



## **TERMS & CONDITIONS OF VON HELDEN UND GESTALTEN GMBH**

### **1 Scope of the Terms & Conditions, Subject Matter of the Contract**

- 1.1 These terms and conditions (Terms) apply to all business transactions between VON HELDEN UND GESTALTEN GMBH (hereinafter referred to as "VHUG") and traders (*Unternehmer*) as defined in German Civil Code (BGB) § 14 regarding the performance of work (*Werkleistungen*), the performance of work including the provision of materials (*Werklieferungsleistungen*) and the provision of services (*Dienstleistungen*).
- 1.2 These Terms are an integral part of every contract concluded between VHUG and the customer unless otherwise stipulated in writing for a specific case.
- 1.3 Our Terms apply exclusively to the entire contractual relationship with the customer concerning the subject matter of the contract. Any terms and conditions of the customer's that conflict with or deviate from these Terms do not become an integral part of the contract unless VHUG expressly agrees thereto. The foregoing applies even if the customer's terms and conditions have been agreed upon in connection with a previous order or if the customer's terms and conditions are referenced during the execution of the order and VHUG does not expressly object to their inclusion again.

### **2 Formation of Contract**

- 2.1 Our cost estimates are subject to change and non-binding. The contract is formed when VHUG accepts an offer submitted by the customer based on the cost estimate. The offer must be accepted within 14 days. Acceptance is declared in text form by mail, fax or email.
- 2.2 If VHUG only accepts the offer in a modified form, this will be understood as a new offer to form a contract that has been modified accordingly. In this case, the customer has the option to accept the offer within 14 days.
- 2.3 The customer is the contracting party even if delivery is to be made to third parties.
- 2.4 VHUG may procure any necessary third-party services on behalf of and for the account of the customer. VHUG is granted a corresponding power of attorney when the order is placed. VHUG charges management costs of 15% of the relevant net order value for supervising and handling third-party work.

### **3 Provision of Services, Third-Party Services**

- 3.1 The individual contract specifies the nature, content and scope of the services and work results to be provided by VHUG. VHUG may have all or parts of the

- contractual services performed by third parties.
- 3.2 Services that are performed at the customer's order or request and that go beyond the contracted services must be remunerated on the basis of the actual time spent using the hourly rate set out in the description of services.
- 3.3 VHUG will consider the customer's preferences and specifications when providing the services but is free to design the services as it sees fit. The customer must bear any additional expenses for implementing change requests submitted after production begins.

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

- 4.1 The customer shall provide VHUG with the data, information, and samples essential for contract performance in good time and in the agreed-upon form and quality. The customer warrants and represents that it may use the materials provided for the contractual purpose, that they do not infringe any third-party rights and that they are free from defects. Regarding the use of these materials, the customer shall indemnify VHUG from and against all claims for compensation made by third parties upon first request. This also applies to legal defense costs.
- 4.2 The customer shall grant VHUG the rights to the provided materials that are needed to fulfill the order.
- 4.3 The customer shall cooperate in order fulfillment by providing approvals and feedback on submitted work results and thus support proper performance of the contract by VHUG.
- After the order has been completed as contracted, the work results must be expressly accepted by the customer at VHUG's request.

#### **5 Delivery, Delivery Periods**

- 5.1 VHUG's performance obligations are fulfilled as soon as the work results are sent off to the customer, irrespective of the chosen or agreed-upon medium for transmission. The risk of accidental loss and accidental deterioration passes to the customer as soon as the work results have left VHUG's sphere.
- 5.2 Agreed-upon deadlines are not fixed deadlines unless VHUG has expressly confirmed the deadline as a fixed deadline. Compliance with specified deadlines is conditioned on the customer's fulfillment of its obligations to cooperate (supplying documents, granting approvals, etc.) as well as the correct, timely, and sufficient availability of supplies and materials.
- 5.3 VHUG may withdraw from the contract if the products and services required to carry out the order are not available because VHUG, through no fault of its own, is not supplied by its suppliers and this was not foreseeable at the time the contract was formed. In this case, the customer will be informed without undue delay that it is not possible to perform the contractual service.
- 5.4 Delays at VHUG or a supplier/subcontractor that are caused by force majeure or equivalent circumstances for which VHUG is not responsible entitle VHUG to postpone performance for the duration of the impediment. The customer may rescind the contract if the customer cannot reasonably be expected to accept contract performance due to the delay. We may also rescind the contract if impediments to performance are other than temporary.
- 5.5 VHUG may make partial deliveries and render partial services provided that the customer can reasonably be expected to accept them.

