

## General Terms and Conditions of Illustratoren Organisation e.V.

### 1. Applicability

These Terms and Conditions govern all agreements between the Illustrator and the Customer and have exclusive applicability. Any provisions in conflict with these Terms and Conditions, including, without limitation, any conflicting terms and conditions, are subject to the written consent of the Illustrator. These Terms and Conditions govern all transactions between the parties, including any future follow-up transactions, including those made orally, in particular by telephone, even if these Terms and Conditions are no longer expressly referenced in such follow-up transactions.

### 2. Orders

All confirmations or minutes of conferences transmitted by the Illustrator are binding, unless the Customer objects without undue delay. The Illustrator shall have the right to use subcontractors for the performance of contracts with the Customer. In such cases the Illustrator shall acquire all licenses and other rights from such subcontractors to the extent owed to the Customer and transfer those licenses and other rights to the Customer.

### 3. Fees

All services rendered to the Customer, including presentations, drafts and work drawings, are subject to fees, unless otherwise agreed in writing.

The fees are as follows:

- draft fee
- work drawing fee
- license fee for the rights to the work drawing.

Unless otherwise agreed, fees promised and/or paid by the Customer shall be credited as follows:

- 30% against the draft fee
- 30% against the work drawing fee
- 40% against the license fee, if any rights are licensed.

The Illustrator shall have a claim to payment of the fee for any licensed rights irrespective of whether and, if so, to what extent such licenses are used by the Customer. If no rights are licensed, the Illustrator shall receive no fee for use [of the work], but shall receive fees for work performed up to that point. Proposals or any other contributions by the Customer shall have no effect on the amount of fees.

If no rights are licensed, payments from the Customer shall be allocated among the fees as follows:

- 50% against the draft fee
- 50% against the work drawing fee

All fees are net amounts, and VAT will be added to each fee if the Illustrator is subject to VAT. Premiums due to the Artists' Social Security Fund are not included in the fees and are due from the Customer in addition to the fees.

### 4. Payment Terms

Fees are due upon delivery and payable without deduction. If a contract is performed over a time period of more than four weeks or requires cost advances by the Illustrator in excess of 50% of the fees due to the Illustrator, the following installment payments shall be due: 1/3 of the total fee at the time the order is placed, 1/3 upon completion of 50% of the work, and 1/3 upon delivery.

If the agreement is terminated early, the Illustrator shall be entitled at least to those installment payments that have already become due to the Illustrator on the termination date in accordance with the above. In addition, the provisions of German Civil Code (BGB) § 649 shall apply.

The Customer will be deemed in default with payment, in whole or in part, with or without a past due notice or other demand for payment, if the Customer fails to make payment within 14 days of delivery.

If the Customer fails to use works of the Illustrator to the extent agreed, the Customer shall have no claim for a fee reduction or refund.

The Customer shall have no rights of offset based upon any counterclaims, unless such counterclaims have been established by a final and conclusive court judgment, are undisputed, or liability for such counterclaims has been accepted by the Illustrator.

### 5. Licenses, Ownership, Advertising

The Customer shall acquire only licenses, if agreed, to the works of the Illustrator. No ownership rights, including, without limitation, ownership rights to drafts (sketches, layouts) or work drawings (final art) created by or for the Illustrator, shall transfer to the Customer. All two-dimensional and/or three-dimensional works delivered to the Customer in connection with an order (drafts, work drawings, models, dummies, samples) shall remain the property of the Illustrator. The Customer shall have a right of possession to such works only for as long as possession of the works is absolutely necessary for the agreed use of the Illustrator's work. In all cases the right of possession shall terminate at the latest when the contract between the Illustrator and the Customer terminates. After the right of possession has terminated, the works shall be returned to the Illustrator in undamaged condition, unless otherwise agreed in writing. The works shall be returned at the cost and risk of the Customer. In the event of damage or loss, the Customer is liable for damages in the amount of 100% of the agreed fees, with the Customer acquiring no ownership rights as a result of the payment of such damages.

Drafts provided to the Customer are intended only to make it easier for the Customer to make a decision and are intended to be used only by the Customer and the Illustrator. No other rights to drafts are licensed to the Customer. Unless expressly agreed otherwise, any additional licenses to which the parties may agree shall relate exclusively to the work drawings as accepted by the Customer.

Whether or not protected by copyright or any other proprietary rights, works of the Illustrator may be used only to the extent agreed in the contract or reasonably implied by the purpose of the contract. Absent any other written agreements, Customer shall receive only non-exclusive licenses or other rights, and only for the agreed term and for the agreed purpose and territory; unless agreed otherwise in writing, licenses are granted only for the territory of the Federal Republic of Germany.

Any use of licensed rights other than that provided for herein or beyond the originally agreed scope is subject to a separate written license agreement and payment of an additional fee in proportion to the additional use.

Any sublicensing of rights to third parties is subject to the consent of the Illustrator. The Illustrator shall have a right to disclosure of the extent to which sublicensed rights are used by third parties.

