

General Terms and Conditions for Contracts for Works and Services and Similar Contracts of WhiteLabel-TandemProjekte e.U., Telgte/ Germany

WhiteLabel

Article 1

General – Scope of application

1. Our General Terms and Conditions of Business (hereinafter also: GTCB) apply exclusively to entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), i.e. to natural or legal persons or partnerships with legal capacity with whom a business relationship is established and whose actions are characterized by the exercise of their commercial or independent professional activity. In addition, they apply to special funds under public law.
2. Our General Terms and Conditions of Business are of exclusive application; no contradicting terms and conditions of Client are acknowledged unless we expressly declare our approval of their application in writing. Our Terms and Conditions of Sale shall apply even if we execute the delivery to Client without reservation and in the knowledge of the existence of contradicting terms and conditions of Client, or of terms that differ from our own terms.
3. All agreements concluded between us and the Client for the purpose of the execution of this contract are laid down in writing in this Contract.
4. Our General Terms and Conditions of Business apply to all present and future business relationships with Client.

Article 2

Conclusion of contract

1. Our offers are subject to change. We reserve the right to make reasonable changes.
2. If the contract concluded subsequent to our offer (subject to change) constitutes an offer within the meaning of Section 145 of the German Civil Code (BGB), we may accept the said offer within two weeks upon receipt by us.
3. We reserve the ownership and copyrights in illustrations, drawings, calculations and other documents. This also applies to written documents marked as "confidential". Prior to their disclosure to third parties, the Client requires our express consent in writing.

Article 3

Prices – terms of payment

1. Unless indicated otherwise in the order confirmation, value added tax at the applicable rate shall be added to our prices and incurred expenses; the applicable rate of value added tax as of the invoice date shall be stated separately on the invoice.
2. If partial performance is justified, we may request the corresponding part payments.
3. In the event of cost reductions or cost increases after the conclusion of the contract, in particular due to collective agreements or changes of material prices, we reserve the right to adjust our prices accordingly. Upon request, proof thereof shall be furnished to the Client.
4. Unless the order confirmation states otherwise, the purchasing price shall be payable (without deduction) in two equal instalments of 50% each, the first of which will fall due upon conclusion of the contract and the second upon delivery of all deliverable documents. If we subcontract any services to third parties, we may request advance payments – deductible from the second instalment – to the extent that we are obliged to make advance payments to the third party.
5. All payments shall be payable within 14 days after the date of the relevant invoice. Upon the expiry of this period, Client shall be deemed to be in default of payment. The legal provisions shall apply to the consequences of a default of payment. We reserve the right to demonstrate that the actual damages caused by Client's delay exceed the damages provided for in the laws and may claim payment of the full damages.
6. The deduction of a discount is subject to a separate written

agreement. 7. In addition to the remuneration for our activity, we are also entitled to the reimbursement of all expenses incurred in connection with the fulfilment of the contract, i.e. travelling costs by car at the applicable rates of tax, travelling costs by train (1st class) and costs for flights internally Europe economy class, and externally Europa business class.

8. The surcharges stipulated in the respective individual agreements, but in any event no less than 50% on top of the hourly rates, shall be applied to work on weekends (Saturday and Sunday), on public holidays and on working days between 8pm and 6am.
9. No offsetting of accounts payable shall be permissible unless Client's claims have been finally adjudicated, are undisputed or acknowledged by us. In addition, Client shall only be entitled to exercise its right of retention if its counterclaim is based on the same contract.
10. Bills of exchange shall only be accepted if previously agreed in writing. In this case, Client shall bear the discount charges. Payment shall only be considered to have been made validly once the owed amount has been irrevocably credited to us.

Article 4

Obligation to co-operate

1. Client shall provide all documents we consider necessary or expedient for the fulfilment of the contract in due time and free of charge. Client shall immediately notify us, without any need to be specifically requested to do so, of any and all events that could be of relevance to the fulfilment of the contract. Client shall support us to the best of its ability with the fulfilment of the contract.
2. By virtue of the award of contract to us, we shall be deemed to have been authorized and ordered to obtain information, in our sole discretion, from the authorities, involved parties and third parties. Equally, we are entitled to make enquiries. Upon request, the required authorizations shall be issued to us or a third party appointed by us in suitable form.

Article 5

Involvement of third parties

For the purpose of the performance of the contract, we may involve suitable third parties at our discretion. In individual cases, Client may refuse the award of a contract to a third party for cause.

Article 6

Time of performance

1. The commencement of the term of delivery and/or execution quoted by us is dependent upon the clarification of all technical issues and, where agreed, the provision of the specified documentation by Client and, where applicable, the receipt of a down payment. If no such advance performance/payment of Client is required, performance shall be started at the earliest convenience but in any event no later than six weeks after the conclusion of the contract. However, we reserve the right to plead non-fulfilment of the contract (Section 320 of the German Civil Code) and the defense of precariousness (Section 321 of the German Civil Code).
2. If Client can be reasonably expected, in due consideration of its interests, to accept partial deliveries, then we shall be entitled to make such partial deliveries.
3. If Client is in default of acceptance or if Client culpably violates other obligations to co-operate, we may demand compensation of the damages suffered by us as a result, including any additional expenditures. The right to assert further claims is reserved.
4. If the prerequisites of item 3 are fulfilled, the risk of accidental destruction or accidental deterioration of the deliverables shall pass to Client at the time when it is first in default of acceptance or debtor's default.

