



## **GENERAL TERMS AND CONDITIONS** **SCHWEIZER DESIGN CONSULTING GMBH**

### **[01:] General remarks**

The following conditions apply exclusively to all results and services rendered by Schweizer Design Consulting (herein after referred to as contractor) to the ordering party. These are particularly valid, too, when the ordering party uses General Terms and Conditions and these contain conditions standing contrary or differing. These are already particularly contradicted hereby now.

Deviations of the conditions listed here are only valid in the case when they are confirmed by the contractor in writing.

### **[02:] Subject-matter of the contract**

The offers of the contractor are subject to change. The contract between ordering party and contractor takes place with the contents of the written order confirmation of the contractor on the basis of these business conditions in connection with possible functional specifications, schedules and so on (object of the contract).

### **[03:] Confidentiality**

The contractor obliges himself to treat confidentially and not to use for purposes of his own the facts of the research and development works having been confessed by the cooperation with the ordering party as well as other business secrets of the ordering party. This also applies after completion of the order to the time.

### **[04:] Copyright and Usufructs**

As far as the order from the ordering party contains the construction of works according to the copyright act by the contractor, the complete contract is a copyright contract which is pointed at the grant of usufructs of the work performances.

All outlines are subject to the copyright law. The instructions of the Copyright act are valid between the parties, too when the required protection prerequisites should not be given in the individual case.

Thereby the contractor is entitled with the claims on copyright, particularly these from the sections 97 et sequentes, copyright act (UrhG).

The outlines may be neither changed nor completed without express permission of the contractor. Any plagiarism, also of parts not regulated by contract, is inadmissible.

The contractor assigns only the usufructs agreed on in writing in the order confirmation to the customer. Utilization which goes beyond the use sized agreed on, require the permission of the contractor.

As far as nothing else is agreed, only a simple usufruct is assigned to the ordering party. An assignment of the usufructs by the ordering party to third

parties requires the previous written agreement between the ordering party and the contractor.

The usufructs change only after complete payment of the compensation by the ordering party on this. The contractor has the right to originator mentioning.

Suggestions and instructions of the ordering party or his employees and/or representatives do not have influence on the amount of the remuneration. These do not justify any con-copyright.

### **[05:] Remuneration**

The amount of the remuneration for the outlines and the grant of the usufructs is according to the written order confirmation of the contractor. The prices agreed on are understood plus value added tax up to the respectively legally specified amount.

If the outlines are used on a larger scale than originally provided, the ordering party is authorized to require the difference between the initial remuneration and the higher remuneration for the current utilization beforehand.

### **[06:] Advisory services, special services, ancillary and travel costs**

As far as the subject-matter of the contract exclusively contains performances of the contractor which are not subject to the copyright law, the regulations over the service and contract of manufacture are correspondingly valid, as far as nothing divergent is regulated here.

Special services such as the control of pressure and production, are calculated after time expenditure on basis of the current price-list of the contractor.

Costs for material and transport are calculated in addition on proof.

Travelling expenses and expenses for journeys which are arranged in connection with the order to do as well as with the ordering party, have to be refunded by the ordering party on the basis of the current price list of the contractor.

Outside production orders are allocated by the contractor after arrangement with the ordering party in the context of a predefined budget in the name and at the expense of the ordering party.

### **[07:] Terms of payment, Acceptance of the work**

If the work provided is removed in parts, then a corresponding partial remuneration is due at removal of the respective part.

In the case of an order extending over a lengthy period or requiring high financial outlay on the part of the contractor, payment of the fee shall be made

in appropriate instalments of 1/3 of the total with order, 1/3 after completion of 50 % of the work, 1/3 on delivery.

If the ordering party comes in delay in payment, then he has to pay default interest from 8 % above the respective reference interest rate of the European Central Bank.

The ordering party only can offset with claims of the contractor if the counter demand of the contractor is undisputed or a final judgement is known. The ordering party only can assert the right of retention as far as it is based on claims from this contract.

The consignment of the outline/development is carried out on the risk and invoice of the ordering party. The contractor is authorized to effect a transport insurance at the expense of the ordering party.

#### **[08:] Terms of delivery**

The appointment promises of the contractor are dependent that all information relevant for the contractor and technical specifications are available at order confirmation at the latest. At delay the delivery time promised by the contractor prolongs itself.

