

## General Terms and Conditions

### 1. Scope

- 1.1 The following General Terms and Conditions of everdesign / Certified Designer Stephan Hauser (hereinafter referred to as the "Contractor") shall apply to all business relations of the Contractor with companies (as defined in Art. 14 BGB – German Civil Code), corporate bodies under public law or special funds under public law (hereinafter referred to as the "Client").
- 1.2 The General Terms and Conditions in the relevant version shall also apply as framework conditions for future contracts for deliveries, services or quotations to the Client without the need for the Contractor to refer to them again in each individual case.
- 1.3 Any different or additional terms and conditions of the Client shall only form part of the contract if and insofar as the Contractor has expressly approved their application.

### 2. Conclusion of Contract

- 2.1 Unless expressly specified as binding, all quotations given by the Contractor shall be subject to change and non-binding. An order by the Client shall constitute a binding offer of contract, which the Contractor may accept within four weeks of receipt. Such acceptance may be confirmed either in writing (e.g. by acknowledgment of order) or by the commencement of provision of the service as discernible to the Client.
- 2.2 The Contractor shall retain title and copyright to all documents (including in particular cost estimates, patterns, drawings, invoices and other contractual and delivery documentation). Such documents shall not be disclosed to any third parties without the express consent of the Contractor.

### 3. Subject of Contract

- 3.1 The subject of the contract shall be the provision of services and/or the production of work in accordance with the precise description in the quotation/order in conjunction with its conditions and any applicable specification and schedule. Any amendments to the specification of services by the Client shall be given in writing.
- 3.2 If the Contractor is instructed to produce design templates, he shall be allowed full creative freedom unless the documentation agreed between Client and Contractor includes specific service requirements.
- 3.3 The Contractor shall be entitled at his own discretion to perform the services himself or to make full or partial use of third parties in the provision of the contractual services.

### 4. Client's Obligations

- 4.1 The Client shall make available to the Contractor free of charge all documents, samples, parts and/or other information and items as required for the provision of the services. The Client shall furnish the Contractor with any requested documents and information promptly, generally within one week of request by the Contractor.
- 4.2 If any action by the Client is required for the further provision of the Contractor's services (interim acceptance, approval of drafts etc.), the Client shall provide this or confirm justified rejection promptly, generally within one week.
- 4.3 Unless the Client instructs the Contractor to undertake research of rights, the Client shall ensure that the documentation, specifications or other information furnished by the Client does not actually or potentially infringe any third-party rights.
- 4.4 The Client undertakes to examine the results of the Contractor's services to ensure their functional suitability and feasibility and their compliance with any potentially opposing third-party rights (including in particular intellectual property rights). Any exploitation of the Contractor's work shall be at the Client's risk.
- 4.5 The Client shall notify the Contractor immediately of any relevant changes relating to the subject of the contract.

### 5. Confidentiality

- 5.1 The Contractor and the Client undertake to maintain third-party confidentiality in respect of all information made available in connection with the development which is designated as confidential or is in the circumstances clearly identifiable as a corporate secret of the contractual counterpart and shall

refrain from using such information for their own purposes. This agreement shall continue to apply beyond the term of the contract.

- 5.2 In the event of any culpable infringement of duties of confidentiality, the infringing party undertakes to compensate the other party for any damages resulting from such infringement.

### 6. Periods and Deadlines

- 6.1 Any delivery periods and dates given by the Contractor shall be non-binding unless specifically agreed in writing as binding deadlines.
- 6.2 Compliance by the Contractor with delivery periods and dates shall require that all commercial and technical queries between the contractual parties have been resolved and that the Client has met all its obligations, such as provision of required drawings, dimensions, technical information or payment on account, in good time (in cases of doubt within seven days of the Contractor's request). Failure to do so shall result in the delivery period being extended accordingly. This shall not apply if the Contractor is responsible for the delay.
- 6.3 In the event of unavoidable or unforeseen occurrences – including in particular in cases of force majeure, business disruptions involving subcontractors, strike, lock-out, official directives etc. – the agreed delivery dates shall be postponed by the duration of the hindrance plus an appropriate start-up period. If the delay renders performance of the contract unreasonable for either party, such party may terminate the contract.
- 6.4 If it is necessary to exceed the delivery period for design- and/or development-specific reasons, the Contractor shall notify the Client immediately. The Contractor shall then be entitled to extend the delivery date by a reasonable period, up to a maximum of four (4) weeks. On expiry of such extension, either party may withdraw from the contract provided it is not responsible for exceeding the delivery period.

