

General terms and conditions of contract for goods and services by designfunktion Allgäu GmbH, designfunktion Aschaffenburg GmbH, designfunktion Gesellschaft für moderne Einrichtung Berlin mbH, designfunktion Gesellschaft für moderne Einrichtung Hamburg mbH & Co. KG, designfunktion München GmbH, designfunktion Gesellschaft für moderne Einrichtung Nürnberg mbH, designfunktion Bielefeld GmbH, designfunktion Bodensee GmbH, designfunktion Holding GmbH, designfunktion Kronberg GmbH, designfunktion Mainz GmbH, designfunktion Mittelrhein GmbH, designfunktion Rheinland GmbH, designfunktion Stuttgart GmbH, designfunktion Oberpfalz GmbH

1. Scope

The general terms and conditions of designfunktion Allgäu GmbH, designfunktion Aschaffenburg GmbH, designfunktion Gesellschaft für moderne Einrichtung Berlin mbH, designfunktion Gesellschaft für moderne Einrichtung Hamburg mbH & Co. KG, designfunktion München GmbH, designfunktion Gesellschaft für moderne Einrichtung Nürnberg mbH, designfunktion Bielefeld GmbH, designfunktion Bodensee GmbH, designfunktion Holding GmbH, designfunktion Kronberg GmbH, designfunktion Mainz GmbH, designfunktion Mittelrhein GmbH, designfunktion Rheinland GmbH, designfunktion Stuttgart GmbH, designfunktion Oberpfalz GmbH (hereafter: Company) are agreed for all deliveries of goods, cost calculations and services that the Company provides to its Customer. The general terms and conditions of the Company apply exclusively. Any divergent or contrary terms and conditions of the Customer shall require written confirmation from the Company in order to be effective.

2. Quotes

Quotes from the Company shall remain binding for one month. Any acceptance received after this period shall require written confirmation from the Company. The Company reserves the right to pass on any price adjustments to the Customer if this period is exceeded.

In relation to traders, the final content of the contract shall be determined by the written order confirmation from the Company, unless the Customer objects to this without delay.

In the event that changes arise as a result of errors in the quote, the order confirmation or the invoice issued, including in particular errors in the pricing, the calculation or through incorrect addition, we shall be entitled to rescind or withdraw from the contract at our discretion.

3. Contractual amendments

In the event that the Company's procurement or wage costs change for goods or services to be supplied that are actually supplied more than 4 months following formation of the contract, then the Company shall be entitled to demand a reasonable amendment in the sales price. Orders remain subject to technical changes in form, colour or weight along with developments and product changes by the manufacturer. Technical descriptions and other information in brochures and documentation, on our website and from other sources of information shall be non-binding in the first instance.

4. Goods and services supplied Delivery time information and processing periods shall be non-binding, unless they have been expressly agreed as binding. The Company shall be entitled to provide partial services and to invoice these separately. The place of fulfilment for deliveries is the place of the supplier Company's head office. Deliveries shall be made at the purchaser's expense and risk. Transport insurance can be taken out following a written request from the Customer 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 supply contained therein shall also be applicable. If acceptance is agreed then this shall be the crucial point at which risk is transferred. In all other respects the statutory regulations related to the law of contracts for work and services shall also apply accordingly to any agreed acceptance. Handover and/or acceptance shall be deemed to have taken place if the purchaser is in default of acceptance.

5. Warranty

Notification of obvious defects must be received by the Company in writing within one week of the delivery of the goods. Traders shall remain under an immediate obligation to examine the goods and provide notification of any defects in accordance with sections 377 and 378 of the German Commercial Code (HGB). In the event that defects are acknowledged, the Company shall be entitled to rectify the defect or to supply goods in perfect condition; if this fails conclusively, the purchaser may demand a reduction in the price or a return of the defective goods in return for credit. Claims for material defects shall expire 12 months following the transfer of risk. The Company shall not be liable for wear and tear, damage to the goods resulting from improper handling by the Customer, 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 Company. Claims for compensation shall be limited to the amount of the purchase price in cases of slight negligence by the Company. The defect shall be rectified at the location of the supplier Company if required. The completion of work provided under the guarantee shall not result in an extension to the original limitation period.

6. Retention of title

The Company reserves the title to all goods provided by them

until the purchase price has been paid in full. If the Company delivers to fully-registered traders, the Company shall retain title to the delivered goods until all claims against the Customer have been settled in full, including any future or contingent claims. If the goods supplied are taken back from a Customer who is a trader, then this shall not constitute a withdrawal from the contract. In the event of default of payment, the Company shall be entitled to take back immediately the goods subject to retention of title. Any sale, pledge, assignment as collateral or similar transaction by the Customer in relation to the goods subject to retention of title shall not be permitted.

The Customer must immediately notify the Company in the event of any third-party intervention (e.g. seizure of the goods). In the event of default of payment, the Company shall be entitled to enter the Customer's premises itself or via a third party in order to collect the goods subject to retention of title. If the Customer is a commercial Customer or trader, then it may resell the goods in the ordinary course of business, but is not entitled to assign them as collateral or pledge these. This Customer hereby assigns the claims against its business partner arising from the sale to the Company; this shall include any finished part in the event that the goods have been subject to further processing.

The Company shall grant a grace period of 2 weeks starting with the date of the start of the default period until disclosure of the assignment of the claim to the Customer's business partner. Following the start of the default period, the Customer shall be under an obligation to state the names and addresses of the Customer's business partners following a request by the Company, and to provide copies of the invoices issued to the business partners. The Company's Customer irrevocably authorises the relevant party in possession of the goods subject to retention of title to return the goods subject to retention of title to the Company.

If the Customer takes the goods subject to retention of title back, then a credit will be issued for the amount of the value as at the return date.

