

# GENERAL TERMS AND CONDITIONS

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**Ärzte ohne Grenzen**  
**Médecins Sans Frontières, Austrian Section**  
Central Register of Associations No. 517860631

Taborstraße 10  
1020 Vienna

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## **Preamble**

- (A) Ärzte ohne Grenzen, registered in the Central Register of Associations under no. 517860631, Taborstraße 10, 1020 Vienna, Austria (hereinafter "MSF"), is a private humanitarian organisation operating as an association that provides emergency medical care. MSF helps people in need, those affected by disasters, and more generally wherever the provision of medical care has broken down. The Austrian Section of MSF was established in 1994.
- (B) These terms and conditions (hereinafter "General Terms and Conditions") establish the legal framework for contracts entered into by MSF. They apply to transactions with persons who are not consumers within the meaning of Section 1 of the Consumer Protection Act (*KSchG*). The contracting party expressly acknowledges these General Terms and Conditions.
- (C) MSF accepts the provision of services exclusively on the basis of the following General Terms and Conditions.

## **Section 1: Scope**

- (1) These General Terms and Conditions form the basis and are an integral part of all contracts ("individual contracts") entered into between MSF and its contracting parties for the supply of goods or services (in particular, purchase contracts, contracts for work and services, and other services commissioned), save where otherwise expressly agreed in writing in the individual contract. The terms and conditions of the contracting party are only binding on MSF if MSF expressly recognises them in writing in each individual case.
- (2) If any individual provision in these General Terms and Conditions becomes invalid, this will not affect the validity of the individual contracts entered into or the other provisions herein. The parties shall replace the invalid provision with a valid one that comes as close as possible to the spirit and economic purpose of the invalid provision being replaced.
- (3) Amendments or supplementary agreements to these General Terms and Conditions and the further content of the individual contracts require express written confirmation from MSF in order to be valid and are only applicable to the respective individual business case.
- (4) The General Terms and Conditions currently in force are available on MSF's website. They will be provided to the contracting party upon the conclusion of a contract and will also be sent to the contracting party upon request. These General Terms and Conditions also apply to all future contractual relationships, even to ancillary contracts that do not expressly refer to these General Terms and Conditions.
- (5) MSF shall notify the contracting party of amendments to the General Terms and Conditions. Such amendments are deemed as having been agreed upon if the contracting party does not object to them in writing within 14 days; the contracting party will be made explicitly aware of the implications of silence.
- (6) In addition to its obligations under the individual contract, the contracting party undertakes vis-à-vis MSF to comply in particular with all legal obligations to which it is subject, unless otherwise expressly provided for in the individual contract.

## **Section 2: Offer and Acceptance**

- (1) In general, MSF sends non-binding requests for quotes to its contracting parties that are subject to change without notice. In the event that an offer is accepted by MSF, the contracting party shall send MSF a written order confirmation. If the written order confirmation deviates from the offer made and is detrimental to MSF, the contract comes into being on the basis of the content of the offer accepted by MSF.
- (2) Where a contracting party submits an offer in accordance with these General Terms and Conditions, the contracting party is bound by its offer for at least one month from the end of the offer period or, if there is no offer period, from the date of the offer.
- (3) If new requirements stipulated by MSF make it necessary for the services or the desired product to be modified, the contracting party will at the request of MSF prepare an offer that has been amended accordingly.

## **Section 3: Service Specifications**

- (1) The scope of services to be provided by the contracting party is set out in the offer made by the contracting party and accepted by MSF. Any changes subsequently made to the service specifications require the express written consent of MSF.
- (2) Upon payment of the consideration, MSF acquires the unrestricted rights necessary to execute/use the service specified. If copyrighted works are the subject of the individual contract, MSF acquires an unrestricted right to use the copyrighted works for an unlimited period.
- (3) When software is purchased, MSF is granted upon payment of the consideration an exclusive, transferable, licensable and perpetual right to use the software on the hardware specified in the contract on multiple workstations simultaneously.
- (4) MSF is not under an obligation to verify whether the contracting party is entitled to all those rights that are necessary in order to provide the service specified. In addition, it is legitimate for MSF to assume that the contracting party is entitled to all rights vis-à-vis third parties that are necessary for performance of the contract. The contracting party expressly warrants that it holds these rights.
- (5) Deliveries are made at the expense and risk of the contracting party to the delivery address specified by MSF. The risk is only transferred to MSF once the delivery has been consigned to a responsible person at MSF. Surplus and short deliveries are not permitted and may be returned at the expense of the contracting party.
- (6) The contracting party is bound by all information about products and services provided in or on catalogues, price lists, brochures, displays at trade fairs, circulars, advertising mailings or other information material.