### 7. Acceptance of Services

- 7.1 If the Client is required to conduct an acceptance test, this shall be carried out immediately on the acceptance date or alternatively within two weeks of the Contractor's notice of readiness for acceptance. If the Client fails to accept or expressly reject the communicated services within such period, the services shall be deemed to have been accepted by the Client.
- 7.2 The Client shall not be entitled to refuse acceptance in the event of a non-essential defect. On acceptance of the results of a development stage, these shall be taken as the binding basis for the further services.
- 7.3 Refusal of acceptance solely on aesthetic or taste grounds shall not be permitted.

### 8. Termination of Contract

- 8.1 The Client shall be entitled to terminate the contract at any time prior to complete performance of the services.
- 8.2 If the Client terminates the contract, the Contractor shall be entitled to demand the agreed remuneration for the portion of the services already performed, including the stage in which notice of termination is given. If no performance stages have been agreed, the Contractor shall charge for the time expenditure at the applicable hourly rates; in the case of work performance, a lump-sum surcharge for loss of profit of 5% of the uncompleted part of the work performance shall be added. If the contract is terminated by the Client, no rights of use whatsoever shall pass to the Client. All items completed by the Contractor (e.g. idea sketches and patterns) shall be immediately returned to the Contractor.
- 8.3 If the Client fails to accept any services notified as completed by the Contractor without grounds for such refusal of acceptance or if the Client fails to comply in whole or in part with its payment obligations, following a reasonable extension of time the Contractor shall be released from its duty of performance and shall be entitled to claim damages for non-performance.

### 9. Remuneration

- 9.1 Unless otherwise agreed, all prices shall be subject to statutory Value Added Tax and any applicable ancillary costs (necessary cash disbursements to third parties etc.). The Contractor shall agree any particularly high-cost and unusual expenses in advance with the Client.

- 9.2 Any information provided by the Contractor regarding overall costs and final prices shall be regarded as cost estimates only (unless expressly identified as fixed prices). Work shall be charged according to the actual time expenditure incurred at the relevant hourly rates of the Contractor.
- 9.3 Any alterations to services and additional services which may be required shall be charged separately unless they are due to circumstances attributable to the Contractor.
- 9.4 Any necessary travel and accommodation costs and expenses shall be charged separately according to the actual costs incurred or for expenses according to the applicable fiscal exemption limits.
- 9.5 The Contractor shall be entitled to provide part-services and to invoice these separately.
- 9.6 Payments shall be due without deduction within 14 days of receipt of invoice. If the payment deadlines are exceeded, the Contractor shall be entitled without further reminder to apply default interest at a rate of 9% above the base interest rate. In the event of arrears of payment for which it is not responsible, the Contractor shall be entitled irrespective of any further claims for damages to postpone fulfilment of its own contractual obligations pending payment of the arrears.
- 9.7 Offsetting against counterclaims of the Client or retention of payments in connection with such claims shall only be permitted if the counterclaims are undisputed or confirmed by final court judgment.
- 9.8 The Contractor shall be entitled to undertake outstanding deliveries or services only subject to payment in advance or provision of security if it becomes aware of circumstances serving to substantially reduce the creditworthiness of the Client and which jeopardise the payment by the Client of outstanding claims for payment of the Contractor (including payments arising from individual orders covered by the same framework contract).