7. Terms of payment

The Company will invoice 50% of the order value upon entering into the contract. This amount shall be due for immediate payment. Unless otherwise agreed in writing, invoices shall be payable net cash within 10 days.

The Company reserves the right to demand advance payment or cash payments upon delivery. In the event that cheques or bills of exchange are accepted on account of performance, then any discount and banking charges shall be borne by the Customer. In the event of default of payment or a significant deterioration in the Customer's financial situation, the Company may call all outstanding claims due for immediate payment and demand net cash payments upon delivery for services not yet supplied, or withdraw from the contract with immediate effect. In the event of default on the part of the Customer, the Company shall be entitled to charge interest on default at the amount of the relevant standard bank rates for overdraft facilities, at a minimum interest rate in any case of 5% above the relevant base rate of the European Central Bank, subject in each case to statutory VAT. The right to assert a claim for damage on account of default which goes beyond this remains reserved. Claims against the Company may only be offset against undisputed and legally valid claims. If the Contractor terminates the contract for just cause, then the Client shall be under an obligation to compensate those costs and fees to the Contractor that have demonstrably been incurred up until the time of the termination. The Client shall not be subject to any payment obligation once the termination has been declared. The services of the Contractor provided up until that point shall be accounted for pro rata.

8. Assignment

The Company is entitled to assign all existing and future claims from the contractual relationship to a factor, in whole or in part and with or without notifying the Customer. The Company is also authorised to collect the claims against the Customer on the account of the factor.

The Customer is authorised to dispose of the goods in the scope of ordinary business transactions. The Customer assigns all rights from the resale to the Company. The Customer is also authorised to collect the claims from the resale on the account of the Company. If the Customers are fully-registered traders, the assignment is also effective if the assignment between the parties is excluded pursuant to section 399 BGB (German Civil Code).

9. Risk with specimens, samples and rentals

Goods that are supplied as specimens or samples or items that are lent or leased will be provided to the Customer at the Customer's risk and shall remain at the Customer's risk while in the Customer's possession. The Customer shall be liable for improper use, damage and accidental destruction.

10. Plans and designs

Plans and designs that are created by the Company and quotes completed by the Company itself are protected by copyright.

These may only be reused with written approval from the Company, unless a contract for planning services subject to a charge has been created beforehand. The Company will subsequently invoice the planning service in the event of unauthorised use. If changes are induced by the Client once the execution planning has been completed or the plans have been approved and released, then the planning changes will be charged in accordance with expenditure of time as follows:

Contractor and project manager	EUR 125.00 net (Interior)
Architect / engineer	EUR 110.00 net
Designer / technician	EUR 65.00 net
Installer	EUR 59.50 net
Textile engineer / room fitter	EUR 65.00 net
Other employees (Technical designers, secretarial staff)	EUR 55.00 net

Proof of the time and effort must be provided to the Client in good time for verification (at least monthly). The aforementioned hourly rates shall apply to all hourly work undertaken by the Contractor. Travel costs will be accounted for in accordance with expenditure of time as per the above hourly rates. Unless otherwise agreed, all ancillary costs of the Contractor shall be borne by the Client following prior approval by the Client with original receipts submitted. Unless otherwise agreed, the Contractor's remuneration shall in all other respects be based on the fee scale in the latest version of the German Fee Schedule for Architects and Engineers (HOAI). The Client shall be entitled to provide partial performance. All prices stated in these general terms and conditions are subject to statutory VAT, unless expressly stated otherwise.

11. Delivery

The Company points out that any presented wood samples, fabric samples, colour charts, etc. can 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. Characteristics of the furnishings shall only be deemed to have been agreed if the agreement is in writing. The Company points out that real wood and leather products in particular feature a considerable amount of colour and sample effects, and colour and structural differences cannot be recognised as complaints.

Deliveries within the Federal Republic of Germany will be made at the Customer's expense unless otherwise agreed in an individual case; a separate agreement shall be required for deliveries outside of the Federal Republic of Germany. Depending on the item and delivery location, the delivery period shall generally be between 6 and 8 weeks following receipt of the Customer's payment. Any delivery times that may be agreed shall be non-binding.

If the Customer is a consumer, the risk of accidental destruction or accidental deterioration of the goods sold in the case of sale to destination transfers to the Customer 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. The risk of accidental destruction and accidental damage to the goods passes to the Customer at the time of the handover or, in case of sale to destination according to buyer's instructions, with the delivery of the goods to the transport Company or the person or institution that has been contracted to transport the goods. Handover shall be deemed to have taken place if the purchaser is in default of acceptance. Following notification that the goods ordered are ready for delivery, the Company shall store these for up to 14 days without charge for the Customer.

The Company shall only be liable for wilful intent and gross negligence during the storage period.

The purchaser shall bear the risk of destruction of the purchase item as a result of slight negligence on the part of the seller. The Company reserves the right to charge storage costs as of the 15th day. The Company applies a charge of EUR 8.00 per cubic metre per day for this purpose. The purchaser shall be liable for the fact that transportation to their residence or the delivery point determined by the purchaser – including through entrances and stairwells – can take place using normal means for transporting furniture.

12. Place of jurisdiction and of fulfilment

The place of jurisdiction and fulfilment is the Company's headquarters for contracts with traders, legal entities under public law or special funds under public law.

13. Final provisions

Customers' personal data must be saved by the Company's EDP systems in order to ensure proper processes for the relevant business transaction (notice in accordance with section 33 of the German Federal Data Protection Act – BDSG). In the event that one of these terms and conditions of contract is ineffective, then this ineffective provision shall be replaced by an effective provision that comes closest to the ineffective provision. This shall not affect the effective nature of the remaining provisions.
(Current as of 9 Jan., 2018)