

Terms and Conditions for Consultancy Services

- Last update: Dec. 2008 -

§ 1 Consultancy Services

1.1
MES shall perform consultancy services in accordance with the current state of the art as specified in writing.

1.2
The customer shall support MES where required, in particular provide all required information.

§ 2 Cooperation

2.1
The customer shall name a contact person; MES shall name a customer consultant. Both shall have the authority to make the necessary decisions or shall obtain authorization for them in a timely manner. The customer consultant shall put decisions in writing. The contact person shall provide all required information. The customer consultant shall contact the contact person as is required to ensure the proper performance of the mutual obligations.

2.2
The services shall be performed at the customer's location if necessary, otherwise at MES' location. In the first case, the customer shall provide MES's employees with adequate working conditions.

§ 3 Charges and Payments

3.1
Unless otherwise agreed, the customer shall remunerate MES on the basis of costs incurred. Hourly rates, travel expenses and incidental expenses shall be paid in accordance with MES' price list, unless otherwise agreed. MES may submit invoices on a monthly basis.

Persons engaged by MES shall fill out detailed time sheets which MES shall hand over to the customer if requested. The customer may audit these sheets at any time.

In case of fixed prices, travel and incidental expenses shall be reimbursed separately.

3.2
Payments shall be due within 30 days after invoicing.

3.3
Duties, taxes and levies including VAT – if applicable – shall be paid by the customer on all prices.

§ 4 Rights

4.1
All rights in the documents and results arising from the services shall accrue to the customer. MES shall not be restricted to use the gained know-how and to render similar consultancy services for other customers of MES, provided MES complies with § 6.

4.2
If MES provides documents or programs not developed under the contract, the customer may utilize them only within the framework of the work results under the contract and not isolated provided MES has notified the customer of such delivery in advance.

§ 5 MES's Liability

5.1
MES – including any person engaged in performing any obligation under this contract – shall be liable for damages under any claim based on normal negligence only if MES breaches a basic obligation of the contract which puts the contract goal at risk (cardinal obligation). In this event, MES's liability shall be restricted to the higher of the following amounts:

- EUR 100,000.00,
- The contract value,
- The characteristic and foreseeable damages.

The customer is entitled to claim for a higher maximum, but MES may then require a surcharge for the aggravated risk.

The restrictions shall not apply to the extent the damages are covered under MES's business liability insurance and the insurance company has effected payment to MES. MES agrees to maintain the coverage of the business liability insurance as provided at the time of the execution of the contract.

Claims for personal injury shall remain unaffected.

5.2
If MES' delay exceeds thirty (30) days, the customer is entitled, for every further week, to a penalty of 0.5 % of the value of those performances which cannot be used in accordance with the purpose of the contract, but the penalty shall be limited to 5 % of the total contract value.

§ 6 Confidentiality Obligations

6.1
MES shall keep the customer's trade and business secrets confidential for an unlimited period of time, as well as all other information obtained by MES under or in connection with this contract designated in writing as confidential by the customer. However, MES shall have no obligation with respect to any information which is (i) already in MES' possession at the time of the execution of the contract, (ii) independently developed by MES, or (iii) which is publicly known through no wrongful act of MES.

6.2
Notwithstanding § 6.1, MES is not obliged to keep confidential any of MES' ideas, concepts, know-how or techniques related to the development of software.

6.3
MES shall obligate its employees to observe the above confidentiality obligations.

6.4
MES may include the name the customer and a brief description of the rendered performances in a reference list. All other advertising references to the customer shall be discussed in advance with the customer.

§ 7 Miscellaneous

7.1
The contract and its modifications require written form.

7.2
The contract shall conform with and be governed by the laws of the Federal Republic of Germany without regard to its choice of law rules and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Exclusive venue shall be MES's main place of business.