

General terms and conditions

Genesis Design GmbH
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§ 1 Scope of application

(1) Genesis Design GmbH ("Genesis Design") provides services to its customers ("Client") exclusively on the basis of the following General Terms and Conditions ("GTC"). Any terms and conditions of the Client that conflict with or deviate from these GTC shall not be recognised by Genesis Design unless Genesis Design has expressly agreed to them in writing. The GTC shall also apply if Genesis Design provides the agreed services without reservation in the knowledge of terms and conditions of the Client that conflict with or deviate from these GTC.

(2) The GTC shall only apply to entrepreneurs within the meaning of Section 310 (1) of the German Civil Code (BGB) and only if nothing to the contrary has been agreed in the individual case.

§ 2 Conclusion of the contract

(1) Offers and cost estimates of Genesis Design are always subject to change.

(2) Orders placed by the Client (also verbally) are binding. A contract is also concluded if Genesis Design begins with the execution of the order although agreement has not yet been reached on all points of the contract, if the Client is aware of this and does not object.

§ 3 Principles of cooperation

(1) The Client is obliged to cooperate. In particular, he will provide Genesis Design with all information, documents and materials required for the execution of the order at the agreed times.

(2) The Client warrants that it is entitled to use all information, documents and materials provided to Genesis Design and indemnifies Genesis Design against all claims for compensation by third parties (including lawyers' fees and court costs) arising from any non-authorisation.

(3) The Client shall provide any necessary releases in good time so as to enable Genesis Design to carry out all the work with which it has been commissioned smoothly and on schedule without incurring additional costs or compromising quality.

(4) If the execution of the order is delayed for reasons for which the Client is responsible, Genesis Design may demand an appropriate increase in the remuneration and assert claims for damages. The assertion of further damage caused by delay remains unaffected.

§ 4 Time of performance and type of performance

(1) Agreed performance deadlines are only binding for Genesis Design if the Client duly fulfils its duties to cooperate (e.g. procurement of documents, granting of releases, compliance with deadlines).

(2) Genesis Design shall not be responsible for delays in performance due to force majeure (e.g. strike, general disruptions in telecommunications, delivery bottlenecks) and due to circumstances for which the Customer is responsible. Completion or delivery deadlines shall be extended accordingly.

(3) Genesis Design is not obliged to deliver the service results to the Client as open, editable files. If the Client wishes to receive such files, this must be agreed and paid for separately.

(4) The risk and costs of the transport of data carriers, files and data online and offline shall be borne by the Client.

§ 5 Freedom of design; subsequent amendments

(1) Within the scope of an order placed, Genesis Design has freedom of design. Complaints regarding the aesthetic-artistic design are excluded.

(2) If, during the execution of the contract, the Client subsequently requests changes regarding the design creation or the time schedule, the Client shall compensate Genesis Design for any resulting additional expenditure on a time basis. Genesis Design retains the full original claim to remuneration for work already commenced.

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§ 6 Granting of rights of use

(1) All designs, developments, elaborations, drawings and other results of the contractual services of Genesis Design are creative creations of value and are subject to copyright protection. The parties agree that the provisions of the Copyright Act shall apply to the results of the services created by Genesis within the scope of this contract. They may only be reproduced and exploited with the consent of Genesis Design.

(2) The scope of the granting of rights shall be determined by the agreement between the parties in the individual case. Unless expressly agreed otherwise, the rights of use shall be granted as simple, temporally and spatially unrestricted rights that cannot be sublicensed or transferred further.

(3) The granting of rights of use refers only to the final design used by the customer and other final performance results. Development, intermediate and final stages, documents for documentation and, if applicable, alternatively developed design versions are only included in the granting of rights if this is expressly agreed or if the purpose of the contract pursued by the parties requires this. The Client undertakes to return or destroy/delete all non-final and/or alternative versions of the design developed within the scope of the order after completion of the project and not to use them further. The right is not granted to modify the final design in the original or in reproduction or to transfer it to products other than those covered by the purpose of the contract or to other items unrelated to the project (e.g. model construction, visualisation) without the express consent of Genesis.

(4) Insofar as the use of the designs and other performance results developed by Genesis is the exercise of a type of use unknown at the time of the conclusion of the contract pursuant to Section 31a (1) UrhG, the client shall notify Genesis of the intended commencement of this use at the last known address of Genesis; Genesis may revoke the granting of the rights of use required for the exercise of this type of use within a period of three months after sending the notification. Otherwise, the granting of the right of use is irrevocable.

(5) If the design developed by Genesis and other performance results are not exploited by the Customer within 3 years from acceptance, Genesis Design may grant the exclusively granted rights of use to third parties for other use.

(6) Data generated by Genesis within the scope of the design development may be used by the Customer exclusively for the production of moulds and tools for the manufacture of the contractual product developed by Genesis, unless otherwise agreed in the individual case.

(7) Furthermore, the Client is not entitled to register the final design as an industrial property right (patent, utility model, design or trademark). Any industrial property rights registered by Genesis, whether or not for the purpose of meeting deadlines, shall be transferred to the Client upon the granting of the rights pursuant to para. 1.

(8) The contractually agreed rights of use shall not pass to the Client until the project has been completed and the contractually agreed fixed remuneration (plus expenses and costs) has been paid in full. In the event of premature termination of the contract, the rights of use shall remain with Genesis Design.

