

General Conditions of GWF MessSysteme AG for Services outside of Switzerland (Version 05.2020)

1. General Information

- 1.1 The contract is concluded upon receipt of the GWF order confirmation.
- 1.2 GWF provides services, especially planning and engineering services as well as research, monitoring or technical services, under mandate („service“) according to expenditure.
- 1.3 To the extent agreed, the client must support GWF in the performance of the services. Any services requested by the client that exceed the agreed scope must be agreed in writing in advance.
- 1.4 By concluding the contract, the customer acknowledges the binding nature of these General Terms and Conditions as an integral part of the contract. Conditions of the customer are not applicable.
- 1.5 Advertising brochures, catalogues and technical data sheets are not binding.

2. Costs and Terms of Payment

- 2.1 The services are invoiced according to time and effort and any surcharges at the rates indicated in the current price list. Invoicing takes place monthly. In the case of fixed prices, invoicing takes place after provision of the services or according to the payment schedule. Invoicing is completed monthly, in the case of fixed prices after the provision of services, or in accordance with the payment schedule.
- 2.2 In the absence of any other agreement, GWF's prices are quoted in EUR, excluding VAT, postage, packaging and import duties. For deliveries, FCA Swiss storage location (Incoterms 2020) shall apply.
- 2.3 The minimum value of the service is EUR 300.
- 2.4 GWF invoices are due immediately and payable within 30 days from receipt of invoice. Offsetting against counterclaims is not permitted.
- 2.5 If the client does not meet the agreed payment deadlines, he will be in default without reminder and will have to pay interest on arrears at a rate of 5 % p.a. from the 31st day after the invoice date.

3. Service Contract

If a service contract is concluded, it is agreed in an additional appendix.

4. Services

- 4.1 The services will be provided at GWF's discretion by remote access, on-site access or at GWF.
- 4.2 GWF is entitled to use subcontractors.
- 4.3 Spare parts are charged according to the valid list prices. They can be new or as good as new. If defective parts are replaced, the replaced defective parts must be returned to GWF.
- 4.4 GWF transmits software and documentation on a suitable data carrier of your choice.

5. Obligations of the Client to Cooperate

- 5.1 The customer is obliged to provide GWF with the information and documents necessary for the services before the beginning of the execution of the service.

- 5.2 The client is responsible for the regular backup of his data himself.
- 5.3 The customer will provide GWF with access to the system necessary for the execution of the services and will provide the necessary transmission devices, network connections and workstations.
- 5.4 The customer will provide GWF with a competent contact person during the services to be rendered and will inform GWF about the safety regulations applicable to him without being asked.
- 5.5 The customer acknowledges GWF's exclusive right of disposal of its tools located at the site.

6. Rights to Hardware/Software and Documentation

- 6.1 The intellectual property of the hardware and software supplied by GWF, including their modifications and documentation, belongs to GWF or its subcontractor, regardless of their protectability.
- 6.2 GWF grants the customer a non-exclusive right to use the software, including documentation (license). The software is delivered in object code without source codes. The license exclusively entitles the use in connection with the service and can only be transferred together with the service.
- 6.3 For standard commercial software to be delivered by GWF, if any, the relevant delivery and license conditions of the respective manufacturers apply exclusively.
- 6.4 The client is not entitled: (a) to transfer the license or grant sub-licenses; (b) to copy or have copied the delivered hardware or parts thereof; (c) to process, reproduce (except for backup purposes or decompile the delivered software; or (d) to copy, publish or have published or made available to third parties the associated documentation.
- 6.5 These obligations and rights are to be conferred to the customer when the system is transferred.

7. Inspection and Acceptance of the Service

- 7.1 For the acceptance of the services rendered by GWF, an acceptance protocol is drawn up. The customer confirms with his signature that all services within the scope of the order have been performed and handed over and that the order has been completed.
- 7.2 The customer is obliged to accept the services immediately as soon as GWF has informed him of the completion of the work.
- 7.3 If partial services have been rendered, this provision shall apply accordingly. In this case, any defects can only be asserted at the subsequent final acceptance if they were not and could not be detected at an earlier (partial) acceptance.
- 7.4 If GWF provides services to the customer after the conclusion of the project, these services will be invoiced separately and on the basis of the price list valid at the time, unless otherwise contractually agreed.

