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General terms and conditions

The terms and conditions below are based on the rules of professional conduct by members of the Swiss Design Association. They serve to establish clear regulations for mutual relationships between designers (Reform, Reform GmbH or Reform LLC) and customers and form the basis for individual contracts (hereinafter referred to as «Design Contracts»).

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I Introductory remarks

1 Scope

The following General Terms and Conditions (GTC) of the Swiss Design Association (SDA) apply to the conclusion, content and execution of design contracts which cover design services and/or designs of products (in particular industrial and product design; fashion and textile design; communication design, corporate and graphic design; typography, photography and illustration, spatial design and staging, architecture and interior design, exhibitions and trade fair construction as well as design management), as well as ancillary obligations associated with the aforementioned contracts such as project and production support and monitoring, training and presentations.

2 Definitions

«Designer» refers to the characteristic design service providing contract party, regardless of whether this is a sole proprietorship, a business partnership or a legal entity.

«Customer» refers to the contract party designated below which orders or contracts the characteristic design service.

«Design» refers to a development and design process with a value added, cultural impact on services, products, spaces, systems and processes. Thus «Design» refers below to the services to be performed by a designer in the scope of an individual design contract and any products designed by the designer in this context.

«Individual design contract» refers to the contract concluded verbally or in writing between the designer and customer which outlines in detail the rights and obligations of the parties regarding a specific design service.

«Briefing» refers below to the instructions in verbal or written form given to the designer by the customer regarding the implementation of the individual design contract. It usually already includes a summary of the tasks, in particular tasks regarding the problem, objective, and purpose of the design and regarding the relevant market.

3 Limitations

Items 11 through 13 of these GTC apply to design contracts of which the subject is the creation of a work by the designer as set out in OR [Code of Obligations] 363 et seq. in

addition to the joint provisions as set out in Section II. With regard to design contracts of which the subject is exclusively the provision of services, and that consequently qualify as an order pursuant to OR 394 et seq., the provisions in Section II (Items 4 through 10) related to the design of a product (namely 8.3, 8.5 and 9.3) do not apply and Items 14 and 15 of these GTC have to be considered in addition.

II Joint provisions

4 Subject of the individual design contract

4.1 Contents of the contract

The services to be performed by the designer, in particular the requirements for the design and the intended purpose, shall be outlined in detail in an individual design contract based on a briefing. The individual design contract shall also contain information on the time frame and remuneration (Item 6.2) as well as the use of third parties (Item 5.2).

The design contract can provide for the staged execution of design services which, with regard to remuneration (Item 6.2) and the granting of rights (Item 8) shall be given particular consideration.

4.2 Assumption of the GTC

These GTC become an integral part of the individual design contract by means of agreement between the customer and designer.

4.3 Changes to the scope of service

If the scope of service is changed after conclusion of the individual design contract (Item 4.1), the consequences on remuneration, time frame and subject of the design contract shall be agreed upon.

5 Obligations of the designer

5.1 Due diligence obligations

The designer is required to perform the work assigned to them specifically for the customer and in compliance with the general due diligence obligations, in particular subject to the principles of the International Council of Societies of Industrial Design (ICSID). The designer further undertakes to take into consideration the customer specific framework conditions, the business strategies expressly designated by the customer as essential and trade secrets (see Item 10). The designer is, beyond the

agreed upon framework conditions, free with regard to the design of the products and the execution of the services. This design freedom forms an essential feature of the design contract.

5.2 Use of third parties

Barring a provision to the contrary, the use of external third parties (e.g. modellers, design engineers, other experts, etc.) on behalf of and for the account of the customer is generally permitted for special work; the customer however shall be notified in advance about such use.

5.3 Customer instructions

If an expedient instruction by the customer results in additional expenditure of time or financial costs, which were not yet taken into account at the time of contract conclusion, the designer shall specifically mention this to the customer. If the customer does not object in written form within ten days, the adapted schedule or financial consequences shall be considered accepted.

If instructions issued by the customer are discernibly inappropriate or even obviously faulty to the designer, the designer shall notify the customer accordingly in written form indicating the potential consequences. If the customer stands by their instructions or fails to issue an opinion on the warning of the designer, the latter shall have the following options:

- The designer shall follow the instructions, yet shall not be liable for any resulting damages (Item 7) or shall be released from any warranty obligations (11.5) or
- The designer may withdraw from the contract with full indemnification for the already performed work.

5.4 Self-employment/Social contributions

The designer shall perform the services as an independent contractor and shall be responsible for paying any social insurance contributions prescribed by law.

