

General Terms and Conditions of interactive scape GmbH

valid from 01. January 2009



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01. Scope

1. The following general terms and conditions of interactive scape GmbH (hereinafter also referred to as Contractor) are exclusively applicable vis-à-vis companies, legal persons and separate funds under public law (hereinafter also referred to as Principal). They shall apply to all contracts concluded between the Principal and us on the delivery of items and prototypes to be produced - hereinafter also referred to as Subject Matters of Contract - and to concomitant performances/services. They are also applicable to such services and design works as are not covered by a separate contract.

2. They shall also apply to all future business relations even if these are not expressly agreed again. Divergent terms of the Principal not expressly recognised by us are not binding on us even if we do not expressly contradict them. The following terms and conditions shall also apply if we execute an order without reservations in the awareness of conflicting or divergent terms of the Principal.

3. All covenants made between us and the Principal for the purpose of performing the contract are laid down in writing in the given contract and in these terms and conditions.

4. The Principal shall be given directions concerning transport, assembly, operation, care and proper siting. Any lighting fixtures potentially delivered with the Subject Matter of Contract are not intended for continuous operation. It is recommended to dispatch all items and prototypes as art objects.

02. Offer, Closing

1. Our offers are subject to change and not binding unless we have expressly declared the given offer as binding.

2. We are free to accept an order of the Principal that can be qualified as an offer for the conclusion of a contract within two weeks by transmitting a pertinent confirmation.

3. We reserve our ownership rights, copyrights and other industrial property rights to all images, calculations, drawings, photographs and other records. The Principal may not pass these items on to third parties except with our written consent, regardless of whether we have labelled them confidential or not.

03. Principal's duty to co-operate, variations of contract

1. The Principal shall assist us in the execution of its order, in particular by answering questions within a reasonable time limit, making decisions on time, declaring clearance and submitting sufficient time in advance and in the form requested by us any required plans and records it is obliged submit, so as to enable us to observe agreed time limits. We shall specify to the Principal the records and other information required and the date by which all of the require records must be submitted. Delivery dates shall be binding only to the extent that the Principal submits, within the agreed time limit, the records it is obliged to provide and fulfils its duty to co-operate as set forth in sentences 1 and 2 of this paragraph.

2. If the Principal submits to us changed records, such as changed sets of plans, after the time limit agreed pursuant to para. 1 second sentence, it is obliged to point out to us each of the changes made. The Principal is obliged to pay for any extra work entailed by such a change. We shall announce any claim to such additional remuneration before acting on the change.

3. The Principal shall name a person authorised to represent its company, who shall be solely responsible for the Principal's decisions and entitled to receive notifications and statements of the Contractor.

4. Section 7 para. 1 shall analogously apply if the Principal learns about defects of the subject matter of contract in the course of the execution of the order.

04. Terms of payment

1. Our prices apply "ex works" without packing unless differently provided for in the confirmation of the order. The prices quoted by us do not include the statutory VAT. The latter shall be separately reported by us at the statutory level on the invoice on the day of invoicing.

2. The due date of payment shall be specified in the given contract. Payment shall be due upon delivery of the subject matter of contract, at the latest. The Principal shall be deemed to be in default 10 days after the due date without any further declaration of the Contractor being required unless payment has meanwhile been made.

3. The Principal is not entitled to claim set-off, not even if defects or counter claims are asserted, except if such counter claims have become non-appealable, are recognised by us and are indisputable. In case of defects, the Principal has no right of retention unless the subject matter of contract is obviously defective, in which case the Principal is entitled to retention only to the extent that the amount retained is reasonably proportional to the defect and to the anticipated cost of retrospective performance (notably by removal of the defect(s)).

4. The Principal may not assert claims or rights on account of defects if the Principal has failed to make payments when due and if the amount claimed as being due (including payments potentially made) is reasonably proportional to the value of the defective subject matter of contract.

05. Periods of delivery and performance

1. Periods of or time limits for delivery named are not binding unless expressly agreed in writing as being binding. Adherence to agreed time limits presupposes settlement of the technical issues involved and proper and timely fulfilment by the Principal of all obligations incumbent on it pursuant to section 03 para. 1. Dates of delivery shall be deemed to be fixed dates only if expressly agreed and termed as such.

2. We are liable to the Principal pursuant to applicable statutory provisions if our performance is delayed provided that such delay is based on a deliberate or grossly negligent breach of contract we are answerable for with the proviso that any fault on the part of one of our representatives or vicarious agents is attributable to us. Our liability is limited to such damage as is typical of the given contract and foreseeable unless the delay in delivery is based on a deliberate breach of contract for which we are answerable.

