

hmmh multimediahaus AG

General Terms and Conditions of Business

I. Area of application / Subject matter of contract

1. These terms and conditions of hmmh multimediahaus AG, Am Weser-Terminal 1, 28217 Bremen, shall apply only to business with companies. They shall form the basis for all transactions, including future business.
2. Deviations from these terms and conditions of business require written agreement. Any differing terms and conditions of the client are hereby expressly contradicted.
3. Amendments and additions to contractual agreements must be set down in writing for purposes of documentary proof. Authorisation for granting warranties and guarantees shall be restricted to managing directors, company officers with commercial power of attorney and other holders of commercial authority.
4. These terms and conditions of business shall apply to services, other contractual performances, deliveries and performance based on a purchase contract, services based on tenancy, lease and loan agreements as well as contracted services (here- inafter also referred to as work performed).
5. On the basis of contracts regarding standard software / standard computer programs / standard applications or software / computer programs / applications to be developed by us, we shall be responsible for maintaining operational and reproduction capability and meeting the transmission standards, as well as operating systems of terminal servers, desktop PCs or mobile end devices, in the version published on placement of the order only for the browsers agreed upon or those dominant in the market at the time of the contract award.
6. The use of open source software and other third party components when this is within the service provisions. hmmh is not obligated to alter services carried out and/or components used in light of later changes/releases to components used.
7. Standard software, third-party programs and standard solutions are all used in their basic version. Additional modules and/or higher versions, e.g. Enterprise Versions, must be licensed and paid for separately.
8. To the extent that we make recommendations regarding what we consider to be a suitable hardware and/or software environment as well as regarding the concept and online strategy for a possible IT solution that are not part of an order involving payment for services, these recommendations shall not be binding.
9. Orders regarding supplementary programming and/or reprogramming with respect to standard software are always based on the release status of the respective standard software at point of assignment.
10. We shall have the right to perform services by successive instalments if this can be reasonably expected of the customer.
11. We shall not be obliged to archive data and documents provided to us for our use as well as data and documents of the work completed and delivered by us and/or accepted unless we are legally or contractually obliged to do so, for example because of commissioned data processing.

II. Offers, contract conclusion

1. Our offers are non-binding. Cost estimates and budget planning produced by us are non-binding. A contract is first concluded when the customer confirms the offer in writing, when we have sent an order confirmation, or when we commence performing the services.
2. Ideas, concepts, strategies, design proposals etc. which we present to the customer are non-binding and are subject to a feasibility assessment.
3. We can accept offers made to us within 14 days.

III. Cooperation / Collaboration of the client

1. The parties shall cooperate on a basis of trust and promptly notify each other in the case of intended deviations from the agreed procedure.
2. The customer shall support us in the performance of the contract. In particular the customer shall provide necessary information, data material, as well as hardware and software in due time and to the extent it is required to perform our service.
3. The customer shall assume legal responsibility for the contracted service. In the event of doubt concerning legal permissibility of the contracted service, the customer shall obtain legal advice at his own expense.
4. If staff members render contractual services for the customer at the customer's premises in consultation with the customer, the customer shall be responsible for ensuring said services are rendered in accordance with the contract by exercising its responsibility for the project and performing project management for the services due to be rendered.
5. We shall treat all objects, photographs, drawings or data media provided to us for our use with extreme care. However, we shall only assume liability for safekeeping and transport in the case of intentional damage or damage due to gross negligence and restricted solely to the intrinsic value.

IV. Target dates, delays in delivery

1. We shall take into account the target dates requested by our customers with a maximum of flexibility and reliability. However, only target dates that are designated as binding by us in writing shall be binding and constitute the basis for delay in the case of noncompliance in accordance with Section 286 [2] of the German Civil Code (BGB). In the event of subsequent amendments to the contract involving additional expenditure, the agreed target date shall become invalid and a new delivery date shall be agreed upon. If a new delivery date is not agreed upon, the delivery date shall be postponed for a reasonable period.
2. We shall not be held liable for delays in performance due to force majeure (general telecommunication failure, strike, etc.) or circumstances falling within the customer's sphere of responsibility. Such circumstances shall entitle us to postpone performance of the service concerned for the duration of the interference. The same shall apply in the case of non-performance or defective performance of contracts concluded in due time with third parties. If a binding delivery date is overrun by more than eight weeks for the above mentioned reasons, each party shall have a right of termination.
3. If delays caused by the customer, and which still arise despite a deadline being set by hmmh, for example by infringing cooperation obligations, mean that the utilisation of equipment and staff as calculated by us does not occur and cannot be used in any other way or the reserve costs are not covered, any resulting costs and losses shall be borne by the customer. The customer retains the right to demonstrate that costs and losses were lower.
4. Software services shall be rendered in consultation with the customer. Failing this, we will make the software and application documentation available for download in a network, and will advise the customer of the access details.
5. In the case of physical dispatch, the time at which we hand over the goods, software and/or application documentation to the carrier shall be decisive for compliance with delivery dates and passing of the risk. Otherwise the time at which the software is available for retrieval in the network and the customer is notified of this shall be decisive.
6. The customer shall ensure that the work and services can be delivered at the agreed time.

