MOULE & PROTOTYPE
French moldmaking and prototyping industry trade union

CONTRACTUAL GENERAL CONDITIONS

for the production and supply of molds, models, prototypes and associated services[1]

GENERAL POINTS

The provisions of these general conditions are in accordance with professional practice for the services of study, development, production and supply of molds, models, prototypes and associated services, hereinafter referred to as the "Service (s)".
They govern the contracts concluded between the party performing the Services, hereinafter the "Provider", and his client, hereinafter the "Customer". By entering into a contract, the Customer accepts them, in the absence of general or specific derogations, expressly agreed in writing with the Provider. Unless their application is expressly accepted, in whole or in part, by the Provider as part of such written agreement, the general or special terms and conditions proposed by the Customer shall not apply to the contract.

1. CONTRACT FORMATION

1.1. Expression of its need by the Customer
Prior to the issuance of an offer by the Provider, the Customer must send him a precise description of the Services for which he intends to request performance.

1.2. Expression of its need by the Customer
In particular, the Customer is obliged to provide the Provider with specifications that define precisely and appropriately the characteristics of the Services in order to enable the Provider to carry out a feasibility study.

The Customer who, in the specifications or by any other means, imposes materials or technical solutions, assumes responsibility for these choices.

If the Provider is involved in the design, the parties must conclude an ad hoc contract.

1.3. Preliminary study or study
If a study and / or a preliminary study to describe the practical ways and means proposed by the Provider for the performance of the Services, made at the Customer's request on the basis of the specifications and / or its other written requests, is not followed by an order for Services, the costs incurred will be charged to the Customer.

If the study is actually followed by a contract, the Customer must inform the Provider of his observations and recommendations prior to the conclusion of the contract.

1.4. Provider's offer - Price estimate
All elements of the Provider's offer are essential elements of the contract. Unless expressly excluded, the offer is made in accordance with these contractual general conditions.

The offer shall be valid for the period specified therein and, failing that, for one month from the date on which it is sent to the Customer. Any acceptance received later cannot form the contract without the subsequent agreement of the Provider.

1.5. Conclusion of the contract
The contract may only be formed as a result of the Provider receiving an order from the Customer if the order constitutes pure and simple acceptance of the Provider's offer.

In all other cases, the contract can only be formed by the Provider accepting the Customer's order in writing.

To be considered a pure and simple acceptance of the Provider's offer, the order must be accompanied in particular by the payment of a down payment, under the conditions set out in article 6.2.

1.6. Cancellation of the contract
Once formed, the contract cannot be canceled or otherwise terminated by the sole will of the Customer. In the event of a breach of this commitment, the Customer shall compensate the Provider for all expenses, services and anything that the Provider may have earned in connection or as a result of the performance of the contract. In this case, the down payment will in any event remain vested in the Provider as minimum compensation.

2. CONTRACT MODIFICATION

Any contract modification requires prior written agreement between the parties, regardless of the cause or purpose. This agreement will have to address in particular the consequences of the modification in terms of price and / or execution time.

3. EXECUTION AND DELIVERY TIME

3.1. The execution and delivery time runs from the date of formation of the contract and, at the earliest, however, from the date on which all the documents, materials, details of execution etc ... will have been provided to the Service Provider by the Customer and / or to which the latter has moreover fulfilled all other prerequisites the fulfilment of which he is responsible for.

3.2. The binding nature of the agreed deadline must be specified in the contract as well as its nature (deadline for making available, deadline for presentation for inspection or reception, effective delivery time, etc.).

In the absence of such details, the deadline is deemed indicative.

3.3. When the deadline is mandatory, any penalties for delay must be stipulated in the contract. They are, at the most, equal to 0.5% of the contractual value, excluding taxes, of the Services whose delivery is delayed, per full week of delay beyond the third, and, in total, to 5% of the contractual value, excluding taxes, for the Services whose delivery is delayed.

In any case, to claim payment of a penalty, the Customer must prove that the delay results from a fault on the part of the Provider.

If this is the case, the penalties calculated as stated above will only be due to the extent that they correspond to the actual loss suffered by the Customer, established contradictorily between the parties. On the other hand, if the amount of this loss is higher than the amount of the penalties calculated as stated above, the Customer shall not be entitled to obtain compensation for the consequences of the delay in question beyond the latter amount, the said penalties then constituting a fixed, definitive and final indemnity.

