

Standard Terms and Conditions for Contracts for Work and Services with Oldenburger-Group

1. Scope of the Terms and Conditions

- 1.1 These Terms & Conditions for Contracts for Work and Services shall apply to contracts with business enterprises only.
- 1.2 Any work performance or offer for work and services that Oldenburger Möbelwerkstätten GmbH and Oldenburger Interior GmbH & Co KG, (hereinafter „Oldenburger“) submits, including the preparation of estimates, shall be exclusively based on these Terms & Conditions for Work and Services. They shall be considered an integral part of all contracts for work and services which Oldenburger enters into with its contractual partners (hereinafter the „Client/s“) for the work and services furnished by Oldenburger. These Terms shall also apply to all future work/services or offers provided or submitted to the Client even if the Terms are not expressly incorporated again.
- 1.3 The Client's or third-party terms & conditions shall be excluded, even if Oldenburger does not specifically reject their application. If Oldenburger refers to a document containing or referring to Client or third-party terms & conditions, it shall not be deemed consent to their application.

2. Subject Matter of the Contract

- 2.1 The legal relationship between Oldenburger and the Client shall be exclusively based on the contract for work and services and these Terms & Conditions. The contract shall reflect the entire understandings between the parties with regard to the subject matter of the contract.
- 2.2 Any information supplied by Oldenburger regarding the Work as well as their representations shall be deemed approximate only, unless exact conformance is crucial for the Work to be fit for its intended and contractual purpose. Such information does not reflect guaranteed properties but only descriptions or characterisations of the Work. Customary variations or deviations due to statutory regulations or improvements in technology shall be permitted, as well as the substitution of equivalent components if usability for the intended and contractual purpose is not impaired by it.

3. Binding Period

Oldenburger shall be bound by quotations it has issued for 8 weeks from the date of issue indicated.

4. Pricing

- Prices are stated as EURO prices, exclusive of
 - the statutory sales tax (VAT) as valid at the time of invoicing,
 - the cost of transport services which Oldenburger is required to arrange for, although not to pay for, under the contract,
 - any customs duties, fees and other charges that are levied by or on behalf of a public authority outside the Federal Republic of Germany.
2. To the extent that Oldenburger, in the performance of its contractual obligations, is charged customs duties, fees or other charges or costs for transportation which Oldenburger, under the contract, is obliged to arrange for, but not to assume the costs for, the Client shall release Oldenburger from payment or refund such amounts.

5. Approvals

Approvals and consents of any kind, whether under public law or of a private nature, which are required for the performance of the contractual work or service shall be obtained and paid for by the Client.

6. Place of Performance

Unless agreed otherwise, Dinklage shall be the place of performance.

7. Period of Performance

- 7.1 Periods or dates suggested by Oldenburger for the performance of the contractual work/services (period of performance) shall be deemed approximate only unless a firm period or date has expressly been promised or agreed. If shipment has been agreed, the period of performance shall relate to the time of handover to the forwarder, carrier or other third party commissioned to effect transportation.
- 7.2 A precondition for meeting periods of performance is the timely and proper performance by the Client of its duties and obligations (Obligation to cooperate), in particular if such cooperation is necessary for the clarification of technical, organisational or financial issues. If the Client fails to comply in this respect and is responsible for such failure, the period of performance shall be extended accordingly, plus a reasonable starting period. Oldenburger shall reserve the defence of non-performance.
- 7.3 Paragraph 7.2 sentence 2 shall also apply in the event that Oldenburger fails to obtain an approval or permit in time and is not responsible for this failure.
- 7.4 If the subject matter of the contract is extended or modified, the period of performance shall be extended in accordance with the additional time and effort required due to such extension or modification, and the delays in the execution of the original subject matter of the contract.
- 7.5 If the Client is in default of acceptance or culpably breaches other obligations to co-operate, Oldenburger shall be entitled to claim compensation for the loss or damage arising as a consequence, including any additional expenses.
- 7.6 If the Work is stored by Oldenburger after the risk has passed to the client or if the Client is in default of acceptance, warehousing costs shall charge at a blanket rate of 0,1 % of the invoice amount for the item to be stored. For each complete week of storage; lower warehousing costs shall have to be claimed and proved by the Client. Oldenburger reserves the right to assert further claims or rights.
- 7.7 If Oldenburger is delayed in its performance, or if performance becomes impossible for any reason, Oldenburger's liability shall be limited to damages in accordance with clause 14. of these Terms & Conditions.

