



## **GENERAL TERMS AND CONDITIONS OF VON HELDEN UND GESTALTEN GMBH**

**In case of discrepancies, the German version of the Terms and Conditions shall prevail.**

### **1 Scope, Subject Matter of the Contract**

- 1.1 These General Terms and Conditions ("GTC") apply exclusively to contracts concluded by VON HELDEN UND GESTALTEN GmbH ("VHUG") with entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB), legal entities under public law, or special funds under public law. VHUG does not enter into contracts with consumers.
- 1.2 These GTC form an integral part of every contract concluded between VHUG and the Client, unless expressly agreed otherwise in text form (e.g. by email). Individual agreements take precedence over these GTC. Subject to proof to the contrary, VHUG's confirmation in text form shall be decisive for the content of such individual agreements.
- 1.3 VHUG's GTC apply exclusively. Any deviating or conflicting general terms and conditions of the Client shall not become part of the contract unless VHUG expressly agrees to their validity. This also applies if the Client has used its own terms and conditions in the past or refers to them during an ongoing contractual relationship and VHUG does not expressly object to their inclusion again.

### **2 Conclusion of Contract**

- 2.1 Cost estimates issued by VHUG are subject to change and non-binding. Offers submitted by the Client on the basis of such estimates constitute binding contractual offers. The contract shall be concluded upon VHUG's acceptance of the Client's offer. VHUG may accept the offer within 14 days. Acceptance shall be made in text form (by post, fax or email).
- 2.2 If VHUG accepts the Client's offer only in an amended form, this shall constitute a new offer to conclude a contract in accordance with the amended terms. The Client may accept this offer within 14 days. Silence shall not be deemed acceptance.
- 2.3 If delivery or performance is intended for third parties, the Client shall remain VHUG's sole contractual partner. This also applies to the Client's obligations, in particular the obligation to pay.

### **3 Performance of Services**

- 3.1 VHUG is entitled to have the contractually agreed services performed in whole or in part by domestic or foreign subsidiaries, partners or other third parties (subcontractors). VHUG shall be liable for the performance of such subcontractors as for its own vicarious agents in accordance with Section 278 BGB and shall select them with due care. Where services are clearly designated as third-party services provided in the name and for the account of the Client, VHUG shall only be liable for culpable selection.
- 3.2 Services performed at the Client's request beyond the contractually agreed scope of services shall be remunerated by the Client based on documented time spent at VHUG's currently applicable hourly rates.
- 3.3 VHUG shall take the Client's specifications and wishes into account; however, the creative and technical implementation shall be at VHUG's discretion. Requests for changes after written approval of the final designs or after the start of production shall result in additional work, which shall be borne by the Client.
- 3.4 The Client is obliged to review VHUG's requests for changes or additions to the contractually agreed services within five working days in text form and to confirm or reject them in writing. If no response is received within this period, the Client shall be in default of its cooperation obligation within the meaning of Section 286 BGB. Failure to respond shall not constitute consent to contractual changes. VHUG is entitled to invoice delays and additional expenses caused by the default at the agreed hourly rates. VHUG shall document requests and missed deadlines in order to ensure traceability of invoicing. Billing shall be made for demonstrably incurred expenses pursuant to Section 280 BGB.

### **4 Client's Obligations to Cooperate**

- 4.1 The Client is obliged to provide VHUG with all data, information, content and templates required for performance of the contract in full, in the agreed format and quality, and in a timely manner. The Client warrants that it holds the necessary rights of use and that the materials provided are free of third-party rights and technically flawless. The Client shall indemnify VHUG against all third-party claims in this respect, including the costs of reasonable legal defence, insofar as such claims are undisputed, legally established by final judgment, or acknowledged by VHUG, and provided that VHUG did not contribute to the infringement.
- 4.2 The Client grants VHUG the rights of use required for performance of the contract in relation to the materials provided.
- 4.3 The Client shall cooperate in the performance of the contract, by providing timely approvals and feedback on submitted drafts, interim results and deliverables. Upon contractual completion, the Client shall, at VHUG's request, accept the service within a reasonable period.
- 4.4 If the Client fails to cooperate, does not cooperate in a timely manner, or does not cooperate in the agreed form, the agreed performance deadlines shall be extended by the duration of the delay plus a reasonable start-up period. Additional work, downtime and idle times incurred by VHUG as a result shall be charged at the agreed hourly rates.