Proposals or any other contributions by the Customer shall give rise to no (shared) rights of the Customer, unless expressly agreed otherwise. No rights to works of the Illustrator, including, without limitation, licenses, shall transfer to the Customer until all fees for the order have been paid to the Illustrator in full. The Illustrator shall have the right to sign his work and to be named as the creator on all copies of his work. Any digital copies of the works must electronically link the name of the Illustrator to the image file.

The Customer shall have no right to edit or modify works (whether originals or reproductions) in whole or in part, or to have works edited or modified by third parties, unless expressly agreed otherwise.

The Illustrator is under no obligation to store works for the Customer. In particular, the Illustrator has no obligation to the store and/or deliver to the Customer any work files created on the computer, including the source code. Any storage and/or delivery of files desired by the Customer is subject to a separate agreement and additional fees.

In the event of any violation of the licensed rights, editing rights or credit rights, the Illustrator may demand payment of a contractual penalty in an amount three times the agreed fees. The right of the Illustrator to bring claims for damages or indemnity, in addition to demanding payment of a contractual penalty, or any other rights shall remain unaffected thereby.

All works created by the Illustrator may be used by the Illustrator to advertise his services without limitation, unless expressly agreed otherwise.

### 6. Special Services, Incidental Costs and Travel Expenses

Unless expressly agreed otherwise, the Customer may request one (1) change per draft – that does not involve an exchange of image elements – during the draft phase at no additional cost.

Each additional change and/or creation and submission of new drafts, any change and/or creation of new work drawings, or any other additional services (e.g., manuscript study), incidental costs (e.g., courier service) or technical costs (e.g., for reproductions, data carriers) will be charged separately on the basis of the amount of services rendered. The Illustrator shall charge such additional services based upon hourly or daily rates as determined at the Illustrator's reasonable discretion in conformity with the recommended fees of I.O. (Illustratoren Organisation e.V.). The matter is different if such services, and the fees due for such services, are expressly included in the order confirmation.

If the contract is not performed for any reasons for which the Illustrator bears no responsibility, the Customer shall pay – in addition to the partial fee due in accordance with section 4 para. 2 in conjunction with German Civil Code (BGB) § 649 – all incidental costs incurred by the Illustrator.

Payment for additional services shall be due after services are rendered. Reimbursement of any incidental costs advanced by the Illustrator shall be due after they are incurred. All fees and incidental costs are net amounts exclusive of applicable VAT, which shall be paid by the Customer in addition to the amounts invoiced.

### 7. Cooperation by the Customer

The Customer is obligated to make available to the Illustrator in due time all information and data in standard format that are necessary for delivery of the agreed works.

The Customer shall ensure that the Illustrator will receive all rights necessary for using such materials. The Customer further shall notify the Illustrator, without demand, of any circumstances which may be significant to the delivery of the agreed works and which the Customer knows, or reasonably should, know are unknown to the Illustrator.

The Illustrator shall have no obligation to store or return materials made available by the Customer, unless expressly agreed otherwise. If agreed, the Illustrator will store and return materials at the sole cost and risk of the Customer.

If the Customer fails to accept agreed works in breach of his duties of cooperation, the Illustrator may demand reasonable compensation. If the Illustrator defines development stages together with the Customer and the Customer must contribute work of his own to reach those development stages, the Customer shall complete and deliver all such work in due time.

### 8. Corrections, Supervision of Production

Prior to the start of production the work drawings, data, drafts or other materials must be approved by the Customer.

The Illustrator shall not be responsible for the supervision of production unless specifically agreed with the Customer. If the Illustrator has assumed responsibility for the supervision of production, the Illustrator shall have the right to make all necessary decisions at its sole discretion and to issue appropriate instructions.

### 9. Delivery, Delivery Period

The Illustrator shall have no obligation to meet agreed delivery dates unless all technical issues have been resolved, and all documents, approvals, performances or other obligations of the Customer have been received or performed in due time. If this is not the case and timely delivery of the Illustrator's work is no longer possible even for an additional fee covering the additional costs as agreed with the Customer, the delivery period shall be extended for a reasonable time period. Contracts are not fixed-date transactions (Fixgeschäfte) within the meaning of German law. The Illustrator reserves the right to raise the defense of non-performance. The Illustrator shall be deemed to have fulfilled his delivery obligations as soon as the works have been shipped.

If non-compliance with an agreed delivery period is due to force majeure, labor dispute, fire, broken machinery, disrupted telecommunication, computer malfunction, severe illness, unforeseen obstacles or any other circumstances for which the Illustrator bears no responsibility, the delivery period shall be extended for the duration of such events. The same shall apply, mutatis mutandis, if delivery by the Illustrator is delayed at the time any such event occurs. The Illustrator shall provide the Customer with notice of any delays in delivery due to force majeure.

