

Standard Terms and Conditions of konstruktiv GmbH

Version of 02.03.2015



§ 1 Scope

(1) The following Standard Terms and Conditions shall apply to all contracts, deliveries, and other services between konstruktiv GmbH (hereinafter referred to as: konstruktiv) and the Customer, who is an entrepreneur, a public corporation, or a special state fund. They shall be part of the business relationship.

(2) Any of the Customer's conditions that conflict with or deviate from this Standard Terms and Conditions shall not apply unless konstruktiv has explicitly agreed to the Customer's conditions in writing beforehand.

(3) In all future business with a Customer these Standard Terms and Conditions of konstruktiv shall apply even if attention has not been explicitly drawn to their application once again.

§ 2 Conclusion of Contract

(1) A contract shall only come into being when acceptance is confirmed in text form. An acknowledgment of order, invoicing of the order, and rendering of service shall be tantamount to a letter of acceptance.

(2) Our offers are subject to confirmation. konstruktiv reserves the right to make changes to its deliveries provided they serve the purpose of technical improvement and/or in an individual case they prove to be expedient in the interests of the performance capability of the equipment/system and they are reasonable for the Customer, especially if the quality of the delivery is not affected by this with regard to the intended purpose.

(3) The information about services, dimensions, weights, prices, and the like contained in catalogs, flyers, circulars, advertisements, photographs, and comparable public recommendations, including that provided via electronic media, is not binding unless it is explicitly declared to be part of the contract.

(4) The documents belonging to an offer, such as illustrations, drawings, weights, and dimensions are only approximate unless they are explicitly described as binding.

(5) Website search engine optimization contracts, contracts for the management of display or search engine advertising campaigns (e.g. Google AdWords), contracts for performing content marketing activities, conversion optimization contracts and contracts for performing online reputation management are contracts for services and no guarantee is given that the measures implemented will be successful.

(6) Oral and written information about the suitability and possible applications of services and products delivered by konstruktiv as well as advice and recommendations given by our employees are provided to the best of our knowledge. They are not binding and they establish neither a contractual legal relationship nor a collateral duty arising from the contract. In particular, the Customer is not exempted from its duty to convince itself of the suitability of the services and products for its objectives by conducting its own investigation. The same shall apply to work and other services to be provided by konstruktiv.

§ 3 Delivery/Rendering of Service

(1) If the Customer requests the agreement of an exact delivery date, that date must be confirmed by konstruktiv in writing. Adherence to the firmly agreed date assumes that all issues have been resolved and that the Customer fulfills its commitment in good time and in a proper manner. The defense of non-performance of the contract shall remain unaffected.

(2) Adherence to time limits and dates assumes punctual receipt of all documents, information, files, and releases to be provided by the Customer as well as adherence to the agreed terms of payment and any other advance performance commitments by the Customer. If these prerequisites are not met in good time, the time limits shall be extended by a reasonable amount; this shall not apply if a delay has been caused by konstruktiv.

(3) konstruktiv shall be entitled to make part deliveries, provided this is reasonable for the Customer. Part deliveries can be invoiced immediately.

(4) konstruktiv shall be entitled to engage the services of external universal agents.

§ 4 Prices and Terms of Payment

(1) Prices are always to be understood in euros (€), not including the applicable rate of statutory sales tax.

(2) Prices for goods are to be understood ex store and shall particularly not include erection and assembly in the field, installation, or putting into operation. For commissioned work and other services the price shall cover the cost of rendering the work or service at konstruktiv's registered office. If costs are incurred for transport and insurance for goods deliveries, costs for travel to and from sites, working hours, and waiting times as well as traveling expenses and separation expenses for other services, they will be invoiced separately. Repair work and other services will be remunerated separately, unless the repairs fall under the statutory guarantee.

(3) The remuneration of konstruktiv shall be calculated according to the valid price list and the services actually rendered unless a different method of calculation (e.g. flat rate, hourly rates, cost prices, or the like) is agreed. This shall particularly apply to any extra expenditure incurred by konstruktiv that is attributable to the Customer's subsequent requests for changes or additions. This shall particularly apply to changes made after acceptance or partial acceptance of the requirements specification, concept, basic version, or completion. Silence after sending the requirements specification, concept, basic version, or completion or parts thereof, despite having been requested to reply within a set period, shall be tantamount to acceptance.

(4) Payments shall fall due immediately, net cash. Default in payment shall occur 14 days after the invoice date and due date at the latest, irrespective of any prior reminder. In the event of default in payment of the remuneration the Customer shall owe default interest in the amount of 8 percent above the base rate in accordance with § 288 of the German Civil Code ('BGB'). konstruktiv reserves the right to claim further damages caused by the default.