#### **6 Prices, Expenses**

- 6.1 All prices are before-tax prices and are subject to statutory value-added tax.
- 6.2 The agreed-upon prices are ex works. Costs for packaging, shipping, and insurance

must be paid in addition by the customer. The customer shall also additionally pay any customs duties for deliveries to third countries outside the EU. If no agreement has been made regarding the above costs, the actual expenses must be reimbursed.

- 6.3 VHUG does not generally charge travel expenses to the customer's headquarters wherever such travel is required as part of providing standard budget support. If activities required for a project or by the customer's request result in an assignment outside the agency's premises, travel expenses will be reimbursed on presentation of appropriate proof and invoiced separately in accordance with the following table:
- Overnight expenses amounting to customary local overnight costs (single room) plus subsistence expenses in accordance with the maximum rates permitted under tax law. The customer shall determine the day of arrival and departure. The agency shall book the accommodation.
- Trips over a distance of up to 400 km from the agency's location to the customer's requested destination by train, based on the price of a 1<sup>st</sup> class ticket. Trips over a distance of over 400 km from the agency's location to the customer's requested destination by plane, based on the price of an economy class ticket.
- Trips over a distance of at least 1,500 km from the agency's location to the customer's requested destination by plane, based on the price of a business class ticket.
- When using a car, the reimbursement rate is EUR 0.50 per kilometer traveled. The agency reserves the right to choose the cheapest means of transportation. However, the agency is required to calculate travel costs using the shortest distance and to obtain the customer's express permission before taking trips whose costs are out of proportion to the total fee.
- Travel time is calculated using the full service time and half the rate for the defined fee.
- 6.4 Wherever VHUG is obligated to pay artists' social security contributions or other levies, the resulting expenses must be borne by the customer.
- 6.5 All other expenses for third-party services must only be reimbursed if reimbursement has been expressly agreed upon or if they are necessitated by additions subsequently made by the customer to the scope of the order.
- 6.6 Any discounts, rebates, or reductions that may be granted do not apply to third-party services or expenses covered by the foregoing clauses.
- 6.7 If no specific remuneration has been agreed upon for VHUG's services or their use, the remuneration will be calculated in accordance with the Collective Agreement on Remuneration for Design Services (AGD/SDSt) in the version applicable at the time the contract is formed.

## **7 Terms of Payment**

- 7.1 For works, the agreed-upon remuneration is due upon the explicit or implied acceptance of the work. For services billed based on time, the agreed-upon remuneration is due monthly.
- 7.2 VHUG may demand payment on account for separately identified items. It may also demand payment of the order value on account for third-party services that have to be ordered. Payments on account and advance payments come due when the customer receives the invoice.
- 7.3 All payments must be made within 10 days of receiving the invoice. The customer is automatically in default once this period expires without the need for a reminder. The consequences of default are those set out by law.
- 7.4 VHUG may transmit invoices electronically as long as the invoices meet the statutory requirements.
- 7.5 The customer may exercise a right of retention if and to the extent that its counterclaim is based on the same contractual relationship.
- 7.6 VHUG retains the title to all physical work results until all due remuneration

components have been paid in full.

- 7.7 If the customer terminates a contract for work or a contract for work including the provision of materials before complete performance by VHUG, the agreed-upon remuneration will come due immediately. However, VHUG will deduct from this amount the expenses that it will save as a result of the termination. These expenses will be estimated at a flat rate of 50%. However, both contracting parties have the option of proving that their actual expenses are higher or lower expenses; in this case, their actual savings will apply.

## **8 Licenses**

- 8.1 VHUG grants the customer the license to use the work results as required to achieve the purpose of the contract. Unless otherwise agreed-upon, this is a non-exclusive, non-transferable license whose duration is limited to one year, whose territory is limited to Germany and whose substance is limited to the contractual purpose. No further rights are granted, including, without limitation, rights for processing, sublicensing, or transfer to third parties. With respect to services provided by third parties, VHUG only acquires the rights needed to perform the contract vis-à-vis the customer.
- 8.2 The license grant is subject to the condition precedent of full payment of the contracted remuneration, including remuneration for subsequent additions to the scope of the order. Furthermore, VHUG must be cited as the author on all copies and on other forms of use (e.g., making the work results available to the public).
- 8.3 The customer does not have a right to surrender raw data such as samples, sketches, files, source codes, etc. that are generated in connection with contract performance. Data may only be surrendered to the customer under a separate agreement with separate remuneration. The agency is not obligated to store such data.
- 8.4 VHUG will inform the customer if and to the extent that we have to acquire rights from third parties for the services that we provide. Any remuneration for these rights must be borne by the customer.
- 8.5 Any use of works and services in a presentation requires VHUG's prior consent. VHUG's prior consent is also required to use works and services in modified or edited form and to use ideas underlying VHUG's works and services. Accepting a presentation fee does not constitute consent.