At VHUG's request, the Client shall confirm fulfilment of its cooperation acts in text form. If cooperation is not provided or is delayed, it shall be rebuttably presumed that any delay or additional expense incurred is attributable to the Client's default in cooperation.

### **5 Delivery, Delivery Deadlines**

- 5.1 VHUG's performance obligation shall be deemed fulfilled as soon as the agreed work results have been transmitted to the Client or made available for collection or download/access. If transmission is made by email or by providing a download link, performance shall be deemed rendered upon dispatch or provision. The risk of accidental loss or accidental deterioration shall pass to the Client as soon as the work results leave VHUG's sphere or are made available for retrieval on a server designated by VHUG.

- 5.2 Compliance with agreed deadlines requires that the Client fulfils its contractual cooperation obligations in a timely, complete and proper manner. If necessary cooperation is not provided or is delayed, delivery and performance deadlines shall be extended accordingly. Deadlines shall generally not be considered fixed deadlines unless expressly confirmed as such by VHUG.
- 5.3 VHUG shall only be obliged to perform if VHUG itself is supplied correctly, on time and adequately by its suppliers and has concluded a congruent covering transaction with them. If VHUG is not supplied through no fault of its own despite such a covering transaction, and this was not foreseeable at the time of conclusion of the contract, VHUG shall be entitled to withdraw from the contract. VHUG shall inform the Client without undue delay; any consideration already received shall be refunded in this case.
- 5.4 VHUG is entitled to make reasonable partial deliveries and partial services, provided these can be meaningfully used by the Client within the purpose of the contract.

## **6 Prices**

- 6.1 All stated prices are net prices plus the applicable statutory VAT.
- 6.2 The agreed prices apply to the services specified in the service description. Any additional services such as shipping, transport, travel expenses or other expenditures shall be charged separately unless otherwise agreed.
- 6.3 The scope of services includes one content correction. Any further revision or adjustment shall be invoiced separately to the Client at the currently applicable hourly rates.
- 6.4 If no remuneration has been expressly agreed for certain services of VHUG or their use, remuneration shall be determined in accordance with the collective agreement applicable at the time of conclusion of the contract for design services (AGD/SDSt). VHUG shall document the calculation to ensure transparent invoicing.

## **7 Third-Party Services, Travel Expenses and Other Outlays**

- 7.1 Third-party services and other outlays
- VHUG is entitled to commission third-party services required for performance of the contract in the name and for the account of the Client. By placing the order, the Client grants VHUG the power of attorney required for this purpose. For coordination, supervision and handling of such third-party services, VHUG shall charge a coordination fee of 15% of the respective net order value.
- 7.2 Costs for packaging, shipping and insurance shall be paid by the Client in addition. The same applies to any customs duties for deliveries to third countries outside the EU. If nothing is agreed regarding the above costs, the actual expenses shall be reimbursed.
- 7.3 Travel expenses
- Coordination meetings are primarily conducted digitally in the interest of sustainability.
- If meetings are project-related or expressly requested by the Client and require deployment outside VHUG's premises, VHUG shall invoice the resulting travel expenses upon proof as follows:
- For on-site appointments within the city area of Stuttgart, travel costs, expenses and allowances are already included in the offered fees and shall not be charged separately.
  - For assignments outside Stuttgart, travel, accommodation and subsistence costs shall be billed according to actual expenses in accordance with the applicable maximum tax rates for allowances. Travel by car shall be charged at EUR 0.50 per kilometre travelled. Travel by train, plane, taxi or public transport shall be billed at Economy Class / 2nd class rates.
- VHUG undertakes to make economically reasonable travel decisions. Travel whose costs are not in reasonable proportion to the total project fee shall only be undertaken with the Client's prior approval.

