
1. Scope
The general terms and conditions of desigfunktion Aligäu GmbH, desigfunktion Aschaffenburg GmbH, desigfunktion Berlin GmbH, desigfunktion Bielefeld GmbH, desigfunktion Bodensee GmbH, desigfunktion Dresden GmbH, desigfunktion Gesellschaft für moderne Einrichtung Hamburg mbH & Co. KG, desigfunktion Holding GmbH, desigfunktion Kronberg GmbH, desigfunktion Münchner Neuesten Nachrichten GmbH, desigfunktion Oberpfalz GmbH, desigfunktion Stuttgart GmbH (hereinafter: 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 trades, the final content of the contract shall be determined by the written order confirmation from the Company, unless the Customer objects to this within the stated period.

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

3. Contractual amendments
In the event that the Company’s procurement or wage costs for goods or services to be supplied that are actually supplied more than 4 months after the original confirmation of the contract, then the Company shall be entitled to demand a reasonable amendment in the sales price.

Orders rendered in connection with long-term contracts will be aligned with developments and product changes by the manufacturer. Technical descriptions and other information in brochures and documentation, on our website or in 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 service and service that does not have to be non-binding. 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 agreement is accepted 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. Manifestations of defects shall have been taken place of 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 not notified within 6 months, the Company shall be entitled to rectify the defect or to supply goods in perfect condition; if this fails conclusively, the purchaser shall have the option to assign the claims against the Company to a factor, in whole or in part and without notifying the Customer. The Company is also authorised to collect the claims from the resale of the account on 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 376 of the German Commercial Code (HGB). In the event of default on the part of the Customer, the Company shall be entitled to take back immediately the goods subject to retention of title. The Company must immediately notify the Customer 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 or trader, then it may read the goods in the ordinary course of business, but is not entitled to assign them as collateral or pledge these. This Customer hereby accepts that a Valuation for 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 of the disclosures of the assignment of the claim to the Customer’s business partner. Following the start of the default period, the Customer shall be entitled to demand from 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 hereby reserves the right to require the relevant third 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 Company 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 bank 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 provided, 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 undoubted and legally valid claims of the Customer. 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 shall be under an obligation to compensate the Contractor up to 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 then shall be accounted for separately.

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 Company. The Company 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 HGB (German Civil Code).

9. Risk with specimens, samples and rentals
Goods that are supplied as specimens or samples or items that are lent to or leased will be provided to the Customer at the Customer’s risk and shall remain the Customer’s property. 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 a charge. If charges are induced by the Client once the execution planning has been completed or the plans have been approved and released, then the planning charges will be charged in accordance with expenditure of time as follows:

Contractor and project manager
EURO 125.00 net (Interior)
Architect / engineer
EURO 110.00 net
Designer / technician
EURO 85.00 net
Textile engineer / room fitter
EURO 65.00 net
Other employees
(Technical designers, secretarial staff)
EURO 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 hours worked undertaken by the Contractor. Travel costs will be accounted for in accordance with expenditure of time as per the Company’s travel rules. Unless otherwise agreed, any ancillary costs of the Contractor shall be borne by the Client following prior approval of the Client with original receipts submitted. Unless otherwise agreed, the Contractor’s remuneration shall be subject to any costs that are based on the fee scale in the latest version of the German Fee Scale for Architects and Engineers into (HAB). The Client shall be entitled to provide partial, if effective, performance. All prices stated in these general terms and conditions are subject to statutory VAT, unless expressly stated otherwise.

Delivery
The Company points out that any presented wood samples, fabric samples, colour charts, etc. on clip 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 agreed if the Contractor is present, 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 in colour samples.

Deliveries within the Federal Republic of Germany will be made at the Customer’s expense unless otherwise agreed. In individual cases, 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 or accidental deterioration of the goods sold in the case of sale to destination transporters 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 issued or not. The risk of accidental destruction and accidental damage to the goods passes to the Client at the time of the handing over or, in case of sale to someone else, to the person or institution that the transport Company or the person or institution that has been contracted to transport the goods. Hereunder shall be deemed to have taken place if the goods ordered are ready for delivery. After notification that the goods ordered are ready for delivery, the Company shall store these for up to 14 days at their risk and own risk.

The Client shall only be liable for fulfilment and gross negligence during the storage period. The purchaser shall bear the risk of the destruction of the purchased item as a result of 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 meter 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 fulfillment
The place of jurisdiction and fulfillment 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 used by the Company’s EDP systems in order to ensure proper processes for the relevant business transaction (processing according to section 33 of the German Federal Data Protection Act – BDSG). In the event that any one of these terms and conditions of contract is invalid, 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.

(Draft as of 1 Jan., 2020)