3.4. Even if the deadline is mandatory, no delay in delivery can justify the termination of the contract by the Customer, except in case of willful misconduct on the part of the Provider.

4. DELIVERIES - TRANSPORTS

Unless otherwise stipulated in the contract, the Services are delivered Ex Works (Incoterm 2010).

Notwithstanding what is said in Article 7, the risks of the Services are transferred to the Customer upon delivery, which means, within the meaning of the applicable Incoterm, if any.

The Customer has the obligation to check, at the arrival of the Services, their condition, quantity and conformity with the indications of the shipping documents. The Customer must record all observations and reservations in this respect on the transport document and have them countersigned by the carrier or his agent. The Customer must immediately inform the Provider in writing with a copy of the relevant documents.

The Customer must then proceed with the notifications and procedures required by law (particularly Article L 133-3 of the Commercial Code) under the conditions prescribed to preserve the rights of the sender and / or the consignee with respect to the carrier.

Consequently, he alone bears the said consequences, without any recourse against the Provider, in the event that he bears the risks of transport. In the event that the Provider bears the risks of transport, the Customer shall indemnify the Provider against all damage resulting for him from any deficiency, fault and / or recklessness, whatever it may be, in the notifications and procedures required by law with respect to the carrier.

In any case, the Customer shall not be entitled to claim against the Provider, by reason of the transport, more rights than those enforceable against the carrier under the terms of the contract of carriage.

The Customer shall indemnify the Provider against any direct action taken by a carrier in the hands of the latter.

5. SERVICES ACCEPTANCE

If the parties want the Services to be subject to an acceptance procedure, the contract determines the conditions thereof.

Unless otherwise stipulated in the contract, when tests (first samples or parts) before delivery are agreed upon, they shall be carried out in the workshops of the Provider or the subcontractor, by applying the procedure normally followed by the Provider. The number of first samples or parts produced within this context is determined in the contract. Failing that, it is no more than 5. In case of absence of the Customer at the place and date of the tests, the Customer is deemed to have accepted the Services.

The Services may also be subject, by applying the conditions, in particular of procedure, agreed in the contract, to an acceptance procedure upon delivery. Unless otherwise stipulated in the contract, when an acceptance has been agreed upon, it is deemed to have taken place if the Customer fails to do so within 10 working days of delivery. The acceptance of the Services may not, under any circumstances, be refused in the absence of non-conformity of the Services with the contract preventing their use by the Customer.

6. PRICE AND PAYMENT TERMS

6.1. Price
Unless otherwise stipulated in the contract, the price of the agreed Services shall be expressed and payable in euros. It does not include taxes. It is firm or reviewable by the application of the revision formula(s) stipulated in the contract.

6.2. Payment terms
The price of the Services shall be paid as agreed in the contract and in accordance with the following rules:
- 30 to 50% of the price as a down payment on placing the order,
- then, at the time of the tests before delivery when such tests have been agreed, so that 90% of the price is then paid,
- the balance of the price (10% where tests have been agreed, 70 to 50% where only a down payment has been paid up to that point) on delivery of the Services or their acceptance when such a procedure has been contractually agreed.

Unless otherwise stipulated in the contract,
- the down payment on placing the order and the second installment due at the time of the tests before delivery, as stated above, are paid in cash, on the day of placing the order in the first case, upon receipt of the corresponding invoice in the second,
- the deadline for payment of the last installment shall be 30 days after delivery or, where an acceptance has been agreed in the contract, after the Services acceptance,
- no discount is due in case of advance payment.

It is reminded that when a holdback guarantee is agreed upon in the contract, it may not be for an amount exceeding 5% of the price of the Services or for a period exceeding one year. However, even if agreed upon in the contract, the holdback guarantee s hall not be issued if, at the Provider's option, a personal and joint guarantee of the same amount, issued by a credit institution chosen by the Service Provider, is substituted for it.

Any unilaterally deduct, compensation, etc ... with an alleged claim against the Provider that the latter has not previously recognized in writing is strictly prohibited, illegal and justify, therefore, the immediate suspension of the performance by the Provider of its obligations, for whatever reason, including under another contract.

6.3. Late payments
Any sum which has become due shall, ipso jure and without formal notice, bear interest at a rate equal to the interest rate applied by the European Central Bank to its most recent refinancing operation plus 10 percentage points. In addition, for any sum remaining unpaid after the due date, the Customer is, by operation of law, debtor to the Provider of a fixed compensation for recovery costs of an amount of 40 euros.