8. Passing of Risk, Acceptance, Shipment

- 8.1 The risk of accidental loss or accidental impairment of the Work shall pass to the Client upon acceptance of the Work.
- 8.2 Acceptance shall not be refused for insignificant defects.
- 8.3 If Oldenburger ships the Work at Client's request to a place other than the place of performance, the risk of accidental loss or accidental impairment shall pass to the Client no later than at the time the Work is delivered to the forwarder, carrier or other party commissioned to effect transportation (the start of the loading process being the decisive point in time). This shall also apply to part deliveries or if Oldenburger has agreed to perform work/services subsequent to the shipment.
- 8.4 The Work shall be deemed accepted when
 - the Work is completed, and
 - Oldenburger has informed the Client accordingly, referring to the assumption of acceptance as described in this paragraph and has asked the Client to accept the Work, and
 - more than 30 working days have passed since completion, or if the Client has started to use the Work (e. g. has put the Work into operation) and if in this case 12 working days have passed since completion, and
 - the Client has failed to accept the Work during this period for a reasons other than a defect of which Oldenburger has been notified, which render impossible or seriously affect the use of the Work.
- 8.5 The provision of section 640 (1) (3) BGB/German Civil Code (assumption of acceptance) shall not be affected by this clause.
- 8.6 If the Work, before it has been accepted, is damaged or destroyed through force majeure, war or riots or other circumstances for which Oldenburger cannot reasonably be held responsible, the Client shall pay that part of the remuneration which covers the work performed and also compensation for any expenses not included in the remuneration.
- 8.7 If partial acceptance has been agreed, the preceding paragraphs shall apply accordingly.
- 8.8 If the Work is shipped, at the Client's request, to a place other than the place of performance, the Client shall be obliged to take out insurance cover for theft, breakage, transport or water damage and other insurable risks.

9. Liability for Unforceable Events

Oldenburger shall not be liable in the event of impossibility or delay of performance if this is caused by force majeure or other events that were unforeseeable at the time the contract was concluded (such as disruptions of operations of any kind; difficulty in obtaining materials or energy; delay in transportation; strikes; lawful lock-outs; shortage of labour, energy or raw materials; difficulty in obtaining the requisite government approvals; measures by government agencies; or lacking, incorrect or late delivery by suppliers) and which are beyond Oldenburger's control. Oldenburger shall inform the Client forthwith if performance is delayed or impossible, stating the pertinent event named in the foregoing sentence 1. If such event considerably impedes performance or makes it impossible and if the existence of such impediment is more than temporary, Oldenburger shall be entitled to rescind the contract. If the impediment is only temporary, the period of performance shall be extended or postponed by a period equal to the duration of the impediment, plus a reason-able starting period. If the delay makes it unreasonable for the Client to accept the Work, the Client can immediately rescind the contract by issuing a written notification to Oldenburger.

10. Part Performance

- Oldenburger shall only be entitled to render part performance if
- part performance is acceptable to the Client, in view of the intended use as stated in the contract,
- performance of the remaining obligations is guaranteed, and
- this will cause no substantial additional expenses or extra costs for the Client.

11. Terms of Payment

- 11.1 Unless agreed otherwise, the price shall be paid as follows:
 - 30 % on receipt of the confirmation of order, 30% on start of production, 30% on start of fitting
 - 10% upon acceptance, and no later than 3 weeks after the earliest point in time at which the Work is deemed accepted in accordance with clause 8. paragraph 4 or 5
 - with the due date 5 calendar days from the respective invoice date.
- 11.2 If the parties have agreed on part acceptance, paragraph 1 item 2 shall apply accordingly.
- 11.3 If the Client does not have effected payment by the due date, any outstanding amounts shall be subject to interest at the rate of 8 % p.a. from the due date; the foregoing shall not affect Oldenburger's right to claim interest at a higher rate or further damages in case of default.
- 11.4 Oldenburger shall be entitled to execute outstanding work/services only against (further) advance payments or (additional) security if circumstances come to its knowledge after conclusion of the contract which are suited to reduce the Client's creditworthiness substantially and which jeopardise the payment of Oldenburger's outstanding claim against the Client under the respective contract.
- 11.5 Oldenburger's claims shall not be offset against Client's counterclaims nor shall payment be withheld because of such claims unless the counterclaims are undisputed or have become res judicata

