's consent, they must not be published in whole or in part. The same shall apply to any disclosure and repeated use by third parties or by the customer.

Even after the plans, data, technical documents etc. were delivered to the customer, the customer's right to use the results of Ebner's work shall be restricted to the agreed type of use and to the contractually agreed scope. Upon payment of the entire remuneration, the customer shall acquire the rights of use as described above.

Any other rights of use shall exclusively remain with Ebner. Irrespective of the customer's rights of use as described above, Ebner shall continue to be entitled to use the developed ideas, concepts, know-how etc. for other development work and services for other customers. The customer must not forward, pass on, disclose or otherwise grant access to the contractual work performed by Ebner to any third party, unless otherwise expressly agreed upon in any individual contract.

Should the customer forward, pass on, disclose or otherwise grant access to the work to any third party, Ebner shall be entitled to claim damages from the customer.

9. Discontinuation

If the order is discontinued, the work effected so far shall be invoiced. Any other claims shall remain unaffected thereby.

10. Specifications

The customer shall provide Ebner with specifications for the work to be performed. These specifications must include accurate application and environment data. Ebner shall not be obliged to verify whether the data delivered by the customer together with the stipulated application and environment data applicable to ordered work can in fact be used in the form specified in the order profile. In no event shall Ebner be liable for any error contained in the specifications provided by the customer.

11. Change of work

Ebner will take into consideration any change requests made by the customer to the extent such change requests are reasonable in view of Ebner's operational capacities, in particular as to costs and time management. To the extent any changes requested by the customer

might affect the contractual conditions (in particular remuneration, time schedule), the parties agree to adjust the contractual conditions accordingly (to a reasonable extent); this shall in particular include an increase in remuneration and postponement of deadlines.

Until the realisation of the desired adjustment, Ebner shall be entitled to continue the work without taking into consideration any change requests. If an extensive verification of the additional work and expenses proves necessary, Ebner shall be entitled to demand a separate order therefor.

12. Warranty, limitation on liability and obligation to inspect

The customer shall be obliged to immediately inspect the work performed by Ebner and to inform Ebner of any defects immediately and in writing. The work performed by Ebner shall be deemed accepted if - after expiry of a inspection period of 2 weeks - the usability of such work is not considerably limited due to reported defects. The same shall apply to partial work for the purposes of these General Terms and Conditions.

In case of any defect attributable to Ebner or in case of any material deviation from the subject matter of the contract, and provided the customer gave notice of such defect or deviation in due time, Ebner shall be obliged - at its option - to remedy such defect or effect a replacement delivery. For these purposes, Ebner shall be entitled to remedy the defect, whereas two attempts for each individual defect shall be admissible. In any individual case, there might be additional rights to remedy the defect. If the remedy of the defect proves unreasonable for the customer, the customer shall be entitled to rescind the contract and/or to claim damages. The customer shall only be entitled to claim damages if the customer took out sufficient insurance against any damage with might be caused by Ebner's employees on site.

The warranty period for Ebner's work shall be 12 months.

Unless otherwise agreed upon below, any other claims of the customer shall be excluded, irrespective of the legal grounds. This means Ebner shall not be liable for any damage other than damage incurred to the subject matter of the contract directly. Ebner shall in particular not be liable for any indirect or consequential damage such as interruption of business, loss of profit and loss of production or any other financial loss incurred to the customer.

To the extent Ebner's liability is excluded or restricted, this shall also apply to the personal liability of employees, agents and vicarious agents.

The above limitation on liability shall not apply to the extent the cause of the damage is attributable to intent or gross negligence. It shall also not apply if the customer asserts claims resulting from section 1, section 4 of the Product Liability Act, claims based on the lack of warranted characteristics or claims for damages for non-performance. The same shall apply to initial inability or impracticality attributable to the party concerned.

To the extent Ebner negligently violates an essential contractual obligation, the liability for damages for personal injury and damage to property shall be limited to the damage usually incurring for this type of contract.

To the extent legally admissible, Ebner's liability shall be limited to the extent of the insured risk. Ebner maintains an insurance contract with an insured amount of EUR 20 million for personal injury and damage to property and of EUR 500,000 for pecuniary damage.

13. Place of performance, applicable law and place of jurisdiction

Place of performance for both parties and - to the extent admissible - general place of jurisdiction for all claims for or in connection with the contractual relationship shall be the seat of Ebner. This contract shall be subject to German law.

14. Final provisions

Should one of the provisions contained in the contracts concluded on the basis of these General Terms and Conditions be ineffective or unenforceable, this shall not affect the validity of the remaining provisions thereof. The parties shall agree on an effective provision which shall replace such ineffective provision. Should the parties fail to do so, the statutory provisions shall apply. This shall also apply to any gap contained in the above-stated contractual provisions.