Any delay in payment shall, if it seems good to the Provider, also result in
- the end of the agreed term, the totality of the sums owed, in any capacity whatsoever, becoming immediately payable and / or
- the termination of all contracts currently in force and/or
- the suspension of any delivery.

The Customer may not dispense with paying all or part of an amount due to the Provider by reason of any claims whatsoever on his part, in particular with respect to alleged warranty claims, without the agreement of the Service Provider.

6.4. Right of retention
The Provider has a right of retention on all Service as soon as the Customer remains indebted to him for any sum whatsoever, whatever the cause, and / or pending the fixing of any damages, penalties etc ... in case of non-performance attributable to the Customer, whatever it may be.

6.5 Law on subcontracting
Insofar as the contract falls under the subcontracting within the meaning of the article 1 of the law n ° 75-1334 of December 31, 1975,
- the Customer has the obligation to have the Provider accepted and the conditions of payment of the contract approved by the client; should the Provider not be accepted or the conditions of payment not be approved by the client, the Customer shall nevertheless be obligated to the Provider but shall not be able to invoke the contract with regard to the Provider,
- in order for the contract to be valid, the payment of the sums due to the Provider by the Customer shall be guaranteed by a personal and joint guarantee obtained by the Customer from a qualified establishment unless the Customer has delegated payment of the Provider to the client pursuant to Article 1338 of the Civil Code, up to the amount of the Services performed by the Provider;
- failing to provide such a guarantee, the Client may assign or pledge the claims resulting from the contract or contract between him and the client only up to the amount of the sums due to him for the work he carries out personally, that is to say excluding those corresponding to the price of the Services.

7. RETENTION OF TITLE

Unless otherwise stipulated in the contract, notwithstanding what is said in article 4 regarding risks, the Provider retains full ownership of the Services until the actual full payment of their price, in principal and incidental amounts. Any failure to pay, at any of the due dates, may lead to the claim of the Services by the Provider, the sums already paid on that date remaining then, in addition, definitively granted to the Provider, as damages.

In accordance with article 4, from the date of delivery, the Customer is responsible for damages that the Services could suffer or cause for any reason whatsoever.

Until the effective payment of their full price, ownership of the Services may not be transferred to a third party, including to a company belonging to the same group as the Customer, without the prior approval of the Provider.

8. WARRANTY AND LIABILITY

8.1. Obligations of the Provider
The Provider is bound within the limits of the obligations he has undertaken. Consequently, unless otherwise stipulated in the contract, the Provider has the sole obligation to deliver the Services in accordance with the dimensions, plans and other specifications or with any other data subsequently validated by an acceptance of the Customer.

Indeed, the Customer, acting as a "principal", by virtue of his professional competence in his specialty and based on the industrial means of production at his disposal, is the only one able to define, according to the industrial objectives of which he alone has knowledge and control, all the technical data to which the Services must conform.

8.2. Warranty
Within the limits specified in Article 8.1,
- any claim, reservation or dispute relating to missing items and/or apparent non-conformities must be formed within the framework of the acceptance procedure or, in the absence of a contractually agreed acceptance, within 10 working days of delivery of the Services in question;
- any claim or dispute relating to non-conformities other than apparent ones must be formed within a period of six months from acceptance of the Services or, in the absence of such acceptance agreed upon in the contract, from the delivery of the Services or, in the case of a contractually agreed guarantee of a number of production cycles or for a specified period of time, before this number of cycles or the end of this period is reached;
- the Customer must notify the Provider in writing of non-conformities that he attributes to the Services, provide any justification as to their reality, give the Provider all facilities to proceed to establish such alleged non-conformities, the Provider reserving the right to proceed, directly or indirectly, to any finding and verification on the spot; where it turns out that the Service in question is in fact compliant or that the Customer cannot report evidence that the Provider is accountable for the Service's non-compliance, an indemnity intended in particular to cover all costs, including staff ones, incurred by the Provider shall be as of right due by the Customer to the Provider;
- the Provider's guarantee consists exclusively in remedying by itself or by a third party of its choice any non-compliance eligible for its guarantee in accordance with this article, to the exclusion of any other intervention or assumption of responsibility.