## **9 Acceptance, Warranty**

- 9.1 The customer shall inspect the work results that VHUG delivers for obvious defects. Such defects must be reported to VHUG in writing within one week of the work results being delivered to the customer. Hidden defects that cannot be detected even after a careful immediate examination must be communicated in writing within one week of their discovery. To be timely, it is sufficient if the notice of the defects is sent out by the deadline. Warranty claims will not be accepted once the deadlines have expired. The foregoing does not affect the statutory provisions concerning a merchant's (*Kaufmann*) obligations to inspect and communicate defects.
- 9.2 In the event of a defect, the warranty is initially limited to VHUG remedying the defect. VHUG may choose to rework and/or replace the defective work or service. If VHUG fails to perform this obligation within a reasonable period of time or if the reworking fails despite repeated attempts, the customer may either reduce the purchase price or rescind the contract.
- 9.3 Defects in only some of the delivered work results do not entitle the customer to lodge a complaint about the entire performance unless the customer has no interest in partial performance.

- 9.4 The limitation period for warranty claims expires one year from acceptance of the work results unless VHUG has acted fraudulently.
- 9.5 VHUG is not liable for proper contract performance by third parties engaged by VHUG on the customer's behalf for the purpose of contract performance. In this case, VHUG is merely acting as an intermediary.
- 9.6 By approving the work, the customer assumes responsibility for the technical and functional correctness of the product, text, and image. The warranty does not cover defects in works approved by the customer if the defects were identifiable during the approval process. VHUG is only liable for the final product conforming to the sample.

## **10 Data Protection**

- 10.1 VHUG shall collect, process, and store all customer-provided personal data in accordance with German data protection law.
- 10.2 Wherever the customer transmits data and documents containing personal data concerning third parties, the customer will be responsible for the lawfulness of VHUG collecting, processing, and using such data.
- 10.3 The customer is advised that, when personal data is collected, processed, and used on behalf of third parties (third-party data processing), the customer will be legally obligated to separately commission VHUG in accordance with the statutory requirements. If so requested, VHUG may, but is not obligated to, provide the customer with a template for commissioning third-party data processing. The customer is solely responsible for the third-party data processing that it has initiated even if, despite the aforementioned notice, third-party data processing is not separately commissioned and the order is nevertheless filled without any such commissioning.
- 10.4 The customer shall indemnify VHUG from and against all third-party claims based on the violation of provisions of data protection law if the collection, processing or use of personal data concerning third parties initiated by the customer violates data protection law.

## **11 Limitation of Liability**

- 11.1 VHUG's liability is unlimited in the event of willful misconduct. In the event of negligence, liability is limited to the damage typically foreseeable at the time the contract was formed. In the event of slight negligence, VHUG is only liable for breaches of material contractual obligations, which are understood to mean obligations whose proper performance is essential to the proper performance of the contract and upon whose satisfaction the customer may regularly rely.
- 11.2 Liability is limited to the damage foreseeable at the time the contract was formed. This limitation does not apply to injury to life, limb, or health.
- 11.3 This limitation of liability does not affect any liability for pre-contractual fault or under the German Product Liability Act (ProdHaftG) or any liability based on fraudulent concealment of a defect or on the assumption of a guarantee or warranty. VHUG assumes no liability whatsoever for any warranties given by other companies (manufacturer's warranty).
- 11.4 VHUG is also liable if performance coincidentally becomes impossible during the delay unless the damage would have occurred even with timely performance.
- 11.5 Any exclusion or limitation of VHUG's liability also applies with respect to the personal liability of its employees, wage and salary earners, staff members, representatives, servants, and agents.

## **12 Miscellaneous**

- 12.1 VHUG may advertise the work results that it produces for the customer as a reference. This includes using the work results when entering creative and agency competitions. To enable VHUG to do this, the customer shall provide VHUG with at least two proof copies at no charge, if the work entails printed matter or comparable reproductions, and shall grant VHUG all the necessary rights to the subject work results.
- 12.2 VHUG reserves the right to use and exploit rejected work designs, ideas, and services such as concepts, sketches, illustrations, drafts, et cetera as well as photos and films for other purposes.

## **13 Concluding Provisions**

- 13.1 The laws of the Federal Republic of Germany shall govern without giving effect to any conflict of laws rules unless such rules are mandatory. The UN Convention on the Contracts for the International Sale of Goods (CISG) does not apply.
- 13.2 If the customer 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 is our domicile in Stuttgart, Germany, without, however, limiting the jurisdiction of the courts that have jurisdiction for interim relief or enforcement proceedings.
- 13.3 The contract language is German.
- 13.4 The full or partial invalidity or inapplicability of individual provisions of these Terms does not affect the validity of any other provisions hereof.