

**General terms of delivery and service of  
Star Cooperation GmbH, Otto-Lilienthal-Strasse 5, 71034 Boeblingen, Germany**

**Part 1: General provisions governing all contracts**

**I. Applicability:**

1. These General terms of delivery and service apply to:
  - a person engaging in commercial activity or self-employment when entering into the contract (contractor) and
  - legal entities or a fund set up under public law.

Hereinafter, our contractual partner shall be referred to as the "Customer".

2. All deliveries and services shall be subject to these terms and conditions, as well as any separate contractual agreements. Any terms of purchase or other conditions of the Customer that deviate from or go beyond these terms and conditions shall be incorporated into this agreement neither by acceptance of the order nor by our failure to raise an objection.
3. They shall also apply to all future business transactions, and to all commercial contact with the Customer – for example, when entering into contract negotiations, or initiating a contract – even if they are not expressly re-stipulated, or if attention is not expressly drawn to them again.
4. Should, in a particular case, obligations be created towards other persons or companies who are not themselves parties to the contract, then the limitations of liability within these General terms of delivery and service shall apply with respect to these parties, insofar as these General terms of delivery and service were brought to bear with respect to these parties when the obligation was first created. This shall above all be the case if those third parties requested knowledge of or already had these General terms of delivery and service when the obligation was created.
5. The acceptance of services and deliveries from us on the part of the Customer shall constitute recognition of the validity of these General terms of delivery and service.

**II. Conclusion of the contract:**

1. Unless agreed otherwise, our tenders shall become binding four weeks after they have been submitted.
2. We shall not be bound by an order from the Customer (i.e., his/her tender) until we have accepted such tender by issuing a written order confirmation or we start fulfilling the order.
5. If the order was placed verbally or by telephone, at our request, the Customer shall be obliged to confirm in writing our written acceptance of its order. If the Customer fails to provide such written confirmation within a confirmation period of five business days of receipt of the respective request by its office, we shall no longer be bound by the order and shall be entitled to cancel it within another five business days following the end of the confirmation period. This must be done in writing.

**III. Scope of delivery and service; performance periods:**

1. Our written tender or, as the case may be, our order confirmation shall be authoritative as regards the scope of our delivery or service. Subsidiary agreements and amendments require confirmation from us in writing. If our tender or order confirmation was based upon submissions from the Customer (dates, figures, drawings, designs, indications of weights and measures etc.), then our tender or order confirmation shall only be binding if these submissions were accurate. If it should prove impossible after conclusion of the contract to carry out the order in compliance with the Customer's specifications, we shall be entitled to rescind the contract, provided and insofar as the Customer is not prepared to accept the alternate solution we suggest and to take on any actual additional costs which might arise from this. Specifications accompanying our tenders, e.g. designs, or information on weights, measures and capacity, should be taken as approximations if they are not expressly denoted as binding. We reserve all rights to designs, samples, models or similar preparatory work.
2. For all orders we shall be entitled, to a reasonable extent, to make partial deliveries/render partial services. We shall furthermore be entitled to use subcontractors in order to fulfil our contractual obligations.
3. Unless an individual agreement to the contrary has been reached with the Customer, while delivery and performance periods and deadlines are always based on the best available information, they are not binding. An agreed delivery period shall be deemed to have been met if the item covered by the contract left the factory or warehouse within the delivery period or the Customer has been notified that it is ready for shipment. As a precondition for the commencement of the delivery period and the adherence to delivery deadlines, the Customer must assist when required in a timely and proper manner, provide all documentation to be furnished and make any agreed payments in advance.
4. If inspection/acceptance must be carried out, the deadline for the inspection/acceptance or, alternatively, a notification that the Customer is ready for the inspection/acceptance, shall be authoritative – except in cases where the Customer is justified in refusing to take delivery.
5. We shall not be held to be in default in cases of force majeure or other extraordinary circumstances beyond our control. In such cases we shall be entitled to rescind the contract, even if we are already in default. In particular, we

shall not be held to be in default for delays in delivery if these were caused by incorrect or late deliveries by our suppliers for which we were not responsible. In the event of temporary impediments such as force majeure, labour disputes or other events outside of our control, the delivery or service periods shall be extended or the delivery and performance deadlines shall be postponed by the period of time that the impediment lasts, plus a reasonable lead time.

6. If the shipment and/or the taking delivery of the goods covered by the contract is/are delayed for reasons for which the Customer is responsible, we may charge the Customer for the costs incurred in connection with the delay, beginning one month after notification of readiness to ship and/or readiness to inspect/accept the goods. Without prejudice to any further claims, if a reasonable grace period expires without action by the Customer, we may otherwise dispose of the goods and, in particular, may at the Customer's risk and expense store them and/or deliver them to the Customer with an appropriately extended delivery period.
7. In accordance with legal provisions, we shall be liable if the delay in delivery is due to a breach of contract based on wilful misconduct or gross negligence on our part. We shall likewise be liable if our legal representative or vicarious agent is at fault. However, our liability shall be limited to the foreseeable damage that typically occurs in such cases. Further, in accordance with legal provisions, we shall be liable if we are responsible for a delay in delivery that is due to a wrongful breach of a material contractual obligation. Material contractual obligations (primary obligations) are obligations which must be fulfilled in order for the contract to be executed properly and on the fulfilment of which the Customer regularly relies and indeed may rely. However, here, too, our liability shall be limited to the foreseeable damage that typically occurs.
8. Call orders have a maximum term of 12 months, beginning on the order confirmation date. After this period has expired, goods not yet accepted shall be delivered to the Customer and the Customer shall be invoiced for them following prior written notification.
9. Further claims relating to delivery default/delay in delivery shall be governed exclusively by section IX of these General terms of delivery and service.

