

Terms & Conditions

1. General points and applicability

These terms & conditions govern the relationship between MAC IT-Solutions GmbH ('MAC') and their clients for all contractual commissions, now and going forward. Any other conditions a client may wish to see as part of the contract between him and MAC will only be recognised by the latter, if MAC has given its written consent. This also applies to any commission carried out by MAC if client conditions do not comply with those specified by MAC, whenever MAC carries out the work for the client without prejudice. Any agreements not in line with or in addition to the provisions in these terms & conditions must be made in writing to be deemed valid.

2. Contract formation

Unless otherwise expressly specified, proposals submitted by MAC do not constitute an offer in the legal sense, but merely the request to the client to respond with an offer made by them. Declarations of acceptance by MAC must be made in writing or follow as a direct consequence of MAC beginning to deliver the performance specified in the contract.

3. Performance and delivery

Unless agreed otherwise, MAC's services are charged out at the hourly rates listed in the current (at the time of commission) itemized price list given to the client. Unless otherwise specified, all prices are given net, i.e. they are subject to the addition of VAT. Proof of service delivery is given via timesheets, which MAC must submit to the client. Unless there is an alternative agreement in place, all timesheets will be submitted together with the invoice/s and are deemed to be approved if the client has not objected in writing within five working days of receipt. Services are deliverable during normal business hours at MAC. Should it be necessary to agree specific times and dates for certain services, MAC will ensure the client knows well in advance.

MAC is entitled to sub-contract third parties for the delivery of the agreed services to the client, but remains responsible for the entirety of all delivered services. Unless there is an alternative agreement in place, delivery lead times and project deadlines are for guidance only. Where delivery and completion times have been fixed by prior agreement, these must be moved if timely delivery is hindered by factors outside of MAC'S control. Where such delays are caused by MAC, the client must permit an adequate extension period for the delivery of the agreed services. Where MAC is delivering a full-service package, the delivery times of the suppliers providing MAC with the required items for fulfilling such a contract are not deemed to be factors controllable by MAC. MAC will inform the client directly should any such delivery delays occur. In such cases, MAC is entitled to withdraw from the contract where deemed appropriate by MAC.

MAC has the right to invoice immediately for partially delivered performance (partial billing), unless this is deemed unreasonable in a specific case.

Delivery of goods commences from MAC's warehouse. The transport risk is borne by the client. If the client does not take receipt of the goods or does not trigger delivery of the goods within 14 days from receiving notice that the goods are ready for delivery, the client is in default without MAC having to give further explanations to this effect.

4. Client's duty to collaborate

The client supports MAC in the delivery of the agreed performance as required.

The client is responsible for providing the framework and environment required for enabling the correct delivery of the agreed performance, including an adequate level of technology and clear installation guidelines and directions. This includes the provision of the required telecommunication facilities, wiring and sufficient supply with electricity as well as the necessary working space.

5. Payment terms

MAC's invoices are payable directly on receipt and without deductions, unless otherwise agreed.

Offsetting invoices against demands against MAC is not permissible unless these demands have been declared to be legally binding without further contention.

The client is not entitled to transfer rights resulting from a contractual agreement with MAC to a third party without MAC's prior agreement.

In order to exercise a right to withhold performance or a right of retention with regard to claims on the part of MAC, the client may only exercise these rights to a value equivalent to that of the counter-claim brought by the client. Exercising a right of retention is only permissible if and insofar as the counter-claim results from the same contractual relationship with MAC.

6. Retention of title

Any deliveries from MAC are exclusively carried out under retention of title. The ownership of the delivered goods (which are subject to retention of title) will only transfer to the client when all demands arising from the contractual relationships with MAC have been met in full. For running invoices, the retention of title serves to secure all outstanding payment demands on the part of MAC. Should the value of the goods which are subject to retention of title exceed MAC's outstanding payment demands by more than 20%, MAC is obliged to release securities matching the excess value, if the client requests this in writing. Release declarations must also be made in writing.