In the case that the delivery date for construction and/or development technical reasons is exceeded the contractor is entitled, the delivering time adequate to exceed, at the latest however two weeks. After expiry of the two weeks the contractor can be put behind schedule of the ordering party. The liability for delay damages is excluded as far as legally permitted.

#### **[09:] Reservation of proprietary rights**

Only usufructs are given of developments and outlines to the ordering party, not transferring any rights of ownership, however.

All rights at the development remain in the property of the contractor, particularly the copyrights, registered design rights, utility patents, patents as well as the property at the produced product/development until fully paid all claims from the business relations with the contractor.

#### **[10:] Inventions by employees**

Usufructs resulting from inventions capable of being legally protected, which arise from the cooperation between the ordering party and the contractor are exclusively entitled to the contractor.

The ordering party has, however, the right to ask the grant of a simple, against payment license for this invention of the contractor. The ordering party has to leave the contractor of possible claims from employees of the ordering party up to the employee invention law.

#### **[11:] Digital Data**

The contractor is not obliged to return files, layouts or models which were made by computers, to the ordering party, particularly in digital form. If the ordering party requires computer files, this has to be agreed separately.

If the contractor has provided the ordering party with computer files, these may be changed only with a previous consent of the contractor.

The contractor assumes no liability for it, that the left data can be reprocessed by the ordering party as well as in the event of damages to computers and software of the ordering party by the left data, as far as this is legally permitted.

#### **[12:] Specimen copies, Self-promotion**

The contractor has claim on one free copy produced in accordance with the design as well as on the free cession of photocopies of the development in the form of slides and negatives.

The contractor is authorized to point and to put pictorial materials produced by the customer to the cooperation with the customer and the cooperation on respective products in publications and representations for the self-promotion.

#### **[13:] Guarantee**

The contractor commits itself, to execute the order with the utmost care, further more carefully to treat presentations, documents, samples and models left. Complaints about an arbitrary type can in writing be asserted with the contractor after delivery of the work within 14 days. After that the work is regarded as assumed without defects.

#### **[14:] Liability**

The contractor is only liable for firm intention and gross negligence just for which legal justification. This limitation of liability also applies to his fulfilment and performance assistants.

The contractor is not particularly liable for damages which are caused by the design or the construction suggested to consequential damages.

The ordering party is obliged to check the work created by the contractor for his fitness function and feasibility independently, the utilization of the work of the contractor is carried out on risk of the ordering party.

The contractor assumes no liability, only guarantee, opposite the ordering party for orders which are placed in the name and on invoice of the ordering party to third parties.

With the release of outlines, constructions and pure explanations by the ordering party, this takes on the responsibility for the technical and function-like correctness of text, picture, operation, construction and design. Every liability of the contractor for the outlines authorized by the ordering party and developments is dropped.

The contractor is not liable for the competition, identification and brand legal tolerance and/or entry ability of the work of the contractor as well as for the novelty of the product.

#### **[15:] Design liberty and presentations**

In the context of the order there is design liberty. Complaints with regard to the artistic freedom are excluded.

The ordering party assures that he is entitled to the use of all presentations submitted to the contractor. In case that the ordering party is not entitled to the use contrary to this assurance, the contractor is exempted from all compensation entitlements of third parties.

#### **[16:] Data protection**

For the purpose of the contract liquidation and customer services, personal data as well as company-related data of the ordering party are saved by the contractor, however with the obligation to pass these on to third parties only in the context of this contract.

#### **[17:] Final provisions; Severability clause**

Provided that nothing divergent arises from the order confirmation, place of performance is the established place of the contractor. The ineffectiveness of one of the prominent conditions does not touch the validity of the other specifications of this regulation. It is to use the right of the Federal Republic of Germany.

In case that the contractor and the ordering party are full merchants, applies to all present and future claims resulting from the business connection between the contractor and the ordering party, exclusively as a place of jurisdiction, Stuttgart.

The same place of jurisdiction is valid if the ordering party does not have any general place of jurisdiction in the inland or in the case that he has transferred his place of residence or corporate centre after completion of a contract, abroad or that his place of residence or corporate centre is not confessed at the time of the institution of proceedings.