(5) The Customer may only offset receivables that are undisputed or have been established in a court of law with no further right of appeal. The same shall apply to the assertion of any right of retention.

(6) Taking receipt of means of payment (bill of exchange, check) shall not constitute performance or entitle to defer payment of the amount. The costs of keeping in safe custody and honoring, especially discounting charges, shall be for the Customer's account.

§ 5 Transfer of Rights / Source Code

(1) The Customer acquires the title in all the contractually owed movable items only upon full payment of the amounts due up to and including acceptance. Use of the delivered items before acceptance is permitted free of charge.

(2) Unless otherwise provided for in an individual contract, the Customer acquires, upon full payment of the amounts due up to and including acceptance, the simple, non-exclusive right, restricted to the territory of the Federal Republic of Germany but unlimited by time, to use the contractual software with the scope defined in the object code or the other copyright-protected products (e.g., whereby the list is not exhaustive: logo, web design, images, texts, etc.). Supplementing that, the rules of §§ 69 a ff of the German Copyright Act ('UhrG') concerning acquisition under a one-time license shall apply without any time limitation. Use for test purposes before acceptance is also permitted free of charge.

(3) Inasmuch as konstruktiv uses free software or implements it in the software for the Customer, the transfer of rights to the Customer shall not include any rights other than those vested in konstruktiv.

(4) The transfer of rights shall not include source code.

(5) Within the scope of creating websites the source code will be made available to the Customer upon full payment of the entire remuneration owed. The Customer shall be entitled to further develop the website and the software of which the website is comprised. However, further development may only take place for the Customer's own purposes. The Customer shall not be entitled to perform further developments that are designed to enable partial or full use of the website by third parties as their own website. The right of use will be restricted accordingly. In addition, the right of use granted in accordance with the contract may not be transferred to third parties.

(6) Within the scope of creating websites the granted right of use shall only apply to use of the website as a whole or to parts of the website on the Internet. The Customer shall not be entitled to use individual design elements of the website or the complete website in a different form, including the printed form.

(7) With regard to products created by konstruktiv, notices about konstruktiv's authorship shall be included in suitable positions.

§ 6 References



konstruktiv may name the customer in all of konstruktiv's publications and in a form and manner other than that of a reference customer. Furthermore, konstruktiv may publicly show or refer to the contractual products for demonstration purposes after completion thereof.

§ 7 Third-Party Property Rights in Deliveries and Services

(1) konstruktiv assumes, for the territory of the Federal Republic of Germany, that contractual use of the products sold by konstruktiv does not violate third-party property rights.

(2) The Parties shall notify each other without delay if third parties should file any property right violation claims in respect of the above products. konstruktiv will bear all the costs of legal disputes concerning the alleged property right violation and will decide on legal defense measures and in the event of compromise negotiations.

(3) If contractual use should affect third-party property rights, konstruktiv will choose whether the license will be purchased, the software modified, or - possibly in part - exchanged.

(4) If konstruktiv fails to eliminate third-party rights within the meaning of § 7 (3), that entitles the Customer to withdraw from the contract or be granted a price reduction.

§ 8 Customer's Duties

(1) On installation, performance testing, handover for use, training and any other contractual fulfillment/performance the Customer shall support konstruktiv to the required extent, inasmuch as it is reasonable. The Customer shall give konstruktiv the required information and documents that konstruktiv requests. It shall grant access to its business site and instruct its employees to cooperate with konstruktiv's representatives, inasmuch as that is required for the installation work and training.

(2) The Customer shall make available to konstruktiv the content to be integrated into the services and products. Production of the content shall be the Customer's sole responsibility. konstruktiv shall not be obliged to check whether the content made available by the Customer is suitable for the purposes pursued with the services and product. konstruktiv shall not be obliged to check whether and possibly to what extent the product ordered from it conforms to guidelines etc. of the Customer or third parties. Only in the event of obvious errors shall konstruktiv be obliged to draw the Customer's attention to defects in the content.

(3) The content to be provided by the Customer shall particularly include the texts, images, logos, tables, other graphics, and, where necessary, other rights/licenses to be used for rendering the services or to be integrated into the products.

(4) The Customer gives konstruktiv a guarantee that it has sufficient rights in all the content made available and that the latter is free of data protection law restrictions. If konstruktiv is taken to task with regard to the content made available by the Customer, the Customer shall defray the expenses of konstruktiv on the first request.

