

minkadu

General Terms and Conditions

1. Validity

1.1. The following General Terms and Conditions for design contracts and offers apply to all design contracts and offers of the Designer. With the acceptance of the offer/conclusion of the contract, these framework conditions shall become an integral part of the design contract concluded between the parties.

1.2. Regulations, which deviate from these terms and conditions, particularly also business terms and conditions of the Principal, shall only become binding with the Designers explicit written consent.

2. Definitions

In accordance with the design contract:

2.1. Design - each illustration provided to the Principal in paper or data form, which depicts the contractual work.

2.2. Final artwork - the illustration of the agreed work in paper or data form presented by the Designer to the Principal for acceptance.

2.3. Preliminary printing stage - all procedures and production steps, which are necessary for preparing the final design for printing after acceptance by the Principal.

3. Principal's cooperation duties

3.1. The Principal shall ensure that all of the information relating to the product to be designed, particularly regarding production, sales and trading, shall be directly and immediately made accessible to the Designer over the entire development phase, free from thirdparty rights.

3.2. The Designer shall only be obligated to conduct a review of the correctness and completeness of documentation and information provided, which goes beyond general conclusiveness upon explicit written agreement.

3.3. The Designer is authorised to commission third-party services that are required for order fulfilment on behalf of and for the account of the Principal. The Principal undertakes to exempt the Designer from all relevant third-party claims, particularly also to settle invoices within their due dates, which are issued to the Designer, but passed on to the Principal.

3.4. Unless agreed otherwise, the Principal shall be obligated to compensate all of the Designer's necessary expenses.

4. Non-disclosure

4.1. The Designer undertakes to maintain non-disclosure for an unlimited period of time regarding all information and documentation that are made available to him in relation to the design contract, which are marked as confidential or are clearly identifiable as company or business secrets of the Principal and shall not record, disclose or exploit this information, insofar as it is not necessary for achieving the contractual purpose.

4.2. Through appropriate contractual agreements with the employees and agents working for him, the Design shall ensure that they also refrain from any exploitation, disclosure or unauthorised recording of such company and business secrets for an unlimited period of time.

4.3. Relevant undertakings affect the Principal in relation to company and business secrets of the Designer. This particularly also applies to ideas and model studies that are pointed out during the development phase. Reference is explicitly made to the punishability of a violation of this undertaking in accordance with §§17 and 18 of the Act Against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb).

4.4. Rights arising from the development phase, particularly rights of use (utilisation rights) to presented design model versions, shall not transfer to the Principal.

5. Performance deadlines

5.1. Where binding deadlines are set for project completion, the following shall apply:

5.2. Any delays occurring due to lacking cooperation by the Principal shall be deducted from the deadline.

5.3. If the deadline is exceeded by more than two weeks, the Principal shall be authorised to set a grace period of at least two weeks, after the fruitless expiry of which the Principal can no longer demand completion and the Designer can no longer demand acceptance.

5.4. If the nonobservance of the deadline results from force majeure, which only occurs or becomes identifiable after conclusion of the contract, the deadline will be extended, if the disruption is of a temporary nature, however, by no longer than by six months. The same applies to strikes, lockouts, absence of the necessary import and export permits, unforeseeable operational disruptions or other events for which the Designer is not responsible. This shall also apply, if these circumstances occur with the Designer's upstream suppliers.

6. Acceptance

6.1. Each of the service phases will be accepted and invoiced separately.

6.2. The acceptance will be deemed as having taken place tacitly if the services are not objected to in writing during the subsequent service phase.

6.3. Through the acceptance of the service phase, its result shall become the binding basis of the further services.

6.4. The acceptance cannot be objected to for reasons of taste (dislike). The Principal's cancellation right shall remain unaffected by this.

7. Cancellation by the Principal

7.1. The Principal can cancel the contract at any time until complete performance of the service.

7.2. He can also cancel for reasons of taste (dislike).

7.3. If the Principal cancels, the Designer shall be entitled to demand the agreed fee for the service phase already provided, including the phase in which the cancellation takes place.

7.4. The Designer shall show the Principal the completion of the individual service phases. The Designer undertakes to grant the Principal the opportunity in advance to inspect the completion of the phase. Within five calendar days after receipt of the notification, the Principal shall be authorised to cancel the contract with effect for the service phases that have not yet been performed.

7.5. If the Principal cancels, no rights of use shall transfer to the Principal. All of the items produced by the Designer, e.g. idea sketches, designs and models, shall immediately be returned to the Designer.

8. Warranty and liability

8.1. The design product created by the Designer shall be an independent, personal intellectual creation according to his state of knowledge. An assurance can not be given for the newness or uniqueness of the idea underlying the design product or for the legal validity or legal existence of property rights for the contract subject matter.

8.2. The Designer shall not be liable for the economic success achievable or achieved with the contract subject matter.

8.3. As a consequence of the design freedom and related artistic uniqueness transferred to the Designer, the Principal cannot derive any supplementary performance or warranty rights for reasons of taste (dislike).

8.4. The Principal undertakes to examine the design products for functional suitability and safety, realisability, legal admissibility, registration eligibility and marketability, if applicable, under his own responsibility.