#### **IV. Assistance provided by the Customer:**

1. The Customer must provide reasonable, customary support to us and our staff. If our employees need to carry out project-related work or services at the Customer's premises, offices and workstations with PCs and telephones should be made available to us at our request as part of this support, and the Customer shall bear the cost of this.
2. Documents, information and data required by us for the performance of our services must be made available to us by the Customer. Data and data storage media must be free from technical defects. The Customer must inform us of any particular statutory or operational safety provisions applicable to its business prior to the performance of our services.
3. The Customer may not instruct our staff as to the concrete manner in which the services shall be carried out, unless instructions are necessary in connection with safety requirements and working regulations in force at the Customer's business. Instructions on particular issues regarding work or services to be carried out by us should not be made to those members of staff whom we have entrusted with the work, but rather to the named contacts we have provided for the project. We shall always make our own autonomous decisions regarding the measures necessary to fulfil our performance obligations.

#### **V. Prices:**

1. Our prices are net and are always "ex works" for deliveries (EXW, Incoterms 2000). For services, the prices refer to the provision of the service at the agreed place of performance. When preparing the invoice, we shall add turnover tax at the statutory rate prevailing at the time.
2. The Customer shall be responsible for costs associated with changes to the order.
3. Agreed prices are not binding for future orders.
4. In the event of reductions or increases in costs occurring after this contract is concluded, in particular those relating to collective-bargaining agreements, changes in the price of materials or changes in interest rates, we reserve the right to change our prices accordingly. If the Customer takes delivery of lower quantities than agreed under call orders and multiple-delivery contracts, we shall be entitled to recalculate our prices based on these reduced purchase volumes and to invoice the Customer for the resulting price increases.
5. Expenses and travel costs shall be invoiced separately, unless otherwise agreed. For travelling expenses outside a radius of 40km around Böblingen's city boundary, an allowance of 0.50 Euros/km plus turnover tax shall be agreed.

## **VI. Payment terms, default/delay, offsetting, assignment:**

**If the Customer is not domiciled in the Federal Republic of Germany on the order date, section 1 below shall apply:**

1. Provided that there is no provision for delivery against prepayment in our contractual agreement with the Customer, we shall be entitled, without the need for any specific agreement to that effect, to make our services dependent upon the provision of a documentary letter of credit amounting to the gross price for those services via a bank or bank branch within the European Union, in accordance with the International Chamber of Commerce's (ICC's) Uniform Customs and Practice for Documentary Credits (UCP 500). If we do not request that such documentary letter of credit be provided and in the absence of a contractual agreement to the contrary, our account shall fall due upon receipt of the delivery or, as the case may be, once our services have been fully carried out. If our deliveries or services are carried out in clearly separable portions, we shall be entitled to invoice the Customer for the amount of remuneration corresponding to each portion and to request the provision of a documentary letter of credit for each portion, if appropriate.

**Otherwise, section 1 below shall apply:**

1. In the absence of an agreement to the contrary, our account shall fall due upon receipt of the delivery or, as the case may be, once our services have been fully carried out. If our deliveries or services are carried out in clearly separable portions, we shall be entitled to invoice the Customer for the amount of remuneration corresponding to each portion.

**The following applies to all Customers:**

2. If the Customer is in arrears, it must reimburse us for the damages caused by the delay; in particular, it must pay interest on arrears equal to 9 % p.a. above the base lending rate. If the Customer is more than 14 days behind in payment of an amount or partial amount due, the entire sum of all outstanding receivables shall become due and payable immediately. In the event the Customer is in arrears, we shall likewise be entitled to suspend further deliveries and services in whole or in part and to revoke payment terms that we have granted. Moreover, if there is a material deterioration of the Customer's financial situation after the contract date, we shall be entitled to make further deliveries or provide further services only if the Customer prepays or furnishes collateral. In addition, we may prohibit the resale, treatment and processing of goods subject to retention of title and their return or the transfer of indirect possession at the Customer's expense, revoke any direct debit authorisation and enter areas where the goods subject to retention of title are being stored and remove such goods.  
This shall not affect the right to assert additional claims for damages caused by default.
3. The Customer shall not be entitled to take deductions without express agreement.
4. Payment by means of promissory notes or acceptances shall only be permitted if expressly agreed in writing and even then shall be valid only on account of payment. Acceptances must be negotiable and eligible for discount. Expenses and fees relating to acceptance of promissory notes shall be borne by the Customer. They are payable immediately. The same applies to cheques.
5. Only uncontested claims, claims upheld by a final and unappealable court order or claims recognised by us may be netted against our compensation claims. This shall also apply to the exercising of a right of retention. In all other respects, the Customer shall only be entitled to exercise a right to retention provided that it is based upon the same contractual relationship.
6. Assignment by the Customer of claims against us shall require our prior written consent. However, the Customer shall be entitled to assign a monetary claim if the assignment takes place as part of a commercial transaction.