## **Section 4: Payment Terms**

- (1) The contracting party shall supply MSF with the details of a standard bank account for payment of the consideration. The contracting party accepts payment of the sum owed by bank transfer.
- (2) Any subsequent change in price by the contracting party following conclusion of the individual contract that is detrimental to MSF will not be accepted and such a change in price is only possible with the express written consent of MSF.

- (3) In the event of a payment default by MSF regarding individual receivables, the contracting party is not entitled to accelerate payment of other receivables. In particular, where payment by instalments has been agreed upon, the contracting party may not demand immediate payment of the entire outstanding debt in the event that MSF is in default with partial payments or ancillary claims. The contracting party shall grant MSF a reasonable grace period in which to meet its payment obligations. A grace period of at least one week is deemed reasonable. It is unlawful to rescind the contract immediately without first granting a grace period.
- (4) In the event of late payment by MSF, default interest will be charged, starting from the due date, in the amount of the default interest actually paid by the contracting party to its principal bank, but not exceeding 4% per annum.
- (5) If a discount has been agreed and the conditions for deducting the discount are met, MSF is entitled to deduct the discount from the total amount shown on the final invoice when making the final payment. The conditions for deducting the discount are met if all payments have been made on time within the discount period.
- (6) A payment is deemed to have been made on time if the payment order for the amount owed was issued within the payment period, irrespective of whether the amount has already been credited to the contracting party's account.
- (7) MSF is not required to effect payment if the invoice is so deficient that MSF can neither check nor correct the invoice.
- (8) MSF has the unrestricted right to offset its own claims against any claims the contracting party may have. The offsetting of counterclaims against one's own claims may not be excluded. Further, it is possible for MSF to assign its own claims against contracting parties to third parties without having to notify or obtain the consent of the contracting party.
- (9) In the event that MSF fails to make the agreed payments, the contracting party is not entitled to cease providing the work required under a contract for work and services or to suspend the services provided. All costs associated therewith, as well as the loss of profit, shall be borne by the contracting party itself.

#### **Section 5: Term and Limitation**

- (1) Individual contracts between MSF and its contracting parties for the performance of a continuing obligation are concluded for a fixed or indefinite period.
- (2) Fixed-term contracts may only be terminated by the contracting party for good cause. MSF has the right to terminate fixed-term contracts and contracts concluded for an indefinite period subject to giving four weeks' notice in writing.
- (3) In the case of an automatic renewal of a fixed-term contract upon expiry of the term, MSF has the right to terminate the contract at any time, it being understood that this right can be exercised immediately and without notice. In addition, MSF reserves the right to object in writing to the automatic renewal of a fixed-term contract upon expiry of the term.

#### **Section 6: Default**

- (1) The contracting party shall inform MSF in a timely manner if it is foreseeable that the performance of the contract cannot be complied with by the contracting party. Improper performance of the contract entitles MSF to insist on performance of the contract or to rescind the contract subject to setting a one-week grace period.

- (2) In the event of delays or non-performance, MSF has the right to commission a third party to render the service. Within the context of procuring a replacement, the contracting party shall reimburse the costs incurred in engaging the services of the third party to MSF.
- (3) Any objective delay in performance of the contract by the contracting party is also to be treated as a subjective delay and gives MSF the corresponding rights.
- (4) Any delay or non-performance of a partial service entitles MSF to exercise its right to withdraw from the entire contract by setting a one-week grace period. Services considered indivisible by law are considered divisible for the purposes of this agreement.
- (5) The contracting party shall pay MSF all costs arising from the delay or non-performance of one or more regularly recurring services.
- (6) The delivery of a completely different item than the one contractually agreed (*aliud*) by the contracting party is deemed improper performance of the contract, resulting in the application of the rules on non-performance.

#### **Section 7: Right of Retention**

- (1) MSF has a right of retention with regard to the consideration payable, or the sum payable on a regular basis in the case of continuing obligations, if the contracting party fails to perform, does not perform on time or renders defective performance. In addition, MSF always has a right of retention whenever the contractual performance of the contracting party results in damage or expenses for MSF.
- (2) If MSF demands the improvement or replacement of the defective good or defective work as provided for under the warranty, MSF is entitled to retain the purchase price in its entirety or retain the sum owed in its entirety and not just a portion thereof that corresponds to the defect in question.