5.5 Place of fulfilment

Barring any agreement to the contrary, the designer shall, as a rule, complete the work at their place of business. The designer shall deliver their work at the business address or barring such an address, at the customer's place of residence. Dispatch to another

location shall be made at the customer's risk and expense.

6 Customer's obligation

6.1 Duty to cooperation

The customer shall be required to provide the designer with all working documents required for the design and the fulfilment of the contractual obligations (pre existing designs, drawings, sketches, calculations, etc.) in paper and electronic form, free of charge, to provide the latter with all relevant information and to keep the latter abreast of the status of any project developments or strategic decisions of relevance for the individual design contract.

This notification and documentation obligation shall apply throughout the duration of the contract. The customer shall guarantee the accuracy, up to datedness, and completeness of their information. Moreover, the customer shall be responsible for timely submission of the documents and guarantee that these are not encumbered by any third party rights.

Throughout the duration of the individual design contract, the customer shall be required to inform the designer of the use of another designers for the same or a similar project.

The customer shall provide the designer, if and to the extent that such is required for the fulfilment of the contract, with access to the customer's premises and provide the designer with the necessary infrastructure for such on site work.

If the customer fails to fulfil their duties to cooperate or does so defectively, the designer may grant the customer a reasonable grace period. The consequences of non fulfilment of the duties to cooperate shall be borne by the customer.

6.2 Remuneration

The customer is required to pay the designer the agreed upon remuneration; the value added tax is owed additionally if the remuneration as such is subject to Swiss value added tax.

The remuneration owed by the customer can take various forms and/or be calculated in various ways: as a lump sum, by time, in the form of profit sharing or as a licence fee; the latter insofar as the design services are related to the design of a product. These remuneration types can also be combined in any desired manner. Agreement on a lump sum shall be based on

the principles known at the time of contract conclusion. Should these subsequently change, the necessary contract amendments shall be agreed upon with the customer.

Time based remuneration is based on an approximate estimate of the required working hours pursuant to the bases known at the time of the conclusion of the individual design contract. Should these subsequently change, or if the designer was not made aware of all required bases for the offer, an increase in the amount of the remuneration stated in the design contract shall be expressly reserved. If a cost estimate calculated by the designer is disproportionately exceeded, the customer shall be entitled to an appropriate decrease in the remuneration. The right to withdrawal is expressly excluded.

6.3 Expenses and third-party costs

The customer is required, in addition to the remuneration, to reimburse the designer for the costs of the following expenditures upon presentation of the corresponding receipts:

- Travel and transport costs, lodging and food
- Costs for creating documents, photographs, copies, blueprints, etc.
- Material costs
- Costs of third parties (Items 5.2), in particular for the creation of models and prototypes, if paid for by the designer.
- The costs associated with the registration of industrial property rights (patents, brands, designs) if the intellectual property rights are fully assigned to the customer (Item 8.4) and registration by the designer is done on behalf of and for the account of the customer.
- Costs for the procurement of objects required for the performance of the contract and other working documents as well as for the collection of information.

6.4 Payment terms

Remuneration, expenses and third party costs shall be payable at the time of contract fulfilment by the designer. Payment shall be made within 30 days after invoicing. In case of staged execution by the designer, payment for remuneration, expenses and third party costs attributed with each phase shall be due at the time of the corresponding provision of service and invoiced to the customer by the designer after completion of each phase.

The designer shall be entitled to request

payments on account for already performed services and to invoice these monthly.

7 Liability

The designer shall only be liable for breach of contract or tortious liability committed wilfully or with gross negligence. Liability for employees or vicarious agents of the designer for mild negligence is expressly excluded.

If the fulfilment of the contractual obligations is transferred to a third party as set out in Item 5.2, the designer shall be liable for their due diligence with regard to this selection and instruction.

The designer shall not be liable for damage caused by third party errors or a breach of duties of cooperation by the customer.

Liability for damages arising from the production, exploitation and use of a product or a product component (co)designed by the designer rests exclusively with the customer, provided the designer did not commit gross negligence. This refers, for example, to product liability, lost profits, incurred losses or consequential damages.

8 Rights

8.1 Intellectual property rights holder

Unless otherwise provided, the designer shall remain the holder of all intellectual property rights to their design (especially copyrights). Suggestions and instructions of the customer shall, as a rule, not constitute a co copyright nor shall they grant the customer an entitlement to file industrial property rights applications (Item 8.3).

Without the designer's express written approval, no changes may be made to the design, whether the original or copies. This also applies in particular the pre design phases carried out by the designer required for contract fulfilment and the data in electronic form.