3. In the event that a delay in delivery for which we are answerable is based on the culpable infringement of a cardinal contractual duty and with the proviso that any fault on the part of our representatives or vicarious agents is attributable to us, we are liable pursuant to applicable statutory provisions on the understanding that in such a case any liability in the form of damages shall be limited to such damage as is typical of the given contract and foreseeable.

4. Moreover, in case of a delay in performance for which we are answerable, the Principal may assert lump-sum compensation for each full week of such delay at a rate of 2% of the net contract value up to a limit of 12% of that value.

5. Any more extensive liability for delays in delivery for which we are answerable is excluded. This is without prejudice to any more extensive statutory claims and rights the Principal may have, apart from the claim for damages on account of a delay in delivery for which we are answerable.

6. We are at any time entitled to make partial deliveries and render partial services to the extent that the Principal can reasonably be expected to concur.

7. If the Principal is in default of acceptance, we may require compensation for any resultant loss and for any potential additional expenditure. The same shall apply if the purchaser culpably infringes its duty to co-operate. From the inception of any default in acceptance or payment of debts, the risk of accidental deterioration and accidental loss shall pass to the Principal.

06. Passing of the risk - shipment/packing

1. Delivery "ex works" shall be deemed to have been agreed unless differently provided for by the confirmation of the order.

2. Loading and shipment shall be uninsured at the Principal's risk. We shall endeavour to take account of the Principal's preferences and interests concerning mode of dispatch and shipping route. Additional costs incurred thereby - also where the parties have agreed "freight paid" - shall be borne by the Principal.

3. If dispatch is delayed at the Principal's request or for reasons for which the Principal is answerable beyond the agreed date of delivery or, in the absence of a precise date of delivery, after notice was given of readiness for dispatch, we shall store the subject matter of contract free of charge for two weeks. Thereafter, the Contractor may for each incipient month levy a lump-sum storage charge of 0.5 per cent, not to exceed 10%, of the purchase price of the subject matter of contract. The Principal shall be free to prove that the Contractor has sustained a substantially smaller loss or no loss at all. The Contractor shall be free to prove that it has sustained a greater loss.

4. At the request and expense of the Principal we shall take out a transport insurance policy covering storage and delivery.

07. Rights in case of defects / liability / limitation of actions

1. The Principal may make claims in respect of defects only if it has properly and promptly satisfied the requirement to investigate and to report the defect pursuant to § 377 HGB (Commercial Code). Notices of defects must be given in writing.

2. If the subject matter of contract shows a defect for which we are answerable, we are obliged, to the exclusion of the Principal's right, to rescind the contract or reduce the remuneration (reduction of the purchase price), to make retrospective performance,, unless were are entitled to refuse to do so pursuant to applicable statutory provisions. The Principal is required to grant

us a reasonable time limit for retrospective performance. We may make retrospective performance at our discretion either by removing the defect (subsequent improvement) or delivering a new subject matter of contract. If we opt for removal of the defect we shall bear the cost incurred thereby, except to the extent that costs are increased on account of the fact that the subject matter of contract is located at a place other than the place of performance. If retrospective performance has failed, the Principal may, at its discretion, require the purchase price to be reduced or rescind the contract. Retrospective performance shall be deemed to have failed after the second futile attempt unless, on account of the nature of the subject matter of contract, further attempts at improvement are reasonable and the Principal can reasonably be expected to concur. Claims for damages in respect of a defect may not be asserted by the Principal on the terms set forth until retrospective performance has failed. This is without prejudice to the Principal's right to assert more extensive claims for damages on the terms set forth below.

3. Defects may not be asserted if the given item deviates but insignificantly from the agreed quality, nor if its fitness for use is but insignificantly impaired, nor in case of such defects as arise due to incorrect or negligent handling, failure to ensure that site conditions are suitable for the given item, excessive strain or such exceptional impacts from outside as are not anticipated by the contract. Nor may defects be asserted in the context of alterations or repairs inexpertly made by the Principal or by third parties or in respect of any consequences thereof.

4. Claims and rights of the Principal concerning defects shall become statute-barred within one year of delivery of the subject matter of contract to the Principal except if we have fraudulently concealed the defect or acted wilfully, in which case the statutory provisions shall apply. Our obligations pursuant to section 07 para. 5 and section 07 para. 6 shall not be affected thereby.

