General Terms and Conditions for the Sale and Delivery of Goods

designfunktion

§ 1 Scope

(1) These General Terms and Conditions apply to contracts for the sale and delivery of goods entered into between the following companies of the designfunktion Group (hereinafter referred to as “Contractor”) and the Customer (hereinafter referred to as “Client”):
designfunktion Berlin GmbH
designfunktion Dresden GmbH
designfunktion Hamburg GmbH und Co KG
designfunktion Holding GmbH
designfunktion Küchen GmbH
designfunktion München GmbH
designfunktion Nürnberg GmbH
designfunktion Rhein-Main GmbH
designfunktion Rhein-Neckar GmbH
designfunktion Rheinland GmbH
designfunktion Südwest GmbH
designfunktion West GmbH

(2) The Contractor’s General Terms and Conditions (hereinafter referred to as “Terms and Conditions”) shall apply exclusively. By placing the order, the Client expresses agreement to these contractual conditions. The Contractor’s General Terms and Conditions for Consulting, Planning and Design Services shall apply in addition to consulting, planning and/or design services.

(3) These Terms and Conditions of Contract exclusively govern the legal relationship between the Contractor and the Client. They therefore also apply to all future business relationships, including in cases where they are not expressly agreed again. The Contractor will not recognise any terms and conditions of the Client that conflict with or deviate from these Terms and Conditions of Contract unless the Contractor expressly agrees to the validity of these. Written agreements made in individual cases between the Contractor and the Client (including collateral agreements, supplements and amendments) shall in any case take precedence over these Terms and Conditions of Contract.

§ 2 Formation of the contract

(1) The information provided by the Contractor on the website or in catalogues does not constitute a legally binding quote. Only the specific quote that the Contractor has sent to the Client at the latter’s request will constitute a quote for legal purposes.

(2) The Client may accept this quote within 30 days, unless otherwise stated in the quote. To accept, the Client must send the quote to the Contractor by e-mail or post (if necessary, after filling in the information).

(3) Declarations of acceptance received after the expiry of the acceptance period pursuant to subsection 2 will require a written confirmation by the Contractor. The Contractor hereby reserves the right to pass on to the Client any price adjustments that occur after expiry of the acceptance period.

(4) If the Contractor has made an error in the quote, in the order confirmation or in the invoice, in particular in the price quotation, in the calculation or through incorrect addition, it shall be entitled to rescind or withdraw from the contract at its discretion.

§ 3 Delivery and delivery periods

(1) Unless otherwise expressly agreed, the information provided by the Contractor regarding delivery times and processing periods shall be non-binding.

(2) The Contractor shall be entitled to provide partial performance.

(3) Provided that the Client is not a consumer (Section 13 of the German Civil Code [Bürgerliches Gesetzbuch, BGB]), the place of fulfilment for the delivery of goods shall be the Contractor’s registered office, unless otherwise agreed. Deliveries shall be made at the Client’s expense. Transport insurance may be taken out following a written request from the Client and this will also be subject to a separate charge. If orders are made from our in-house goods catalogue, the terms and conditions of delivery contained therein shall also be applicable.

(4) Deliveries shall only be made within the Federal Republic of Germany, unless otherwise agreed for a specific case.

(5) The Client must ensure that the ordered goods can be transported to the specified point of delivery – including through entrances and stairwells – using the usual means for transporting furniture.

(6) The Contractor shall be entitled to use third-party services to fulfil its performance obligations.

(7) When the Contractor is able to deliver the ordered goods, it shall inform the Client of this immediately by e-mail or letter. If the Client does not agree to accept the goods within 15 calendar days of being notified that they are ready for delivery, or if delivery is not made for reasons on the part of the Client (e.g. due to construction delays), the Contractor shall be entitled to charge the Client EUR 4.00 plus VAT per week or part thereof and square metre for continued storage of the goods. The Contractor shall only be liable for intent and gross negligence during the storage period. The Client shall bear the risk of loss or destruction of the goods due to slight negligence on the part of the Contractor.

