

General Terms and Conditions

§ 1 General information

The following terms and conditions are exclusively authoritative for any contract concluded with BDE and are additionally applicable to our contractual offer. This is especially applicable also in the event of contradictory terms and conditions of the customer. Deviations from our terms and conditions are applicable only if they are confirmed by BDE in writing.

§ 2 Subject of the contract

The subject of the contract arises from the written offer/order in conjunction with these terms and conditions of contract, the agreement for project processing, and specification sheet.

§ 3 Remuneration

The amount of claim to remuneration arises from the offer or the order confirmation. The agreed prices are subject to value added tax in the respective amount applicable upon invoicing, without discount and other deductions. Ancillary services (such as travel, material, or transport costs) are calculated additionally, provided not expressly included in the offer.

§ 4 Terms of payment

Unless it has been otherwise agreed upon, the remuneration is due for payment without deduction 14 days from invoicing. Discount deduction is not permissible without a separate agreement.

If the customer is in default, he/she has to pay a default interest of 9 per cent points over the base interest rate, plus the respective value added tax. The default interests should be fixed higher or lower if BDE proves a liability with higher interest rate or the customer proves a lower liability.

The customer can settle the claims of BDE only if the counter claim of BDE is undisputed or there is a legal title; the customer can assert a right of retention only to the extent that the right is based on claims from the contractual relationship.

§ 5 Retention of title

Until the complete payment of all claims from the terms and conditions with BDE, all the rights to the work product remain in the ownership of BDE, especially the ownership of the work product manufactured.

§ 6 Exclusion of cession

The customer may not transfer the claims and rights to which he/she is entitled from this contract to third parties without the consent of BDE.

§ 7 Delivery times, Deadlines

The schedules and project plans for an offer and communicated in the course of the project constitute a non-binding outlook to a potential course of the project as orientation. Binding deadlines must be clearly defined as such in the course of the project, after each project stage or at every review mutually, according to the latest insights and development results and recorded in text form.

BDE calculates the delivery times for work products according to the project plan and offer starting from the technically cleared order intake / approval of the customer. This also includes clear feedback according to the review meetings or on the information and decisions requested in the course of the project.

If there is no approval / decision at the time defined by BDE or changes become necessary at a later time, the deadlines should be redefined. Changes requested later or technically necessary changes can either no longer be considered or compromise the deadline for the creation of the work product. If it is necessary to exceed a bindingly agreed delivery deadline for construction-related and/or developmental reasons, BDE is authorised to exceed the delivery time by a reasonable period, but a maximum

of 6 weeks, provided anything else is not expressly agreed upon in text form. BDE shall notify the customer of the same and define a new delivery deadline. After its expiry, the customer can put the BDE in default provided the customer is not jointly responsible for the delay. In case of a delay caused by negligence, the damage due to delay is limited to typical and foreseeable damages.

§ 8 Customer's obligation to cooperate, communication

The customer is obliged for appropriate involvement in the execution of the contract work. If the customer does not fulfil his/her obligation to cooperate, especially if decisions, approvals, or information are not communicated on time, BDE shall not be liable for delays in delivery. Any additional costs that may possibly arise should be borne by the customer.

Project-related changes, remarks or information from the customer shall always be in text form (e.g. in writing or by email) and with the note on whether these changes should be directly implemented or discussed in the next meeting. If the changes desired by BDE appear to be too time critical or expensive, a mutual agreeable approach is agreed upon.

At the commencement of the project, the customer should define the nature of the electronic communication (email, PGP, FTP, etc.). If there is no specification, then the communication is via email.

§ 9 Warranty for defects

The § 377 of HGB [German Commercial Code] is applicable. Otherwise, the customer can demand the elimination of defects within 12 months from acceptance.

In the event of deficiency, BDE has the opportunity of correction two times. If the remedial action finally fails, the customer can reduce the contract or withdraw from the contract. In the event that the lack of success is not due to intent or gross negligence of BDE, the right of withdrawal is replaced by a right to termination in accordance with § 12.

BDE does not assume liability for quality deviations or damages arising because the customer has commissioned a third party with the serial production of a product or a prototype, without BDE having granted the approval of design status for it with respect to suitability for this production. A liability for freedom from defects in title is assumed only to the extent that these defects in title are known to BDE.

§ 10 Regulations on intellectual property

BDE is and remains the owner of the inventions and developments made by BDE before the commencement of the respective project and the property rights and copyrights registered on them. BDE shall disclose to the customer such previous property rights if they are used in the work product, could restrict the customer and BDE shall grant the customer non-exclusive usage rights not limited in time and place. Besides, the ownership of rights to all the work products devolve to the customer with the acceptance of the work products and settlement of all the agreed remuneration including any fee for use of design. Provided the work products are eligible for protection, the customer is authorised to register for the property rights. BDE has to unrestrictedly use the inventions eligible for protection, which BDE's employees make while executing the project and transfer the right to the invention to the customer. The customer must release BDE from any claims according to the employee's invention act. The design or elements under this may be transferred to objects other than those contractually agreed upon only with the understanding of BDE in text form. Otherwise, BDE shall grant to the customer a non-exclusive and irrevocable exploitation right with the settlement of the entire remuneration if the work product is protected by copyrights of BDE.

