

General Standard Terms and Conditions for services provided by designafairs GmbH

Valid from March 15, 2007

1. General - scope of validity

- 1.1 The General Standard Terms and Conditions of designafairs GmbH shall apply to all agreements concerning services provided by designafairs GmbH to the Contractual Partner. designafairs GmbH shall not recognise any contradictory terms or terms diverging from the General Standard Terms and Conditions of designafairs GmbH on the part of the Contractual Partner, unless designafairs GmbH has issued its express agreement to their validity in writing. The General Standard Terms and Conditions of designafairs GmbH shall be applicable also if designafairs GmbH, while being cognizant of contradictory or divergent terms on the part of the Contractual Partner, unconditionally accepts the contractually required service of the Contractual Partner or designafairs GmbH unconditionally renders the contractually required service. Counter-confirmations on the part of the Contractual Partner referring to its terms of business or purchasing shall be hereby excluded.
- 1.2 The General Standard Terms and Conditions of designafairs GmbH shall apply only with respect to companies, public corporations, and public funds.
- 1.3 The General Standard Terms and Conditions of designafairs GmbH shall also apply for all future transactions with the Contractual Partner.
- 1.4 All agreements, modifications, supplements, and the partial or whole cancellation of agreements shall require written form; this shall also apply to the modification or cancellation of the requirement for written form.

2. Offer and conclusion of agreement

- 2.1 The offers provided by designafairs GmbH shall be subject to confirmation and not binding. Confirmations of acceptance and all orders shall require written or fax confirmation by designafairs GmbH in order to enjoy legal efficacy.
- 2.2 Drawings, diagrams, measurements, weights or other service data shall be binding only if agreed expressly in writing. designafairs GmbH shall own the rights of property and copyright relating to drawings, diagrams, calculations and other documents (e.g. logos) prepared by designafairs GmbH. These shall not be transferred and may not be made accessible to third parties without the express written agreement of designafairs GmbH. They shall not be disclosed to third parties.
- 2.3 The employees of designafairs GmbH shall not be authorised to make verbal ancillary agreements or to provide verbal assurances over and above the content of this written agreement; designafairs GmbH shall not be bound to verbal ancillary agreements or commitments made by its employees.

3. Cost proposal and estimate of expense

- 3.1 If designafairs GmbH issues a quotation or estimate of expense to the Contractual Partner, and should it become clear during the processing of the order that the quotation or estimate will be exceeded by more than 5%, designafairs GmbH shall communicate this immediately to the Contractual Partner, providing the reasons and potential consequences for the execution of the order.
- 3.2 If the Contractual Partner cancels the order after receiving such notification, designafairs GmbH shall be entitled to proportional remuneration incurred corresponding to the services rendered up to the time of cancellation.

4. Remuneration

- 4.1 To the extent that nothing else is agreed, designafairs GmbH shall be bound to the prices contained in its offers for a period of 30 days following the date of such offers.
- 4.2 Additional services shall be billed separately. Additional expenses requiring remuneration shall include, among other things, expenses

incurred by designafairs GmbH because it has performed modifications at the request of the Contractual Partner after approval or partial acceptance of its services relating to services that have already been approved or accepted.

- 4.3 If the actual expense exceeds the estimated expense in individual orders by more than 5%, and the Contractual Partner cancels the order after notification of the excess according to Points 11.1, 11.2 or 11.4, designafairs GmbH shall be entitled to claim the agreed remuneration corresponding to the services already rendered plus 5%.
- 4.4 If the total scope of the services to be rendered by designafairs GmbH is reduced by a circumstance for which the Contractual Partner is responsible, designafairs GmbH shall be entitled to raise the fixed daily rate by an appropriate amount, however, by a maximum of 15%.

5. Services

- 5.1 Contractually binding periods of execution shall require written form.
- 5.2 Even in the instance of contractually agreed deadlines, designafairs GmbH shall not be responsible for delays to work caused by force majeure or unforeseen events that lie outside the scope of influence of designafairs GmbH, and which temporarily render designafairs GmbH's performance of service either difficult or impossible, including in particular strikes, inability to enter premises, regulatory orders etc. They shall entitle designafairs GmbH to prolong the performance of its services by the duration of the delay, plus an appropriate start-up period. This shall apply also if the circumstances are brought about by sub-contractors or suppliers of designafairs GmbH or its sub-suppliers. designafairs GmbH shall correspondingly notify the Contractual Partner as soon as it is aware of such circumstances. If the execution of the agreement consequently becomes unacceptable for one of the parties, such party shall be entitled to withdraw from the agreement. The exercise of the right to withdraw shall be limited to the portion, or portions, of the agreement not yet performed, unless the partial satisfaction of the agreement is not of interest for the Contractual Partner.
- 5.3 If the delay lasts longer than six weeks, the Contractual Partner shall be entitled to withdraw from the agreement, either wholly or in part. If the period allowed for performance of the services is extended, or if designafairs GmbH is released from its obligation, the Contractual Partner shall not be entitled to assert claims for damages against designafairs GmbH. designafairs GmbH shall be entitled to invoke the above-mentioned circumstances only if it has immediately notified the Contractual Partner regarding the delay that has occurred.
- 5.4 If designafairs GmbH identifies during the course of the execution of the agreement that the agreed services will clearly fail to have the success desired by the Contractual Partner unless additional services are rendered, it shall immediately communicate this to the Contractual Partner.
- 5.5 designafairs GmbH shall be entitled to render partial services at any time, unless the partial service is identifiably not of interest for the Contractual Partner.
- 5.6 Observance of the service obligations of designafairs GmbH presupposes the timely and proper satisfaction of the obligations and duties of the Contractual Partner.
- 5.7 In particular, the Contractual Partner shall be obligated to provide to designafairs GmbH all information, work, and documents required for the rendering of services, completely and on a timely basis. Requisite information, work, documents shall particularly include those on which the order is based, those requested by designafairs GmbH in order to perform the order, or those that are normally essential for the relevant order.