(5) In the management of sponsored links campaigns (e.g. Google AdWords) the Customer also gives a guarantee that the advertisement commissioned by it does not violate any regulations of competition law, trademark and distinctive mark law, or copyright law or any other third-party rights. konstruktiv shall not be obliged to check advertisements with regard to legality. If konstruktiv is taken to task with regard to the content made available by the Customer, the Customer shall defray the expenses of konstruktiv on the first request.

(6) konstruktiv shall not be liable for damages arising from infringement of the Customer's obligations to cooperate or for material statements or other items that are specially provided by the Customer for rendering the services incumbent on it.

(7) The Customer shall communicate in good time and in writing any changes in operating conditions or other circumstances essential for effecting delivery.

(8) If the delivery or service cannot be provided for reasons that fall within the Customer's sphere of responsibility, konstruktiv shall be entitled to invoice the Customer for the expense resulting therefrom and to be evidenced by konstruktiv (troubleshooting time is labor). This especially applies if the above-mentioned cooperation duties are not fulfilled or not fulfilled in good time or if the reported error actually failed to occur during the field inspection by konstruktiv or if the Customer neglected the agreed repair date.

§ 9 Examination / Acceptance

(1) The Customer shall examine the product without delay after delivery/handover by konstruktiv, inasmuch as this is feasible in the course of normal business, and, if a defect becomes apparent, notify konstruktiv without delay.

(2) If the Customer fails to notify, the goods/service shall be deemed approved, unless the defect is one that was not evident during examination.

(3) If such a defect appears later, the notification must take place without delay after discovery; otherwise the goods/service shall also be deemed approved even in light of that defect.

(4) To preserve the Customer's rights it is sufficient for notification to be dispatched in good time.

(5) If konstruktiv has fraudulently concealed the defect, konstruktiv cannot invoke the obligation to examine and file a complaint.

(6) Prior to acceptance the Customer shall be obliged to confirm receipt of goods and services.

(7) konstruktiv can demand an acknowledgment from the Customer if konstruktiv has handed over design planning documentation (e.g. website drawings, layouts, project flow charts, milestone plan, etc.). The Customer shall be obliged to check the completeness of design planning documentation at user level. Acknowledgment is no substitute for subsequent acceptance of the product as a whole.

(8) konstruktiv can demand acceptance from the Customer if konstruktiv has handed over the entire product.

(9) The date of acceptance shall be deemed to be the date of unconditional signing of the acceptance record or the letter of release by the Customer. Acceptance shall not be unreasonably denied. Inasmuch as the acceptance record or the letter of release lists defects, missing functions, or malfunctions, the date of acceptance shall be deemed to be the first day on which the last material defect was eliminated or the last material missing function was integrated without resulting in errors.

§ 10 Statutory Guarantee

(1) The Customer shall examine the delivery without delay after acceptance, and acceptance does not take place, after handover. If there is an obvious defect, it shall be reported to konstruktiv without delay and in specific terms. The time limit for filing complaints is 10 days maximum; punctual filing depends on the dispatch of a complaint in text form to konstruktiv. If a concealed defect only becomes apparent later, it must be reported within the above-mentioned time limit after discovery. The Customer's statutory guarantee rights shall no longer apply if it fails to fulfill the obligations mentioned above.

(2) If delivered goods manifest an obvious defect, the goods may not be processed/installed if a damage or loss would thereby be increased or caused.

(3) The following shall apply to the delivery of goods and the provision of services:

a) In the event of justified complaints, konstruktiv is, at its own discretion, entitled to perform later by remedying the defect (rectification) or deliver new goods / make a new product (new delivery). If konstruktiv is not prepared or able to perform later or if it is delayed beyond reasonable time limits for reasons attributable to konstruktiv, or if late performance fails in any other manner, the Customer shall always be entitled, at its own discretion, to demand a reduction in remuneration (price reduction), cancellation of the contract (withdrawal), or compensation instead of performance. However, if a contract violation is only minimal, especially in the event of only minimal defects, the Customer shall have no right of withdrawal. konstruktiv shall be entitled to attempt rectification a number of times (at least 3 rectification attempts), unless this is unreasonable for the Customer.

b) If the operating instructions are defective, the statutory guarantee is initially restricted to delivery of defect-free operating instructions, inasmuch as installation was not performed properly. This shall not apply inasmuch as further damage or loss has already occurred due to the defective operating instructions.

(4) konstruktiv's statutory guarantee liability is generally restricted to the order value, and, in the event of claims for compensation, to the cover limit of the employer's liability insurance policy taken out by konstruktiv. The above restriction shall not apply inasmuch as konstruktiv can be accused of intent or gross negligence or harm to life, body or health has occurred.

