

The following **Terms & Conditions of Malz++Kassner GmbH**, Leopoldstraße 7a, 38100 Braunschweig, Germany (hereafter "Malz++Kassner", "we", "us", or "our"), shall be effective as of June 22, 2007, superseding all prior versions.

1. Scope

The following provisions shall apply to all our sales and services, unless expressly agreed to otherwise in writing. We hereby expressly reject any conflicting terms of or collateral agreements with the buyer or customer (hereafter "you" or "your"), which shall be binding only if specifically confirmed by us in writing.

2. Execution of contract

Offers made by us shall be non-binding, while catalogs, leaflets, advertisements, price lists, and the Internet contain only approximate values subject to change, which shall become binding after we have confirmed them in writing in a contract or in business correspondence. Orders shall be legally binding only upon our express written confirmation or delivery of the goods.

Orders placed via the Internet are preliminary when you receive confirmation of your email submitted at the end of the ordering process, and shall become binding following our confirmation of the order or upon delivery of the goods. Your order shall not be binding if you do not receive an order confirmation or the goods within two (2) weeks thereafter. We shall have the right to exercise our discretion in rejecting any orders placed.

3. Supplies and shipment

Unless stated otherwise in our offer, delivery will usually take place within 7 days. You shall be obligated to accept and verify the goods received, and shall also accept partial shipments and services deemed reasonable, without your prior consent. We shall exercise our discretion in selecting the most reasonable method of shipment, unless otherwise requested by you.

You may rescind the contract for non-performance, only after having first granted us a grace period of at least four (4) weeks via registered letter, unless we had previously confirmed a binding delivery schedule in writing. We shall not be held liable for the duration of delays arising from events beyond our reasonable control, such as industrial actions, traffic jams, and force majeure, under which circumstances we shall have the right to withdraw from the unfinished portions of the contract, without incurring any liability for attendant damage claims.

4. Right of return

If you are based within the European Union, you shall have the right to return standard software and hardware within two (2) weeks of delivery, no questions asked, unless you act in a commercial capacity by placing an order through a firm or as an independent contractor. In order to comply with this return period, which shall commence following receipt of the goods and detailed written instructions on such rights, you are required to simply ship the goods on time to the following address:

Malz++Kassner GmbH
Leopoldstraße 7a
38100 Braunschweig
Germany

The return of goods shall be at our risk, and your shipping costs will be reimbursed. Software delivered by post may be returned only if the seal on the package and CD case is intact. Software downloaded fully online or electronically is not returnable.

5. Settlement of returns

Following proper return of the goods, each party shall have the right to reimbursement for services rendered or benefits of use. If the goods have deteriorated, the parties may demand an equivalent value, unless such deterioration occurs due to inspection of the goods, similar to that conducted by a customer in a store. You may avoid liability for equivalent value replacement by not using the goods and refraining from all actions that may impact their value.

6. Scope of services and payment

We shall retain the right to invoice our services as and when we deem appropriate, whereby we shall be entitled to engage a third party to undertake the development, completion, and execution of the services on our behalf.

6.1 Software development services

We provide the following services under a software development contract: using our discretion as to the tools and methods to be applied, we develop process flowcharts, relevant programs, and prepare a user manual. You shall test the supplied programs or subparts immediately upon receipt for errors, and accept the supplied work. The software shall be deemed accepted, if you do not file a complaint within twenty-one (21) days after the programs or parts thereof have been installed or handed over to you. Training and instructions of your operating personnel on the software or hardware is not included in the scope of services, and shall be charged for separately. You are solely responsible for installing and setting up any software or hardware delivered.

6.2 Scope of Web design services

Web design comprises only the design and technical implementation of graphics, texts, and layouts for an Internet site. In the event you give us pictures, graphics, texts, or similar material to be incorporated into the Web pages prepared by us, you shall be obligated to ensure that such material does not infringe upon any third party copyrights. You shall indemnify us against any claims that may arise due to unauthorized use of third party material you provide to us for the subject site. You shall test the supplied material immediately upon receipt for errors, and accept the work, which shall be deemed accepted if you do not file a complaint within twenty-one (21) days after the material has been handed over to you. We hereby assign to you non-exclusive rights of use in the Web pages, but retain the copyrights thereto. If the material supplied contains a reference to Malz++Kassner as the Web designer, you may not subsequently remove or alter such notice.

6.3 Scope of consulting services

You shall be required to approve all decisions and actions related to consulting services, whereby your approval and confirmation will be required in writing for any binding commitments made to suppliers or third parties.