## **VII. Default/delay in acceptance, transfer of risk and inspection/taking delivery:**

1. The risk of loss of or damage to the goods is transferred to the Customer when the goods are handed over to or sent directly to the Customer or its designated agent, even if partial deliveries are made. If the Customer is late accepting the goods or in wrongful breach of other obligations to assist, we shall be entitled to demand payment for any damages we have incurred, including any additional expenses.  
If we are entitled to claim compensatory damages instead of performance, we may claim 15% of the agreed price, plus payment for any work already performed and material used, as compensation without providing substantiation. This shall not affect further claims.
2. The risk of accidental loss of or damage to the item(s) covered by the contract shall transfer to the Customer on the date of the Customer's default in acceptance or payment of amounts owed. This shall apply even if the shipment is delayed or does not take place and/or the Customer does not take delivery due to circumstances beyond our control, from the date of notification of readiness to ship or readiness to take delivery.
3. The risk of accidental loss, destruction or deterioration and the risk relating to payment of compensation transfer to the Customer when the goods to be delivered are loaded ex warehouse or, in the case of direct delivery, ex works of our supplier, even in the case of partial deliveries or if we have undertaken to provide other services, e.g. assuming shipping costs, or delivery, installation and unloading. Any agreed inspection/acceptance must take place without delay by the deadline for taking delivery, or alternatively following our notification concerning readiness to take delivery.  
Any additional costs incurred shall be borne by the Customer. The Customer may not refuse to take delivery because of a minor defect.
4. The goods shall be shipped at our discretion using the most economical, fastest route, without any guarantee. Any additional expenses related to special shipping requests by the Customer shall be borne by the Customer.

## **VIII. Warranty:**

Subject to item IX of these terms and conditions, we guarantee new items against material defects and defects in title as follows, while excluding further claims:

### **1. Material defects**

- (1) If there is a material defect in goods being delivered due to circumstances existing on the date when risk transfers, we shall be obliged to repair or replace the goods, at our discretion. The parts replaced shall become our property and must be handed over to us by the Customer without delay. Expenses relating to the repair or replacement, such as transportation, travel, work and material costs, shall be borne by us, so long as they are not higher due to the fact that the goods delivered have been transferred to a place other than the place of performance.  
Upon notification by us, the Customer must provide us the opportunity and necessary time to make any and all repairs and/or replacements we deem necessary; otherwise, we shall be released from any liability for any consequences thereof. The Customer shall have the right to remedy the defect himself/herself or to have third parties remedy the defect and to demand that we reimburse the necessary costs only in emergency situations where operational safety is in jeopardy and/or to prevent disproportionately large damages, in which case we must be notified at once.
- (2) Pursuant to article 377 of the German Commercial Code (HGB), the Customer must inspect every shipment immediately after delivery and notify us of any defect detected at once. Complaints of defects shall be considered only if they are raised in writing without delay, no later than one week after receipt of the goods. The date of receipt of the notice of defect shall be decisive in determining whether the deadline was met. Later notices of complaint shall be barred. The delivery shall then be deemed to have been accepted. This shall not apply to hidden defects, i.e., defects that are not obvious. The loss of the right to lodge a complaint for defects shall not take effect if a proper, immediate inspection for defects did not manage to discern the defect during the one-week time limit for lodging complaints. If a complaint of defects is lodged, the Customer may withhold only that proportion of the payments equal to the ratio of defective items to the entire shipment.
- (3) If the attempt to repair or replace the items fails, the Customer shall be entitled, in accordance with legal requirements, to reduce the purchase price or to rescind the contract.
- (4) The warranty shall be invalid if a defect was caused by improper operation, handling or use or by a change, reworking or repair by the Customer or a third party that was not approved by us, unless we are at fault. The same applies to natural wear and tear, the use of improper materials, chemical, electrochemical or electrical influences, etc.

The warranty likewise shall not apply to used items, unless the parties have entered into an agreement to the contrary.

### **2. Defects in title**

In the event of defects in title, the warranty shall be determined by legal requirements.

### **3. Statute of limitation**

For claims of defects, the limitation period is 1 year, calculated from the beginning of the statutory limitation period. For the services stipulated in article 438(1)(2) and article 634a(1)(2) of the BGB, the following statutory periods apply.

### **4. Extension to third parties**

Should third parties be appointed or included in the initiation or development of the obligations between the parties, the aforementioned warranty limitations and exclusions shall also apply to those third parties.

### **5. Further claims**

Such claims are governed by item IX of these terms and conditions.