- 7.4 Travel time shall be considered billable service time and shall be charged at 50% of VHUG's respective applicable hourly rate.
- 7.5 Any cash discounts, rebates or other reductions shall not apply to third-party services, travel expenses or other outlays incurred in connection with the project.
- Where VHUG is obliged to pay artists' social security contributions (Künstlersozialabgabe) or other levies, such expenses shall be borne by the Client.

## **8 Payment Terms**

- 8.1 Upon commissioning, 25% of the net order value shall be invoiced as the first instalment ("Invoice 1. Step"). Further invoicing shall be made in accordance with project progress.
- 8.2 The agreed remuneration shall be due upon acceptance of the work or upon deemed acceptance. Services billed on a time-and-material basis shall be due in accordance with the performance status/project progress.
- 8.3 VHUG is entitled to request advance payments for separately listed items. The same applies to third-party services to be commissioned, in the amount of the respective order value. Instalment invoices and advance payment invoices shall become due upon receipt by the Client.
- 8.4 All invoices are payable within 10 days from the invoice date. Upon expiry of this period, the Client shall automatically be in default without the need for a reminder. The consequences of default are governed by statutory provisions. Unjustified deductions from invoice amounts shall be reclaimed.
- 8.5 VHUG is entitled to transmit invoices electronically, provided they comply with statutory requirements.
- 8.6 The Client may exercise a right of retention only if and insofar as its counterclaim arises from the same contractual relationship. Set-off is permitted only against undisputed claims, claims established by final judgment, or claims acknowledged by VHUG.
- 8.7 Until full payment has been made, VHUG retains title to all work results.
- 8.8 If the Client is more than 14 days in arrears with a payment, VHUG is entitled to suspend further performance until all outstanding amounts have been settled in full. Any agreed payment schedules form a binding part of the contract. Agreed delivery/performance deadlines shall be extended accordingly for the duration of the suspension. VHUG shall not be liable for delays resulting from the suspension of work due to late payment.
- 8.9 If the Client terminates a works contract or a contract for work and materials before VHUG has fully performed, the agreed remuneration shall become due immediately. From this remuneration, VHUG's expenses saved as a result of termination shall be deducted. The amount of saved expenses shall be determined based on the performance status established at that time and shall be documented by VHUG and invoiced. Both parties are entitled to prove to the other party that the actual saved or incurred expenses are higher or lower; in this case, the demonstrably saved amount shall be decisive.

## **9 Rights of Use and Exploitation**

- 9.1 VHUG shall remain the legal owner of the source code, source text, documentation and all other development resources, unless expressly agreed otherwise in writing. Upon full payment of the agreed remuneration, VHUG grants the Client the right of use required to achieve the purpose of the contract in relation to the work results. Unless otherwise agreed, this is a non-exclusive, non-transferable and non-sublicensable right of use, limited territorially to Germany and in content to the contractual purpose, and granted for an unlimited period. Any further rights, in particular rights to edit, sublicense or transfer to third parties, require a separate written agreement and additional remuneration. Subsequent modifications of the source code by the Client require VHUG's prior written consent and are generally subject to additional remuneration.
- 9.2 The granting of the right of use is subject to the suspensive condition of full payment of the contractually agreed remuneration, including remuneration for subsequent extensions of the scope of services.

Furthermore, VHUG must be credited as the author on all copies and in other forms of use (e.g. making available to the public), insofar as this is customary in the industry.

- 9.3 The Client has no claim to the release of raw data generated in connection with performance of the contract, such as templates, sketches, files, source codes, etc. If the Client wishes to obtain such materials, this must be agreed separately and remunerated. VHUG is not obliged to store such materials.
- 9.4 If rights of third parties must be acquired for services provided by VHUG, VHUG shall notify the Client accordingly. Any remuneration for such rights shall be borne by the Client.
- 9.5 Any use of works and services presented as part of a presentation requires VHUG's prior consent. This also applies to use in modified or edited form and to the use of ideas underlying VHUG's works and services. Acceptance of a presentation fee does not constitute such consent.
- 9.6 The Client undertakes to treat the source code, source text, documentation and all other development resources as confidential and to protect them from unauthorised access by third parties. The Client is prohibited from passing on or reproducing them unless VHUG has given prior written consent.
- 9.7 Termination of the contractual relationship shall not affect rights of use already granted to the Client and fully paid for, unless expressly agreed otherwise in writing.

