

Terms and Conditions

1.) Scope of the Terms and Conditions and deviations

- a) The following Terms and Conditions apply to all current and future contracts between the customer (companies only) and AXD Engineering GmbH.
- b) Deviations from these Terms and Conditions and, in particular, also the customer's terms and conditions, only apply if these deviations have been explicitly accepted and confirmed by AXD Engineering GmbH in writing.

2.) Quotes and collateral agreements

- a) Unless otherwise stated, AXD Engineering GmbH's quotes are non-binding with regard to all data provided and including the fee.
- b) Should an order confirmation from AXD Engineering GmbH include changes to the order, these changes are deemed to have been approved by the customer unless the customer objects to these changes in writing without delay.
- c) All agreements must be made in writing.

3.) Placing orders

- a) The contract and these Terms and Conditions specify the type and scope of the product or service agreed.
- b) Changes and additions to the order require confirmation in writing by AXD Engineering GmbH in order to apply to the contractual relationship concerned.
- c) AXD Engineering GmbH undertakes to fulfil the order given to it in accordance with customary engineering practice and principles of sound financial management.
- d) Calculation models are always simplifications of the real, physical world. Therefore, despite applying the prudence that is standard in the industry, these models never fully reflect reality. Consequently, the customer must apply suitable methods of its own to verify the results supplied by AXD Engineering GmbH.
- e) Unless otherwise agreed, AXD Engineering GmbH will not check the information given to it by the customer. If it is obvious, without any special check being performed, that information supplied by the customer to AXD Engineering GmbH is incorrect, AXD Engineering GmbH will point this out to the customer without entering into any obligation to do so.
- f) The customer must hold AXD Engineering GmbH harmless from claims to industrial property rights, which may arise from the object of the order, by third parties.
- g) AXD Engineering GmbH may appoint other parties with the appropriate authority to perform the contract and place orders on behalf of the customer and at the customer's expense. However, AXD Engineering GmbH must inform the customer of such intention in writing and give the customer the opportunity to object to the order being issued to a third party within 10 days.
- h) To perform the contract, AXD Engineering GmbH may also, in its own name, appoint other appropriately authorised parties as sub-contractors and place orders with such parties who will then bill AXD Engineering GmbH. However, AXD Engineering GmbH must inform the customer in writing if it intends to have orders fulfilled by sub-contractors and give the customer the opportunity to object to this placement of orders to the sub-contractor within one week; in such case, AXD Engineering GmbH must then carry out the order itself.

4.) Acceptance of performance

- a) The customer is obliged to accept the contractually agreed performance or partial performance. Acceptance must be provided in writing within 14 days from the delivery of the product or service.
- b) Acceptance cannot be refused if insignificant defects in the product or service are present. If the customer does not accept the product or service within a reasonable period of time specified by AXD Engineering GmbH despite being obliged to do so, this will be deemed equivalent to acceptance.

5.) Guarantee and damages

- a) Entitlements under guarantee can only be claimed after notifications of defects have been furnished exclusively by registered letter within 14 days following delivery of the product or service or partial product or service.
- b) Entitlements to rescission and a reduction in price are ruled out. AXD Engineering GmbH must satisfy entitlements to the remedying of defects or to replace missing items within a reasonable period of time, which should generally be one third of the period agreed to provide performance. Entitlements to damages due to delayed performance cannot be asserted within this period.
- c) AXD Engineering GmbH must provide its products and services with the due care expected of it as a specialist company in its field (article 1299 ABGB [Civil Code of Austria]).
- d) If the engineering company, in breach of its contractual obligations, culpably causes damage to the customer, its liability for compensation of the damage caused is limited, unless otherwise agreed, as follows in cases of ordinary negligence:

1) General:

- Where orders total 250,000.00 euros: 12,500.00 euros max.;
- Where orders exceed 250,000.00 euros: 5% of the order total, but 750,000.00 euros max.

2) The above-mentioned limitations of liability do not apply to personal injury.