If performance of a contract is delayed for reasons for which the Customer bears responsibility, the Illustrator may recover damages by reasonably increasing the fee at its reasonable discretion in accordance with the fee provisions of these Terms and Conditions. The Illustrator's right to claim additional damages for delayed performance shall remain unaffected thereby.

### 10. Transfer of Risk

Unless otherwise provided in the order confirmation, delivery shall be made at the Illustrator's place of business/place of residence. If the Customer desires delivery at a different location, delivery shall be made at the risk and cost of the Customer. The risk shall transfer from the Illustrator to the Customer at the time of delivery to the carrier or, if no carrier is used, at the latest when the work is received by the Customer or his agents, whether or not partial deliveries are made and whether or not the Illustrator has agreed to provide any additional services (e.g., cost of shipping or drop-off).

### 11. Warranty, Liability

The Illustrator may exercise artistic license in the performance of the contract. If the Illustrator's illustration is not in conformity with the Customer's taste or the Illustrator's style does not meet the expectations of the Customer, this shall not be deemed a defect of the Illustrator's work.

The Customer shall have no warranty claims unless the Customer inspects works delivered by the Illustrator without undue delay after receipt, in any event before any further processing, and provides the Illustrator with notice of defect promptly upon discovery. Minor color discrepancies between prints and monitor representations or computer printouts are technically unavoidable and do not constitute defects.

If the Illustrator is responsible for a defect, the Illustrator shall first have the right to render remedial performance within a reasonable time period. If remedial performance fails, the Customer shall have the option, after expiration of a reasonable grace period set by the Customer, of either rescinding the contract or demanding an appropriate fee reduction. Remedial performance shall be deemed to have failed if the defect has not been cured even after the second attempt of remedial performance.

The warranty period shall be 12 months from the transfer of risk. The warranty period is a limitation period and shall also apply to claims for consequential damages caused by defects, except for tort claims; any tort claims are subject to the legal limitation period.

The Illustrator shall be liable for damages – whatever the legal basis of liability – only in cases of willful or grossly negligent actions or omissions, including actions or omissions by the Illustrator's representatives or agents. Except in the event of a willful breach of contract, the Illustrator's liability shall be limited to reasonably foreseeable damages. This limitation of liability shall not apply to damages involving harm to life, limb or health, or to damages resulting from a breach of any of the Illustrator's material obligations.

If the Illustrator merely passes along services to the Customer that were performed by third parties (e.g., photographers, service providers), the Illustrator's liability shall be limited to cases where the Illustrator made a wrongful selection. Any liability for computer viruses is hereby excluded, except in cases involving willful or grossly negligent actions or omissions by the Illustrator.

The Customer is responsible for verifying the lawful nature of all works delivered by the Illustrator. If any work of the Illustrator infringes the rights of third parties or otherwise violates applicable law because it is based on unlawful specifications and/or documentation of the Customer, the Customer shall, as between the parties, be solely liable for such infringements or violations. The Customer shall indemnify the Illustrator for all resulting damages, including reasonable costs of legal defense, and hold the Illustrator harmless from any third-party claims. However, the Illustrator shall notify the Customer of any infringements associated with his work as soon as the Illustrator acquires positive knowledge of such infringements. This liability provision shall apply, in particular, to factual information or other contributions provided or otherwise made available to the Illustrator by the Customer; to the same extent, the Customer is liable for any failure to obtain all licenses and commercial exploitation rights or any other necessary rights to the materials delivered by the Customer.

As between the parties, the Customer is exclusively responsible for contents posted online by the Illustrator on behalf of the Customer. If the Illustrator is held liable, for any reason whatsoever, as a secondary infringer or responsible party within the meaning of the German Online Services Act (Teledienstgesetz) or German Interstate Media Services Agreement (Mediendienste-Staatsvertrag) or under any other laws, the Customer shall indemnify and hold harmless the Illustrator from and against any and all third-party claims.

To the extent that the Illustrator's liability for damages is excluded or limited under the above provisions, this shall also apply to any liability of the Illustrator's staff, employees, independent contractors, representatives and agents.

### 12. Author's Copies

The Customer shall provide the Illustrator with 5 to 10 flawless, unfolded author's copies of all reproduced works. The Illustrator shall have the right to use such copies to advertise his services.

### 13. Place of Performance, Jurisdiction, Governing Law

The place of performance for all obligations arising from agreements between the parties and, to the extent permitted by law, the exclusive place of jurisdiction for any disputes arising between the parties shall be the place where the Illustrator's place of business is located. All agreements between the parties shall be governed exclusively by the laws of the Federal Republic of Germany.

### 14. Final Provisions

Any modifications or amendments to the agreement shall be valid only if in written form. The same shall apply to any modifications of this requirement of written form.

If any provisions of the agreement are void or invalid, the validity of the remaining provisions shall remain affected thereby. The same shall apply if any provisions have been inadvertently omitted from the agreement. Any invalid or omitted provisions shall be replaced by such valid provisions as most closely reflect what the parties intended or, given the intent and purpose of the agreement as a whole, would have intended.