7. Prices

Prices for standard software and hardware are included in the relevant product information, and may be requested at any time from us in printed or electronic form, or downloaded from www.CAD6.com. Any specific supplies and services beyond the scope of standard services shall be in accordance with the written contract confirmation sent by us to you, subject to our right to pass through any documented price increases. Unless agreed upon otherwise, our prices are in Euros, ex warehouse, and exclude any VAT applicable on the day of delivery and any costs for freight, postage, insurance and miscellaneous shipping and handling charges.

8. Warranty and liability

We do not warrant nor accept any liability whatsoever for the fitness of our goods for any particular purpose, irrespective of whether you or the recipient of the goods informed us of any details in connection with the intended application. We shall not be liable for any claims of direct or indirect damages or losses or injury to persons or property damage that arise from or in connection with the use of our goods. You are obligated to check the delivery immediately upon receipt, and to file without delay a written complaint in case of any technical defects, incorrect deliveries, errors in quantities etc., or lack of fitness for the purpose. In particular, notification of incorrect deliveries, errors in quantities, and transportation damage shall be filed in writing within seven (7) days. The warranty excludes claims arising from improper use, storage, or handling of the goods, whereby a partly defective shipment shall not entitle you to claim damages covering the entire shipment, unless you are unable to use the defect-free components of the shipment.

9. Payments

Unless otherwise stated on the invoice, the invoiced amount shall be paid to our bank account immediately upon receipt of the invoice. We may bill for partial shipments. Bills of exchange or other payment orders may be accepted in lieu, subject to a special agreement. You shall be responsible for covering any charges levied by the bank immediately. We may assign our receivables from this business transaction. If your payment is overdue, we shall be entitled to charge interest at the rate of 5% over the current base interest rate of the German Central Bank, which shall be computed without further notice as of the due date and be immediately payable.

If you default on a payment for a business transaction and/or we become aware of circumstances that indicate that your creditworthiness has worsened, we shall have the right to demand immediate settlement of your payables and, as a precautionary measure, request the return of goods supplied. Thereafter, we shall be entitled to demand advance payments or securities before making new deliveries, or to withdraw from the remaining portion of the contract. You shall have no rights to offset any counterclaims against our receivables, unless such claims are unchallenged or legally enforced. Any warranty claims filed by you shall not affect the date when receivables to us are payable.

10. Vendor's lien

We shall obtain a vendor's lien on the goods supplied up and until receipt from you of all outstanding amounts, including those from past, current, or future business transactions. You shall be entitled to use the goods subject to our vendor's lien during the normal course of your business, provided you are not in default on any of your attendant obligations. At our request, you shall provide us with all necessary information on the status of the goods subject to our vendor's lien, their location, on payables assigned to us pursuant to the preceding provision, and to notify the receiver of the goods of such assignment. You shall notify us immediately in writing if the goods subject to our vendor's lien are accessed by third parties in fact or in law, or damaged, or lost, and you shall provide us the sheriff's return or attachment order, if relevant. You shall bear the costs for any related actions on our part that become necessary.

11. Export

You shall require our written consent to export our goods to non-EU countries, notwithstanding your responsibility to obtain all necessary import/export permits.

12. Copyrights

All our programs, software, and user manuals are protected by copyright. The granting of rights to use requires our written consent. Any software ordered from us that has not been developed for you, shall be subject to our software license agreement applicable at the time the order is placed. This license agreement may be ordered at any time from us in printed or electronic form, or downloaded from www.CAD6.com. We shall retain all current and future copyrights and/or trademarks in any programs we sell and in derivative programs, subprograms, and related documents, including cost estimates, drawings, and miscellaneous proposals/bids. You are strictly forbidden from copying our programs, software, or user manuals or releasing them to third parties.

You shall indemnify and hold us harmless against any claims arising from or in connection with the above-stated copyright obligations. We shall have the right to claim a contractual penalty of ten (10) times the purchase price of the full program supplied, without obligation to provide documentary evidence, notwithstanding any further claims. If we file damage claims in addition to the contractual penalty, any penalty paid shall be offset against such damages claimed.

Malz++Kassner is a trademark of Malz++Kassner GmbH, registered in Germany.

13. Data storage and protection

We shall store and process information on you electronically, to the extent necessary for conducting business and as permissible under the Federal and Communications Data Protection Acts (§26 of BDSG & TMG). You shall have the right to submit a request by post or fax to view, correct, block, or delete your personal information in our records, at no cost to you. We shall not pass on any of your personal information, including your home and email addresses, to third parties without your express, prior revocable consent. However, we may pass on such information to service providers that need the information to process your order, for instance, to enable the freight company to deliver the goods or the bank to collect payment, whereby we shall disclose only the minimum possible amount of information.

14. Governing law and jurisdiction

All orders and supplies shall be governed by the Laws of Germany. In the event you are a general merchant or legal entity, jurisdiction shall be in Braunschweig, for all disputes arising from or in connection with this agreement, including proceedings involving bills of exchange or checks.