3) Even in cases of gross negligence, liability for consequential damage and profit lost is also ruled out unless otherwise agreed in individual cases.

6.) Withdrawal from the contract

a) Withdrawal from the contract is only permitted for an important reason.

b) If AXD Engineering GmbH is in default with providing a product or service, the customer may only withdraw from the contract after specifying a reasonable additional period of time by registered letter.

c) In the event of a delay on the part of the customer in providing partial performance or fulfilling a duty of cooperation, which renders it impossible or very difficult for AXD Engineering GmbH to fulfil the order, AXD Engineering GmbH is entitled to withdraw from the contract.

d) If AXD Engineering GmbH is entitled to withdraw from the contract, it may still claim the full fee agreed, which also applies if the customer withdraws from the contract and has no justified reasons for doing so. Article 1168 ABGB [Civil Code of Austria] also applies; should the customer withdraw from the contract on justified grounds, it must pay for the products and services provided by AXD Engineering GmbH.

7.) Conditions of payment

a) Unless otherwise agreed, all fees must be invoiced in euros.

b) Value added tax (VAT) is not included in the fees and must be paid separately by the customer.

c) Providing compensation with setoffs of any kind, for whatever reason, is not permitted.

d) Unless otherwise agreed, payment must be made without deductions within 30 days from invoicing to the account of a bank, specified by AXD Engineering GmbH, with a domestic branch. In the event of a default in payment, interest of 9.2% per annum above the ECB's base rate plus reminder fees must be paid.

8.) Place of performance

AXD Engineering GmbH's registered office is the place of performance for all office services provided.

9.) Confidentiality

a) AXD Engineering GmbH and the customer acknowledge that in the course of providing performance, they may be granted access to confidential information and business secrets (confidential information) belonging to the other party. Such confidential information must be kept secret and only used for purposes associated with the performance specified regardless of whether disclosure of such information occurs before or after the date of the performance described.

b) Confidential information belonging to the other party may only be forwarded by the recipient to its own employees, sub-contractors and authorised representatives, except where the party disclosing the information has given consent to the contrary in writing. The parties must inform these people about the confidential nature of this information.

c) This duty of confidentiality does not apply to information that was verifiably as follows:

- 1) known to the recipient before the disclosure thereof or
- 2) in the public domain or generally accessible or
- 3) entered into the public domain after disclosure without any involvement or fault of the recipient or was generally accessible or
- 4) disclosed or given to the recipient by an authorised third party at any juncture
- 5) where the recipient, regardless of any knowledge of the information, had developed it itself or contracted another party to develop.

The party invoking the above-mentioned exceptions has the burden of proof that these apply.

d) In the event of any actual or threatened breach of the provisions of this section by either party, the other party in each case will be entitled, in addition to any other remedies available to it, to seek injunctive relief prohibiting such acts or attempts.

10.) Property rights

a) AXD Engineering GmbH reserves all rights to and usage of the documents it created (in particular plans, drawings, calculations, technical documents).

b) Any use of these documents or parts thereof (in particular processing, executing, reproducing, distributing, presenting them in public, providing them to other parties) is only permitted with the explicit consent of AXD Engineering GmbH. Therefore, all documents may only be used for the purposes specified explicitly when issuing the order or following a subsequent agreement.

c) AXD Engineering GmbH is entitled to and the customer must quote the name (company, business name) of AXD Engineering GmbH whenever any publications and announcements are made about the project.

d) Should such provisions be breached, AXD Engineering GmbH will be entitled to receive a contractual penalty totalling twice the appropriate fee for unauthorised use without prejudice to assert a further claim for damages. These contractual penalties are not subject to judicial discretion. The customer has the burden of proof that it did not use AXD Engineering GmbH's documents.

11.) Choice of law and venue

a) Austrian law will apply exclusively to contracts between the customer and AXD Engineering GmbH.

b) It is agreed that the competent court at AXD Engineering GmbH's registered office will have jurisdiction for all disputes arising from this contract.

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