

**General Terms of Sales and Service  
of MBA Design & Display Produkt GmbH  
(Status: October 2016)**

**§ 1**

**The scope of application**

- (1) Our General Terms and Conditions (GTC) apply exclusively and without further formal notice to all future product deliveries and services that we perform for the customer. We shall not accept opposing or deviating terms and conditions of the customer, unless we have explicitly agreed their validity in writing. This also applies if we perform the delivery unconditionally in awareness of opposing or deviating conditions of the customer.
- (2) Our GTC apply only in relation to entrepreneurs, legal entities under public law or public law special assets within the meaning of § 310, Paragraph (1) BGB (Bürgerliches Gesetzbuch [German Civil Code]).

**§ 2**

**Offer and conclusion of contract**

- (1) Our offers are subject to change, including our Online-Shop, unless they are explicitly designated as "binding". The customer is bound to its order for two weeks. The contract is concluded either by our written acceptance of the order, i.e. confirmation of the order (either by email or fax) or upon the shipment of goods.
- (2) The customer declares its consent that we will obtain information about his creditworthiness and financial situation. In the case of negative information, we reserve the right to deliver the products only against pre-payment. If financing by third parties is intended, we may request verification of the financing prior to the delivery as well.
- (3) Figures, descriptions, measurement and quantity specifications are only binding if this has been agreed in writing with the customer in advance. The nature of the service to be performed by us is based solely on the written contractual documents. Changes in design and material remain reserved, insofar as these changes are not of fundamental nature and the purpose of the service to be provided to the customer according to the contract is not affected.
- (4) If the customer intends to change the contractually agreed scope of the service to be performed by us, he shall express this change request to us in writing. The costs

of the work incurred thereby (e. g. drafting of a change proposal, stand-still periods, etc.) shall be borne by the customer if we agree with the request for change.

### **§ 3**

#### **Quantity and measurements specifications, obligation to cooperate**

- (1) With the conclusion of this contract, the customer confirms that all quantities and measurements in its orders are based on his own specifications that have been verified by him. If deviations from the customer's specifications arise subsequently, additional costs incurred due to this shall be at the customer's expense.
- (2) The customer shall appoint a technically competent contact person who shall provide us with the required information and who can make or bring about the necessary decisions for the implementation of the contract order without delay.
- (3) The customer shall create all the conditions to allow for a proper implementation of the contract order. In particular, the customer shall ensure that all the necessary cooperation on its part or on the part of its agents will be fulfilled on time to the required extent and free of charge for us.
- (4) The customer shall made available the customer-specific documents necessary for the implementation and other required internal information of the company to us even without a special request.
- (5) The customer shall be liable for delays or errors in the implementation of the contract order if they result from incorrect or incomplete data or information submitted by to customer, or any other circumstances that the customer is responsible for.

### **§ 4**

#### **Prices, conditions of payment**

- (1) Unless otherwise agreed, our prices are "ex works", excluding packaging, which shall be invoiced separately.
- (2) The statutory value added tax, apart from our Online-Shop, is not included in our prices; it will be shown separately in the statutory order confirmation and amount on the invoice.
- (3) Any deduction of discount requires separate written consent.
- (4) Unless agreed otherwise, the purchase price (without deduction) will become due for payment within 30 days from the invoice date. The statutory provisions governing the consequences of a default on payment shall apply.

- (5) We reserve the right to withhold service and delivery to new customers until advance payment is received.

## **§ 5**

### **Delivery times, periods, partial deliveries**

- (1) Binding delivery times and scheduled dates require our written confirmation, which may also be issued by fax or email. The periods start upon the customer's receipt of the confirmation and for purchase contracts these are understood as the time of shipment ex works and for service contracts as the time of completion. The start of the specified period presupposes the clarification of all technical questions, the timely fulfilment of the customer's obligations as well as the availability of the documents and approvals to be provided by him. Any changes to the implementation, which are requested by the customer after the conclusion of the contract, will prolong the delivery times and scheduled dates accordingly. We reserve the right to raise the objection of the unfulfilled contract.
- (2) Events that are not within our responsibility (in particular strike, acts of God and late supply to us) will prolong the agreed delivery periods and scheduled dates for the duration of the delay in addition to an appropriate start-up period. The customer will be informed of these circumstances immediately; should the delay persist for longer than three months, the customer will be entitled to withdraw from the contract after setting an appropriate grace period, provided the contract has not yet been fulfilled. This right is also granted to us, whereas the setting of a grace period is not required in this case.
- (3) If we are released from our obligation to performance according to the above paragraph, or if the delivery period or the agreed indemnification date extends, the customer does not have any claims to damage compensation.
- (4) Unless otherwise agreed by contract, partial deliveries by us are permissible, as well as deliveries prior to the expiration of the agreed delivery period.
- (5) Call orders agreed with the customer shall be placed by him by calls at the latest within twelve months in absence of other agreements. If this does not take place, we shall be entitled to pass on price increases to the customer which have occurred in the meantime.
- (6) If the customer is in delay with acceptance or if he negligently breaches his other cooperation duties, we will be entitled to demand compensation of the damages resulting in this respect, including any additional expenses. Further claims or rights remain reserved. The risk of accidental loss or accidental deterioration of the products will be transferred to the customer at the time when the customer starts to be in default in acceptance or payment.