(9) Any granting of rights of use to the Client that deviates from the above provisions must be expressly agreed and remunerated.

(10) If Genesis Design has already published the final design before conclusion of the contract, there is no obligation to delete or remove it, even if exclusive rights of use are granted to the Client.

(11) Genesis shall conclude valid and sufficient agreements with its employees or shall take all necessary measures which ensure the transfer to Genesis of the work results created by this group of persons. Genesis shall in particular make unrestricted use of the patentable and/or utility modelable inventions created by its employees.

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§ 7 Ownership of performance results, duty to return

(1) Only rights of use in accordance with § 6 shall be granted to the results of the performance, but no rights of ownership shall be transferred.

(2) Any originals of final Designs in physical or digital form shall, as soon as the Client no longer has a compelling need for them, be returned to Genesis Design undamaged, retransferred or destroyed, at Genesis Design's option.

§ 8 Naming rights, free copy

(1) Genesis Design may demand that the products for which the final design has been developed be marked with its name, logo or other customary business designations. It must agree on the specific form with the Client.

(2) Genesis Design is further entitled to mention the name and logo of the Client in its advertising as a reference in a manner customary in the industry.

(3) The Client shall provide Genesis Design with a free sample copy of the commercially produced products that embody the final design. If the material costs for this exceed an amount of EUR 500.00, the Client shall provide Genesis Design with the specimen copy at the work delivery price less EUR 500.00.

§ 9 Remuneration and terms of payment

(1) The scope and composition of the remuneration owed shall be determined by the agreement reached between the parties in the individual case. Genesis Design is entitled to invoice according to service phases and to demand reasonable advance payments. Amounts quoted by Genesis Design are net amounts payable plus the statutory value added tax.

(2) If a royalty is payable, that royalty shall be based on the net trade selling price only. The trade selling price (or trade selling price) is the price at which a manufacturer or supplier sells its products to retailers.

(2) Expenses for ancillary technical costs such as for special materials, the production of photos, models, prototypes, etc., shall be reimbursed separately.

(3) Costs and expenses for travel undertaken in connection with the assignment and agreed with the client shall be reimbursed by the client if the travel (shortest route and one-way) is to a location more than 300 km away. Travel days shall be reimbursed in accordance with the agreed daily fee, accommodation costs in the proven amount and expenses in accordance with the maximum tax rates. Travel by train is reimbursed at the cost of a second class ticket, air travel at the cost of a business class ticket and car travel at € 0.8 for each kilometre travelled.

(4) Invoices are due for payment within 14 days of receipt.

§ 10 Liability

(1) Genesis Design will ensure to the best of its knowledge and belief that the final design does not infringe third party property rights and competition law. No warranty beyond this is given.

(2) Genesis Design is not liable for the protectability of the final design and/or the risk of technical manufacturability, functional reliability or economic usability of a product manufactured on the basis of the design. Genesis Design is further not liable for defects in data carriers, files and data that occur during data transport to the system of the Client or its agent, except in cases of intent and gross negligence.

§ 11 Termination

(1) The Client may terminate the contract at any time until the design services have been rendered in full (e.g. in the event of a project stop) without stating reasons.

(2) In addition, both parties may terminate the contract extraordinarily at any time for good cause.

(3) Cancellations must be made in writing (including scanned and/or by e-mail) to be effective.

(4) In the event of termination, or in the event of a project stop, no rights of use shall pass to the Client, neither to partial results, nor to final results of the services already rendered. All performance results in the possession of the Client shall be returned to Genesis Design without delay, or, if they are available to the Client in digital form, they shall be destroyed/deleted and the destruction/deletion shall be assured to Genesis Design in writing.

§ 12 Cancellation costs

(1) In the event of termination pursuant to § 12(1), Genesis Design shall receive, at its own option

(a) the pro rata remuneration for services rendered up to the date of termination plus reimbursement for expenses incurred up to the said date; or

(b) a lump sum of

- 25% of the agreed remuneration if notice of termination is given at least 4 weeks before the agreed start of the project, unless the Client proves that Genesis Design is entitled to a lesser amount, taking into account other income made possible by the termination and expenses saved;
- 50% of the agreed remuneration if the termination takes place after the aforementioned date, unless the Client proves that Genesis Design has a lesser claim, taking into account other acquisition made possible by the termination and expenses saved.

§ 13 Confidentiality, duties of disclosure and deletion

(1) The parties shall treat all information of the other party which comes to their knowledge in the course of their cooperation and which is not intended to be passed on to third parties as strictly confidential beyond the end of the contract and shall use it only for contractual purposes.

(2) After the end of the contract, documents and information of the respective other party which are not required for contractual purposes shall be handed over to the respective other party at the expense and at the discretion of the respective other party or destroyed/deleted.

§ 14 Customer protection - Competition

(1) The Client shall not employ or directly commission employees or former employees of Genesis Design. This applies for the duration of the contractual relationship and for a period of three years after the end of the cooperation (date of the last invoice).

(2) Genesis Design is not subject to any restriction whatsoever in working on the same or similar projects of different Clients.

§ 15 Final provisions

(1) There are no verbal ancillary agreements. Amendments or supplements to the respective agreements made must be in writing in order to be effective.

(2) The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany.

(3) The place of performance and jurisdiction for all disputes arising from the contractual relationship is Munich.