Where the goods subject to retention of title are mixed up or connected with other items, MAC automatically acquires partial (joint) ownership of the set-up or the new item to the value of MAC's contribution. The client is obliged to keep these items safe for MAC, free of charge. The client has the right to divest themselves of the goods subject to retention of title through everyday business channels, as long as he is not in payment default towards MAC. In this case, the client is obliged to agree an appropriate right to retention of title but not a non-assignment clause with his buyers. Up until all outstanding demands from MAC against the client have been met, the client relinquishes all rights, inclusive

of any auxiliary entitlements and/or securities arising from the sale of the items delivered by MAC or for any other legal reasons, and assigns them to MAC. With regard to assigned rights, the obligation to release these applies as described in the first paragraph of this section. The client is authorised to collect on claims relinquished to MAC until this is revoked by MAC. MAC is entitled to revoke this direct debit authority if the client is in default on any payments.

The client is obliged to notify MAC immediately of any impairment of its rights linked to the right of retention, especially if these are the result of imminent seizures, as well as advising any third parties acting on MAC's rights of ownership of the existence of such rights in favour of MAC. Wherever goods subject to retention of title pass into the possession of third parties, the client will, when requested to do so, relinquish any release claims against third parties to MAC.

Where the legally prescribed conditions apply, MAC may withdraw from the contract and demand release of the goods subject to retention of title into MAC's possession. This also applies where the opening of insolvency proceedings for the client's assets has been requested. Independently of exercising a right to withdraw from the contract, the client's right of ownership of the items subject to retention of title expires with any payment default on part of the client.

The client is obliged to insure the items subject to

retention of title adequately, at his expense, against fire, theft and break-in. Any rights resulting from the relevant insurance contract regarding the items insured are assigned to MAC as long as the retention of title is in place. The obligation to release the assigned claims back to the client applies in accordance with the first paragraph of this section.

7. Warranty

In absence of any special agreements, MAC does not take responsibility for any products or services provided by MAC being suitable for the deployment purposes envisaged by the client, and/or that components delivered by MAC can be integrated into existing client system environments.

The warranty for all goods delivered by MAC is in line with legal regulations subject to the following limitations:

Damage caused through inappropriate handling or through normal wear and tear is not covered by warranty. Where any of the provided operating guidelines or instructions (in a manual or by MAC directly) are disregarded by the client and damage to the delivered goods is caused, or the services provided by MAC are rendered useless, this is not covered by warranty unless the client proves that the damage would have occurred even if he had complied with all given usage guidelines and instructions.

The client is obliged to check all delivered goods directly, as directed by §377 HGB (German Trade Law). The client is obliged to report directly recognisable faults within five working days of taking receipt of the goods, and hidden faults immediately upon discovery, both by writing to MAC. Otherwise, the warranty will not cover these faults.

The warranty for delivered goods is one year.

8. Liability / legal disclaimer

MAC shall be liable only in cases where it is proven that MAC has acted with malicious aforethought, with gross negligence, or is guilty of breaching principal contractual obligations. Principal contractual obligations are those on whose fulfilment the contractual relationship relies for its existence and on whose fulfilment the contractual partners should always be able to rely. In the absence of malfeasance or of intentional malpractice, liability shall be limited to the compensation for the typically predictable damage in each case, but to a maximum of €100,000,000. These limited liabilities do not apply where MAC is forced to act in line with the law, such as for the product liability act or in the case of bodily harm or damage to personal health.

9. Data protection

MAC shall capture, process and use any personal client data which is part of setting up and managing the business relationship, including the capture of commissioning information, and processing and fulfilling customer commissions, only in line with current data protection laws and regulations. In cases where MAC is providing data processing services to the client, these will be subject to the specific agreements made between the client and MAC regarding the processing of this data on their behalf.

10. Final terms

Changes and additions to this agreement must be made in writing with the express declaration that they constitute a change or addition to this agreement.

For all claims arising from this contract or raised in connection with this contract, only German material law shall apply, under exclusion of any conflict of laws.

Exclusive place of jurisdiction for all and any disputes arising in connection with this contract is Flensburg.

Should single provisions made in this contract be deemed or turn out to be invalid, void or unfeasible, this will not impact upon the validity of the agreement as a whole nor of any of its other provisions.