## **10. Rights of Use**

- 10.1 The Client shall only be entitled to use the results of work provided by the Contractor for its own purposes as defined in the contract. Any amendment to and further development of the design template and adoption of the design for other products or other areas of use shall be subject to the prior consent of the Contractor. The use of presented designs, drafts, patterns etc. not selected by the Client shall not be permitted and it is expressly agreed that no rights of use are assigned for such materials. Templates, illustrations and drafts produced by the Contractor shall remain the property of the Contractor.
- 10.2 The rights of use shall only pass to the Client on payment in full of the due fees. If lump-sum payment for rights of use has been agreed, such lump sum must also be paid in full.
- 10.3 Notwithstanding the scope of the rights of use granted, the Contractor shall remain entitled to use its drafts and reproductions thereof for its own advertising.

## **11. Property Rights**

- 11.1 On acquisition of the rights of use, the Client shall also acquire the right to registration of designs or technical property rights, with the Contractor being identified as the designer or inventor.
- 11.2 In the event of any registration of industrial property rights, the Client shall inform the Contractor prior to commencement of production and prior to publication of the design whether it has registered any property rights and the nature of such rights. If the contract is terminated or if the rights of use revert for any other reason to the Contractor, the Client shall immediately assign the property rights to the Contractor.

## **12. Application of Copyright**

- 12.1 The Client expressly acknowledges that the designer is the sole originator of the design templates. The provisions of the Copyright Act [Urheberrechtsgesetz - UrHG] shall also be deemed to be agreed in the event that the templates do not possess the required degree of creativity pursuant to Art 2 Para. 2 UrHG. The Client shall in particular be required to pay the agreed fees irrespective of the protectability of the templates under copyright or other law or if the periods of protection under special protective rights have expired.

## **13. Liability, Warranty**

- 13.1 The Contractor shall be liable in accordance with the statutory regulations for any infringement attributable to the Contractor of essential contractual obligations, i.e. contractual duties whose fulfilment is characteristic to the contract and serves to enable its proper performance. The Contractor shall only be liable for all other breaches of duty if damage has been caused intentionally or due to gross negligence by the Contractor or his leading vicarious agents.
- 13.2 If no intentional conduct attaches to the Contractor, he shall only be liable for typically foreseeable damage.
- 13.3 The foregoing shall not affect liability under the Product Liability Act [Produkthaftungsgesetz]; this shall also apply for liability for culpable injury to life, body or health. On assumption of a warranty, the Contractor shall be liable in accordance with the statutory regulations.
- 13.4 Save as otherwise agreed in the foregoing, no claims for damages against the Contractor arising from breaches of duty shall be permitted.
- 13.5 Claims for damages in accordance with Clauses 13.1 to 13.4 above shall become time-barred within the statutory periods.
- 13.6 The limitation of liability as provided for in Clauses 13.1 to 13.4 above shall also apply in respect of the Contractor's employees.
- 13.7 The Contractor provides no warranty that the developed product or draft constitutes a novelty and/or that it is suitable for protection or registration. The Contractor further provides no warranty that the production and distribution are not subject to any opposing third-party rights.
- 13.8 The Client shall inspect the results of services produced by the Contractor immediately upon receipt and shall notify the Contractor of any discernible defects.
- 13.9 The period of limitation for claims for defects, with the exception of cases of fraudulent intent and subject to Clause 13.5 above, shall be 12 months calculated from the date of handover of the results of services or, where an acceptance test is required, from the date of acceptance. Leistungsergebnisse oder, soweit eine Abnahme erforderlich ist, ab der Abnahme.

## **14. Specimen Copy, Own Advertising**

- 14.1 The Contractor shall be entitled to a complimentary copy produced according to the design and the provision free of charge of photocopies of the development.
- 14.2 The Contractor shall be entitled to the provision free of charge of 10 advertisements produced for the product designed by the Contractor. The Contractor shall be entitled to refer to the collaboration with the Client and cooperation in the relevant projects in publications and presentations for its own advertising purposes and to use images produced by the Client.

## **15. Concluding Provisions**

- 15.1 Even in the event of the invalidity of individual provisions, the contracts produced in accordance with the present terms of delivery shall remain binding on the Client in all other respects.
- 15.2 The law of the Federal Republic of Germany shall apply.
- 15.3 The place of performance and legal venue for all disputes arising between the parties from the contractual relationship shall be Freiburg i. Br. The Contractor shall further be entitled to assert its claims at the place of general jurisdiction of the Client.