## **IX. Compensatory damages for defects and other liability**

1. In the event of wrongful breach of material contractual obligations, we shall be liable in accordance with legal provisions, whereby in cases of slight or gross negligence, our liability here shall be limited to the foreseeable damage that typically occurs in such cases. Material contractual obligations (primary obligations) are obligations which must be fulfilled in order for the contract to be executed properly and on the fulfilment of which the Customer regularly relies and indeed may rely.
2. If the Customer asserts legitimate claims for compensatory damages in lieu of performance, we shall be liable in the same way, but our liability shall likewise be limited to compensation for the foreseeable damage that typically occurs in such cases.
3. We shall also be liable in accordance with legal provisions if the Customer asserts legitimate claims for compensatory damages based on wilful misconduct or gross negligence on the part of our legal representatives or vicarious agents. However, for non-deliberate acts of infringement, our liability for compensatory damages is limited to compensation for the foreseeable damage that typically occurs in such cases.
4. Liability for loss of life, physical injuries or damage to health attributable to a negligent breach of duty on our part or a deliberate or negligent breach of duty by one of our legal representatives or vicarious agents shall remain unaffected.

Our liability for fraudulently concealing defects or assuming a guarantee, as well as our mandatory liability under the Product Liability Act (Produkthaftungsgesetz), shall remain unaffected.

4. To the extent our liability for compensatory damages is barred or restricted, this shall also apply to the personal liability for compensatory damages of our employees, representatives and vicarious agents.
6. Unless agreed otherwise above, further claims by the Customer for compensatory damages shall be barred. This also applies to claims for compensatory damages due to precontractual liability (culpa in contrahendo), other breaches of duty and tortious claims for compensation for damages to property pursuant to article 823 of the BGB.
7. All Customer claims shall be time-barred after one year. For wilful misconduct or malicious conduct, as well as claims under the Product Liability Act and the services stipulated in article 438(1)(2) and article 634(1)(2) of the BGB, the statutory limitation periods apply. The beginning of the statutory period of limitation is determined in accordance with legal requirements.
8. Should third parties be appointed or included in the initiation or development of the obligations between the parties, the aforementioned limitations and exclusions of liability shall also apply to those third parties.

#### **X. Confidentiality:**

1. Both we and the Customer ("the Parties") undertake, for the duration of the contract, to treat as confidential all information disclosed in connection with the contract which is marked as confidential or which, due to other circumstances, is clearly a business or operational secret. We also undertake neither to record, to transmit any such information to third parties, nor to exploit it in any way whatsoever unless this has previously been expressly approved in writing or is necessary for achieving the aims of the contract. This duty to observe secrecy shall remain in force for a further five years after the complete discharge or termination of the order.
2. The following information is excluded from this:
  - information which was already known to one of the parties before contract negotiations had begun, or which was disclosed by third parties as not confidential in nature, provided that the latter are not infringing their obligations to observe confidentiality;
  - information which the parties have each developed independently of the other;
  - information which is or shall become part of the public domain, without fault or assistance from either party;
  - or
  - information which must be made public to comply with legal requirements, or due to an official or judicial decree.

In the last-mentioned case, the disclosing party must inform the other party without delay prior to the information being made public. Statutory duties of confidentiality of a more extensive nature shall remain unaffected.

#### **XI. Product liability:**

If there are product liability and/or product security regulations in the countries where the Customer will be reselling our products, which deviate – particularly in their severity – from those under German law, the Customer must indicate this to us when submitting the order. In such cases we are entitled to rescind the contract within a month. Should the Customer fail to inform us of this, we shall be entitled to rescind the contract within one month of gaining knowledge of the relevant legal position. In the latter case, the Customer is obliged to release us from third-party claims which would exceed our contractual-1491850373"Contractual" is not present in the source text and is included here for clarity performance obligations in a comparable product liability case in Germany. This shall apply even if we continue to adhere to the contract.

#### **XII. Use in the Customer's operations of employees outside of the German Act on Temporary Employment**

1. If we send our employees to work at the Customer's premises, this shall be only for the purpose of satisfying our contractual obligations to the Customer.
2. We alone shall be authorised to issue instructions to these workers; the Customer shall have no such right to issue work-related instructions. We satisfy the operating and/or personnel requirements to organise the employees we have deployed on-site and issue work instructions to them.
3. No integration of our employees into the labour organisation of the Customer's company shall take place.

#### **XIII. Employee protection laws**

We comply with all employee protection laws, also the minimum wage law introduced by now, and have also obliged our suppliers to comply with these laws.

