# General Terms and Conditions for Design Agreements and Offers

1. Applicability

The following General Terms and Conditions of the Contractor apply for all the contactor's design agreements and offers. Contrary and supplementary conditions, in particular those of the Customer, as only binding insofar as these have been expressly agreed to in advance by the Contractor. The signing of the agreement / offer is deemed to represent acceptance by the Customer of these General Terms and Conditions.

2. Customer's obligations of cooperation

The Customer is obliged, without demand, to provide the Contractor with all necessary information relating to the strategic business and technical process objectives and priorities within its sphere of responsibilities and relating to the product to be designed.

The Contractor is only obliged to undertake a supplementary plausibility test of the supplied documentation and information where this type of examination has been agreed in writing.

3. Non-disclosure

The Contractor undertakes to treat as confidential all that information and documentation provided to it in connection with the design agreement / offer. This obligation is for an unlimited period and permits the Contractor to use, record and communicate the aforesaid documentation and information only insofar as this is required for performing the agreement.

The Contractor will ensure that suitable corresponding non-disclosure agreements are made with its employees and sub-contractors obliging these parties also to refrain from using, communicating or improper recording of these business and operating secrets.

The Customer is bound by a similar obligation with respect to the business and operating secrets of the Contractor; this applies particularly to the ideas and model studies communicated during the development phase.

4. Periods for performance

Where binding periods are agreed for the conclusion of the project, the following applies:

Delays resulting from the Customer's failure to cooperate will be added to the period for performance.

If the period is exceeded by more than 2 weeks, the Customer is entitled to stipulate a further period, of at least 2 weeks, after which the Contractor can no longer demand acceptance on the part of the Customer where the agreed performance was not rendered within the additionally defined period.

If the failure to comply with the agreed period is due to an event of force majeure arising after the conclusion of the agreement, the period will be extended for the time that the interruption endures, but for no longer than 6 months. The same applies to strikes, lockouts, failure to obtain the necessary import / export licences, unforeseeable interruptions to operations and other events for which the Contractor is not responsible.
This also applies when the aforesaid circumstances affect the Contractor's suppliers.

5. Acceptance

Each of the phases of performance will be separately accepted.

Acceptance is implied when the performance of the subsequent phase is not repudiated in writing.

The acceptance of a phase of performance means that its results will form the binding basis for subsequent performance.

Acceptance cannot be refused on the basis of aesthetic taste considerations. The Customer is referred here to its rights of cancellation.

6. Customer's right of cancellation

The Customer may cancel the agreement at any time before complete performance has been rendered.

It may also cancel the agreement on the basis of aesthetic taste considerations.

If the Customer cancels the agreement, the Contractor is entitled to demand the agreed payment for the phases of performance already rendered including the phase to which the cancellation relates.

The Contractor will notify the Customer with regard to the completion of the individual phases of performance. The Contractor is obliged to grant the Customer prior opportunity to assess the completion of each phase. The Customer is entitled to cancel the agreement within 5 calendar days of the aforesaid notification, the cancellation taking effect for the phases of performance not yet completed.

If the Customer cancels the agreement, no rights of use of any kind accrue to it. All the Contractor's completed materials and items (e.g. idea sketches, detailed design, volume models etc, must be returned immediately to the Contractor.

7. Rectification of defects / Warranty

Due to the freedom of design granted to the Contractor and the associated artistic characteristics, there are no rights under warranty or for the rectification of defects on the basis of aesthetic taste considerations.

8. Rights of use

The exclusive rights of use to the final design product will be assigned to the Customer upon complete payment for the phases of performance 1-6.

If a licence fee has been agreed, the rights of use will revert to the Contractor once licence payments cease to be made. The same applies in the event that the Customer does not commence production within one year following completion of the 6th phase of performance or where it ceases the aforesaid production. In such an event as described above, any legal industrial property rights acquired from the Contractor (design patents, utility patents, standard patents) will likewise revert to the Contractor.
Usage, which extends over and beyond the agreement production objective and the agreed production volume, must be agreed with the Contractor.
The design, or elements thereof, may only be transferred to non-contractual articles with the consent of the contactor.

