

I. General provisions

1. The following terms and conditions apply to orders placed with DI MATTEO Förderanlagen GmbH & Co. KG (hereinafter referred to as "ODM") for the performance of works or services.
2. Terms and conditions of the customer (hereinafter referred to as "Purchaser") shall not apply, even if ODM does not separately object to their validity in individual cases. Even if ODM refers to a letter containing or referring to Purchaser's or a third party's terms and conditions of business, this shall not constitute any agreement with the validity of those terms and conditions of business.
3. These General Terms and Conditions apply only to merchants.

II. Type and scope of services

1. The type and scope of the works or services (hereinafter referred to as "Services") to be provided by ODM are described conclusively in ODM's offer (if accepted by Purchaser) or in the order (if accepted by ODM).
2. At the request of Purchaser, ODM is prepared to provide additional Services. The type and scope of the additional Services are to be agreed jointly by Purchaser and ODM before inclusion and to be set down in writing. Delays resulting from negotiations and/or implementation of the additional Services shall be added to the deadlines to be met by ODM.
3. Purchaser is obliged to support ODM in the performance of the contract by providing all necessary materials/documents free of charge upon request. Purchaser shall be responsible for providing ODM with all necessary information regarding the Services within a reasonable period of time so that the Services can be performed in accordance with the contract.
4. ODM reserves the property rights and copyrights to samples, cost estimates, drawings and similar information of a physical and non-physical nature - also in electronic form; they may not be made accessible to third parties.
5. Unless otherwise agreed, the performance of the Service shall be carried out in accordance with the EN standards valid at the time of conclusion of the contract. For the EN standards which are not yet available, the corresponding German rules of technology apply, e.g. standards according to DIN and/or VDE.

III. Remuneration and payment

1. All Services will be invoiced by agreement in accordance with the conditions of the respective contract.
2. Unless otherwise agreed, Purchaser shall pay the contractual price without deduction within 30 days after receipt of the invoice.
3. Payments should only be made by bank transfer.
4. Value added tax at the respective statutory rate is added to the prices.
5. Purchaser shall only be entitled to withhold payments to the extent that his counterclaims are undisputed or have been legally established.
6. Purchaser shall only have the right to offset counterclaims to the extent that they are undisputed or have been legally established.

IV. Obligations of the Purchaser

1. Purchaser shall provide ODM with all information and data required for the performance of the Services in good time and without being requested to do so. He shall also allow ODM access to any existing facilities (parts of facilities) at any time, insofar as this is necessary or expedient for the performance of the Services.
2. Purchaser shall name a contact person who will be available to ODM for necessary information and who will make decisions or bring them about without delay.
3. If acceptance is required, the Purchaser shall be obliged to inspect and accept the Services immediately, unless there are substantial defects. Acceptance shall be deemed to have taken place at the latest within 4 weeks after completion or notification of completion of the Service. This shall not apply if there are substantial defects which Purchaser has notified in writing.

V. Dates

1. Dates shall be agreed in writing between Purchaser and ODM.
2. Adherence to an agreed time schedule requires Purchaser to properly fulfil his obligations to cooperate, i.e. that ODM receives all necessary and in particular to be procured documents, approvals, data, specifications, releases, advance payments etc. from Purchaser in good time so that ODM can fulfil its contractual obligations without delay. Otherwise, the agreed dates shall be extended by these delay times. Purchaser shall reimburse ODM for any additional costs incurred due to delays after appropriate proof by ODM.
3. If Purchaser suffers a loss due to the fact that ODM culpably failed to meet the final date for completion of the Service, Purchaser may claim a liquidated damages for delay of 0.5% for each full week of the delay, but in total no more than 5% of the pro-rata contractual price for the Service, which cannot be used for the intended purpose due to the delay.
4. If Purchaser sets ODM - taking into account the statutory exceptions - a reasonable deadline for performance after the due date and if the deadline is not met, Purchaser is entitled to withdraw from the contract within the scope of the statutory provisions.
5. Further claims arising from delay shall be determined exclusively in accordance with Section VII of these terms and conditions.

VI. Warranty

1. ODM has to provide its Services free of defects of quality and defects of title. In the event of defects of quality and/or defects of title, the relevant provisions of the German Civil Code (BGB) shall apply unless otherwise agreed below.

2. ODM shall be liable for defects in the Service in accordance with the statutory provisions in such a way that it shall, at its own discretion, either repair or replace its demonstrably defective Service at its own expense. ODM must be notified immediately in writing of the discovery of such defects.
3. ODM shall not be liable if the defect is insignificant for Purchaser's interests or is due to a circumstance attributable to Purchaser.
4. If Purchaser or third parties make improper changes to the Service without the prior approval of ODM, ODM's liability for the resulting consequences shall be cancelled.
5. In the event of a justified complaint, ODM shall bear the costs necessary to rectify the defect.
6. Only in urgent cases where operational safety is endangered and to prevent unreasonably high damages, in which case ODM is to be informed immediately, or if ODM - taking into account the statutory exceptions - has allowed a reasonable period of time set for it to remedy the defect to elapse without success, Purchaser shall be entitled within the framework of the statutory provisions to remedy the defect himself or have it remedied by third parties and to demand reimbursement of the reasonable costs from ODM.
7. If ODM fails to meet a reasonable deadline set to him for remedy of the defect, the Purchaser shall also have the right to reduce the price within the scope of the statutory provisions. Purchaser may only withdraw from the contract if it can be proven that the Service is of no interest to Purchaser despite the reduction.
8. Further claims shall be determined exclusively in accordance with Section VII of these terms and conditions.