(8) If the parties have agreed binding delivery periods and the Contractor is unable to meet the delivery periods for reasons for which it is not responsible (hereinafter: non-availability of the performance), the Contractor shall inform the Client of this immediately and at the same time notify the Client of the expected new delivery period. If the performance is also not available within the new delivery period, the Contractor shall be entitled to withdraw from the contract in whole or in part; any consideration already provided by the Client shall be reimbursed by the Contractor without delay. Non-availability of the performance shall for instance apply in the event of late delivery by the Contractor’s own supplier, if a matching cover transaction has been entered into, or in the event of other disruptions in the supply chain, e.g. due to force majeure or if the Contractor is not obliged to procure goods in individual cases.

§ 4 Handover, transfer of risk, assembly

(1) If the Client is a consumer, the risk of accidental destruction or accidental deterioration of the goods sold in the case of sale to a destination other than the place of performance shall transfer to the Client with the handover of the item to the consumer or to a recipient determined by the consumer. This applies irrespective of whether the shipment is insured or not. In all other cases, the risk of accidental loss or destruction or accidental deterioration of the goods shall pass to the Client upon handover, in the case of sale to a destination other than the place of performance upon delivery of the goods to the carrier or other person or organisation designated to carry out the shipment.

(2) The handover shall be deemed to have taken place if the Client is in default of acceptance.

(3) Unless the parties expressly agree otherwise, the Contractor shall not be responsible for any assembly or installation work.

§ 5 Risk with the delivery of trial items and production of samples

(1) Upon request, the Contractor may make goods and other items available to the Client for trial purposes, as samples or for hire. Further details shall be determined in accordance with the Contractor’s individual quote.

(2) The Client shall bear the risk for the delivery of the items in accordance with subsection 1.

(3) During the entire period of provision of the items in accordance with subsection 1, the Client shall bear the risk of accidental loss or destruction or accidental deterioration of these.

(4) The Client shall be liable for any use of or damage to the items in accordance with subsection 1 that deviates from the contractual use for the period of provision.

§ 6 Warranty for defects

(1) The goods shall be free from material defects if they fulfil the subjective requirements pursuant to section 434 (2) of the German Civil Code (BGB) at the time of transfer of risk. The goods shall fulfil the subjective requirements if they have the agreed quality structure and properties. The agreed quality structure and properties shall be determined exclusively in accordance with the product specifications and manufacturer’s details which are the subject of the individual contract or which were made public by the Contractor (in particular on the website) or by the manufacturer (in particular on the manufacturer’s website) at the time that the contract was entered into. No other or further subjective or objective requirements for the purposes of section 434 (3) of the German Civil Code (BGB), properties or characteristics shall be owed other than the quality of the deliveries as expressly agreed. A warranty for a specific purpose, functionality, compatibility, interoperability, duration of use or durability after the transfer of risk that goes beyond the warranty for this quality agreement shall only be assumed if this has been expressly agreed in writing; otherwise the risk of suitability and use shall be the sole responsibility of the Client. In the case of goods with digital elements or other digital content, the Contractor shall only be obliged to provide and, if applicable, update the digital content if this is expressly stated in an agreement on a particular quality or property in accordance with the above provisions. The Contractor will assume no liability in this respect for public statements made by the manufacturer and other third parties.
With this proviso, the Contractor shall be liable for any material defect in accordance with the following provisions. In all cases, the statutory provisions on the sale of consumer goods (sections 474 et seq. BGB) and the rights of the Client arising from guarantees issued separately shall remain unaffected, in particular guarantees on the part of the manufacturer.

(2) The warranty period shall be one year from delivery; if the Client is a consumer, the warranty period shall be two years from delivery. If products free from defects are delivered within the scope of subsequent fulfilment, the Customer may only assert claims for material defects with regard to these products until the original limitation period has expired. The above limitation periods shall not apply to claims for damages asserted by the Client arising from injury to life, limb or health or from intentional or grossly negligent breaches of duty by the Contractor or its vicarious agents, which shall in each case be subject to the time limitations in accordance with the statutory provisions.

(3) The delivered goods must be carefully inspected immediately after delivery to the Client or to the third party designated by the Client. The Client must notify the Contractor in writing of any obvious defects within one week of delivery. Section 377 of the German Commercial Code (Handelsgesetzbuch, HGB) shall remain unaffected by this.