#### **XIV. General final provisions:**

1. The place of performance and exclusive legal venue for any and all disputes between the parties arising from the contractual relationship shall be Böblingen, provided the Customer is a merchant, legal entity or fund under set up under public law or the Customer has no general legal venue in the Federal Republic of Germany or has transferred its legal venue abroad. As an exception to the above, we shall also be entitled to file claims against the Customer at its general legal venue.
2. The Customer is aware that data from business transactions, including personal data, will have to be recorded and, on the basis of commercial necessity, processed and transmitted to third parties. The Customer is in agreement with this data collection and processing.
3. If for any reason any provision in these terms and conditions should in general or in an individual instance be or become invalid, this shall not affect the validity of the remaining provisions of these terms and conditions. In this case, dispositive law shall apply. If and to the extent dispositive law does not cover this particular type of contract or provides no alternative solution for the general terms and conditions clause deemed invalid, the parties shall replace the invalid provision or the provision which has become invalid with a provision that comes as close as possible to achieving the parties' originally intended economic effect whilst being legally valid.
4. Any and all claims arising under and in connection with the contractual relationship shall be subject exclusively to the laws of the Federal Republic of Germany, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

#### **Part 2: Special provisions for specific types of contracts**

##### **I. Special provisions for performance-related contracts such as contracts for work and services (Werkverträge):**

1. If we are tasked with bringing about a particular outcome – e.g. the construction of a factory – or a particular set of documentation, the Customer shall be obliged, upon our issuing it with the relevant notification of completion, to provide a written statement formally confirming acceptance of our performance.
2. If this formal acceptance is delayed through no fault of our own, our performance shall be taken as accepted after the expiration of seven calendar days from the notification of the completion.

##### **II. Special provisions for service contracts:**

1. A service contract can only be terminated for good cause.
2. Good cause shall exist, in particular, if:
  - obligations, notably obligations to assist, which need to be met within contractually-agreed deadlines, are not met despite the setting of a time limit and reference to the existing right of termination,
  - confidentiality obligations are violated,
  - material elements of the contract are not carried out, or are not fully carried out despite the granting of a grace period.
3. Notice of termination must be given in writing.

##### **III. Special provisions covering the delivery of goods, documents and software, etc.:**

###### **1. Retention of title and retention of rights of use**

- (1) We shall retain title to the delivered goods and all rights of use under copyright law until any and all claims against the Customer, including any and all ancillary claims, arising from the business relationship with the Customer have been satisfied in full. Insofar as the validity of these reservations of title depends upon registration, e.g. in the public registers of the Customer's country, we shall be entitled and fully authorised by the Customer to carry out this registration at the Customer's expense. The Customer is obliged to provide any assistance necessary on its part with respect to this registration free of charge.  
In the event of payment by cheques or promissory notes, the Customer's obligations shall be met only when the corresponding amounts have been definitively received into our account.
- (2) The Customer shall be obliged to treat with care the goods delivered. We shall be entitled to insure the goods delivered against theft, breakage, fire, water and other damages at the Customer's expense unless the Customer can prove that he/she has insured the goods itself. The Customer hereby assigns to us any and all claims against the insurers relating to the aforementioned loss events.
- (3) The Customer may resell, combine, blend or process the goods delivered in the ordinary course of business. Otherwise, our prior written consent shall be required, particularly in the case of a pledge or collateral assignment.

The Customer must notify us in writing without delay of any pledges, attachments or other dispositions by third parties. If the third party is not in a position to reimburse us for the court and extrajudicial costs of a lawsuit pursuant

to article 771 of the Code of Civil Procedure (ZPO), the Customer shall be liable to us for the amount not covered. The aforementioned duty to notify shall apply even if the goods subject to retention of title are lost or damaged.

- (4) In the event of a breach of duty by the Customer that is more than just a minor infringement, in particular in the event of default/delay in payment, we shall be entitled, after sending a prior warning letter, to demand that the goods delivered be handed over, and the Customer shall be obliged to hand them over. This shall not constitute a rescission of the contract by us, just as a pledge by us does not constitute a rescission of the contract.

The right to recover possession shall not apply to goods subject to retention of title for which the Customer has already paid or if the default/delay in payment is due to circumstances beyond the Customer's control.

If the goods subject to retention of title are returned in the manner described above, we shall be entitled to sell the goods subject to retention of title which have been returned to us following a prior warning and a reasonable grace period and to net the proceeds of the sale against the purchase price receivables. We shall be obliged to obtain a reasonable price for the goods. If the goods are sold, this shall constitute a rescission of the contract.

- (5) The Customer is authorised to resell, process, alter, combine or blend the goods delivered in the ordinary course of business. However, if it falls behind in payments to us or if it is charged with more than a trivial breach of contract, we may revoke this authorisation.
- (6) In the event the goods delivered are resold, the Customer hereby assigns to us the receivable claim, equal to the final invoice amount (including the turnover tax) accruing to it from its buyers or third parties from the resale, regardless of whether the goods delivered have been resold without or after processing.

It is authorised to collect these receivables even after the assignment. This shall not affect our authorisation to collect these receivables ourselves. However, we undertake not to collect the receivables so long as the Customer is not in default/delay in its payments to us and there are likewise no other objective grounds for doing so, e.g., cessation of payments or the filing of a petition to open insolvency proceedings. If such objective grounds do exist, we shall be entitled to revoke the direct debit authorisation and may demand that the Customer disclose to us the assigned receivable claims and the names of the debtors, and that the Customer provide all the information necessary to collect them, furnish the related supporting documents and notify the debtors and third parties of the assignment.