The Customer is stripped of all rights to warranty:
- in the event of decisions or choices imposed by the Customer, in particular in the event of a defect in the raw material imposed or a defect arising from the design of the Services;
- in the event of modification or repair of the Services carried out, without the prior written consent of the Provider, by the Customer or a third party chosen by it;
- in the event the Services are used, handled, stored or maintained abnormally or not in accordance with the specifications, the Provider's instructions or the standard practices.

8.3. Liability
The Provider is not obliged to repair the harmful consequences of the facts of the Customer or third parties, regardless of whether they are at fault or not.

In order for the Provider's liability to be validly engaged, the person who avails himself of it must provide proof of
- a breach by the Provider of its obligations,
- a damage foreseen or foreseeable, at the time the contract is concluded, and not merely possible,
- as well as, the direct causal link between that breach and that damage.

In any event, the liability of the Provider shall in particular not extend to
- damage to property and persons and, in general, to any damage caused by a defective Service during its use, when the defect is attributable to the design of the Service or the system in which it is incorporated, to instructions of any kind given by the Customer to the Provider, or to any processing or modification made to the Services after delivery;
- damage to property and persons and, in general, to any damage caused by a defective Service during its use, if the Customer has put it into service without having carried out all the checks and tests that its design, use and the industrial result sought required;
- direct and / or indirect immaterial damages and in particular operating losses, loss of profit, loss of opportunity, commercial loss, revenue shortfall etc ...

9. INTELLECTUAL PROPERTY

9.1. Studies, research, methods, processes, know-how, data, information, plans, diagrams, etc.
The study and the performance of the Services do not imply the transfer to the Customer of the Provider's rights on the pre-studies, studies, researches, methods, processes, know-how, data, information, plans, diagrams etc ... carried out and / or implemented by the Provider for the performance of the contract, regardless of the medium, and whether or not these rights are intellectual property rights in the strict sense (such as patent, trademark, model, etc ...).

The Provider retains all its rights to these elements and the Customer acquires only ownership of the manufactured object.

9.2 Means of production
Means of production, including, before-models, reproduction mock-up, gauges, fixtures, electrodes, data and related information, whatever the medium, as well as all rights, whatever they are, who are attached thereto, remain the ownership of the Provider.

These means of production may be the subject of a loan for use to the Customer for the sole purpose of developing, modifying or maintaining the Service. In this context, the Customer must provide the insurance of these means of production as to their deterioration or destruction for any cause whatsoever and this for an amount allowing their replacement to new. These various means of production must be returned to the Provider at the latter's first request.

The means of production are retained by the Provider for three years. At the end of this period, the Provider is free to proceed with their destruction after giving the Customer three months' notice, unless, within this period, the Customer has requested that they continue to be retained and that an agreement has been reached on the terms of this extension, in particular with regard to the Provider's remuneration in this respect.

9.3 Warranty against third party claims
In addition, the Customer warrants to the Provider that the Services do not infringe any rights, including intellectual property rights, belonging to third parties and against any actions or other remedies of any kind that may be brought against the Provider in this respect. In this context, the Client shall indemnify the Provider against all direct and indirect consequences of any kind (damages, sanctions, penalties, legal, procedural, legal advice or other costs, etc.) of such actions and remedies.

10. CONFIDENTIALITY OBLIGATION

Each of the parties considers that all Confidential Information, as defined below, is communicated to it solely for the purposes of the corresponding contract and is secret and confidential in nature.

Confidential Information is all documents, information and information of a technical nature and, in particular, all pre-studies, studies, research, methods, processes, know-how, data, information, plans, diagrams, part plans, specifications (functional, technical, etc.), dimensional tolerances, but also all documents, information of an economic, financial or commercial nature, in whatever form, written or oral, and medium (paper, computer file, digital data or other) held by a party (the "Disclosing Party") and of which the other Party (the "Informed Party") may have become aware in the course of the negotiations and performance of the contract, including but not limited to, during visits of production units.

As a consequence, the Informed Party undertakes to keep Confidential Information, and to have them kept, strictly confidential and secret.
In this context, any use for purposes other than those defined in the first paragraph of this Article 10, any disclosure, assignment, communication, reproduction, representation, diffusion, modification, total or partial, direct or indirect, in any form and by any means whatsoever of Confidential Information, without the prior written consent of the Communicating Party, is strictly prohibited.

