

# General Terms and Conditions of Contract for Media Design

medinix Information Systems GmbH provides its contractually agreed services and deliveries (such as the development and design of logos and websites; development, design and delivery of business papers, image and project brochures, etc.) based on the following contractual conditions and the provisions set down in the order confirmation in question.

If the order confirmation in question and these contractual conditions contradict one another, the provisions set down in the order confirmation shall take precedence over the provisions set down in these contractual conditions.



## 1. General information, scope of validity

(1) Our contractual conditions and the order confirmation in question shall apply exclusively; we shall not recognise any of the Client's terms and conditions that conflict with or deviate from our contractual conditions unless we have expressly agreed to the validity of the same in writing. Our contractual conditions shall also apply even if we carry out the delivery to the Client without reservation in the knowledge that the Client's terms and conditions conflict with or deviate from our contractual conditions.

(2) All agreements that are made between ourselves and the Client for the purpose of executing the contractually agreed services and deliveries must be recorded in text form (§ 126 (b) of the German Civil Code – by email, for example).

(3) Our contractual conditions shall only apply to companies under § 310 (1) of the German Civil Code.

## 2. Quotation, quotation documents, cost estimates

(1) If the purchase order is to be qualified as a quotation in accordance with § 145 of the German Civil Code, we can accept it within two weeks.

(2) We reserve all rights of ownership, rights of use, industrial property rights and copyrights to all illustrations, drawings, calculations and other documents that we make accessible to the Client in the context of preparing quotations or cost estimates. The Client requires our express written consent before passing them on to third parties.

(3) Cost estimates are binding if the client order is placed within 14 days.

## 3. Prices, terms of payment, offsetting, right of retention

(1) The remuneration owed results from the order confirmation. Our prices determined therein are net. In other words, our prices do not include value-added tax at the statutory rate. It shall be shown separately on the invoice at the statutory rate on the day of invoicing.

(2) The deduction of a discount requires a special written agreement.

(3) Provided nothing different is stated in our order confirmation, the agreed remuneration shall be due for payment within 30 days of the invoice date. The legal regulations concerning the consequences of default of payment shall apply.

(4) The Client shall only be entitled to offsetting rights if their counter-claims have been legally established, are undisputed or have been recognised by us. Furthermore, they shall only be entitled to exercise a right of retention insofar as their counter-claim is based on the same contractual relationship.



## 4. Delivery time / date, default of acceptance, delay in delivery

(1) Delivery times or dates require written agreement (in accordance with § 126 of the German Civil Code). The beginning of our stated delivery time requires all design-related and technical questions to be clarified.

(2) Compliance with our delivery obligation further requires the timely and proper fulfilment of the Client's obligations, particularly the supply of all documents and templates, images, design elements and information to be provided by the Client, any necessary third-party approvals and releases or plans, and the Client's compliance with the agreed terms of payment. We reserve the right to the defence of non-performance of the contract. If the prerequisites are not fulfilled in good time, the delivery period shall be extended appropriately for us; this regulation shall not apply if we are responsible for the delay.

(3) The agreed delivery time shall be interrupted in each case for the duration of time that the Client spends examining all of our designs. The interruption shall be calculated from the day that the Client is provided with the designs until the end of the day that we receive their opinion on (inclusive).

(4) If the Client requests that changes that influence the production time be made to the order after it has been placed, the delivery time shall be extended accordingly.

(5) In the event of a delay in delivery that we are responsible for, the Client shall only be entitled to exercise the rights that they are legally entitled to after setting a reasonable grace period of at least two weeks.

In this case, we shall be liable in accordance with the statutory provisions if the delay in delivery is due to an intentional or grossly negligent breach of contract that we are responsible for. Any fault on the part of our representatives or vicarious agents shall be attributed to us. If the delay in delivery is due to a grossly negligent breach of contract that we are responsible for, our liability for damages shall be limited to the foreseeable, typically occurring damage.

(6) If the Client is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage that we incur in this respect, including any additional expenses. We reserve the right to assert further claims or rights.

(7) Insofar as the prerequisites set down in (6) are met, the risk of accidental loss or accidental deterioration of our deliveries and services shall pass to the Client at the point in time at which the Client is in default of acceptance or debtor's delay.

