

# General Terms and Conditions of UP Designstudio GmbH & Co. KG, Stuttgart

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## § 1 Area of application

- (1) These General Terms and Conditions apply exclusively to all agreements governing product design, product communication, consulting and product development services between UP Designstudio GmbH & Co. KG ("UP") and the business partners ("customer").
- (2) Contrary or deviating terms and conditions of the customer to those of UP are not recognised by UP, unless UP has explicitly agreed to their validity in writing. Counter-confirmations on the part of the customer with reference to their conditions are herewith contradicted.
- (3) These terms and conditions also apply for all future business with the customer as far as no other terms have been agreed to with him in writing.
- (4) The terms and conditions of UP are only valid for entrepreneurs. Entrepreneurs in the sense of the terms and conditions are natural or legal persons or partnerships with legal capacity, with whom a business relationship is entered into, and who act in a commercial or independent professional activity.

## § 2 Quotations, offers, conclusion of an agreement

- (1) Unless something else has been agreed to in writing all offers issued by UP are subject to confirmation and non-binding unless something else has been agreed to in writing.
- (2) The customer is entitled to accept the contract offer in the order within a period of four weeks after receipt. A contract is only concluded by the written order to UP.
- (3) Quotations issued by UP are non-binding.
- (4) All agreements between UP and the customer related to the execution of the contract are to be put down in writing. This refers in particular also with regard to the volume and requirements of the order, side agreements and assurances as well as for subsequent changes and additions to the agreement. Telephonic or verbal agreements such as agreements with UP representatives only attain a legally binding effect if UP confirms them to the customer in writing.
- (5) The ownership and all copyright of all documents pertaining to the offer remain with UP. These documents may not be made available to third parties or used else-

where and are to be returned to UP at its request immediately, in particular if UP is not given the order.

## § 3 Reimbursement and payment terms

- (1) All quotations are all subject to confirmation. Prices quoted are net prices plus the amount of VAT due that is valid on settlement date. As far as these are necessary, forwarding expenses are invoiced additionally.
- (2) If the customer wishes to make changes after the assignment of UP, he has to bear the resulting additional costs. UP retains the full remuneration claim for work already commenced.
- (3) If the execution of the order is delayed for reasons for which the customer is responsible, UP can request a reasonable increase in the remuneration.
- (4) As far as no separate agreements have been made for payment, the customer undertakes to pay invoices net within 14 days from date of invoice. After the expiry of this deadline, the customer is in arrears even where no reminder is sent. The day the payment is received is the day on which UP is able to dispose of the equivalent amount.
- (5) In the case of arrears, all outstanding claims become due immediately without any deductions. If the customer does not fulfil the payments agreed to or does not provide security as requested, the performance obligation on the part of UP falls away respectively UP is entitled to a right of retention.
- (6) All claims from UP are, also in the event of a deferment, immediately due if the customer suspends his payments, is heavily indebted, insolvency proceedings have been instituted against his assets or if the institution of such proceedings has been requested, or the institution of such proceedings has been rejected on the grounds of insufficient assets or UP is aware of circumstances that considerably suited to reduce the customer's creditworthiness. UP is then entitled at its choice and following the setting of a deadline to ask for the delivered product to be returned, to make further performances dependent on advance payments or the provision of security and to demand damages due to non-fulfillment and to withdraw from the contract.

#### § 4 Delivery time and performance time

- (1) Delivery terms are approximate and non-binding as far as they have not explicitly been confirmed in writing by UP as binding. Adherence to bindingly agreed delivery times presupposes that all relevant questions have been clarified and that the customer has fulfilled all his obligations such as the presentation of the necessary documents and information or the payment of a deposit. If this is not the case, the delivery time is proportionately extended.
- (2) If, at the **customer's instigation**, additional requirements are made with regard to the object of the performance, the delivery time extends by the time necessary for the implementations of these requirements.
- (3) Performance delays based on force majeure do not fall under UP's responsibility. This also applies to bindingly agreed deadlines.