- (7) We shall be liable pursuant to the statutory provisions provided the underlying contract is a fixed transaction within the definition of § 286 (2) No. 4 BGB or § 376 HGB (Handelsgesetzbuch [German Commercial Code]). We are also liable pursuant to the legal regulations, insofar as the customer is entitled to claim frustration of his interest in the further contract fulfilment as a consequence of a delay of delivery that is within our responsibility.
- (8) We are furthermore liable pursuant to the legal regulations, insofar as the delay of delivery is caused by an intentional or gross negligent breach of contract for which we are responsible; negligence of our representatives or agents shall be attributed to us. If the delay of delivery is caused by a gross negligent breach of contract for which we are responsible, our damage compensation liability is limited to the foreseeable, typically arising damage.
- (9) We will also be liable pursuant to the statutory provisions, insofar as the delay of delivery within our responsibility is caused by the negligent breach of an essential contractual duty, however, in this case the damage compensation liability is limited to the foreseeable, typically arising damage. Essential contractual duties are those duties that result from the nature of the respective contract and if breached endanger the achievement of the contract's purpose.
- (10) Furthermore, in case of a delay of delivery we are liable for each completed week of delay in the scope of a lump-sum delay compensation amounting to 0.5% of the delivery value, but no more than 5% of the delivery value.

## **§ 6**

### **Transfer of risk**

- (1) Unless determined otherwise, delivery "ex works" is agreed. The risk, including the risk of confiscation, shall transfer to the customer in all cases, also if the delivery is free of freight charges, upon the handover of the delivery object to the shipping agent. This also applies if we carry out the shipping ourselves. If the shipping is delayed for reasons for which the customer is responsible, the risk will transfer to the customer already at the time of the notification of the readiness for shipment.
- (2) In absence of opposing agreements, we will determine the kind and manner of the packaging and the shipment. If the customer makes a written request, we will insure the delivery by taking out shipping insurance at the customer's expense.
- (3) Under service contracts, the risk will be transferred to the customer upon acceptance.

## **§ 7**

### **Reservation of the title**

- (1) The products will remain our property until all claims in our entitlement from the business relationship with the customer are fulfilled. In case the behaviour of the customer is responsible for the violation of contract, especially in case of default in payment, we are entitled to take back the products, which shall be considered as a withdrawal from the contract.
- (2) In case of attachments or other interference by third parties, the customer shall immediately notify us thereof in writing, so that we can file third party proceedings according to § 771 of ZPO (Zivilprozessordnung [Code of Civil Procedure]).
- (3) The customer may only resell the products subject to the reservation of title in the course of ordinary business and only for as long as he is not in default in relation to us, however, at the present time the customer assigns all claims to us in the amount of the final invoice (plus VAT) which arise against his buyers or third parties on the basis of the resale, and specifically regardless of whether the products have been resold without or after processing. The customer shall also remain entitled to recover this claim after the assignment. Our authority to recover this claim directly remains unaffected by this. However, we undertake to refrain from doing so provided the customer fulfils its payment obligations from the collected proceeds and does not enter payment default, and provided an application for the opening of insolvency proceedings has not been filed and no moratorium on payments is present. If this is the case however, we may demand that the customer discloses the assigned claims and debtors to us, provides all information necessary for collection, surrenders the related documents and notifies the debtors (third parties) of the assignment.
- (4) The processing or modification of the products by the customer is always done for us. If the product is processed together with other objects that are not our property, we will obtain co-ownership of the new object in the proportion of the product's value (final invoice amount plus VAT) relative to the other processed objects at the time of the processing. Furthermore, the same applies to the object created by processing in the same way as for the products delivered with reservation of the title.
- (5) If the product is inseparably combined with other objects that are not our property, we will obtain co-ownership of the new object in the proportion of the product's value relative to the other combined objects at the time of the combining. If the combining takes place in such a way that the customer's object must be considered the primary object, it is agreed that the customer will transfer co-ownership proportionally to us. The customer will hold the resulting sole ownership or co-ownership for us.
- (6) The customer assigns to secure our claims against him which arise through the combination of the products subject to the reservation of the title as well as claims against a third party.

- (7) We commit ourselves to release the securities due upon demand of the customer insofar as the realisable value of our security exceeds the secured claims by more than 10% whereas the selection of the securities to be released is at our discretion.