(8) We shall be liable in accordance with the statutory provisions insofar as the order is a firm deal under § 286 (2) (4) of the German Civil Code or § 376 of the German Commercial Code. We shall also be liable in accordance with the statutory provisions if, as a consequence of a delay in delivery that we are responsible for, the Client is entitled to claim that their interest in the further performance of the contract has ceased.



## 5. Reservation of ownership

1) We reserve all rights of ownership, rights of use, industrial property rights and copyrights to our deliveries and services until we have received all payments arising from the Client's orders. If the Client acts in a manner that is in breach of the contract – particularly in the event of default of payment – we shall be entitled to take back our deliveries and services. Us taking back the deliveries and services shall constitute withdrawal from the contract. Once we have taken back the goods and services, we shall be entitled to utilise them elsewhere; the proceeds of such utilisation shall be offset against the Client's liabilities – less reasonable utilisation costs.

(2) In the event of seizure or other interventions by third parties, the Client must inform us immediately and in writing so that we can take legal action in accordance with § 771 of the German Code of Civil Procedure. Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of a lawsuit in accordance with § 771 of the German Code of Civil Procedure, the Client shall be liable for the loss that we incur.

(3) If the order relates to deliveries and services that are intended from the outset to be passed on by our Client to their own customers or third parties, our Client shall be entitled to resell the agreed deliveries and services in the ordinary course of business; however, they hereby assign to us all claims in the amount of the final invoice amount (including VAT) of our claim that accrue to them from resale against their customers or third parties, irrespective of whether the object of sale has been resold without or after processing. The Client remains authorised to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we undertake not to collect the claim as long as the Client meets their payment obligations from the proceeds received, does not fall into arrears and, in particular, does not file a petition for the institution of insolvency proceedings, protective shield proceedings or self-administration, or does not suspend their payments. But if this is the case, we can demand that the Client inform us of the assigned claims and their debtors, provide all the information necessary for collection, hand over the relevant documents and notify the debtors (third parties) of the assignment.

(4) We undertake to release the securities that we are entitled to at the Client's request to the extent that the utilisable value of our securities exceeds the claims to be secured by more than 10%; the selection of the securities to be released shall be at our discretion.

## 6. Acceptance / changes / corrections

(1) We shall send the Client the finished designs. The Client must check them and notify us of any objections in text form immediately after receipt (§ 126 (b) of the German Civil Code). If no objections are raised, the Client must immediately notify us in text form that our deliveries and services have been performed in accordance with the contract (acceptance). Corrections are included in the agreed remuneration.



- (2) If the Client wishes to change their specifications before completion of and their acceptance of the order, we shall comply with this change request insofar as it is reasonable in the context of our operational efficiency and that doing so does not put the original order at risk.
- (3) Every change request must be made in writing. A claim to implementation of the change shall only exist if we have agreed to the change request after examining it beforehand.
- (4) Change requests can no longer be considered once the order has been accepted.

## 7. Copyright

(1) What rights we grant the Client to our deliveries and services is determined by the agreements made with the Client in the order. Depending on the order, we can grant the Client a right of reproduction, a right of distribution and a right of issuance. Furthermore, we can only grant these rights to individuals. In any case, we shall grant the Client a simple right of use only. The extent to which this right of use is limited in terms of space, time and content shall also result from the agreements made in the order. We reserve the right to demand that copyrighted deliveries and services be provided with a copyright designation and to specify what designation (e.g: 'Copyright') is to be used. Any editing or redesigning of our copyrighted services, both in the original and in the reproduction, may only be published or used with our consent.

(2) If we use texts, images or other copyrighted works for our deliveries and services in accordance with the Client's specifications (provisions), the Client undertakes to make these provisions available to us exclusively free from third-party rights. If the provision is not free from third-party rights, the Client shall indemnify us on first request against all third-party claims against us – including the legal costs actually incurred.

(3) If we use texts, images or other copyrighted works belonging to third parties for our deliveries and services, at the latest on transmission of our completed designs we shall inform the Client of what exploitation rights the third party has granted to the copyright works used and whether these works are to be provided with a copyright designation and what designation is to be used. The Client undertakes to observe all third-party rights to the copyrighted works that we use. If this does not happen, and if claims are made against us by third parties due to their rights being infringed, the Client shall indemnify us on first request against all claims that the third parties make against us – including the legal costs actually incurred.