12. Warranty Claims

- 12.1 Warranty claims shall be excluded unless the Client has notified Oldenburger in writing, within 4 weeks after acceptance, of defects discovered during the acceptance inspection. Warranty claims for any defects that were not discoverable during the acceptance inspection shall be excluded if Oldenburger has not been notified by the Client within a period of 4 weeks after such defects could have been discovered.
- 12.2 If the Client accepts the Work although it is defective, and if the Client is aware of the defect at the time of acceptance, any warranty claims shall be excluded notwithstanding the foregoing paragraph unless the Client has reserved its rights.
- 12.3 In the case of defects, Oldenburger shall be obliged and entitled to effect, at its own choice to be taken within in reasonable period of time, to rectify the defect or supply a replacement item. In the event of failure, i.e. if rectification or replacement proves impossible or unreasonable or is re-used or unacceptably late, the Client can rescind the contract in accordance with statutory provisions or can reduce the price accordingly.
- 12.4 To the extent that additional expenses accrue for Oldenburger from such supplementary performance due to the fact that the Work is located at a place other than the location of its intended use, such expenses shall be born by the Client.
- 12.5 In the event of defects at components supplied by other manufacturers, which Oldenburger cannot remedy for licensing reasons or factual reasons, Oldenburger can at its own option assert warranty claims against the manufacturer and supplier for the account of the Client, or can assign them to the Client. There shall be no warranty claims against Oldenburger for such defects under the circumstances and in accordance with these Terms & Conditions unless the aforementioned claims against the manufacturer and supplier cannot be enforced in court or are futile because of insolvency. For the time of any litigation, the limitation period for the Client's relevant warranty claims shall be suspended.
- 12.6 There shall be no warranty claim in the case of slight deviations from the agreed properties or if usability is insignificantly affected.
- 12.7 Oldenburger's warranty shall be nil and void if the Client modifies the Work or causes it to be modified by any third party without Oldenburger consent and if this makes the rectification of defects impossible or unacceptably difficult. In any case, the Client shall bear any additional costs arising for the rectification on account of such modifications.
- 12.8 The warranty shall also be nil and void if the Client does not operate and handle the Work in accordance with the technical parameters, and in particular if the Client operates the Work beyond the stated rating/capacity or fails to maintain it properly, and has thus caused the defect.
- 12.9 If Oldenburger is responsible for a defect, the Client, notwithstanding the foregoing paragraphs, can claim damages under the conditions stated in clause 14..

13. Industrial Property Rights

- 13.1 Oldenburger shall warrant that the Work is free of third-party industrial property rights or copyrights, in accordance with this clause 13. Each party to the contract shall inform the other party forthwith in writing of any claims made against it for the infringement of such rights.
- 13.2 If a third-party industrial property right or copyright is infringed by the Work, Oldenburger shall at its discretion and at its own expense either modify the Work in such a way or make such replacements that third-party rights are no longer infringed and the Work still fulfills the agreed functions, or Oldenburger shall enter into a licence agreement and obtain the right of utilisation for the Client. If it fails to achieve this within a reasonable period of time, the Client shall be entitled to rescind the contract or claim an appropriate price reduction. Any claim for damages by then Client shall be subject to the limitations of clause 14 of these Terms & Conditions.

14. Liability to Pay Damages for Negligence

- 14.1 Oldenburger's liability, irrespective of legal grounds, shall be limited as provided under this clause 14., in particular for intentional or negligent false performance, breach of contract, breach of obligations during contract negotiations or tortious act, to the extent that negligence is at issue.
- 14.2 Oldenburger shall assume no liability in the event of ordinary negligence of its organs, legal representatives, employees or other vicarious agents except in the case of a breach of essential contractual obligations. Essential contractual obligations comprise the obligation to produce the Work punctually and free of major defects, and also the obligations to advise, protect and take care, which are to enable the Client to use the Work as contracted or which aim to protect life, limb and health or protect the Client's property from material damage.
- 14.3 Insofar as Oldenburger is in principle liable for damages in accordance with paragraph 2, this liability shall be limited to damage that Oldenburger, at the time of the conclusion of the contract, could foresee as a possible consequence of a breach of contract, or which Oldenburger should have foreseen with due diligence. Indirect damage or consequential damage resulting from defects of the Work can only be compensated for if such damage can typically be expected in the conventional use of the Work.
- 14.4 The above-mentioned exclusions and limitations of liability shall equally apply in favour of the organs, legal representatives, employees and other vicarious agents of Oldenburger.
- 14.5 If Oldenburger furnishes technical information or advice which ex-cedes the scope of work/services agreed under the contract, this information or advice shall be furnished free of charge and with no liability.
- 14.6 The limitations set forth in this clause shall not apply to any liability that Oldenburger may have for willful intent, for guaranteed properties or fraudulently concealed defects, for injury to life, limb or health or under the product liability law.