V. Changes in services to be performed

1. Change-requests by the customer or requests for additions to the contractually agreed scope of the services to be performed by us have to be in writing. If it is foreseeable that the desired changes or additions postpone the time of completion or increase the costs, particularly our claim for compensation, we shall inform the customer of this. The customer

shall then have the choice between generally agreeing to postponement of the times for performance and increasing the compensation for this or withdrawal the request for changes.

2. If the customer confirms the change-request, we shall examine the feasibility of the latter and inform the customer of the specific impacts of such changes on the agreements made (target dates and compensation). The statement shall contain either a detailed proposal for implementation of the requested changes or explanations of why the requested changes are not feasible.

3. A written supplementary agreement on implementation of the changes or additions requested by the customer shall be concluded. If no agreement is reached, the original scope of performance shall remain unchanged.

4. Target dates and deadlines affected by the change process shall be postponed while taking into account the duration of the review of and consultation over the proposed change and, if applicable, the duration of implementation as well as a reasonable lead time to the extent necessary.

5. The customer shall bear the expenses incurred in connection with the change - requests, in particular the examination of the change-requests, the preparation of a proposal for changes and any downtimes, even if no agreement is reached in accordance with clause 3.

6. If a written supplementary agreement / amended agreement is not concluded, but we nevertheless perform additional services at the request of the customer, section VIII, 6 shall apply.

VI. Mandatory review by customer, acceptance, quantity variance

1. The customer is obliged to examine and review the service provided by us immediately after submission of the order completion report and/or provision or delivery. This shall also apply to concepts, texts, artwork, applications, software solutions, photos, lithos, digital data records and other documents submitted to the customer for review and approval before starting print or production. Software provided by us shall be checked for its operability in the agreed or envisaged running environment. Hardware supplied by us shall be set into operation, confirmed according to the manufacturer's guidelines and checked for its operability.

2. Obvious defects shall be reported immediately, but at the latest 5 business days after delivery. Defects that could not be detected in spite of careful inspection shall be reported immediately after they appear.

3. Defects shall be reported to us in writing along with appropriate information to remedy elimination the defects.

4. The customer is obliged to carry out an acceptance procedure for programming services and other contractual performances by sending an acceptance certificate at least in text form and cannot refuse acceptance based on trivial defects.

If the customer misses a reasonable deadline that we set for acceptance, the work produced shall be regarded as accepted on expiration of the deadline. The work produced shall be regarded as accepted even without setting of a deadline if the customer makes use of the work without having lodged a complaint regarding material defects.

5. We shall have the right to demand acceptance of parts of the order if this involves self-contained partial performance.

6. Production-related quantity variances of up to 10% in the production of printed matter and promotional articles are customary. Excess or short deliveries shall be charged according to the actual number of pieces.

VII. Rights

1. Our services regularly represent personal intellectual creations and are subject in particular to the Copyright Act. Regardless of the type of order, we are the originator and owner of all intellectual property rights, rights of use and rights of exploitation.

2. The rights of use of our work produced shall be transferred only to the extent expressly stipulated in the agreement on which they are based. If no provision is made for this, the customer shall revocably receive until complete payment of all accounts receivable from the business relationship a non-exclusive and non-transferable right to use software products in the object code to the extent necessary to achieve the purpose pursued by means of the respective contract. Other use, in particular imitation, duplication except for data back-up purposes, avoidance and sublicensing, shall not be permitted and rights to such use are excluded from the transfer. There shall be no entitlement to transfer of the source code.

3. As long as we do not have any further-reaching agreement with the customer, rights shall be granted, geographically restricted to the territory of the Federal Republic of Germany and temporally limited to the contractual period. If standard software is sold, rights shall be granted for an indefinite period.

4. If hmmh supplies the customer with third party software, the customer shall be granted a basic usage right of the type and scope according to the licensing and usage conditions of the third party.