VII. Liability

1. Subject to the exceptions set out in paragraph 2 below, ODM shall not be liable for loss of profit, loss of use, wasted expenditure, wasted time, loss of production, loss of use, loss of business or other opportunities, financing costs or replacement costs or consequential or indirect loss.
2. The above exclusion of liability pursuant to paragraph 1 shall not apply a) in the event of ODM's intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents, b) in the event of culpable injury to life, limb or health, c) in the event of defects which ODM has fraudulently concealed or if ODM has assumed a guarantee for the quality of the performance or d) insofar as liability exists under the Product Liability Act for personal injury or property damage to privately used objects. In the event of culpable breach of material contractual obligations (so called "Kardinalspflichten"), ODM shall also be liable in the event of slight negligence, in this case, however, limited to the reasonably foreseeable damage typical for the contract. Material contractual obligations (so called "Kardinalspflichten") are obligations the fulfilment of which is a prerequisite for the proper performance of the contract and on the fulfilment of which the Purchaser may regularly rely.
3. The same (exclusions, limitation and exceptions thereto) shall also apply to claims arising from culpa in contrahendo.
4. The above limitations of liability shall apply to the same extent in favour of the organs, legal representatives, employees and other vicarious agents of ODM.
5. A change in the burden of proof to the disadvantage of the Purchaser is not associated with the above provisions.

VIII. Statute of limitation

All claims of the Purchaser - for whatever legal reasons - shall become time-barred 12 months after performance of the Service. The statutory time limits shall apply to damages claims under Section VII. If ODM renders performance on a building and thereby causes its defectiveness, the statutory periods shall also apply.

IX. Force majeure

1. If a complete or partial non-fulfilment of the contract is due to force majeure, such as mobilisation, war, weather conditions, riot, pandemic or epidemic, or other events that cannot be reasonably avoided, such as strike or lockout, ODM is entitled to adjust the agreed deadlines
2. If the effects of these events continue for more than a total of 30 working days, Purchaser is obliged, at ODM's request, to declare within a reasonable period of time whether he will terminate the contract due to the delay in delivery or insist on delivery. If the effects of these events continue for more than 30 working days in total, Purchaser may terminate the contract.
3. If such events significantly change the economic significance or the content of the service or have a significant effect on the operation of ODM, the contract will be adjusted appropriately in good faith. If an adjustment is economically unreasonable for ODM or if an agreement on the adjustment cannot be reached, ODM shall be entitled to terminate the contract.

X. Rights of use and confidentiality

1. The Parties grant each other the right to use, free of charge, existing knowledge, experience, industrial property rights and inventions (hereinafter referred to as "prior knowledge") belonging to the other Party in the context of participation in the performance of a contract.

2. ODM and Purchaser will treat the information obtained within the scope of this contract, in particular all commercial and technical information, whether verbal or embodied in documents, as business secrets and accordingly confidential. The organs, employees and vicarious agents of the contractual parties shall be obligated accordingly. The obligation to maintain confidentiality does not exist or ends if and insofar as ODM or Purchaser can prove that the information in question becomes generally known through no fault of their own, was obtained lawfully from a third party, must be presented in the course of legal proceedings or was already generally known at the time it was obtained. ODM and Purchaser shall only be entitled to pass on information obtained within the scope of this contract to third parties with the respective consent of the other party to the contract and under the obligation of the third party to maintain confidentiality. However, ODM and Purchaser will only refuse consent for good cause. The following shall not be considered third parties within the meaning of this provision: employees of ODM and Purchaser as well as their vicarious agents, approval authorities and experts. However, such persons shall be obliged to maintain confidentiality in accordance with the above provisions.

XI. Final provisions

1. Changes and amendments to a contract must be made in writing. This also applies to the waiver of the written form requirement.
2. Any kind of transfer of rights and obligations under a contract to a third party as well as any changes to the same are considered null and void, unless the same are agreed by both parties and confirmed in writing.
3. Should one or more provisions of these terms and conditions be void or ineffective, this shall not affect the effectiveness of the remaining provisions. In this case, a provision which comes as close as possible in legal and economic terms to the intended purpose of the void or ineffective provision shall be deemed to have been agreed between the parties. Should these provisions contain a gap, the provision which the parties to the contract would have agreed upon in accordance with the meaning and purpose of the contract shall be deemed to have been agreed upon if they had considered the gap in advance.
4. For all legal relationships between ODM and the Purchaser the law of the Federal Republic of Germany, which governs the legal relations between domestic parties, shall apply exclusively.
5. The place of jurisdiction shall be the court having jurisdiction over the registered office of ODM. ODM shall, however, be entitled to take legal action at the principal place of business of the Purchaser.
6. All disputes arising out of a contract with respect to Services rendered by ODM to a foreign resident shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with these Rules. The place of arbitration shall be Zurich, Switzerland. The language of the arbitration proceedings shall be English.