15. Limitation Period

- 15.1 Warranty claims shall become time-barred one year after acceptance of the Work and no later than one year after the earliest point in time at which the Work is deemed accepted pursuant to clause 8 paragraph 4 and 5.
- 15.2 The above paragraph 1 shall not apply to claims for defects in a structure or work, where successful performance lies in the rendering of planning and supervisory services. Here, the statutory limitation periods shall start upon acceptance or at the earliest point in time at which the Work is deemed accepted pursuant to clause 8 paragraph 4 or 5.
- 15.3 Neither shall paragraph 1 apply to liability for injury to life, limb and health, for willful or grossly negligent breach of duty on the part of the organs of Oldenburger, its legal representatives, employees or other vicarious agents, in the event of fraudulent concealment of a defect, and for guaranteed properties or liability under the law on product liability. In those cases again, statutory limitation periods shall apply.

16. Reservation of Title

- 16.1 Title to the Work shall remain with Oldenburger until all claims against the Client resulting from the business relationship have been settled.
- 16.2 The Client shall be permitted to process or transform the Work (processing). The processing shall be carried out on behalf of Oldenburger. If, however, the value or the Work owned by Oldenburger is lower than the value of the items not owned by Oldenburger and/or the processing, Oldenburger acquires co-ownership in the new item, at the ratio of the value (gross invoice value) of the processed Work to the value of the other processed items and/or the processing at the time the processing is carried out. If Oldenburger does not acquire ownership of the new item in accordance with the foregoing sentence, Oldenburger and the Client agree that the Client grants Oldenburger co-ownership in the new item at the ratio of the value (gross invoice value) of the Work owned by Oldenburger to the other processed items at the time of the processing. The foregoing sentence shall apply accordingly if the Work is inseparably mixed or combined with items not owned by Oldenburger. If Oldenburger acquires ownership or co-ownership in the items, the Client shall keep them safe with the care of a prudent businessman.
- 16.3 In case the Work or the new item is sold, the Client hereby assigns to Oldenburger, by way of security, the claim which the Client has against its customer from the resale together with all secondary rights, and no further declarations shall be required for this. The assignment shall include any balance claims. The assignment shall only be made in the amount of the price invoiced by Oldenburger for the Work. The share of the claim assigned to Oldenburger shall be settled with priority.
- 16.4 If the Client in times the Work or the new item to premises, the Client shall assign to Oldenburger its claim to remuneration for executing this connection, in the amount of the price invoiced by Oldenburger for the item supplied, and no further declaration shall be required for this.
- 16.5 Subject to revocation, the Client shall be entitled to collect the claim which it assigns to Oldenburger under this clause 16 (Reservation of Title). The Client shall immediately transfer to Oldenburger any payments made towards the assigned claim, up to the secured amount. If a legitimate interest arises, in particular in the case of delay in payment, default, institution of insolvency proceedings, protesting of a bill or evidence of over-indebtedness and impending insolvency of the Client, Oldenburger shall be entitled to revoke the Client's right to collect. In addition, Oldenburger shall be permitted to disclose such assignment by way security and, having given due warning and allowing a reasonable grace period, may realise the assigned claim and may demand that the Client disclose the assignment to its customers.
- 16.6 If Oldenburger can credibly show a legitimate interest, the Client shall furnish the information Oldenburger requires to be able to assert its claims against the Client's customers and shall hand over the necessary documents.
- 16.7 For the duration of the reservation of title, the Client may not pledge the items concerned or transfer ownership by way of security. In the event of levy of execution, seizure or other third-party dispositions or interventions, the Client shall notify Oldenburger forthwith. The resale of the Work or the newly created item shall only be permitted to resellers in the regular course of business and on condition that payment is effected to the Client in the amount of the value of the Work. The Client shall stipulate that its customer shall acquire title to the item only upon payment of such sum.
- 16.8 If the total realisable value of Oldenburger's security interests exceeds the amount of the secured claims by more than 10%, Oldenburger shall, at the Client's request, release an equivalent share of the security interests. The requirements of the preceding sentence shall be assumed fulfilled if the estimated value of the collaterals to which Oldenburger is entitled reaches or exceeds 150% of the value of the secured claims. Oldenburger shall select, at its own choice, the security interests that are to be released.
- 16.9 If the Client breaches any of its duties, in particular in the event of delay/default of payment, Oldenburger shall be entitled to demand surrender of the Work and/or the new item without setting a time-limit, and/or to set a time-limit, after the expiration of which it can rescind the contract; the Client shall be obliged to surrender the Work/the new item. The re-request for surrender shall not imply the rescission of contract by Oldenburger, unless such rescission is expressly stated.