Assignment of the rights of use to a third party requires a supplementary agreement to be made between the parties.

Rights to use to drafts, versions and studies of the final design product may not be assigned because these are only prepared for the purpose of developing and making decisions as to the final draft and design product.

The Customer is responsible for ensuring the protection of the assigned rights of use. If the Customer does not fulfil its duties of protection, the Contractor may make the appropriate arrangements at the expense of the Customer, if its interests are seriously and lastingly endangered by the Customer's failure in this regard.

Licence fees are payable to the Contractor no later than the end of February with respect to the preceding year. Payment must include submission of an auditable listing of accounts.

The Contractor is entitled to have the Customer's licence fee accounts inspected by a member of the accounting and auditing profession who is subject to a professional obligation of confidentiality. Where the accounts information proves incorrect, the party under the obligation of notification (Customer) will be obliged to bear the costs of the auditor's appointment.

9. Special copyright

The Contractor has the right to be named as the author.

Significant changes to the design product require the agreement of the Contractor.

10. Free copies

The Contractor has the right to a free mock-up of the product made with the assistance of its design.

The Contractor is entitled, moreover, to 10 free copies of an advertising item produced with respect to the product designed by it.

The Contractor may publish photographs both of the product based on its design and of the associated advertising materials for its own advertising purposes.

11. Liability

According to its knowledge, the design product produced by the Contractor is its own independently produced creation. No additional declaration of assurance can be given regarding the novelty of the idea underlying the design product.

The Customer bears the risk in the commercial exploitation of the design product.

The Customer alone is responsible for examining the functionality, functional safety and the feasibility of the design product, because the core area of the Contractor's contractual performance relates to the design aspect.

The Contractor's liability for non-contractual obligations, which nevertheless are associated with this agreement, and for the breach of collateral contractual obligations, which are not significant for the performance of the agreement, is limited to gross negligence and deliberate acts.

The liability of the Contractor for the slight negligent breach of obligations significant to this agreement is limited to an amount for direct losses which does not exceed the losses and lost profit suffered by the Customer and which the Contractor upon conclusion of the agreement must have foreseen as the possible consequences of a contractual breach taking all circumstances into consideration.

The Customer's claim for compensation for non-performance resulting from a delay in rendering performance or the subsequent frustration of the agreement for which the Contractor is responsible, is limited to a maximum of 50% of the total fee and for direct loss.

12. Place of performance and court

The place of performance is the registered address of the Contractor.

The applicable court is that court with jurisdiction for the registered address of Contractor, provided the Customer is a registered commercial entity. The

Contractor is nevertheless entitled to initiate claims at the court with jurisdiction for the registered address of the Customer.

This agreement is subject to German Law whereby the United Nations Convention on Contracts for the International Sale of Goods is excluded.

13. Design terminology

Proportional model
A model the sole purpose of which is to manifest the external form and the proportions in particular.

Design model
A model the external appearance of which corresponds exactly to the subsequent series production samples, with a level of quality that may be used for catalogue photographs.

Functional model
A model that demonstrates all or part of the technical functionality, without regard to the external form.

Ergonomic model
A model produced in the development of the optimal operability or usability.

Prototype
A model produced on the basis of the production drawings, which largely corresponds to the subsequent series production samples with regard to materials and dimensions.

14. Changes / amendments

Changes and amendments to this agreement must be made in writing. Letter or fax communication is adequate in this regard.

The provisions of the Copyright Law and the Design Law apply accordingly.
The delivered articles remain the property of the Contractor until such time as all its claims against the Customer arising out of this agreement have been fulfilled.

The invalidity or ineffectiveness of any of these General Terms and Conditions does not affect the validity of the remainder. The parties are obliged to substitute or supplement any ineffective conditions with another legally valid condition that most closely fulfils the commercial objectives of the original. Gaps in these General Terms and Conditions will be remedied in a similar fashion.

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