8.2 Right of use

The customer shall receive, notwithstanding any existing industrial property rights, an exclusive and transferable right of use to the design forming the subject of the contract, the scope of which is determined by the individual design contract. The explicit approval of the designer shall be required for use of the design which exceeds or deviates from the arrangements in the design contract or for the design of other products. The designer shall

be entitled to reasonable compensation in this case.

The transfer of rights of use to third parties shall only be permitted subject to the condition of passing on all obligations set out in the individual design contract or the GTC.

The customer's right of use to the design shall cease to exist if the customer falls behind in the payment of remuneration, expenses or third party costs by more than one month and is notified of this legal consequence by the designer in writing.

8.3 Filing of registration rights

Without an explicit agreement to the contrary, the designer shall be solely authorized to file property right applications (design, trademark, patent rights) for products designed or services performed by them as part of the individual design contract. If such filings have been made, the designer shall not be required to maintain the filing rights unless there is an explicit agreement to the contrary; however, the designer shall notify the customer prior to the expiry of the initial protection period.

8.4 Assignment

An assignment of intellectual property rights or entitlements to apply for property rights to the customer shall only be possible with an explicit agreement and exclusively in exchange for appropriate compensation. In property right applications filed in the customer's name, the designer shall be mentioned by name as the designer or inventor. Intellectual property rights or entitlements to file shall only be transferred to the customer after complete payment of the agreed upon compensation.

8.5 Drafts

If various drafts are produced by the designer with a view to contract fulfilment for the design of an individual product or a selection of concepts, the granting of rights of use (Item 8.2) or the assignment of rights (Item 8.4) shall, barring an agreement to the contrary, only encompass the version executed or to be executed based on the customer's decision. The rights to the other versions shall fully remain with the designer, who may use them in another context so long as the rights granted to the customer are not affected thereby.

8.6 Staged execution

If, in the scope of staged execution of the design contract (Item 4.1) not all design services can be performed by the designer because the customer fails to make a decision on the continuation of the design contract or the execution of the design after conclusion of a phase for a period of two years, the designer shall be entitled, after giving written notice to the customer, to use the design service for another purpose.

8.7 Original documents and data storage media

Barring agreements to the contrary, all original documents, in particular original drawings, negatives, image data, working models, scale models, etc. shall as a rule remain the property of the designer. With regard to the non executed versions (Item 8.5), even sketches and drafts shall remain the designer's property and shall be surrendered to the designer on request.

If the customer wished the handover of electronic data, this must be agreed upon explicitly. Barring an agreement to the contrary, the data may be destroyed five years after fulfilment of the contract.

9 Special claims of the designer

9.1 Name mentions

In publications and advertising concerning their design, the designer shall have the right to be explicitly mentioned as the author. If the subject of the design contract is a physical object, the parties shall agree upon whether the designer's name shall be indicated thereupon.

9.2 Use for own purposes

Subject to Item 10, Para 2 the designer shall have the right to make reference to their collaboration with the customer and the designs created for the customer in publications, at expositions and in printed materials. The designer shall also retain the right to use the designs created by them as their author in the scope of the design contract for promotional purposes, particularly in documentations and portfolios, as well as submitting them for competitions, awards and exhibitions. If this right is eliminated either partially or completely, the designer shall be entitled to additional, appropriate compensation.

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9.3 Specimen copies

For every object produced according to a design by the designer, the designer shall receive free of charge a specimen copy for exhibition and reference purposes or entry in competitions (Item 9.2) provided the customer's costs for such do not exceed CHF 1,000 or, in case of agreement to a fee based on time or a lump sum, of 5% of the remuneration. In this case, or in case of explicit agreement, parts or professional quality images shall be submitted.

The designer shall also be entitled, free of charge, to 10 specimen copies of all advertising media and printed matter produced concerning the design developed by the designer.

10 Confidentiality

Both parties are required to treat the information and documents of the other party to which they become privy in the scope of the contract confidentially, in particular with regard to ideas, trend and market analyses, concepts, plans, calculations and accounting figures, trade secrets, etc. This obligation shall continue even beyond the end of the contract. Item 9.2 shall remain unaffected.

Publications about the design forming the subject of the individual design contract may only be made during the term of the contract with mutual approval by the parties. In particular, consideration shall be given to the fact that if applicable, property right applications have not yet been filed. After the end of the contract, barring an agreement to the contrary, the designer shall be entitled to make publications about the design.

its delivery by the designer or handover by a corresponding contractor; both designate thus the same process. Acceptance shall be independent of an inspection by the customer. The presence of negligible defects shall therefore not preclude acceptance. If, however, significant defects exist, rendering acceptance unreasonable, acceptance may be refused by the customer.