5.8 The Contractual Partner shall ensure that the requisite work and documents, which the Contractual Partner is required to provide as part of its obligations and duties, shall be transferred to designafairs GmbH in good time before the execution of the order. Supply delays or cost increases arising through incorrect, incomplete, late or subsequently modified disclosures and information or documents made available, shall not be the responsibility of designafairs GmbH, and shall not comprise part of the delay for which designafairs GmbH is responsible. The Contractual Partner shall bear related additional costs.

5.9 The Contractual Partner shall immediately accept the plans, constructions, drawings, models etc that have been prepared for it, after designafairs GmbH has announced that the project is complete. designafairs GmbH shall rectify free of charge any defects determined at the time of acceptance, and within an appropriate time-frame. Significant defects that render the use of the plans, constructions, drawings, models etc impossible, shall be re-accepted after they had been rectified. If the Contractual Partner fails to make acceptance due to another, or a significant, defect, the corresponding plans, constructions, drawings, models etc shall be regarded as accepted four weeks after designafairs GmbH has announced that the project is complete.

5.10 If the Contractual Partner delays acceptance, designafairs GmbH shall be entitled to claim compensation for any damages it incurs as a consequence. If acceptance is delayed, the risk of accidental deterioration and accidental ruin shall transfer to the Contractual Partner.

6. Rights of use

6.1 To the extent that nothing divergent is agreed, the Contractual Partner shall be entitled to use the services rendered by designafairs GmbH as part of the execution of the agreement, particularly the documents prepared by designafairs GmbH, and after complete payment of the remuneration to which designafairs GmbH is entitled.

6.2 Plans, constructions, drawings, models and other documents transferred by designafairs GmbH as part of the agreement shall enjoy copyright protection. To the extent that nothing else arises from the purpose of the agreement, the Contractual Partner shall not be entitled to modify these documents, to reproduce them, even in modified form, to publish them, or to revise them.

6.3 designafairs GmbH shall be entitled to make shared use of, and to make other use of, unprotected ideas, concepts, experience, and techniques used or developed during the performance of the agreement.

6.4 Should the project results contain patentable discoveries or ideas, designafairs GmbH shall be entitled, at its discretion, to register patent rights, to pursue them further, and/or to fail to pursue them. designafairs GmbH shall enjoy the exclusive right to patents and distribution of licences. Divergent regulations must be set down expressly in separate written agreements.

7. Warranty

7.1 designafairs GmbH shall warrant that the services it renders are free of defects. The period of warranty shall be according to statutory regulations.

7.2 designafairs GmbH's warranty obligation shall be limited to providing repairs. If repairs fail after an appropriate period, the Contractual Partner shall be entitled to a discount from its payment.

7.3 If the Contractual Partner fails to follow operating, maintenance, or other instructions provided by designafairs GmbH, or if it makes modifications, any resultant warranty shall be hereby rendered void, if the Contractual Partner fails to disprove a corresponding, substantiated assertion that one of these circumstances has caused the defect. § 645 of the German Civil Code (BGB) shall be hereby unaffected.

7.4 The Contractual Partner shall be obligated to notify designafairs GmbH immediately of any identifiable defects, and to carry out all measures that enable the defects and their causes to be determined, or facilitate or accelerate the removal of such defects.

7.5 Solely the Contractual Partner shall be entitled to assert warranty claims against designafairs GmbH, and these claims may not be transferred.

8. Payment terms

8.1 To the extent that nothing else is agreed, invoices presented by designafairs GmbH shall be payable without discount 15 days after the preparation of the invoice. Cash discounts for the Contractual Partner shall be excluded to the extent that nothing divergent has been agreed in writing.

8.2 designafairs GmbH shall be entitled, subject to divergent written agreements, to invoice the Contractual Partner for an amount equivalent to 30% of the total order after the order has been granted. Furthermore, designafairs GmbH shall be entitled to invoice the Contractual Partner for appropriate milestone payments in accordance with the progress of the project.