- 7.5 Non-substantial defects do not entitle the customer to refuse acceptance. GWF will remedy these defects within a reasonable period of time and make the service available again for acceptance by the customer.
- 7.6 If the customer refuses the acceptance based on considerable defects, after he has given GWF the opportunity to provide the service at least twice, he can withdraw from the contract. Those services (or parts thereof), which have already been provided essentially in accordance with the contract and which can be used by the customer in an objectively reasonable manner, must be fully remunerated. A possible withdrawal from the contract does not affect these services; the corresponding contractual provisions continue to apply to them.
- 7.7 The services are automatically deemed to be accepted unless the Client declares in writing within 14 calendar days of the provision of the service, specifically listing significant defects, that he refuses acceptance. Services shall also be deemed to have been accepted without further ado as soon as the Client uses the service or allows it to be used.
- 8. Warranty in Kind**
- 8.1 GWF provides its services professionally and carefully.
- 8.2 GWF cannot guarantee a completely error-free, undisturbed or uninterrupted operation beyond this in all configurations requested by the customer.
- 8.3 GWF warrants a replacement part or upgrade for a period of 6 months after acceptance, but for no longer than 9 months after the original warranty period begins. In the case of an upgrade, the warranty only covers the functional expansion of the system which has been achieved by the upgrade.
- 8.4 In the case of a service or delivery of an update, GWF guarantees professional and careful execution for a period of 3 months after completion of the respective service or after delivery of the update, but no longer than 6 months after the beginning of the original warranty period.
- 8.5 If the customer discovers an error or defect during the warranty period, he has to notify the contractor, GWF MessSysteme AG, Obergrundstrasse 119, CH-6002 Lucerne, immediately in writing.
- 8.6 If there is a defect covered by the warranty, the customer may initially only demand a free repair. If the defect cannot be remedied within a reasonable period of time, the customer shall set a reasonable period of grace for the remedy of the defect. If the rectification definitely fails, the customer can: (a) demand an appropriate price reduction, or (b) in case of a considerable defect, which prevents the customer from using the work as a whole, withdraw from the contract, provided that the customer has given notice of the intent to withdraw from the contract in writing, granting a last appropriate period of time and GWF has not successfully rectified the defect by the expiry of this last period of time. Those services, which have already been provided to a substantial extent in accordance with the contract, and which can be used by the customer as such in an objectively reasonable manner, are to be fully remunerated. A possible withdrawal from the contract does not affect these services; the corresponding contractual provisions continue to apply to them.
- 9. Legal guarantee**
- 9.1 GWF guarantees that its services do not violate any property rights of third parties in Switzerland.
- 9.2 GWF is entitled to demand an appropriate compensation from the customer for the use of the software.
- 9.3 Claims are only considered justified if they have either been recognized by GWF or have been awarded in a legally binding procedure.
- 9.4 If a third party tries to prevent the customer from using the services of GWF in accordance with the contract on the basis of allegedly better property rights, the customer will inform GWF in writing within five calendar days. Provided that the notification is received in due time and reasonable support by the customer is given, GWF will, at its own discretion, either modify its services (including software) in such a way that they do not violate industrial property rights, if all essential requirements of the customer are fulfilled, or obtain a license from the third party for the customer at his expense, or contest the third party claim.
- 9.5 If a legal action is brought against the customer by the third party, the customer will leave the sole control over the process to GWF and will take all necessary actions. Under this condition, GWF will bear the costs of the litigation (including reasonable lawyer's fees) and will compensate the customer for any direct damage resulting from a final judgment against the customer within the scope of the limitation of liability. The customer loses the claims according to this legal guarantee if he withdraws or does not give GWF the control over the conduct of the lawsuit, especially if he settles third party claims in whole or in part by means of settlement or acknowledgement without the express consent of GWF. GWF will not refuse such approval without good cause.
- 10. Disclaimer of Warranty**
- Excluded from the warranty are all defects and damages which have not demonstrably been caused by faulty material, construction or execution, as well as those which can be traced back to improper operation or use, to normal wear and tear or to external influences such as malfunctions of devices of other manufacturers or to improper interventions and modifications on the part of the customer or third parties not authorized by GWF.
- 11. Compliance with Export Control Regulations**
- 11.1 GWF and the customer commit themselves at all times to comply with national and international export control laws as well as sanctions and embargos defined by the United Nations, the Swiss Embargo Act, the Swiss sanction regulations with corresponding sanction lists, the Swiss Goods Control Act, the embargo and sanction regulations of the EU, as well as the reexport law and embargos and sanctions of the USA, in particular the sanction measures of the US OFAC.

- 11.2 GWF reserves the right to withhold, suspend or cancel services to countries or to companies if the services are subject to an export control licensing requirement, or if the recipient country or company is subject to sanctions or embargoes, or any other licensing requirement applies. GWF cannot be held liable for any damages resulting from this.
- 12. Liability**
- 12.1 The contractual and non-contractual liability is, as far as legally permissible, completely excluded. In particular, GWF is only liable in case of intent or gross negligence.
- 12.2 GWF is only liable for direct damage and only if the customer proves that GWF caused it intentionally or by gross negligence. The liability is limited to the price of the respective service. GWF is not liable for auxiliary persons.
- 12.3 Any further liability of GWF for damages of any kind is excluded. In particular, the customer has in no case the right to claim compensation for damages resulting from loss of production, loss of use or data, loss of orders or loss of profit, nor for indirect or consequential damages.
- 13. Confidentiality and Data Protection**
- 13.1 GWF and the customer undertake to treat as their own trade secret all documents, information, aids and software received in connection with this contract and not generally accessible, not to distribute them unnecessarily within the company and not to make them accessible to third parties – with the exception of subcontractors – even after termination of the contract.
- 13.2 If GWF processes personal data within the scope of its services, GWF complies with the data protection laws and takes appropriate measures to protect such data from unauthorized access by third parties in accordance with the data protection declaration (to be found at <https://gwf.ch/datenschutz/>)
- 13.3 By placing the order, the client acknowledges and agrees that the data concerning him/her may also be stored outside Switzerland and may be disclosed to GWF and its group companies in the context of the fulfilment of the contract.
- 14. Amendment of the General Terms and Conditions**
- 14.1 GWF reserves the right to change these terms and conditions at any time. The version of these terms and conditions valid at the time of the order is decisive.
- 14.2 Adjustments or additions will be notified to the client in a suitable manner and will become valid within 14 calendar days of receipt of the changes, unless the client objects.
- 15. Final provisions**
- 15.1 Should one or more provisions of these General Terms and Conditions be or become invalid, the validity of the remaining provisions shall not be affected.
- 15.2 The contractual relationship is subject to Swiss substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980.
- 15.3 Exclusive place of jurisdiction is Lucerne, Switzerland, subject to mandatory statutory places of jurisdiction.