5. We shall be fully liable pursuant to applicable statutory provisions for any loss of life, bodily harm and injury to health caused by any negligent or deliberate breach of duty by us, our legal representatives or vicarious agents as well as for any losses covered by liability under the product liability act. As for losses not covered by the first sentence of this paragraph and based on

deliberate or grossly negligent breaches of contract and fraudulence by us, our legal representatives or our vicarious agents, we shall be liable pursuant to statute. However, in this case our liability shall be confined to the foreseeable damage typical of the given type of contract except to the extent that we, our legal representatives or our vicarious agents have acted wilfully. To the extent that we have guaranteed the quality and/or durability of the subject matter of contract or of parts thereof, we shall also be liable under such guarantee. However, as for any damage which, while based on the absence of the guaranteed quality or durability, does not affect the subject matter of contract proper, we shall be liable only if the risk of such damage is obviously covered by such guarantee of quality and durability.

6. We shall also be liable for losses caused by simple negligence to the extent that such negligence relates to the infringement of such contractual duties whose fulfilment is of special relevance to the achievement of the purpose of the given contract (cardinal duties) with the proviso that our liability shall be confined to such damage as is typical of the given contract and foreseeable.

7. Any more extensive liability is excluded irrespective of the legal nature of the claim asserted. This shall in particular apply to claims in tort and to compensation for futile expenditures in lieu of performance. This is without prejudice to our liability pursuant to section 05 para. 2 to para. 5 above. To the extent that our liability is excluded or limited, this shall also apply to the personal liability of our employees, staff members, representatives and vicarious agents.

8. Claims for damages by the Principal in respect of defects shall become statute-barred within one year of delivery of the subject matter of contract to the Principal. This shall not apply where losses of life, bodily harm or injuries to health are culpably caused by us, our legal representatives or our vicarious agents or where we or our legal representatives have acted wilfully or grossly negligently or where our ordinary vicarious agents have acted wilfully except where claims under the product liability act are concerned.

08. Reservation of title

1. Pending satisfaction of all claims to which we are entitled vis-à-vis the Principal under the contract, any item delivered thereunder (reserved merchandise) shall remain our property. If the Principal acts contrary to contract, e.g. by delay in payment, we are entitled to recover the given item after setting a reasonable time limit. Any such recovery is tantamount to rescission of contract. So is any attachment of the item. We are entitled to exploit such item after recovering it. After deduction of an adequate amount by way of exploitation costs, the proceeds derived therefrom shall be set off against any amounts owed to us by the Principal.

2. The Principal shall handle reserved merchandise with care and shall adequately insure it at its own expense against damage by fire, water and burglary at replacement value. Any required maintenance works or inspections shall be performed by the Principal on time at its own expense.

3. The Principal is authorised to properly sell and/or use reserved merchandise so long as it is not in default in payment. Reserved merchandise may not be attached or transferred by way of security. The Principal shall already now fully assign to us by way of security any accounts receivable arising from the re-sale of reserved merchandise or from any other pertinent legal ground (insurance, tort) (including all receivables in the form of current account balances). We hereby accept such assignment while revocably authorising the Principal to collect for its account and in its own name any accounts receivable assigned to us. Such collecting power may be revoked at any time if the Principal fails to properly meet its payment obligations. The Principal is not entitled to assign these accounts receivable, not even for the purpose of the collection of receivables by way of factoring, except if the factor simultaneously undertakes to cause the consideration received at the level of such accounts receivable to be directly remitted to us for so long as we have outstanding claims against the Principal.

4. In case of any third-party recourse to reserved merchandise, notably in the form of attachment, the Principal shall draw attention to our ownership rights and shall promptly inform us of such recourse, so as to enable us to assert these rights. To the extent

that any such third party is unable to refund to us any fees arising in this context in or out of court, the Principal shall be liable.

5. We are obligated to release any collateral security owed to us to the extent that the realisable value of such security exceeds by more than 10 per cent the accounts receivable to be secured with the proviso that the selection of the collateral securities to be released is incumbent on us.

09. Secrecy, copyright

1. Except if expressly agreed differently in writing, the information imparted to us in the context of an order shall not be deemed to be confidential. We are entitled to take photographs and partial samples of the subject matter of contract and to label and publish them as reference objects.

2. The Principal shall indemnify us in the context of the execution of an order against any third-party claims based on the infringement of copyrights, utility models or other industrial property rights (hereinafter: property rights) to the extent that such infringement is a result of guidelines issued by the Principal, of a form of use of the subject matter of contract not foreseeable by us or of an alteration of the latter by the Principal. Claims of the Principal against us are excluded to the extent that the former is answerable for such infringement.

10. Place of performance, venue, applicable law

1. Place of performance and venue in respect of deliveries and payments (including complaints filed in the context of cheques and bills of exchange) and of all disputes arising between us and the Principal from contracts concluded between us and the latter shall be the registered seat of our company.

2. The relations between the contracting parties shall exclusively be governed by the law of the Federal Republic of Germany. The Uniform Law on the International Sale of Goods and

the Uniform Law on the Formation of Contracts for the International Sale of Goods shall not be applicable.