8.3 A payment shall not be regarded as having been made until designafairs GmbH has such an amount at its disposal. When cheques are tendered, the payment shall not be regarded as having been made until the cheque has been cashed.

8.4 If the Contractual Partner defaults, designafairs GmbH shall be entitled to demand statutory interest amounts from the relevant point in time. designafairs GmbH shall be entitled to present proof of higher extent of damages.

8.5 If designafairs GmbH becomes aware of circumstances that call into question the creditworthiness of the Contractual Partner, in particular if a cheque is not honoured or the Contractual Partner cancels its payments, designafairs GmbH shall be entitled to require prepayments or collateral to an amount equivalent to the residual liability.

8.6 designafairs GmbH shall not be obligated to provide evidence in its invoices of working time performed and outlays to be reimbursed. The Contractual Partner shall be entitled, on request, to inspect related statements, and/or shall receive these in copy.

9. Limitation of liability

9.1 designafairs GmbH shall be liable, both for itself and on the part of its vicarious agents, for any damages, for whatever legal reasons, including tortious act, only if designafairs GmbH or its vicarious agents are guilty of violating a key contractual obligation (cardinal obligation) in a way that jeopardises the purpose of the agreement, or the damage is caused intentionally or through gross negligence on the part of designafairs GmbH or its vicarious agents. Liability based on an assurance intended to protect the Contractual Partner from the risk of damages that might occur, as well as liability for damages arising from injury to life, body or health, shall be hereby unaffected.

9.2 Excluded claims shall also include defects in damages to production resources and products belonging to the Contractual Partner included in the services performed by designafairs GmbH, for example, through taking into account ideas, proposals or concepts of designafairs GmbH involved in the planning, design, construction or other external forming and structuring by the Contractual Partner, as well as defects in damages arising from the use of such products of the Contractual Partner.

This shall not apply to the extent that there is a mandatory liability, for example due to intention, gross negligence, violation of key contractual obligations or to a lack of characteristics for which warranty has been provided. Compensation for damages due to the violation of key contractual obligations shall be limited, however, to typical contractual, foreseeable damages, to the extent that there is no instance of intention or gross negligence.

9.3 The Contractual Partner shall release designafairs GmbH from all third-party claims raised against designafairs GmbH and which have their origin in the use of the Client's products, to the extent that the designafairs GmbH has not caused the third-party damage as a result of intention or gross negligence.

9.4 designafairs GmbH's liability for, and arising from, the execution of an order shall be limited in each case to the amount entailed in the order.

10. Use of service providers and vicarious agents

designafairs GmbH shall be entitled to mandate service providers and vicarious agents to render parts, or the entirety, of the services to which it is contractually bound.

11. Cancellation

11.1 Each Contractual Partner shall enjoy the right to cancel the contract for an important reason. However, the contractual partners shall, to an acceptable extent, grant each other the opportunity to address the reason for the cancellation before making such a cancellation.

11.2 If the agreement is cancelled for a reason for which one of the contractual partners is responsible, or the Contractual Partner cancels for a reason for which neither of the parties to the agreement is responsible, designafairs GmbH shall receive the agreed remuneration. However, designafairs GmbH must take into account expenses saved as a consequence of the early cancellation of the agreement. This shall apply also if the service has been rendered impossible as a consequence of a reason for which designafairs GmbH is not responsible.

11.3 If designafairs GmbH is responsible for the cancellation, designafairs GmbH shall be entitled to compensation only with respect to services it has rendered up to the cancellation of the agreement, to the extent that the services are of interest for the Contractual Partner. Point 4.3 shall be hereby unaffected.

11.4 If a Contractual Partner is unable to make payment, insolvency proceedings have commenced with respect its assets, or such pro-

cedures have been declined due to a lack of bankruptcy assets, the other Contractual Partner shall be entitled to cancel the agreement.

12. Prohibition on enticement and hiring

The Contractual Partner shall be prohibited from enticing away or employing employees of designafairs GmbH for the duration of the cooperation of the parties and for a subsequent period of two years without the prior agreement of designafairs GmbH. In an instance where a party is guilty of infringing this prohibition, the Contractual Partner shall be obligated to pay to designafairs GmbH a contractual fine equivalent to one year's gross salary of the related employee. The Contractual Partner shall also be liable for group companies.

13. Applicable law, place of jurisdiction, invalidity

13.1 The law of the Federal Republic of Germany shall apply for the General Standard Terms and Conditions and for all legal relationships between designafairs GmbH and the Contractual Partner.

13.2 To the extent that the Contractual Partner is a business person, public institution, or special public fund in the sense of § 38 of the code of civil procedure (ZPO), Munich shall be the exclusive place of jurisdiction for all disputes arising either directly or indirectly from the agreement.

13.3 Should a term contained in these General Standard Terms and Conditions of business, or a term contained in other agreements, be, or become, ineffective, the efficacy of all other terms or agreements shall be hereby unaffected.