- (7) The processing, alteration, combining or blending by the Customer or, at the Customer's request, by us, of the goods delivered shall always be done on our behalf. If the goods delivered are processed, altered, combined or blended with other items not belonging to us, we shall acquire co-ownership in the new item equal to the ratio of the value of the goods delivered to the new items created by processing, altering, combining or blending the existing items on the date when these events take place.

If a residual portion initially not covered by retention of title remains because other suppliers have not extended their retention of title to the value created by the Customer, our co-ownership share shall be increased by this residual portion. However, if other suppliers have also extended their retention of title to this residual portion, we shall be entitled only to that share of the residual portion equal to the ratio of the invoice value of our goods subject to retention of title to the invoice values of the goods from these other suppliers that have been processed together with our goods.

For the new item created by processing, altering, combining or blending, the same applies as for the goods delivered subject to retention of title.

- (8) If the processing, alteration, combination or blending is done in such a way that the Customer's item is the main component, the parties shall be deemed to have agreed that the Customer shall transfer proportional co-ownership to us. This proportion is calculated as the ratio of the value of the purchased goods (final invoice amount, including the turnover tax) to the other items on the date of the aforementioned events.  
The Customer shall hold the sole or co-ownership thus created in safe custody for us.
- (9) The Customer shall assign to us as collateral for our receivable claims its receivables against a third party arising from combining the goods delivered with real property, if the combination makes the item purchased an integral part of the real property.
- (10) We shall be obliged, at our discretion, to release the collateral to which we are entitled at the Customer's request, to the extent that the realisable value of our collateral exceeds the accounts receivable being secured by more than 10%, provided that the excess collateral is not just temporary.

## **2. Agreed right of rescission**

If we have entered into a special agreement with the Customer to the effect that the Customer shall be entitled under certain conditions to rescind the contract even without the existence of a legal reason for cancellation, in the event such a right of rescission is exercised, we shall be entitled to demand that the Customer reimburse our expenses for the incoming goods inspection, for restocking the goods, bookkeeping, etc. to a reasonable extent upon providing substantiation. A minimum amount of 10% of the compensation for the contract in question shall be deemed to have been agreed as the amount of our expenses to be reimbursed.

### **Part 3: Supplementary provisions regarding special contracts**

In addition to the provisions in Parts 1 and 2 of these General terms and conditions, the following additional provisions apply to **agency services including, in particular, print, advertising and media-related contracts**, on the one hand, and **consultancy, planning, documentation and development work** on the other:

#### **I. Agency services including, in particular, print, advertising and media-related contracts**

##### **1. Presentations**

- (1) Any use, including partial use, of the work and services (presentations) presented or submitted by us for the purpose of concluding the contract, whether or not they are copyright-protected, shall require our prior consent. This also applies to use in an altered or processed form and to the use of the ideas on which our work and services are based, provided these are not expressed in the Customer's previous advertising materials. Upon termination of the contract, the presentations must be returned to us unless the Customer has our approval to use them.
- (2) The acceptance of a presentation fee shall not imply any consent on our part to the use of our work and services.
- (3) We shall retain the copyright utilisation rights and ownership rights to the work presented by us as part of the presentation. If the works presented by us as part of the presentation have been fully paid for in accordance with the agreement, the copyright utilisation rights and ownership rights shall transfer to the Customer pursuant to Part 2 III 1 of these General terms and conditions.

##### **2. Templates, files and other work resources**

- (1) We shall retain ownership of templates, files and other work resources (in particular, negatives, models and original illustrations, among other things) that we create or have created in order to perform the service we have committed to provide under the contract. There is no obligation to hand over these items. We shall not be obliged to retain them.
- (2) The same applies to all interim work results, such as sketches, drafts, production data, lithographs, printing plates, etc., that have been created by us or our suppliers/subcontractors in connection with an order.

##### **3. Overages or shortages**

Excess or short deliveries of up to 10% of the quantity ordered shall not give rise to a complaint. The quantity delivered shall be invoiced. For deliveries of custom-made paper products under 1,000 kg, the percentage increases to 20%, under 2,000 kg to 15%.

##### **4. Customer's templates, data and supporting documents**

- (1) The Customer shall be obliged to provide to us only templates such as models, photos or other working documents that have been cleared for publication or reproduction.
- (2) The Customer shall make available to us free of charge all the data and supporting documents, templates, etc. needed to implement the project. They must be delivered within the period agreed or the period imposed by the nature of the contract. The Customer shall be responsible for ensuring that these deliveries (including data storage media, transferred data) by it or a third party retained by it are suitable for providing our service and that they are complete and free of defects. The digital print material must be print-ready. We are under no obligation to test the deliveries. This does not apply to data which clearly are not processable or readable. In data transfers, the principal must deploy the latest anti-virus software before transferring the data. The Customer shall bear sole responsibility for data back-ups. We shall be entitled to make a copy.
- (3) In the absence of an agreement to the contrary - without prejudice to our duty to report obvious errors - we shall assume no obligation to provide advice or information about the suitability and quality of these datasets. Should we nevertheless provide information or suggestions in this regard, this shall be done outside of contractual or precontractual relationships. Article 675(2) of the BGB shall apply.
- (4) The Customer shall be responsible for typesetting or typographical errors.
- (5) The Customer shall award contracts to other agencies or service providers in connection with a project for which the order has already been placed only after consulting with and reaching agreement with us.