(4) In the event of material defects in the delivered goods, the Contractor shall in the first instance be entitled to choose, within a reasonable period of time, between repair or a replacement delivery. At the Contractor’s discretion, subsequent fulfilment may take place at the Contractor's registered office or at the place of installation of the goods. The Contractor shall not be liable for any expenses incurred as a result of the goods being transported to a place other than the destination specified in the order confirmation, unless the Client has informed the Contractor of this in writing in the order prior to entering into the contract. The Customer shall make the goods available to the Contractor for the purposes of subsequent fulfilment. The Contractor shall be granted a reasonable time and opportunity for subsequent fulfilment. If the Contractor is refused this, the Contractor shall be released from the warranty in this respect.

(5) In the event that this fails in the end, the Client may demand a reduction in the price or return of the defective goods in return for repayment of the purchase price in accordance with the statutory provisions.

(6) The warranty shall lapse if the Client modifies the delivery item or has it modified by a third party without the Contractor’s consent, in the event of wear and tear, damage due to improper handling, incorrect operation or the use of accessories not recommended by the manufacturer, and if this makes it impossible or

unreasonably difficult to rectify the defect. In any case, the Client shall bear the additional costs of remedying the defect resulting from the change.

(7) Any wood or fabric samples, colour cards, etc. that are provided may only be used for an approximate determination of the goods to be delivered. The Company expressly reserves the right to change colours, materials and features. Real wood and leather products in particular may exhibit considerable colour and pattern variations; differences in colour and structure shall not constitute a material defect.

(8) These deliveries and services cannot be offered in Austria under the brand designfunktion.

§ 7 Prices and terms of payment

(1) The prices for the delivery of goods shall be based on the Contractor's quote. Any agreed assembly and installation work shall be remunerated separately. The agreed rates shall apply.

(2) The Contractor shall be entitled to demand a down payment of up to 50% of the total order volume from the Client before commencing with provision of services and to demand payments in instalments for partial services that have been proven to have been provided.

(3) If the Client fails to make the down payment within the period set by the Contractor, the Contractor reserves the right to pass on any price adjustments made by the manufacturer to the Client accordingly. The Contractor shall inform the Client of any corresponding price changes.

(4) The Contractor shall be entitled to reimbursement of its necessary and verified expenses incurred in connection with the delivery of the goods in accordance with these Terms and Conditions of Contract. Travel and accommodation costs and other expenses not directly related to the work shall only be reimbursed by the Client if the Client has expressly agreed to this in writing in advance.

(5) The Client shall receive an invoice in each case which shall be provided or sent to it in text form. Invoicing shall be monthly unless the parties have specified a payment cycle in the quote. The Contractor may issue a separate invoice for partial services provided, if they constitute the completion of a divisible service.

(6) Unless otherwise agreed, the amount stated in the invoice shall be due for payment within 30 days. The Client shall be in default of payment upon expiry of the above payment deadline. The outstanding amount shall bear interest during the period of default at the applicable statutory default interest rate. The Contractor reserves the right to assert further claims for damages caused by the default.

(7) In the event of default of payment or a significant deterioration in the Client's financial situation, the Contractor may call all outstanding claims due for immediate payment and demand payments upon delivery for services not yet supplied, or withdraw from the contract with immediate effect.

§ 8 Obligations of the Client to co-operate

(1) The Client shall facilitate provision of the Contractor's services by cooperating as appropriate. In particular, it will ensure that it provides the Contractor with all information and data required for the execution of the order and that it allows the Contractor's employees access to its business premises to the extent necessary during its business hours. In addition, the Client will make the necessary working materials available at its business premises to a reasonable extent. The Contractor must be informed in good time and without making a special request of all processes and circumstances that may recognisably be of significance with respect to fulfilment of the order.

(2) The Contractor shall inform the Client by e-mail if the Client does not fulfil its obligations to cooperate or does not do so in good time. If the Client continues to fail to fulfil its duty to cooperate or fails to do so on time despite being notified and if the Contractor is unable to perform its services in whole or in part or on time for this reason, the Contractor shall not be responsible for the non-performance or limited performance of the agreed services. In the event of a failure to cooperate in good time, the period agreed for the provision of the service shall also be extended accordingly.