## **§ 8**

### **Liability for defects, damage compensation**

- (1) Claims of defects of the customer presuppose that he has properly fulfilled his obligations for inspection and notification of defects, which are in accordance with § 377 of HGB. For works services, § 377 HGB applies accordingly.
- (2) If a defect is present, the customer shall be initially restricted to claim supplementary performance, whereas we reserve the right to choose the type of supplementary performance. In case the supplementary performance fails, the customer has the right at its discretion to apply reductions or to withdraw from the contract.
- (3) We are entitled to refuse supplementary performance if it involves disproportional costs for us. The customer may then demand a reduction of the agreed price or the reversal of the contract instead of the supplementary performance.
- (4) We are liable pursuant to the legal regulations, insofar as the customer raises damage compensation claims which are based on intent or gross negligence by us, our representatives or agents. If no intentional breach of contract is present, the damage compensation liability shall be limited to the foreseeable, typically arising damage.
- (5) We are liable pursuant to the legal regulations, insofar as we, our representatives or agents commit a negligent breach of an essential contract duty; however, in that case the damage compensation liability is limited to the foreseeable, typically arising damage. Essential contract duties are those resulting from the nature of the respective contract and which endanger the achievement of the contract's purpose if breached.
- (6) The liability for culpable injury to life, body or health remains unaffected; this also applies to the mandatory liability under the Product Liability Act.
- (7) Liability is excluded as far as not agreed otherwise in the paragraph above.
- (8) The limitation period for claims of defects is 12 months calculated from the date of the transfer of risk.

The statutory limitation period in the case of recourse for delivery pursuant to §§ 478 and 479 BGB, and in the cases covered by §§ 438 (1) No. 2 and 634 a Para. (1) No. 2, remains unaffected.

- (9) Any liability for damage compensation in excess of the provisions in the above paragraphs is excluded – regardless of the legal nature of the asserted claim. This applies in particular to damage compensation claims resulting from negligence upon the conclusion of the contract, due to other breaches of duty or for tortious compensation claims for property damages according to § 823 BGB. This limitation also applies insofar as the customer asserts a claim for compensation for useless expenditure instead of for the performance. If liability for damages against us is excluded or limited, this shall also apply regarding the personal compensation liability of our employees, representatives and agents.
- (10) Default losses are not covered by the preceding paragraphs. Such losses are specifically covered by § 5 paragraphs (7) to (10).

## **§ 9**

### **Software, liability for data loss**

- (1) If we are liable for damage compensation pursuant to the above § 8, our liability for data loss is limited to the typical restoration costs which would have occurred during regular and complete creation of backup copies of the entire data, structures and programs.
- (2) If the use of software products of third parties is included in our scope of service, the customer acknowledges the terms of use/license of the holder of rights to this software already at the present time. These use/license terms will be made available to the customer upon request. We are not responsible for failures of functions which are related or linked to operating system environments and operating system configurations installed at the customer's site. Our liability is also excluded in case of non-compatibility of the software program with the customer's hardware and/or software, unless we have performed the consulting services in this regard according to written agreement.

## **§ 10**

### **Assignment, offsetting, retention**

- (1) The customer is not entitled to assign or transfer claims against us or rights from the business relationship to third parties without our consent. The same applies to claims and rights arising against us directly by act of law.
- (2) The customer is entitled to rights to offsetting only if his counter-claims have been validly found, are undisputed, or acknowledged by us.
- (3) The customer is only authorised to exercise a right to retention if his counter-claim is based on the same contractual relationship.

## **§ 11**

### **Contracting of third parties**

- (1) We are entitled, even without prior consent of the customer, to pass on the contract or parts of it to third parties.
- (2) In these cases, we are liable for the third party as we are for an agent of our own.

## **§ 12**

### **Lease, deposit, insurance**

- (1) If we lease objects to the customer, then before providing them we are entitled to demand a deposit to the sum of 20% of the agreed net lease price.
- (2) The deposit is to be provided by the customer per bank transfer. In doing so, the receipt of the payment in our account is definitive for the date of the presence of the security. Interest is not paid on the deposit amount.
- (3) If the deposit is used by us for justified reasons during the term of the lease agreement, then the customer is obligated to top it up without delay.
- (4) In addition, we may also demand that the customer insures the objects against loss, damage and destruction to the sum of their value for the duration of the lease and that he provides us with corresponding, written proof of insurance.

## **§ 13**

### **Place of performance, place of jurisdiction, applicable law**

- (1) Place of performance and place of jurisdiction for disputes with merchants, legal entities under public law, or public-law special assets is the location of our head office. In addition, we are entitled to sue the customer also at the place of its head office.
- (2) The laws of the Federal Republic of Germany apply, the applicability of the UN Convention on Contracts for the International Sale of Goods is excluded.
- (3) Should one of the above provisions be or become invalid, the validity of the remaining provisions will remain unaffected by it.