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8.5. The Designer's liability for other damages than those of injury to life, limb or health is excluded, if they are not based on deliberate or grossly negligent breach of duty by the Designer or one of his legal representatives of legal agents.

8.6. The Designer shall only be required to perform production monitoring if this has been explicitly agreed. If responsibility is assumed for production monitoring, the Designer shall be authorised to make necessary decisions at his sole discretion, also without the Principal's prior consent and to issue relevant instructions. He shall only be liable for errors resulting from own fault and only for deliberate acts and gross negligence.

8.7. If the Designer commissions necessary third-party services, the relevant contractors are not legal agents of the Designer.

9. Property rights

9.1. All designs, prototypes and files of the Designer, as well as all documentation provided by him shall be protected by copyright law as personal intellectual creations, the regulations of which are also deemed as agreed, if the necessary level of creation is not reached in accordance with § 2 of the German Copyright Act (Urheberrechtsgesetz). The Designer has a right to be named as the copyright owner.

9.2. The Designer's work may only be used for the agreed type of use for the agreed purpose to the agreed extent; in the absence of an explicit agreement, the purpose of the contract shall only by the purpose made identifiable by the Principal upon placement of the order. The Principal shall only acquire the right of use with full payment of the agreed fee, if this also relates to granting a right of use. If designs are used later, although this was not contractually envisaged, or if they are used to a greater extent than originally envisaged, the Designer shall be authorised to invoice the fee for use subsequently or demand an appropriately increased fee. The Principal is not subject to any export restrictions under the design contract.

9.3. Without the Designer's consent, his designs, prototypes or files are neither permitted to be modified as originals, nor for reproduction or production; each copy of the design, or elements from it, shall only be admissible with the Designer's consent. Suggestions by the Principal or his other cooperation shall not form grounds for any co-copyright. The onward transfer or licensing of the rights of use and all relevant property rights to third parties shall also require the Designer's consent; this also applies if the insolvency administrator decides to continue the licence agreement in the event of the Principal's and licensee's insolvency.

9.4. If a licence fee (share of turnover) is arranged, the rights of use shall return to the Designer upon discontinuation of the licence fee payment, without requiring a separate declaration of intent by one of the contracting parties. The same also applies:

- if the Principal fails to start production within one year after completion of design service and fails to offer the products produced under the design contract for sale within three further months;
- if the Principal finally discontinues production of the contractual products;
- if in the case of the Principal's and licensee's insolvency, the insolvency administrator decides against continuation of the contract. Legal property rights registered by the Principal for the Designer's services (design patents, utility models, trade marks, patents) shall also transfer to the Designer in these cases.

9.5. Rights of use to preliminary designs, variations and studies of the final design product will not be transferred, as these only prepare the development and decision-making for the selection of the final design.

9.6. In the event that protectable enhancements or improvements arise with the Designer during the term of the design contract, the Principal shall not acquire any rights of use or exploitation rights to these.

9.7. The Principal undertakes to initiate or further pursue all possible and promising measures for obtaining legal property rights for the contract subject matter. The costs for this shall be borne by the Principal from conclusion of the contract until the end of the

contract. If the Principal fails to fulfil this requirement, the Designer can arrange for what is necessary at the Principal's expense, if his interests are seriously and sustainably impaired due to the lack of protection.

9.8. Breaches of property rights for the contract subject matter shall be pursued by the Designer. The Principal can also proceed against such violations himself at his own expense, however, the Designer shall be entitled to any compensation payment for violations.

9.9. Licence fees (shares of turnover) shall be invoiced at the end of each quarter of the year by the Principal, submitting a verifiable statement and paid out to the Designer within 30 days after the quarter-end.

9.10. The Designer shall be entitled to receive information about the extent of use by the Principal. The Designer is authorised to have the details notified to him for calculation of the licence fee audited by a member of the tax advisory profession who is committed to professional secrecy, by inspecting the Principal's accounts. The costs for the appointment shall be borne by the Principal, if his information proves to be incorrect.

9.11. A right of use shall be granted to the documentation and items provided to the Principal; a right of ownership shall not be transferred.

10. Free copies

10.1. The Designer is entitled to free surrender of each of 10 copies of an advertising medium, which has been produced for the product that he has designed.

10.2. The Designer is permitted to publish images and photographs of the product created on the basis of his performance and related advertising media and use these for self-promotion.

11. Place of performance and court jurisdiction

11.1. The place of performance is the Designer's registered office.

11.2. The legal jurisdiction is the Designer's registered office, provided that the Principals is a registered trader or public sector legal entity or public sector special fund or the Principal has no general domestic legal jurisdiction. However, the Designer is also authorised to file for legal action at the Principal's registered office.

12. Changes, amendments partial invalidity

12.1. Changes and amendments to the contract must be in written form, whereas the exchange of correspondence, fax or electronic dispatch by email is sufficient.

12.2. The invalidity of one or several of the aforementioned provisions shall leave the validity of the remaining provisions unaffected. The invalid provision shall be replaced by a valid provision, which realises the economic purpose pursued with the invalid provision as far as possible.