5. Clauses 1-3 shall also apply to IT solutions and software developed individually for the customer. Contrary to the rights rules in Paragraph 2, the following rules shall apply when granting rights for software which has been individually manufactured and paid for:

At the time of payment, hmmh grants the customer the exclusive, irrevocable right, unrestricted in space, time or content, to all known forms of use for tailor-made services, except the sole, unrestricted ownership right to services for which such a right can be established and transferred. In particular, the customer is un-conditionally entitled to copy the work results, edit them (including combining software with other programs, redesigning it, and converting it to other programming languages and for other operating systems), convert them to other forms of presentation, otherwise modify, update and amend them, circulate them in modified or unmodified form, and reproduce them in public by wire or wirelessly. The rights to grant sublicenses, as well as to transfer all usage rights granted as part of this contract for free or for a charge, are granted solely to companies affiliated with the customer.

6. hmmh is entitled to incorporate services provided within the scope of an order, which represent either changes and extensions of the standard software or newly created individual software, in its own standard software.

7. Use of the work produced provided shall be permitted only revocably until complete payment has been made.

8. We shall be entitled to use the customer's name as a reference client and the customer-related project for demonstration and promotional purposes as well as for the press unless there are important reasons for refraining to do so.

9. Ideas, concepts, strategies, slogans and texts, graphics and other visual design elements that we develop for and present to a customer and are not subject to copyrights or other industrial property rights shall be presented to the customer on a confidential basis and may only be used by the customer if we receive the contract and/or the services are paid. The rights of use shall then comply with clauses 2 and 3. If our services are used contrary to this provision, the customer shall be required to pay a reasonable contract penalty that we stipulate at our reasonable discretion and which can be subjected to judicial review in case of dispute.

10. The rights to system components provided (hardware and software) shall comply with the manufacturer's specifications.

VIII. Payment, default in payment, offset

1. Our services, in particular concept, consulting and development work, are generally rendered only for a compensation.

2. Our services are generally charged based on time expenditure, unless otherwise expressly agreed. Cost proposals and offers subject to change do not classify as differing agreements. Fixed-price agreements and cost limits are must be expressly labelled as such.

3. Our invoices shall be due for payment without deduction immediately after delivery of a software application or after delivery of other work performed. In the case of long-term orders or delays in work caused by the customer, we shall reserve the right to issue intermediate invoices. We shall be entitled to request reasonable part payments of the total amount on order placement and according to project progress. The same shall apply to invoicing work performed by successive instalments to the extent we are entitled to provide such partial performance.

4. The customer shall be in default in payment, even without a reminder, after a period of 30 days has elapsed after receipt of the invoice.

5. The services of third parties handled by us within the framework of agency business shall be invoiced separately. These services, too, shall be payable immediately after provision or delivery without deduction.

6. hmmh is authorised to provide the customer with an invoice in advance with regard to the third party services it will be procuring for the customer and to make this dependent on payment.

7. If we have not made an agreement with the customer regarding payment of the work performed by us, the customer shall make the customary payment for this work. In the event of doubt, our general remuneration rates applying at the time of performance of the work shall be regarded as customary.

8. The remuneration rates indicated by us are net prices excluding statutory value added tax and any packing and transport charges.

9. For services that hmmh does not provide at its head office (Bremen), travel expenses, in particular travelling times and costs, meals and any overnight accommodation required will be invoiced for separately.

Travel expenses are defined as additional expenditure caused directly by a business trip. This includes travel costs, additional meals allowances, overnight accommodation costs and any ancillary costs that are proven or for which prima facie evidence is provided (e.g. forwarding and storage of luggage, airport taxes and telephone conversations). Travel expenses are calculated as follows: economy-class flights, second-class train travel; €0.30/km fixed rate for kilometres driven, hotel in accordance with expenditure (max. 4 stars); public transport: in accordance with expenditure; taxi and parking fees: in

accordance with expenditure; daily meals allowance in accordance with applicable tax guidelines. Travel times will be invoiced at 50% of the hourly rate accrued.

10. In the case of default in payment, we shall have the right to charge 8% interest above the base interest rate on our receivable. Furthermore, we shall have the right to assert a claim for higher interest losses on provision of proof. We shall also be entitled to withdraw services and revoke granted rights of use, though exercising these rights shall not be considered to represent withdrawal from the contract. hmmh is also entitled to terminate the contract without notice.

11. The customer can offset our claims only with undisputed or legally enforceable counterclaims.

12. We can charge a handling fee to an amount of 15% for handling orders with third parties whose costs are passed on directly to the customer.