#### § 5 Copyright, right of use

- (1) UP has the sole copyright of the concepts, drafts, two- and three-dimensional designs, prototypes, works, project results and other performances carried out. Proposals, instructions or collaboration on the part of the client or his employees and agents do not justify any joint authorship.
- (2) As far as no other agreement is made, UP will, after the whole payment of the remuneration, grant the customer the non-exclusive licence, unrestricted right of use in terms of territory and time in the contractually agreed volume. The customer does not receive any ownership rights; these remain with UP.
- (3) As far as no other agreement is made, rough outlines, fine drawings, files, information and other project results may not be altered by the customer without the prior approval by UP.
- (4) Even after a right of use has been granted, UP is entitled to use its rough outlines, fine drawings, duplications, product results etc. as part of self-advertising and as a reference.
- (5) The transfer of a right of use by the customer to a third party requires the prior approval of UP.
- (6) UP is not obliged to hand over to the customer any files or other data carriers that were drawn up in the computer. If the customer wishes the handover of computer data, this is to be agreed on separately and to be reimbursed.

#### § 6 Coordination of the prototype, product supervision, advertising material, name giving

- (1) Before commencing with the serial production, the prototype is to be coordinated with UP.
- (2) Production supervision by UP is only carried out based on a special agreement.

- (3) UP is entitled to have illustrations of the items that were produced with the aid of its rough outlines handed over to it.
- (4) UP is entitled to five copies of advertising material produced for the products that it designed. UP is entitled to distribute this advertising material or to make copies thereof for self-advertising.
- (5) In publications, UP is entitled to be named as designer respectively author of the product as well as the reproduced items. The copyright description as advised by UP is to be applied to the products that were manufactured according to its design.

#### § 7 Guarantee, Liability

- (1) As far as the law governing the contract for work and services applies, the following applies in terms of guarantee and liability:
  - a) UP undertakes to carry out the order with the highest degree of care possible. UP must treat any samples, documents, patterns, data etc. left with it with care.
  - b) A defect is only present if the project performance differs considerably from the guidelines given by the customer. The fact that the customer does not find the project result satisfactory does not constitute a defect. Creative freedom exists within the framework of the order. Complaints and reclamations with regard to the artistic design are therefore excluded.
  - c) If there is a fault, UP is entitled to remove this in two subsequent improvement attempts. If these attempts are unsuccessful and/or no practical removal is possible, the customer must, as part of a last extension, provide UP with the opportunity to carry out at least two additional subsequent improvement attempts. If within this extension period UP is also then unable to remove the defects, the customer is, at his choice, entitled to a reduction or to withdraw from the project performance. The right to withdrawal and a claim for damage instead of the entire performance only exists in the event of substantial defects.
  - d) UP is liable for damages, irrespective out of which legal grounds, only in the event of wilful intent and gross negligence, also on the part of its legal representative and executive staff.
  - e) In the case of a negligent violation of duty, UP's liability is excluded as far as it does not refer to damage for which UP is responsible in terms of a violation to life, body or health or a significant contractual duty (material obligation). In the event of a material contractual obligation, the liability for damage on the part of UP is limited to predictable contract-typical, direct average damage. This also refers to inadvertently negligent violations of duties on

the part of UP's legal representatives or by its sub-contractors.

- f) The liability for a positive violation of a contractual duty at the conclusion of the contract and from unauthorized action is restricted to the replacement of typical predictable damage.
- g) With the release of drafts, final designs, drawings and other performances etc. by the customer, the customer takes the responsibility for the technical, content-related and functional correctness of the product, text, image, website, video and design as well as the workability of the production. UP has no liability whatsoever for those drafts, developments, rough outlines, fine-drawings and sketches that have been released by the customer.
- h) UP is not liable for the novelty and/or uniqueness, competitive admissibility, utility and design registration or protectability and economic usability of the design work and drafts. UP is also not responsible if the manufacturing and/or usability conflicts with third party rights.
- i) Complaints and reclamations irrespective of what nature are to be asserted towards UP by the customer in writing within 14 days after the work has been delivered. Thereafter, the work is considered as having been accepted and faultless in terms of the contract.
- j) UP is not liable for faults to data carriers, files, information and layouts that arise during the importation of data onto the customer's system or that of his authorized representative. Sending work and drafts, data carriers, files and information etc. takes place under the customer's guarantee and for his account.
- k) UP does not assume any guarantee for the adherence to legal provisions with regard to the processed item.
- l) The customer releases UP from all claims that third parties could assert against UP with regard to a behaviour for which the customer is responsible in terms of the contract or these General Terms and Conditions respectively assumes liability. The customer carries all costs of a possible action.
- m) As far as UP itself is a customer of sub-contractors, UP herewith assigns all the guarantee performances, claims for damage and other claims out of faulty, delayed or non-delivery it is entitled to, to the customer. The customer undertakes to try to enforce the assigned claims before it claims from UP.
- n) If the execution of the order is delayed for reasons for which the customer is responsible, the customer can not derive any claim against UP from this.
- o) Further claims are, as far as they are legally permissible, excluded.
- p) Claims for damages on the part of the customer as a result of defects are statute-barred after a period of one