##### **5. Preliminary work; subsequent changes**

- (1) Sketches, drafts, typeset proofs, printing proofs, proof sheets, changes to delivered or transferred data and similar preliminary work carried out at the Customer's request shall be invoiced. The same applies to data transfers (e.g., via ISDN).
- (2) This also applies to subsequent changes and corrections made at the request of the Customer, as well as to typesetting errors caused by the Customer. Print proofs that have to be repeated at the Customer's request due to minor deviations from the template shall also be deemed to be subsequent changes.
- (3) Implementing all of the Customer's requested changes shall extend the performance time accordingly.

## **6. Archiving**

- (1) Products, in particular data, data storage media, printing templates and films to which the Customer is entitled, shall be archived beyond the date of handover of the end product to the Customer or its vicarious agents only after express agreement and in exchange for special compensation.
- (2) If the Customer wishes for these products to be returned, it must notify us of this by the order completion date. If we do not receive such a notification, we shall be entitled, at our discretion, to dispose of the products or to make them available to the Customer.
- (3) If the aforementioned products must be insured, in the absence of an agreement, the Customer must take care of this itself.

## **7. Colour reproductions, digital printing templates, proof sheets and print samples**

- (1) In the case of colour reproductions, in all manufacturing processes, minor deviations from the original shall not give rise to a complaint.
- (2) The same applies to comparisons between other templates (e.g., digital proofs, print proofs) and the end product.
- (3) We shall give the Customer the opportunity to participate in the proof process and to review the conformity of the agreed service to the colours of the final output. If the Customer elects not to participate in the proof process, colour deviations that are within the tolerance range customary in the industry shall be deemed to have been approved.
- (4) We shall be entitled to send proof sheets and print samples to the Customer for review before performing the final service. If the Customer does not report deviations of these proof sheets and/or print samples from the desired performance within a reasonably short time period, the proof sheets/print samples shall be deemed to have been approved as the basis for performing the final service. If the Customer does not respond during the reasonable time period we indicated upon sending the proof sheets/print samples, we shall be entitled, at our discretion, to perform the final service or to wait. If we wait for the Customer to respond, we shall not thereby be in default of performance.

## **8. Variations in paper**

Deviations in the quality of the paper provided by us shall not be regarded as defects if they have been declared acceptable in the terms of delivery of the paper and cardboard industry or are otherwise consistent with customary standards or if they are due to technical printing differences between the print proofs and the production run. We shall be liable for lightfastness, variability and deviations in colour, for the quality of the gumming, glossing, lamination, etc., only to the extent that defects in materials could have been detected by a proper inspection before the materials were used. Any colour variations are due to the particulars of the printing process and shall not entitle the Customer to claim compensation.

## **9. Copyrights and rights of use**

- (1) Rights of use shall transfer to the Customer to the contractually agreed extent and for the contractually agreed period of time, if and to the extent possible under German law or under the actual circumstances (in particular for photo, film and music rights). In case of doubt, we shall satisfy our obligation by granting temporary, non-exclusive rights of use within the territory of the Federal Republic of Germany that are valid for the period during which the advertising material is being used.
- (2) Any use above and beyond this, in particular processing and/or modifying the services and products we have developed and/or passing the rights of use on to third parties, shall require our consent.
- (3) In any case, we shall be entitled to use our drafts and copies for our own advertising purposes.
- (4) The services and products we have developed within the scope of the contract are protected as personal intellectual creations by the German Copyright Act. This provision shall be deemed to have been accepted even if the level of creativity required under the Copyright Act is not attained; this means that even in such cases, we are entitled to the exclusive right of use.

## **10. Competition and trademark law, etc.**

- (1) We shall not be obliged to scrutinise contracts to determine whether the contents and disclosure to us of the data, text, music and images to be processed will infringe the rights of third parties. The Customer shall bear responsibility for the contents and the legal admissibility of the data, text, music and images made available and disclosed to us for processing. It shall indemnify us against third-party claims in this regard.
- (2) We shall not be liable for the admissibility of our drafts and other work under competition and trademark law or their suitability for trademark registration. That also applies if campaigns and measures taken violate provisions of the Copyright Act and the special legislation governing advertising law. However, we shall be obliged to point out any legal risks that come to our attention in the scope of our work. The Customer shall indemnify us against third-party claims if we acted at the express request of the Customer, although we had notified the Customer of concerns about the admissibility of the measures taken. We must notify the Customer of such concerns in writing immediately after they come to our attention. If we believe that a specially qualified person or institution needs to examine the

admissibility under competition law of a measure to be implemented, following consultation with us, the Customer shall be obliged to cover the costs of such examination.