(3) If the Contractor incurs costs due to the Client's failure to cooperate, failure to cooperate on time or only partial cooperation in the performance of the agreed services, the Contractor shall inform the Client of this and invoice the Client for the future additional expenses.

§ 9 Right of retention, retention of title

(1) The Client may only offset against claims of the Contractor if the Client's counterclaim is undisputed or a legally binding title has been issued. The Client may only assert a right of retention to the extent that this is based on claims arising from the contract entered into.

(2) The Contractor shall retain title to the goods delivered by it, drafts handed over to the Client and other documents until payment has been made in full. If the Contractor delivers to the Client and the Client is a commercial trader, the Contractor shall retain title to the delivered goods until all claims against the Client have been fulfilled, including future or conditional claims.

(3) In the event of default of payment, the Contractor shall be entitled to demand that the goods subject to the retention of title are returned immediately. The Contractor shall also be entitled to enter the Client's premises itself or through third parties in order to collect the goods subject to the retention of title.

(4) Any sale, pledge, assignment as security or any other granting of collateral rights over the goods subject to the retention of title by the Client shall not be permitted. Provided that the Client is not a consumer, it shall be entitled to resell the goods in the ordinary course of business. The Client hereby assigns to the Contractor the claims against its business partner arising from the sale, including the improved part in the event that the goods been processed further. The Contractor shall grant a grace period of 2 weeks from the date of default until disclosure of the assignment of the claim to the Client's business partner.

(5) The Client must notify the Contractor immediately in the event of any third-party intervention (e.g. seizure of the goods).

(6) Following the start of the default period, the Client shall be under an obligation to state the names and addresses of the Client's business partners if so requested by the Contractor, and to provide copies of the invoices issued to the business partners. The Contractor's Client irrevocably authorises the respective owner of the goods subject to the retention of title to return those goods subject to the retention of title to the Contractor. If the Contractor takes the goods subject to the retention of title back, then a credit will be issued for the amount of the value as at the return date.

§ 10 Liability

(1) The Contractor shall be liable without limitation
   a. in the event of wilful intent or gross negligence
   b. for injury to life, limb or health
   c. in accordance with the provisions of the German Product Liability Act (Produkthaftungsgesetz) and
   d. to the extent of any guarantee assumed by the Contractor.

(2) In all other cases, the Contractor will only be liable in the event of a breach of an obligation that is essential for fulfilment of the contractual purpose (cardinal obligation). This liability is limited to the amount of damage that is foreseeable and typical for the type of transaction in question.

(3) The Contractor shall not be liable for wear and tear, damage to the goods resulting from improper handling by the Client, defective operation, use of accessories not recommended by the manufacturer or in the event of changes or repairs to the goods that have not been carried out by the Contractor.

(4) The Contractor shall not be liable beyond this.

(5) The above limitations and exclusions of liability shall also apply to the personal liability of the Contractor's employees, representatives and bodies as well as to other third parties involved in the fulfilment of the performance obligation.

§ 11 Contractor's right of assignment

(1) The Contractor shall be entitled to assign all existing and future claims arising from the contractual relationship to a factor or other third party in whole or in part and with or without notifying the Client.

(2) The Contractor shall further be authorised to collect the claims against the Client for the account of the factor or other third parties.

(3) The Client shall be authorised to dispose of the goods in the ordinary course of business. The Client assigns all rights from the resale to the Contractor. The Client shall also be authorised to collect the claims from the resale for the account of the Contractor.

§ 12 Final provisions

(1) Amendments and supplements to these Terms and Conditions of Contract must be made in writing. This also applies to any amendment or cancellation of this clause.

(2) The law of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(3) The place of fulfilment shall be the Contractor's registered office, i.e. the designfunktion Group company executing the order (hereinafter: the Contractor's registered office). The exclusive place of jurisdiction shall be the Contractor's registered office if the Client is a commercial trader or a legal entity under public law. In all other respects, the applicable statutory provisions shall apply to the place of jurisdiction.

(4) In the event that individual provisions of these Terms and Conditions of Contract are invalid, this shall not affect the validity of the remaining provisions. If the parties are commercial traders, they shall endeavour to replace the invalid provision with a provision that best meets the legal and economic purpose of the contract.