

General Terms & Conditions

Form of Contract

A contract between Evolute GmbH (“Evolute”) and a contracting party (“CP”) results either from Evolute and CP (“parties”) entering into a written contract or from an offer being made by Evolute and being confirmed without any changes by the CP. Should the order confirmation differ from the offer, these changes are only valid once explicitly confirmed in writing by Evolute.

Prices

Prices are based on the agreement between the parties. All prices are stated in Euro, net without VAT.

Payment Terms

Payment terms are as stipulated in the contract, or, if the contract does not include payment terms, one third of the order value is payable upon conclusion of the contract, one third at the start of the implementation phase, and one third upon completion of the project. Invoices are payable net within 21 days. Payments will always be offset against the oldest claim arising from overdue invoices, regardless whether the claim arose from this or another contract between the parties.

Waiver of Claim Offsetting

The CP must not withhold payments for received goods and services and offset them with claims against Evolute; this includes warranty and liability claims.

Acceptance of Goods and Services, Notice of Defects

The CP must give written notice of obvious defects within 14 days; hidden defects must be reported within 7 days of discovery. The CP acknowledges that failure to give notice of defects voids warranty claims, the right to challenge defects as well as entitlements for compensation. Notice of defects is also necessary in case of incorrect delivery or incomplete services; in this case the CP has to set a reasonable term for Evolute to provide the contracted services. The CP is not entitled to make any claims for compensation of damages or to terminate the contract.

Warranty

In the case of a valid warranty claim, Evolute will replace defective goods or services at their own expense within a reasonable time limit. Replaced parts become the property of Evolute. Evolute have the right to repair and amend goods and services twice. If Evolute have not repaired, amended, or replaced the defective or missing goods or services by the lapse of the second term set, the CP may claim a discount. Unless agreed otherwise, such a discount is limited to 5 percent of the agreed price of the missing or faulty service or product. Defects do not entitle the CP to withdraw from the contract. The CP is not entitled to compensation for damages. Evolute are exempt from warranty obligations as long as the CP is behind schedule with its contractual obligations. Warranty is voided if the CP modifies or repairs the defective goods or services without prior written consent from Evolute. The deadline for the assertion of any warranty claim ends 6 months after delivery.

Consequential Damages

Liability for consequential damages of any kind is excluded to the maximum extent permitted by law. This exclusion applies especially to damages caused indirectly and to lost profits.

Retention of Title

The CP acquires the contractually agreed ownership respectively rights of use of delivered goods and results only upon full payment of the agreed remuneration.

Copyright and Intellectual Property Right (“IPR”)

Copyright and IPR remain with the original holder. Evolute retain all rights on texts, designs, graphics, presentations, publications, software, etc.

Advertisement

Both parties are entitled to use the name of the other party for advertising purposes.

Severability Clause

Should contractual agreements between the parties or portions of these terms and conditions become invalid or void, the remaining agreements stay in force. The parties or a judge are to replace invalid or void agreements with contract terms that conform to the law and that achieve the economic intent of the original agreements as closely as possible.

Jurisdiction

Contracts and agreements shall be governed by the laws of Austria. The court of jurisdiction is Vienna, Austria.