5. All events of force majeure and other delays not attributable to us pursuant to Section 276 of the German Civil Code release us from the duty to fulfil the contractually agreed obligations for the time during which such events persist. In particular, we shall not be held responsible for delays attributable to Client. We are obliged to immediately notify Client of the occurrence of such an event; likewise, we shall notify Client of the presumable duration of such an event. If such an event persists for more than three months, we may withdraw from the contract. To the extent that the delay is not attributable to us, we are entitled to keep payments for services already rendered.
6. Agreed deadlines are non-binding unless they were explicitly expressed to be binding. If no binding deadline is agreed, we are obliged to perform within a reasonable period of time.
7. If the default in performance is attributable to an intentional or grossly negligent violation of the contract by us, we shall be liable pursuant to the statutory provisions; a default in performance by our representatives or vicarious agents is attributable to us. However, if the default in performance is not caused by an intentional violation of the contract attributable to us, our liability to pay damages to entrepreneurs is limited to the foreseeable damages that would typically arise. Our liability to consumers is unlimited, also in case of gross negligence.
8. Furthermore, we are also liable pursuant to the statutory provisions if a default in performance, attributable to us, has been caused by the culpable violation of a material contractual obligation; however, in this case the liability for damages is limited to the foreseeable damages that would typically arise.
9. Further legal claims and rights of the Client are reserved.

Article 7

Copyright, other industrial property rights

If applicable, we hold a statutory copyright in the works developed by us. Any expert opinion prepared by us, as well as any documents supplied by us provided they are copyright-protected or covered by another industrial property right (e.g. patents, design patents, trademarks), shall be used by Client exclusively for the purpose defined in the contract. A duplication or publication – even if only partial – always requires our written consent, it being understood that Client has no right to demand such consent.

Article 8

Claims for defects

1. As a general rule, only the description of our tasks in the contract shall validly apply to the quality of the work or service. Other public statements, advertisements or commercials do not constitute a contractual statement about the quality of the goods.
2. No claim for defects shall arise if there is only an inconsiderable departure from the agreed quality or if the usability is only insignificantly affected.
3. Client bears the full burden of proof with respect to any and all prerequisites relating to a claim, in particular relating to the defect itself, the time of the defect and the timeliness of the notice of defect.
4. To the extent that a work produced or service rendered by us has a defect, we may choose freely between supplementary performance by rectification of the defect and the supply of a new item that is free of defects.
5. Should the supplementary performance fail, the Client does not, in case of a contract for work and services concerning a construction service have a right of withdrawal.
6. We can be held liable pursuant to the statutory provisions if the Client asserts damages that are attributable to intention or gross negligence, including extent that we are not accused of an intentional violation of the contract, the liability for damages shall be limited to the foreseeable damages that would typically arise. In this respect, a limit of max. EUR 25,000 shall apply.
7. We are liable pursuant to the statutory provisions if we culpably violate a material contractual obligation; in this case, however, the liability for damages is restricted to the foreseeable damages that would typically arise.

8. The aforesaid applies without prejudice to the liability attributable to a culpable injury of life, limb or health; this also applies to the compulsory liability under the product liability law.
9. If the above does not contain any statement to the contrary, a liability by us is excluded.
10. Guarantees in the legal sense are not extended to Client. This applies without prejudice to manufacturer warranties.

Article 9

Joint and several liabilities

1. Any further liability for damages other than that provided for in Article 8 items 6 to 10 is excluded – irrespective of the legal nature of the asserted claim. This shall apply in particular to claims for damages on account of culpa in contrahendo, on account of other violations of duties or on account of claims in tort for compensation of any material damage pursuant to Section 823 of the German Civil Code.
2. The limitation pursuant to item 1 shall apply equally if Client requests, instead of performance, the replacement of useless expenses rather than claiming indemnification.
3. If liability for damages is excluded or restricted in respect of us, this shall also apply to the personal liability for damages of our staff-members, employees, fellow-workers, representatives and vicarious agents.

Article 10

Client's solvency

If Client is in default with its due payments – including from earlier contracts – and if there are grounds to assume that its financial circumstances will deteriorate significantly and that our entitlement to payment is threatened as a result, we may retain goods not yet delivered, respectively services not yet rendered, until Client shall have paid the due amounts in cash or provided sufficient collateral. If Client fails to do so, we may withdraw wholly or partially from the contracts to the extent they have not been fulfilled yet.

Even if Client is not in default with due payments, Section 10 item 1 shall apply regardless provided that, after the conclusion of the contract, we become aware of circumstances that give rise to fears that a significant deterioration of the financial circumstances of Client is imminent and that such circumstances put Client's fulfilment of the contract at risk.

Article 11

Venue – place of performance – applicable law

1. If customer is a businessman or a public corporation or a special fund under public law, our registered office shall be the exclusive venue; however, we may also sue Client in the court at its domicile or registered office.
2. If customer is a businessman or a public corporation or a special fund under public law, and if the order confirmation does not indicate otherwise, our registered office shall be the place of performance.
3. The law of the Federal Republic of Germany shall apply. In case of disputes, the German version of these General Terms and Conditions shall prevail.