- (3) We shall assume no liability for the way images are used. The Customer shall be responsible for ensuring that the way they are used does not violate any privacy rights, copyrights or other third-party rights.
- (4) We likewise shall not be liable for factual statements about the Customer's products and services contained in the advertising campaigns.

#### **11. Collecting societies**

- (1) The Customer shall be obliged to pay any fees incurred to collecting societies such as GEMA. If these fees are paid by us, the Customer shall be obliged to reimburse us upon presentation of receipts, including after the contractual relationship has ended.
- (2) The Customer is aware that when a contract is awarded to a person who is not a legal entity operating in an artistic, conceptual or advertising consultancy field, an artist's social security contribution (Künstlersozialabgabe) must be paid to the German Artists' Social Security Fund (Künstlersozialkasse). The Customer may not deduct this social security tax from our invoice. The Customer itself is accountable and responsible for compliance with the duty to register for and pay the tax.

#### **12. Media planning and media implementation**

- (1) We manage media planning projects awarded on the basis of the media documents made available to us and publicly available market research data. We do not owe the Customer specific advertising success through these services.
- (2) When placing media advertisements, we shall be obliged to take into account all benefits, special conditions and discounts relating to the Customer and to pass these on to the Customer.
- (3) Where extensive media services are involved, we shall be entitled to invoice the Customer for a certain proportion of the outside costs and to book the respective media only after payment has been received. We shall not be liable for any failure to meet a placement deadline caused by late payment. This shall not give rise to a claim against us for compensatory damages by the Customer.

## **II. Consultancy, planning, documentation and development work**

1. Depending on the contractual provisions, our services include consultancy, planning, documentation and development work. The contractual task to be performed, the scope and the timing are separately agreed by us and the Customer in an individual contract.
2. We shall deploy adequately qualified employees or third parties to perform our contractual services. Even if the work is performed at the Customer's premises, we alone shall be responsible for briefing, instructing and supervising our consultants/vicarious agents. If no agreement to the contrary has been entered into in individual contracts, we shall be obliged neither to have the work performed by certain individuals nor to deploy the same individuals continuously to work on an order". We shall be obliged to coordinate those of our employees who have been deployed and third parties appointed by us in accordance with project requirements to ensure that the contracted services can be performed to the quality standard and according to the timetable agreed.
3. The Customer shall designate one responsible project manager to serve as our contact person for the entire duration of the consultancy assignment. If the project manager's employment agreement with the Customer ends during the term of the consultancy assignment, the Customer shall be entitled and obliged to designate a new project manager. In this case, the Customer shall ensure that this new project manager upon assuming his/her position has been fully briefed about the consultancy assignment and the current status thereof. The same shall apply if the project manager becomes ill for a long period of time or for other good cause is not available to work on the project for a protracted period of time.
4. The Customer shall handle coordination of its own employees and third parties appointed by it whose deliveries and services are directly or indirectly related to the project. It shall also ensure that in providing their deliveries/services, they cooperate with us in such a way that we are neither impeded nor negatively impacted.
5. We shall regularly report to the Customer's designated project manager on the progress of the order. On our part, we shall designate a responsible project manager to be the Customer's contact person for – to the extent possible – the entire term of the project. If the project manager's employment agreement or service contract with us ends during the term of the consultancy assignment, we shall be entitled and obliged to designate another project manager. In this case, we shall ensure that the new project manager upon assuming his/her position has been briefed about the consultancy assignment and the current status thereof. The same shall apply if the project manager becomes ill for a long period of time or for other good cause is not available to work on the project for a protracted period of time.

6. As a rule, the contract shall be executed at our registered office. The parties may agree to carry out the work in whole or in part at the Customer's premises if working documents cannot be handed out and/or if constant on-site advisory services, technical discussions and/or technical consultations are required.
7. The Customer shall in a timely manner provide us with all the work resources, information and documents (in their entirety) that in our view are necessary to provide the services covered by this contract, free of charge. We shall assume that these work resources, information and documents are complete, accurate and up-to-date, unless it is obvious to us that they are incomplete, inaccurate or no longer up-to-date. In addition, our employees/service providers shall receive free access to the Customer's IT systems and, where applicable, computer time, test data and data collection capacity to the extent needed. If and to the extent necessary, the Customer shall make available what we deem to be an adequate number of its own sufficiently qualified employees to provide assistance.
8. To the extent we are required to document the results of the services we have provided under the contract, the written description alone shall be authoritative. Unless expressly agreed otherwise, all reports, expert opinions or results of investigations shall be submitted in writing. By contrast, verbal statements and information from us and/or our employees or third parties appointed by us which are not in writing shall not be binding.
9. At our request, the Customer shall confirm the percentage-of-completion by signing the project progress reports submitted to him/her.
9. The Customer shall be obliged to use work results prepared by us within the scope of this project, such as expert opinions, organisation charts, process descriptions, drawings, lists, calculations or similar work results, exclusively for its own internal purposes. Other uses shall require an express, written agreement between us and the Customer.

In case of inconsistencies between the German and English version of these Terms and Conditions only the German version shall apply and be legally binding.