## 8. Services not provided in accordance with the contract and liability

(1) If we do not provide the agreed deliveries and services in accordance with the contract, and if the Client has given immediate notice of this ((6) (1)), the statutory provisions shall apply in the Client's favour with the following restrictions.



(2) We shall be liable in accordance with the statutory provisions if the Client asserts claims for damages based on intent or gross negligence, including intent or gross negligence on the part of our representatives or vicarious agents. Insofar as we are not accused of intentionally breaching the contract, the liability for damages shall, however, be limited to the foreseeable, typically occurring damage. Compensation for lost profit and consequential damage is excluded – unless it is based on our delay in delivery in accordance with (4) above.

(3) We shall be liable in accordance with the statutory provisions insofar as we culpably violate an essential contractual obligation; in this case, too, the liability for damages shall be limited to the foreseeable, typically occurring damage.

An essential contractual obligation exists if the breach of duty refers to an obligation on the fulfilment of which the Client has relied and was entitled to rely.

(4) Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability under the German Product Liability Act.

(5) Unless regulated otherwise above, liability is excluded; this applies regardless of the legal nature of the asserted claim. This applies particularly to claims for damages arising from breaches of duty in the conclusion of the contract, other breaches of duty or tortious claims for compensation for property damage in accordance with § 823 of the German Civil Code. This limitation shall also apply if the Client demands compensation for useless expenses instead of a claim for compensation for the damage instead of performance.

(6) Insofar as liability for damages against us is excluded or limited, this shall also apply with regard to the personal liability for damages on the part of our employees, workers, staff, representatives and vicarious agents.

## 9. Data protection, the Client's consent

(1) In the context of the contractually agreed services and deliveries, data transmitted by the Client shall be processed and stored using a computer system.

(2) The Client expressly agrees to the collection, processing and use of their personal data. Personal data shall be treated confidentially. The Client may revoke their consent to the collection, processing and use of personal data at any time, also with effect for the future.

(3) We collect personal data only to the extent that and for as long as we need the same to provide our services. We do not pass personal data on to third parties. The only exceptions to this rule are our service partners, insofar as we need them to provide our contractually agreed services and deliveries. The extent of data transfer is limited to the absolute minimum.

(4) The Client has a right of access, a right of rectification, a right of erasure and a right to block with respect to the data stored about them at any time.



## 10. Personal data processing on the Client's behalf

(1) If personal data is provided by the Client and processed or used on their behalf, the Client shall be responsible for compliance with the regulations set down in the German Federal Data Protection Act and other regulations on data protection.

(2) We shall only process and use data in the context of the Client's instructions. If we believe that an instruction issued by the Client violates the German Federal Data Protection Act or other regulations on data protection, we shall inform the Client to this effect immediately.

## 11. Force majeure

If we are unable to provide our deliveries and services due to force majeure – particularly due to shortages of raw materials, energy and labour, industrial disputes, serious transport disruptions, operational disruptions that are not attributable to us or are unforeseeable, official measures that are not attributable to us, pandemics or other events that we are not responsible for – we shall not be obligated to provide our services for as long as the impediment to performance persists and we have informed the Client immediately of this circumstance. In the event that the impediment lasts for longer than four months, we have the right to withdraw from the contract, provided that the fulfilment of the contract is no longer of interest to us as a result of the impediment and we have not assumed the procurement or manufacturing risk. The Client shall be informed at their request once the deadline has elapsed whether we shall withdraw from the contract or fulfil our performance obligations within a reasonable period of time.

## 12. Place of jurisdiction, place of performance, contractual language

(1) If the Client is a merchant, the place of jurisdiction is our registered office. However, we are also entitled to bring action against the Client at a court in their place of residence.

(2) The law of the Federal Republic of Germany shall apply; the validity of the UN Convention on Contracts for the International Sale of Goods is excluded. The contractual language is German. All agreements made between us and the Client shall be interpreted only in accordance with German law. Insofar as we provide the Client with these contractual conditions, quotations, order confirmations or other agreements made in another language, this serves only to inform the Client and does not form part of the legal transaction. If there are discrepancies between the German version of the agreement and a version in another language, only the German version shall therefore apply.

(3) Unless stated otherwise in the order confirmation, our place of business is the place of performance.