## **10 Acceptance, Warranty**

- 10.1 The Client is obliged to inspect work results delivered by VHUG without undue delay for obvious defects. Obvious defects must be notified to VHUG in writing within one week of delivery. Hidden defects that could not be detected by immediate careful inspection must be reported in writing or in text form within a reasonable period after discovery. Timely dispatch of the notice of defects is sufficient to meet the deadlines. Statutory provisions on commercial duties of inspection and notification of defects remain unaffected.
- 10.2 For websites, software projects or digital applications, acceptance shall be deemed to have taken place at the latest upon going live or productive use. If no written notice of defects is received within seven days after going live, the service shall be deemed accepted by implication.
- 10.3 By approving works, the Client assumes responsibility for the technical and functional correctness of the product, text and image. For approved works, warranty claims for defects that were recognisable during the approval process are excluded. VHUG shall only be liable for the conformity of the final product with the template.
- 10.4 V HUG is entitled to remedy defects within a reasonable period by up to three attempts at rectification, provided the service has defects that are not insignificant. Only after unsuccessful expiry of these rectification attempts may the Client demand a reduction in remuneration or withdraw from the contract. The obligation to remedy defects shall not apply if defects are attributable to improper use, subsequent changes by the Client or third parties, external technical influences or software/system changes for which VHUG is not responsible.
- 10.5 Defects in individual partial services do not entitle the Client to object to the entire service unless the partial service is of no interest to the Client. Third-party services commissioned by VHUG in the name of the Client for performance of the contract are merely arranged by VHUG; VHUG assumes no warranty for their proper execution.
- 10.6 VHUG provides no warranty for achieving specific search engine rankings unless this is expressly included in the scope of services and agreed in writing.
- 10.7 Warranty claims shall become time-barred one year after acceptance of the work results, unless VHUG acted fraudulently or the claims relate to damages resulting from injury to life, body or health, or claims under the Product Liability Act.

- 10.8 Delivery and completion dates are binding only if expressly confirmed by VHUG in writing as fixed deadlines. In this case, compliance with the deadline constitutes a material contractual obligation (cardinal obligation). Otherwise, the provisions in Clause 5 shall apply to deadlines and time limits. Liability for delays is excluded unless such delays are due to intent or gross negligence; the limitations of liability in Clause 12 remain unaffected.

## **11 Data Protection**

- 11.1 VHUG collects, processes and stores the Client's personal data exclusively for the purpose of performing the contract and in compliance with German data protection law and the GDPR. VHUG shall take appropriate technical and organisational measures to ensure data security.
- 11.2 The Client is responsible for ensuring that all third-party data transmitted to VHUG has been lawfully collected, processed and used. This includes, in particular, compliance with the provisions of the GDPR and other data protection regulations.
- 11.3 If VHUG processes personal data as a processor within the meaning of Article 28 GDPR, the Client is legally obliged to commission VHUG separately for this purpose. VHUG may, upon request but without obligation, provide a template for data processing agreements. In any event, the Client remains solely responsible for the lawfulness of processing, even if no separate commissioning takes place and VHUG nevertheless processes the data.
- 11.4 The Client shall indemnify VHUG against all third-party claims, damages, costs and expenses, including reasonable legal defence costs, arising from unlawful collection, processing or use of third-party personal data by the Client, insofar as such claims are undisputed, legally established by final judgment, or acknowledged by VHUG.