IX. Retention of ownership, right of retention

1. hmmh reserves the right to ownership of our products (hardware, software, documentation) (hereinafter also known as reserved goods) until full payment of the purchase price and all claims resulting from the current business relationship with the customer (extended retention of ownership). Adding individual claims to a current invoice and balancing accounts does not affect the retention of ownership; in this case, the reservation shall apply to the recognised or actual balance.

2. If the customer processes or transforms our goods, this shall always be carried out on behalf of hmmh as a manufacturer as defined by the German Civil Code. If our goods are processed, transformed, inseparably mixed or combined with objects not belonging to us, we shall acquire co-ownership of the new object based on the ratio between the value of our item and that of the other, processed item at the time of processing, transformation, mixing or combining. If the other item is deemed the main item, it is hereby agreed that the customer shall transfer proportionate co-ownership to us. We accept this transfer. The customer maintains our (co-)ownership for us free of charge. For the rest, the rules governing the processed good shall be the same as for our reserved good.

3. The customer is entitled to process and sell the reserved goods as part of normal business dealings, insofar as it has not defaulted on its payment obligations to hmmh, and as long as the sale does not entail an agreement stating that the customer's claim against the third party expires through offsetting. The entitlement to process and sell also ceases to apply if the customer's financial circumstances have significantly deteriorated. Pledges or assignments as security are not permitted. Claims resulting from the resale of the goods (including all balance claims resulting from the current account, even those resulting after a current account has been closed), insurance claims, and claims against third parties for damage, destruction, theft or loss of the goods, are hereby transferred to us by the customer by way of security. We accept this transfer. If we are only entitled to co-ownership of the reserved goods, the advance transfer shall be limited to the portion of the claim corresponding to our share in the co-ownership (based on the invoice value). If the goods are resold, the customer must reserve its right to ownership of the reserved goods until full payment of the purchase price by its customers. The customer will not be entitled to resell the goods to a third party if the purchase-price claim resulting from the resale is prohibited from being transferred.

We revocably authorise the customer to collect the claims transferred to us for its own account and in its own name. This collection authorisation may be revoked if the customer fails to fulfil its payment obligations to us, or our claims appear jeopardised due to lacking capacity at the customer's end. Once the sales proceeds have been credited to the customer, our claim immediately becomes payable, and must be paid in full by instant transfer. The customer must advise us of the name and address of the debtor of the transferred claims upon request. The claim resulting from the resale cannot be transferred.

In the event that third parties access the reserved goods, the customer will advise them of our ownership and inform us immediately. Insofar as the third party is unable to pay our intervention costs, particularly the judicial and extrajudicial costs of a complaint as per Section 771 of the German Code of Civil Procedure, the customer shall be liable for the shortfall we incur.

4. In the case of breach of duties on the part of the customer, in particular default in payment, we shall have the right, even without setting a deadline, to demand surrender of the delivery item and/or withdraw from the contract. The demand for surrender of the delivery item in itself shall not represent notice of withdrawal.

5. The customer shall not have the power to assert rights of retention or rights to refuse performance in accordance with Sections 273, 320 of the German Civil Code (BGB).

X. Liability for defects, reduction of purchase price, withdrawal, compensation for loss of use

1. Notices of defects shall be taken into account by us only if they are in writing.

In the case of a defect reported in due time, we shall provide for subsequent performance at our option either via remedy of the defect, workaround or replacement. Replaced parts shall become our property.

2. Claims arising from a defect shall not exist in the case of only insignificant deviation from the agreed nature and quality or only insignificant impairment of serviceability or if the defect is not reproducible or detectable.

3. Functional defects in supplementary programming and/or reprogramming with regard to standard software that are based on the release status of this standard software issued on completion shall not represent defects if they are due to the fact that the customer has installed or arranged for installation of another release status, an update or upgrade of the software and interoperability no longer exists.

4. The customer shall not have any warranty claims if the customer has made changes himself or by a third party to our product or if the software is not used in the agreed system environment, unless the customer proves that such use is not the cause for the reported defects.

5. Claims arising from defects shall not apply to system components provided (hardware or software) and such system components that the customer or a third party changes without the consent of hmmh.

6. If hmmh undertakes developments in accordance with guidelines and specifications of the customer and if hmmh integrates computer programs or other third party components into the hardware or software or adapts its own developments for such components hmmh shall not be liable for the technical and legal characteristics of these third party components. In particular the customer indemnifies hmmh with regard to claims for damages made by third parties against hmmh for infringement of third party patents, copyright, trademark rights or other such intellectual property rights.

6. We shall not be liable for defects due to defective concepts, texts, artwork, photos, lithos, digital data records, applications, software solutions or other documents that have been approved by the customer prior to the start of printing or production.

7. Assignment of warranty claims shall be excluded.

8. In the event of failure to rectify defects after a 3rd attempt to do so, the customer shall have the right at his option to demand reduction of the purchase price or, if significant defects are involved, withdraw from the contract.

9. In the case of withdrawal on the part of the customer, we shall have the right to demand reasonable compensation for use that the customer has made of application of the services until rescission of the contract. This compensation shall be determined on the basis of a four-year overall period of use of the services.

10. The warranty period lasts 12 months beginning with delivery of the goods in the case of a purchase contract or, in the case of an contract for work and services, on the day of acceptance, if the parties have not agreed otherwise.

XI. Liability

1. In cases of doubt, declarations regarding the nature and quality of our service shall represent a guarantee only if we have expressly designated them as such.

2. We shall be liable for damage that does not occur on the delivery item itself, no matter on what legal grounds, only in the case of intent, gross negligence on our part or on the part of our legal representatives and vicarious agents, culpable harm to life, body or health, malicious concealment of defects or other circumstances and within the scope of a warranty.

3. In the event of culpable violation of significant contractual obligations, we shall also be liable in the case of ordinary negligence, but limited to the contractually typical, reasonably foreseeable damage.

4. Further claims, in particular liability regardless of fault, shall be excluded.

5. The customer shall be responsible for backing up his data. We shall not assume any liability for the loss of data if the loss occurred due to lack of data backup by the customer.

6. Liability according to the Product Liability Act shall not be affected.

7. Technical data and descriptions for products of third parties contained in brochure material, offer texts or order confirmations are based on the manufacturer's specifications. As a matter of principle, we cannot guarantee these features to the customer.

8. Liability for third party components, in particular open source components is restricted to culpa in eligendo and the infringement of inspection obligations.

9. For limitation periods, XII applies providing that the statutory limitation period applies for claims pursuant to XI para. 2 and 6. The limitation period as per sentence 1 begins with the time period specified in section 199 para. 1 German Civil Code (BGB). It comes into effect at the latest upon expiry of the longest time periods specified in section 199 para. 3 and 4 of the BGB.

XII. Statutory limitation

1. The limitation period for all warranty claims is one year and commences upon delivery of the object of the contract/when the object of the contract is made available (and upon notifying the customer of this); the same limitation period applies to all other claims made against hmmh, regardless of what type. In the event of intent or gross negligence by hmmh,

fraudulent concealment of defects, personal injury or defect of title as per section 438 para. 1 sentence 1a BGB and for guarantees (section 444 BGB) the statutory limitation periods apply, as well as for claims in accordance with the German Product Liability Act.

XIII. Confidentiality, data protection provisions

1. On purchase or provision of hardware the customer shall undertake disposal of the packaging and, at the end of the period of use, disposal of the delivered hardware, to the extent the latter has become the property of the customer.
2. hmmh shall ensure that all persons who have been entrusted by hmmh with performance of the contract comply with the legal data protection provisions. hmmh shall collect, store, use and process personal data only to the extent necessary to implement the contract.
3. The customer shall be informed that he is required to conclude a written order data processing agreement with hmmh if the customer contracts hmmh to process personal data.

XIV. Packaging

1. On purchase or provision of hardware the customer shall undertake disposal of the packaging and, at the end of the period of use, disposal of the delivered hardware, to the extent the latter has become the property of the customer.

XV. Final provisions

1. The place of performance for all claims arising from contracts concluded with us, including the customer's payment obligations, is exclusively Bremen.
2. The laws of the Federal Republic of Germany shall apply.
3. The exclusive place of jurisdiction for all legal proceedings arising from or in connection with this contract is Bremen.
4. Should any provisions of these General Terms and Conditions of Business be or become invalid, this shall have no impact on the effectiveness of the other provisions. Any ineffective provision shall be replaced by a new provision that reflects the aims of the parties and otherwise the legal regulations shall apply. In the case of a contractual loophole, a provision shall be agreed upon that most closely approximates to the meaning and purpose of the contract that would have been agreed upon between hmmh and the customer if the parties had perceived and taken into consideration the contractual loophole on conclusion of the contract. In no case shall the provision concerned in these General Terms and Conditions of Business be replaced by the customer's terms of business.