More generally, the Informed Party undertakes to ensure that the Confidential Information is not disclosed, in whole or in part, directly or indirectly, to third parties, without the prior written consent of the Communicating Party for the communication of the Confidential Information in question to an identified third party.

In this respect, the Informed Party agrees, in particular, to communicate all or part of the Confidential Information only to those of its employees whose intervention will be strictly necessary for the performance of the contract.

In the event of such a communication, the Informed Party shall guarantee that each of its involved employees will keep Confidential Information as afore said communicated strictly confidential and secret.

Likewise, in the case of the communication of Confidential Information to a third party, which presupposes the prior agreement of the Communicating Party as stated in paragraphs 3 and 4 above, the Informed Party shall guarantee that the said third party will strictly maintain the secrecy and confidentiality of the Confidential Information considered.

The contract does not imply any transfer or promise to transfer ownership of the Confidential Information from one party to the other. Each party therefore retains ownership of the intellectual property rights it holds in the Confidential Information of which the other party may have become aware.

The Informed Party has only a right of use on Confidential Information that is not subject to intellectual property rights, including know-how, strictly limited by the terms of these general conditions and the contract.

The term or termination for any reason whatsoever of the contract shall not release the parties from their obligation to comply with the provisions of this article for the Confidential Information held by the other party and of which they may have become aware prior to the term, the date of termination or, more generally, of end of the contract. This obligation shall continue for a period of ten years from the said term or date.

11. FORCE MAJEURE

None of the parties may be held liable for its delay or failure to perform any of its obligations under the contract if such delay or failure results from force majeure within the meaning of French law. Nevertheless, it is agreed that, in addition, force majeure within the meaning of these general conditions and the contract, notwithstanding the qualification that could be given by application of French law, is also the following events:
- labor dispute, total or partial strike, lockout, affecting the Provider, the Customer, the subcontractors, service providers, carriers, post offices, public services and, more generally, social unrest of any kind;
- conflicts, war, attacks, riots and, more generally, various disturbances of public order;
- natural or atmospheric disasters or cataclysm, earthquake, storms, fires, floods, heavy rains, snowfalls, droughts, bad weather, epidemics and, more generally, any climatic event;
- acts of government, import bans embargoes, requisitions and, more generally, any mandatory injunction by the public authorities;
- operational accidents, machine breakdowns, explosions,
- computer bug.

Each party shall inform the other party within 3 working days of the knowledge it will have, of the occurrence of any case of force majeure which, in its opinion, is likely to affect the performance of the contract.

12. HARDSHIP CLAUSE

In the event of the occurrence of an event and/or, more generally, changes in circumstances beyond the control of the parties and jeopardizing the economy of the contract in such a way that the performance by one of the parties of its obligations becomes excessively onerous, the parties agree to negotiate in good faith the amendment of the contract in order to take into account the consequences of this event and/or development.

In the absence of agreement between them on such an amendment within 45 days of receipt of the notification given by the party concerned by the excessively onerous execution of its willingness to avail itself of the provisions of this article, by registered letter with acknowledgement of receipt, the said party may terminate the contract as of right with 15 calendar days' notice sent by registered letter with acknowledgement of receipt.

In particular, the existence of one or more competing offers made to the Customer by one or more third parties, on more advantageous terms (particularly lower prices or shorter time periods, etc.), or any changes, whatever their nature (e. g. reduction in volumes, breakage, etc.), and whatever the cause and merit of such changes, may not be regarded as jeopardizing the economy of the contract and therefore as justifying the application of this article.

13. JURISDICTION – APPLICABLE LAW

The parties shall attempt to settle their differences amicably before entering the competent court.

In the absence of an amicable agreement, the amicable settlement attempt being deemed to have failed in the absence of a written agreement between the parties within 60 calendar days from the first notification of the dispute made by the most diligent party, by registered letter with acknowledgement of receipt, any dispute shall fall within the exclusive jurisdiction of the court in whose jurisdiction the head office or domicile of the Provider is located, even in the event of a request under guarantee or a plurality of defendants.

These general conditions and the contract are governed by French law excluding both its conflict of laws rules and the Vienna Convention on the International Sale of Goods of April 11, 1980.

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[1] These general conditions have been registered at the office for professional usages of the Commercial Court of Paris **on February 2018**. Their English text is a translation; in case of difficulties of interpretation, the French text shall prevail.