(5) The statutory guarantee rights shall become time-barred one year after delivery of the goods / rendering or – where necessary – acceptance of the service. This shall not apply inasmuch as legally binding longer time limits are specified.

(6) The above statutory guarantee restrictions shall not apply if konstruktiv can be accused of intention to deceive or konstruktiv has given a warranty concerning the quality of the goods.

(7) If a Customer for its part is exposed to statutory warranty claims due to goods purchased from konstruktiv, it retains the rights referred to in § 478 of the German Civil Code ('BGB'), inasmuch as a statutory guarantee has to be provided by konstruktiv according to the German Civil Code. With regard to any compensation claim going beyond reimbursement of expenditure, § 9 (4) shall apply accordingly.

(8) The statutory guarantee shall not apply if the Customer alters material parts of the software or hardware concerned itself or has them altered by third parties. In such cases a guarantee obligation only exists if the Customer proves that the technical malfunction would have occurred even without such alterations and they do not materially make the required work more difficult.

§ 11 Warranties

(1) The giving of a warranty by konstruktiv requires an explicit declaration in writing.

(2) Inasmuch as the manufacturer gives a warranty for the quality of delivered goods or for the goods maintaining a certain quality for a certain period of time, the buyer shall, notwithstanding statutory rights, have the rights arising from the warranty on the terms set out in the warranty declaration and the relevant advertising, solely vis-a-vis the manufacturer.

§ 12 General Liability

(1) The Customer shall have no further compensation rights or expense reimbursement rights, on any legal grounds whatsoever, and especially no claim to compensation for damage or loss that was not sustained by the delivered item itself.

(2) In particular, konstruktiv shall not be obliged to make payments for consequential expenses after error elimination in the area of the Customer's data, e.g. restoration of customer-specific data.

(3) The above liability restrictions shall not apply if the cause of the damage is due to intent or gross negligence on the part of konstruktiv, harm to life, body or health attributable to konstruktiv, or if konstruktiv has violated a material contractual duty (cardinal duty).

(4) Liability for data loss at the Customer's shall, inasmuch as konstruktiv is fundamentally liable, be limited to the expense where backup copies exist.

(5) Inasmuch as konstruktiv's liability is excluded or restricted, this shall also apply to the personal liability of its employees, representatives, and universal agents.

(6) In general, the Customer's compensation claims become time- barred after one year unless konstruktiv is liable in accordance with § 12 (3).

(7) The above liability restrictions do not affect the Customer's rights arising from product liability.

§ 13 Data Protection

(1) konstruktiv draws attention to the fact that it processes and saves the data necessary for handling business. The Customer gives its consent to the collection, saving, use, transmittal, and any alteration of its personal data inasmuch as this is required for performance of the contract with konstruktiv. konstruktiv shall especially be entitled to obtain information from third parties for the purposes of checking creditworthiness and to pass it on to third parties.

(2) konstruktiv shall also be entitled to appoint third parties to deliver the ordered goods and, in the event of default, appoint third parties to collect the debts, and to pass all the data required for this on to the agents.

(3) konstruktiv shall be entitled to use personal data for customer management measures (marketing campaigns, etc.). konstruktiv undertakes not to pass on personal data for any other purposes.

(4) The Customer may entirely or partially revoke its consent at any time with effect for the future or demand the correction of data stored concerning it at konstruktiv. In such a case konstruktiv undertakes to delete the personal data without delay as soon as the contract has been completely wound up.

(5) Any revocation or demand to see the stored personal data free of charge to konstruktiv shall be addressed to: info@konstruktiv.de.

(6) On completion of its purchase order the Customer explicitly consents to the collection, processing, and use of its personal data.

§ 14 Final Provisions

(1) Amendments to this contract shall be made in writing; this shall also apply to any waiver of this requirement for the written form.

(2) The place of performance with regard to all mutual rights and duties and the sole place of court jurisdiction shall be Bremen. However, konstruktiv shall be entitled to also sue the Customer at the latter's general place of court jurisdiction.

[3] The laws of the Federal Republic of Germany shall apply. The "United Nations Convention of Contracts for the International Sale of Goods" shall not apply.

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[4] If any individual provisions of this contract and/or these Standard Terms and Conditions should be or become wholly or partially legally invalid or impracticable, it shall not affect the validity of the remaining provisions of this contract. The same shall apply if the contract contains a regulatory omission. Instead of the invalid or impracticable provisions or to fill in an omission a reasonable arrangement shall apply that, inasmuch as legally possible, shall come as close as possible to what the contracting parties would have intended if they had taken that point into consideration when concluding the contract.