#### **Section 8: Notice of Defects and Warranty**

- (1) The contracting party warrants that the goods delivered or the services rendered are free from defects. The warranty period is 36 months, commencing from receipt of the delivery in full or provision of the service in full.
- (2) If, after being requested to do so by MSF, the replacement or improvement of the service owed under the contract is not carried out or not carried out in a timely manner within the deadline set by MSF, MSF has the right to commission a third party with the improvement or it may purchase a product/service free from defects from a third party (procurement of a replacement) and demand reimbursement of the costs of engaging the third party from the contracting party.
- (3) MSF is not required to give notice of defects within the meaning of Section 377 of the Commercial Code (*UGB*).
- (4) In the event of defective performance under the contract, MSF may at its option choose between improvement, replacement, conversion or price reduction, as provided for under warranty law.
- (5) In all other respects, the statutory warranty provisions apply.

### **Section 9: Liability and Claims for Damages**

- (1) The contracting party of MSF shall exercise the diligence of a responsible business.
- (2) The contracting party is liable for any damage it causes pursuant to the provisions of the Product Liability Act (*Produkthaftungsgesetz*) and the statutory provisions on compensation for damages, unless otherwise specified below. The limitation period applicable to claims for damages brought by MSF against the contracting party is five years and begins to run from the time at which MSF becomes aware of the damage and the injuring party.
- (3) MSF only has to assert that the statutory requirements for compensation for damages are met. The contracting party bears the burden of proving that the statutory requirements for compensation for damages are not met. Irrespective of the degree of fault, MSF has the right to choose between calculating the damages payable on an objective and abstract basis or on a subjective and concrete basis.
- (4) In the case of slight negligence, contracting parties are also liable to pay compensation for direct loss (*damnum emergens*) and loss of profit (*lucrum cessans*).
- (5) The contracting party shall pay a contractual penalty of 20% of the agreed consideration in the event that it fails to comply with the place of performance or the time of performance, as well as in the event of an unjustified withdrawal on the part of the contracting party. This claim arises irrespective of the fault of the contracting party. This is without prejudice to the right to claim damages over and above this amount.
- (6) Claims for damages by the contracting party against MSF on any legal grounds whatsoever (in particular, for delay, impossibility of performance, positive breach of contract, culpa in contrahendo, defects or due to inadmissible actions) are excluded unless they are the result of wilful intent or gross negligence. Claims for damages must be asserted within three years of the contracting party becoming aware of the damage and the injuring party. In all other respects, the statutory provisions on compensation for damages apply to the contracting party's claims for damages against MSF.

### **Section 10: Reservation of Title**

- (1) Once MSF has paid the agreed consideration, any contractually agreed reservation of title lapses irrevocably.
- (2) Any agreement relating to an extended reservation of title, under the terms of which MSF would only acquire title to an item purchased once all of the existing liabilities vis-à-vis the contracting party are fulfilled, and not just the receivable arising from the relevant contractual relationship, is invalid.

### **Section 11: Transfer of Rights and Obligations**

- (1) The rights and obligations of the contracting party under the individual contracts entered into with MSF may not be transferred to third parties without the prior written consent of MSF.
- (2) MSF may, at any time and even without the specific consent of the contracting party, designate a third party to be the principal debtor in lieu of MSF (assumption of debt) for all obligations arising from or in connection with the individual contracts, provided that the subsequent debtor assumes all obligations vis-à-vis the contracting party in the same way that MSF was required to fulfil them vis-à-vis the contracting party at the time of the transfer. In such a case, MSF shall inform the contracting party of the transfer of the performance obligations to the subsequent debtor.

## **Section 12: Data Protection and Artificial Intelligence**

- (1) Please refer to our privacy statement, which can be found on our website: <https://www.aerzte-ohne-grenzen.at>.
- (2) These General Terms and Conditions also apply if the individual contracts are concluded using artificial intelligence ("AI"), such as an AI-based language model (chatbots).
- (3) The contracting party is required to comply with the provisions of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 ("Artificial Intelligence Act"), in particular Articles 50 et seq., as well as all regulations currently in force and any adopted in future concerning artificial intelligence at the national, international and EU level. In particular, the contracting party warrants that it will respect and protect the intellectual property rights and confidential business information or business secrets of MSF in accordance with EU and Austrian national law.
- (4) The contracting party is expressly prohibited from reproducing MSF texts and data in digital form, especially for machine learning and the development of AI.

## **Section 13: Applicable Law, Place of Performance, Jurisdiction**

- (1) The legal relationships with the contracting party shall be governed exclusively by Austrian law, without giving effect to the United Nations Convention on Contracts for the International Sale of Goods and the conflict-of-law provisions of Austrian international private law.
- (2) The place of performance for all obligations under this agreement is Vienna, 1020 Austria.
- (3) The parties agree that the court with subject-matter jurisdiction for the 1<sup>st</sup> District of Vienna (*Innere Stadt*) shall be competent to settle all disputes arising from this agreement, whether directly or indirectly.
- (4) MSF is entitled to have a dispute heard by another court with jurisdiction for the contracting party.