11.3 Inspection

After acceptance of the work, the customer must immediately perform an inspection of the work and notify the designer of any defects within a maximum of 30 days in writing and with reasons.

11.4 Approval

If the delivered work is explicitly or tacitly accepted by the customer, the designer shall be freed of their liability so long as there are no defects which were not apparent upon acceptance and the proper inspection or were deliberately concealed.

11.5 Warranty

The designer shall warrant their due diligence and compliance with the principles set out in Item 5.1.

The design constitutes a personal, intellectual creation by the designer, yet the latter assumes no liability for the fulfilment of the protection requirements for the registration of intellectual property rights, particularly for novelty and uniqueness, for the economic usability of the design or that the production and use do not infringe third party rights. Such a guarantee shall only be assumed by the designer in case of an express assurance by the latter.

The customer shall merely have a right to improvement. Warranty claims exceeding this are expressly barred.

11.6 Limitation period

Warranty claims shall expire within six months of acceptance of the work.

12 Term of contract and termination

12.1 Term of contract

The individual design contract shall as a rule end with the fulfilment of the contractual obligations. If a longer term collaboration between the customer and the designer has been agreed upon which encompasses

III Special provisions for work contracts

11 Delivery, acceptance, approval

11.1 Delay and withdrawal

If the designer fails to meet an agreed upon delivery date, they shall become delinquent after the expiry of a period of 30 days after receipt of a written warning by the customer.

No delinquency shall apply if the failure to meet a deadline is due to force majeure.

A withdrawal by the customer shall only be possible if the designer is at fault for the delay.

11.2 Acceptance

The acceptance of a work shall coincide with

multiple designs, the parties shall agree upon the termination modalities. In the absence of an individual agreement, the following terms shall apply.

12.2 Termination for just cause

Both parties shall have the right to terminate the individual design contract at any time without notice for just cause which renders a continuation of the contractual relationship unreasonable.

Just cause refers, in particular, to impending bankruptcy concerning one of the parties, bankruptcy or liquidation, the takeover of control of a party by a third party.

In addition, just cause includes a severe violation of a contractual obligation by one of the parties (especially Item 5.1). In this case, the other party shall give a reasonable period to restore the proper condition. After expiry of this period, the warning party may terminate the contract with immediate effect.

13 Consequences of termination

The work performed by the designer up until that premature termination shall be compensated on a prorated basis or according to the rates contractually agreed upon. This shall apply in particular to a staged execution of the design contract. The designer, however, shall not be subject to any obligation to complete the work. The designer's claim to compensation for expenses and third party costs (Item 6.3) which have been incurred until expiry of the contract period shall as a rule remain in effect.

Rights of use of the customer which were granted in the scope of the individual design contract shall not be affected by the termination, shall however only apply to the extent that they existed at the time of termination of the design contract.

The provisions on confidentiality and data privacy, warranty and liability shall continue in force beyond the end of the contractual relationship.

On the date of termination, the parties shall return all documents, data, models, etc. belonging to the other party in their possession.

IV Special provisions for orders

14 Term of contract and termination

14.1 Term of contract

The term of the contract shall be fixed in the individual design contract. The contract shall end with the fulfilment of the contractual obligations.

14.2 Termination and cancellation

Both parties shall be entitled to a right of cancellation or termination pursuant to OR 404. If the termination or cancellation occurs untimely, without just cause, the terminating party shall be liable for damages.

15 Consequences of termination

Work performed by the designer up to the cancellation or termination by the customer shall be paid for on a pro rated basis and/or according to the agreed upon rates. For the rest, the provisions in Item 13 shall apply analogously.

V Final provisions

16 Relationship between GTC – Individual Design Contract

In case of discrepancies between the individual design contract and the GTC, the provisions of the design contract take precedence.

17 Severability

If individual, non essential provisions of the design contract turn out to be invalid, this shall not affect the validity of the remainder of the contract. The contracting parties shall, in such a case, adapt the contract such that the purpose intended with the invalid part may be reached to the extent legally possible.

18 Jurisdiction and applicable law

Disputes arising from design contracts are exclusively subject to Swiss law. The place of jurisdiction is the registered office of the designer, although the designer has the right to sue the customer at the latter's registered office. Arbitration agreements are expressly reserved. This English version of the GTC is a translation; in case of a legal dispute, the original German version shall be authoritative.