year following the acceptance; this does not apply if UP can be accused of malicious intent.

- (2) UP will carry out the greatest care in its provision of consultation and services. A liability vis-à-vis the customer only exists in the case where the damage is caused by wilful intent or gross negligence. For the rest, any guarantee and the resulting liability on the part of UP, as far as legally permissible, is excluded.

## § 8 Customer's obligations

- (1) As far as the customer has undertaken to make available to UP image, sound, text, model-making or similar material as part of the contractual execution, the customer must return these to UP at his expense immediately after the termination of the agreement. Furthermore, the customer, at his expense, ensures that UP obtains the necessary rights for the use of these materials.
- (2) The customer assures that he is entitled to the use of all patterns, files and information etc. and releases UP in this regard from all claims for compensation by third parties.
- (3) The customer supports UP to the best of its ability during the fulfillment of the performance due in terms of the contract. In particular, this refers to making information, data material as well as hardware and software available in a timely manner as far as this is necessary for the order. The customer will comprehensively inform UP of the performances to be carried out by UP.
- (4) The customer nominates a contact person for UP who has the necessary expertise.
- (5) If the customer transfers information, irrespective in which form, the customer is obliged to create backup files before sending the information. In the instance where there is a loss of data, the customer undertakes to re-transfer the relevant data bases to UP free of charge.
- (6) The customer declares his consent that for the purpose of communication within the project performance, documents and information can be sent by E-mail or by other electronic means via the Internet. The customer is aware that data transmission may be associated with transmission errors, transmission failures, data theft, data loss and loss of confidentiality. The customer takes this into account.

## § 9 Data protection

The customer agrees that all information that UP receives within the framework of the business relationship is stored and automatically processed in its EPD system.

## § 10 Offset, retention, assignment

- (1) UP is entitled to offset claims by a customer or to assert a right of retention also in the event of different settlement dates.
- (2) The customer is only entitled to offset a claim by UP or to assert a right of retention if his claims are legally determined, undisputed or recognised by UP. Further, the customer is only entitled to carry out a right of retention as far as his counter-claim is based on the same contractual relationship.
- (3) The customer also declares that he agrees to a settlement of his claims and liabilities towards UP. In the same way, UP can also settle claims and liabilities with the customer's group company.
- (4) Claims by the customer against UP may not be assigned unless the preconditions of Section 354a HGB (*Handelsgesetzbuch* / Commercial Code) apply.

## § 11 Confidentiality

UP and the customer mutually undertake to keep secret all business and trade secrets of the other party for an unrestricted period of time and not to pass this information on to a third party or to exploit it in any way. All information in whatever form that is received by the other contractual partner based on the business relationship may only be used within the framework of the relevant contractual purpose.

## § 12 Final provisions

- (1) German substantive law applies exclusively for these business conditions and the entire legal relationship between the parties or their relevant legal successors.
- (2) Place of performance for both parties is Stuttgart.
- (3) As far as the customer is a businessman, the exclusive place of jurisdiction for all disputes is Stuttgart. UP is entitled to take the customer to court also at the place of the **customer's** competent court.
- (4) All changes and/or additions must be in writing to become effective. The same applies for the provision relating to the written form.
- (5) Should individual provisions of these General Terms and Conditions be ineffective or become ineffective, this does not affect the validity of the other provisions of these General Terms and Conditions. The parties undertake to replace ineffective provisions by new provisions that come closest in meaning to the regulations contained in the ineffective provision. The same applies for loopholes contained in the contract. The parties agree to work towards a removal of the loophole in such a way that comes closest in meaning and purpose what the parties would have determined if the item had been considered by them.