§ 11 Contract amendment, changes in remuneration

The offer and the calculation by BDE are based on the current level of knowledge about the scope of the project and project requirements. Therefore, BDE can also always make binding offers only about the next project stages, considering the experiences from the previous project stages. As a part of the execution of individual project stages, it can happen that corresponding functionalities cannot be achieved technically or with extreme difficulty, cannot be implemented within the planned costs and time window of the customer or the customer chooses higher quality, but more expensive solutions. If during the execution of the order, the result of an extensive, time-consuming processing turns out to be as offered, BDE is entitled to invoice the verifiable extra costs without a special agreement up to an amount of 10% of the agreed order volume.

If the agreed order volume is likely to overshoot by more than 10% or if there arise other changes, particularly the customer's requests for change, then the contracting partners shall inform each other about it and record the need for change in writing. Based on this, BDE is authorised to create a changed offer for the respective project stages. While doing this, the contracting partners shall endeavour for a mutual contractual amendment. If an agreement on a contractual amendment can still not be achieved, both the parties are entitled to a right to termination in accordance with § 12.

§ 12 Termination

If considerable disagreements with respect to the developed contents, attained goals, costs, etc. should arise in the course of the project, the parties shall endeavour to find an amicable solution through the project leaders before the termination of the contract and before taking legal measures. If no solutions should be found at this level, the matter shall be discussed at the management level. In this case, BDE shall have the right to suspend further activities until clarification. Schedules must be adjusted accordingly. If contractual amendments are required and the parties cannot reach an agreement on the amendments, then both the parties are entitled to a right to termination.

Otherwise, each party can terminate this contract for a substantial cause. A substantial cause exists especially when obligations to cooperate are repeatedly breached, the obligations to secrecy are violated, or if insolvency proceedings are opened on the assets of the other contracting party or are rejected for lack of assets.

In the event of a termination, the BDE is entitled to the remuneration of the works performed up to the termination as a part of the contractually agreed latest project stage, including the fee for use of design. This amount shall reduce to 70 per cent if the customer proves that the performance is ultimately worthless and is not useable in any other way for anyone. The claim to remuneration shall not be applicable if the reason for the termination is based on intentional or grossly negligent behaviour from BDE.

The customer shall receive all the project documents and CAD data resulting at this time step-by-step against the payment of the remuneration still outstanding. The claim to remuneration with respect to the project stages completed and accepted until them shall remain unaffected by the termination.

§ 13 Liability

BDE shall assume unrestricted liability for the harm to life or limb or health only in case of wilful intent or gross negligence according to the regulations of the product liability act as well as in the extent of a guarantee assumed by BDE. For a minor negligent breach of an essential contractual obligation (cardinal obligation), BDE's liability shall only be in the amount of foreseeable and typical damage. There is no further liability by BDE. The preceding limitation of liability is also applicable for the personal liability of employees, vicarious agents, representatives, and bodies of BDE.

§ 14 Secrecy

The contractual partners commit to keep the work products of the respective other contracting partners as well as any other information, especially of technical and economic nature, intentions, experiences, designs and documents/files, which become known to the parties owing to the collaboration as per this contract (hereinafter referred to as confidential information) confidential with respect to third parties, not make it accessible to them and protect the information from access by third parties. Confidential information should be used only to fulfil the obligations resulting from the contractual relationship of the parties and may not be utilised by the other party for any other purposes. If any confidential information mentioned above does not meet the requirements of a trade secret within the meaning of the act on trade secret, it shall still fall within the obligations under § 14. This obligation shall also be applicable beyond the duration of the contract.

The contracting partners shall furthermore make sure that the employees, freelancers, and subcontractors consulted by the parties in the execution of this contract also maintain the above confidentiality.

The above obligations are not applicable for the information, which was already known to the contracting parties before it was communicated as a part of this contract, which was worked out independent of its communication or lawfully obtained elsewhere, or is public or is generally known without breaching this contract.

Pledges of blanket contractual penalty are not accepted by BDE.

After the collaboration or the obligation to secrecy ends, all the contractual information including the copies, should be immediately returned to the other party, destroyed, or deleted and this should be validated if requested.

§ 15 Free copy

BDE has a claim to a free copy produced according to the design provided the total production costs for the customer do not exceed €2,000.-. In case of higher total production costs, a free copy should be delivered only upon express request. BDE shall pay the customer the amount exceeding the €2,000.- in this case. If BDE waives of the free copy, it shall have a claim to photos in the digital form.

§ 16 Data security

BDE also uses cloud-based services and software. BDE will check that the providers ideally have - if possible/feasible - external auditing and certification such as ISO/IEC 27001, data security according to EU/US GDPR (or similar) and for cloud-based services certifications according to CSA STAR or EU Cloud CoC. The certificates, processes and GTCs of the providers are not checked in detail nor legally by BDE. BDE advises - if offered by the services and programs - 2-factor authentication or login verification via security keys and SSO services. If the client wishes to use these, he must himself and at own costs/efforts create the prerequisites for this with the persons and parties involved and to bear potentially resulting higher license costs and hardware expenses. BDE secures its and its clients' data by using the latest firewall and virus protection software. BDE is not liable for data leaks and data losses that are within the eight range of third party services (such as software, cloud or server).

§ 17 Written Form

Amendments and additions to the contract must be in the written form and the same applies for setting aside this clause on requirement in written form. Individual agreements between persons authorised to represent take precedence according to § 305b of BGB [German Civil Code].

§ 18 Final provisions

The place of fulfilment of all the obligations from this contract is 89275 Elchingen. The exclusive court of jurisdiction for all the present and future claims from the business relationship is 89231 Neu-Ulm. The same court of jurisdiction applies if the customer does not have a general court of jurisdiction in the country, has relocated his/her residence and registered office from the country, or his/her residence or registered office is not known at the time of filing the complaint.

The German law applies exclusively.