17. Right of Lien

- 17.1 If performance of the work/service is to be effected on an object that is owned by the Client, and if the work is performed on the premises in Dinklage, Oldenburger shall acquire, on account of its claim under the contract, a lien in the object that has come into its possession.
- 17.2 The lien described in paragraph 1 can also be exercised for accounts receivable for earlier work or services if they are in any way connected with the object in paragraph 1. The right of lien shall only apply to other claims under the business relationship if and to the extent that these claims are undisputed or have become res judicata.
- 17.3 The above mentioned right of lien shall also be applicable, given the circumstances described in paragraph 1, if the object comes into Oldenburger's possession in any other manner than at the works in Dinklage.
- 17.4 In accordance with the above provisions, a right of lien can also be established over any other object on which the work/ service is executed.

18. Intellectual Property, Confidentiality

- 18.1 Ownership and copyright to all offers, estimates, samples as well as drawings, illustrations, calculations, brochures, catalogs, models, tools and other documents or materials of a physical or intangible nature, including electronic format, shall remain with Oldenburger. Without Oldenburger's express consent, Client shall not make such items or their content available to any third party, disclose them, utilise them or allow others to utilise them, reproduce them or turn them to account in any other way. At Oldenburger's request, the Client shall return all of these items and destroy any copies made by the Client if they are no longer needed in the regular course of business or if negotiations do not result in a contract.
- 18.2 If Oldenburger makes confidential information available to the Client in the context of the preparation of an offer or the performance of a contract concluded with Oldenburger, the Client undertakes
 - to maintain confidentiality,
 - not to make them available to any third party and prevent unauthorised access by a third party,
 - not to reproduce, utilise or circulate them or allow others to repro-duce, utilise or circulate them,
 - not to use them for anything but the performance of the respective contract with Oldenburger.
- 18.3 The term „confidential information“ shall cover the items set forth in paragraph 1 and any other financial, technological, scientific, legal, personnel-related or other internal information or about Oldenburger, its technologies and products, with regard to its business strategies, business data, industrial property rights, development, production or the company itself, of which the Client becomes aware during the performance of this contract or the negotiations preceding it.
- 18.4 The obligation to maintain confidentiality shall not extend to the following information of the contract parties:
 - information that was in the other party's possession before its disclosure,
 - information that at the time of disclosure was public or was state of the art and therefore neither confidential nor capable of being protected,
 - information that after it has been disclosed becomes generally known through publication or in any other way, except as a result of one of the parties violating the confidentiality obligation agreed in this contract.
- 18.5 The Client's shall subject those of its employees who handle confidential information during the performance of the contract to the above confidentiality provisions.

19. Software Clause

- 19.1 If the Work contains software that has not been specially developed for the Client, the Client is granted a non-exclusive right to use the soft-ware and the documentation. The Client shall be permitted to use the software together with the Work for which it is intended. The software may not be used on more than one system.
- 19.2 The Client may reproduce, process, translate the software or convert from object code to source code only to the extent permitted by law (Section 17 sec. 1 German Copyright Law). The Client agrees not to re-use, manufacture information – in particular copyright notices – or modify these without Oldenburger's express prior consent.
- 19.3 All other rights to the software and documentation, including copies, shall remain with Oldenburger or the software supplier, respectively. There shall be no grant of sublicenses.

20. Governing Law

The laws of the Federal Republic of Germany shall apply.

21. Jurisdiction

The venue for any litigation arising from the business relationship between Oldenburger and the Client shall be, at Oldenburger's discretion, either the city of Oldenburg or the Client's domicile. For any action against Oldenburger, the city of Oldenburg shall be the only venue.

Obligatory statutory provisions regarding exclusive venues shall not be affected by this clause.

22. Written Form

Amendments or modifications to the agreements including these Terms & Conditions for Work and Services shall only be valid in written form

Dinklage, 01.01.2009