## **12 Limitation of Liability**

- 12.1 VHUG shall be liable without limitation for intent, gross negligence, and for damages arising from injury to life, body or health.
- 12.2 In cases of slight negligence, VHUG shall only be liable for breach of material contractual obligations (cardinal obligations). In this case, liability shall be limited to the typical, foreseeable damage and shall amount to a maximum of 100% of the net contract value, but no more than EUR 20,000 per claim.
- 12.3 Liability for indirect damages, loss of profit or consequential damages is excluded unless such damages are due to intent or gross negligence or relate to injury to life, body or health.
- 12.4 To the extent permitted by law, VHUG assumes no liability for defects and damages resulting from improper use or changes to the source code, source text or other resources by the Client or third parties.
- 12.5 Limitations of liability shall not apply to claims arising from culpa in contrahendo, under the Product Liability Act, in cases of fraudulent concealment of a defect, or in the event of the assumption of guarantees. If guarantees are granted by third parties (e.g. manufacturer warranties), VHUG shall not be liable for these.
- 12.6 VHUG shall not be liable for accidental damage occurring during default if the damage would have occurred even if performance had been rendered on time.
- 12.7 To the extent VHUG's liability is excluded or limited, this shall also apply to the personal liability of its employees, workers, staff, representatives and vicarious agents.
- 12.8 The Client shall be liable for all content provided by it (texts, images, graphics, videos, trademarks, logos, etc.) and shall indemnify VHUG against all third-party claims, damages, costs and expenses, including reasonable legal defence costs. The Client warrants that it holds the necessary rights to such materials.

## **13 Handling of Unlawful Content**

- 13.1 The Client bears sole responsibility for all content on its website, including texts, images and other digital materials, regardless of whether VHUG acts as host or service provider. The Client warrants that the content provided is lawful and does not infringe third-party rights. This does not apply to content created by VHUG itself.
- 13.2 If VHUG becomes aware of or obtains knowledge of unlawful content, or if there are concrete indications of an infringement, VHUG shall be entitled to block or remove such content without prior notice to the extent required by applicable law, in particular pursuant to the Digital Services Act (DSA). VHUG has no general obligation to monitor or actively review the legality of content.
- 13.3 The Client undertakes to support VHUG without undue delay and comprehensively in clarifying suspected cases. The Client shall also indemnify VHUG against all third-party claims, costs, damages and expenses, including reasonable legal defence costs, asserted in connection with website content, insofar as such claims are undisputed, legally established by final judgment, or acknowledged by VHUG.

## **14 Rights of Use and Exploitation (Self-Promotion, Presentations)**

- 14.1 VHUG is entitled to use the works developed and published for the Client for self-promotional purposes. This includes presentation on websites, in presentations and on social media, as well as attribution as the author. This also includes participation in creative and agency competitions using such work results. For printed matter or comparable reproductions, the Client shall provide VHUG with at least two specimen copies free of charge and grants VHUG all necessary rights to the contractual work results for this purpose.
- 14.2 With regard to rejected designs, ideas and services such as concepts, sketches, illustrations, drafts and the like as well as photos and films, VHUG reserves the right to use and exploit them otherwise.
- 14.3 Ideas, concepts, texts, sketches, layouts or other work results presented by VHUG in the context of presentations, offers or pitches are protected by copyright and may not be used or disclosed by the Client without VHUG's written consent — including in modified form. In the event of unauthorised use or disclosure, the Client shall be obliged to pay an appropriate contractual penalty, the amount of which shall be determined by VHUG at its reasonable discretion and may be reviewed by the competent court in the event of dispute. Assertion of further damages remains reserved; any contractual penalty forfeited shall be offset against such damages.
- 14.4 Duty to mitigate damage: The Client shall take all reasonable steps to prevent or mitigate any damage or impairment arising from or in connection with the services provided by VHUG. The Client shall comply with any corresponding instructions from VHUG without undue delay.

## **15 Final Provisions**

- 15.1 The law of the Federal Republic of Germany shall apply, excluding conflict of laws provisions, insofar as this does not concern mandatory law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 15.2 If the Client is a merchant, a legal entity under public law or a special fund under public law, the place of performance and exclusive place of jurisdiction for all disputes arising from and in connection with this contractual relationship shall be Stuttgart. Mandatory statutory places of jurisdiction remain unaffected. This applies without prejudice to the jurisdiction of courts for interim legal protection or enforcement proceedings.
- 15.3 The language of the contract is German.
- 15.4 Should individually provisions of these General Terms and Conditions be or become wholly or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions.