

GENERAL TERMS AND CONDITIONS OF KUNSTBETRIEB AG MÜNCHENSTEIN (HEREAFTER CALLED “KUNSTBETRIEB”)

ARTICLE 1: GENERAL

1. The general terms and conditions apply for every offer and agreement between Kunstbetrieb and a client, for which Kunstbetrieb has made them applicable. An indication of their existence is sufficient to make them applicable.
2. The general terms and conditions likewise apply for all agreements with Kunstbetrieb that have been executed by a third party.
3. Exceptions must be specified (stipulated) in writing.

ARTICLE 2: OFFERS, QUOTES, AND AGREEMENTS

1. All offers made by word of mouth are nonbinding.
2. Quotes made in writing are valid for 30 days, unless Kunstbetrieb has set another period of validity in writing.
3. The price specified in the quote is a suggested price, which is routinely adjusted to the market. This is exclusive of VAT, other official fees and duties, packing, shipping and other administrative costs, unless these have been explicitly included in the quote.
4. If, at the request of the client, the execution of services deviates from the plan upon which the quote was based, Kunstbetrieb is not bound to this quoted price.
5. A quote does not obligate Kunstbetrieb to execute a part of an order for a partial payment of the given total price.
6. Offers and quotes do not automatically apply to future projects.
7. An agreement is constituted by the client's acceptance of the quote. If, with the knowledge of the client and because of reasons of time, work must be started before a quote has been made, then the client is obligated to pay the quoted sum as later specified. The order also takes effect when the client has been in possession of the quote for three days and Kunstbetrieb begins execution, with the client's knowledge.

ARTICLE 3: EXECUTION OF THE AGREEMENT

1. Kunstbetrieb is obligated to execute the order, in good faith and to the best of its ability, in accordance with the current state of technical knowledge. The risk of an unusually complex and experimental application of techniques and materials in connection with contemporary art production is borne by the client. Kunstbetrieb is committed to the greatest possible effort in achieving the goals of an agreement, but not to the greatest success of the result.
2. Kunstbetrieb retains the right to delegate a part of the execution to a third party. Kunstbetrieb assumes responsibility for this execution in the frame of the general terms and conditions.
3. The client ensures the timely and complete delivery of all specifications necessary for production (drafts, measurements, data, and documentation).
4. Kunstbetrieb assumes that orders can be carried out during normal working hours. Waiting time, overtime, and extra travel time for which Kunstbetrieb is not responsible is discussed with the client and billed additionally. Where applicable, Kunstbetrieb is not obligated to compensate for delays caused by the client. In extreme cases, Kunstbetrieb can postpone or cancel an order with the allocation of already accrued costs.
5. Kunstbetrieb is not liable for damages that ensue as a result of incomplete or incorrect specifications from the client.
6. If an execution in stages has been agreed upon, Kunstbetrieb can postpone the execution of a subsequent stage until the results of the previous phase have been deemed good by the client in writing and have been paid for as arranged.
7. At the request of the client, Kunstbetrieb (or a third party designated by Kunstbetrieb) can execute an order away from its own premises, at a location specified by the client. In this case and unless otherwise specified, the client ensures accessibility and provides utilities necessary for execution (power, water, etc.) as well as permits and fees. The client is then also obligated to take adequate precautions for safety. Kunstbetrieb excludes any liability for costs resulting from weather damage, vandalism or theft of artwork, materials and tools.
Such damages do not absolve the client from payment for the agreed service.
8. Kunstbetrieb excludes any liability for damages to a third party that Kunstbetrieb did not directly cause.

ARTICLE 4: ADJUSTMENTS TO THE AGREEMENT

1. In some cases, changes in the client's wishes or technical findings require adjustments to the original agreement. These are carried out in consultation between the client and Kunstbetrieb.
2. Kunstbetrieb is to make the client aware as expeditiously as possible of any potential impact on the budget or the timeline. If Kunstbetrieb is not responsible for causing the additional costs, these will be charged to the client at standard rates in addition to the initial quote. This also applies in the case of payment by a flat fee.

ARTICLE 5: ALLOCATION

1. The timeline specified in the quote is based on an appraisal of facts known at the time at which the quote is made. The working hours actually necessary for execution will be re-allocated.
2. Where applicable, flat fees and/or cost ceilings are only binding in written form. These are also exclusive of VAT.
3. The quote is based on the price, as it is known at the time the quote is made, of metal and other materials and auxiliary supplies, as well as transport costs, taxes, salaries, insurance premiums, import fees, exchange rates, etc. If, between the time at which the quote is made and the time of consumption, these prices and fees should undergo a demonstrable increase, Kunstbetrieb can allocate this increase to the client. This also includes such increases as were already foreseeable at the time at which the quote was made.
4. For orders with a duration of execution longer than three months, Kunstbetrieb will present an invoice at the end of every month.

ARTICLE 6: PAYMENT

1. Invoices are to be paid within 30 days after the date of the invoice, in the currency specified by Kunstbetrieb. The cost of transfer of funds is to be paid by the client. Complaints that call the invoiced amount into question do not postpone the payment deadline.
2. If payment is not made within 30 days, the client is in default and owes Kunstbetrieb, in addition to the outstanding balance, 1% interest monthly. This interest is charged from the beginning of the default until remittance of the entire balance.
3. In the case of inability to pay or bankruptcy of the client, the receivables of Kunstbetrieb are due immediately.
4. Even when the entire balance is paid, the default interest is still owed.
5. For orders that require Kunstbetrieb to make substantial payments in advance (e.g. for preordering of materials or payment of a third party), or for orders that are executed in stages, Kunstbetrieb can require a partial prepayment.
6. All objects delivered by Kunstbetrieb, including drafts, sketches, drawings, photos, films, software, electronic data, etc., remain in the possession of Kunstbetrieb until the client has met his/her obligations in their entirety.
7. All costs resulting from the client's default of payment, e.g. collections, are charged to the client. Kunstbetrieb retains the right to charge interest on missed payments.

ARTICLE 7: COMPLAINTS, GUARANTEE AND MAINTENANCE

1. Complaints about work accomplished by Kunstbetrieb must be registered with Kunstbetrieb within eight days after discovery of a problem and a maximum of 14 days after receiving the delivery. The complaint must be documented and described in writing in as much detail as possible, so that Kunstbetrieb is placed in a position to react accordingly.

2. If the complaint is founded, Kunstbetrieb will finalize an agreement with the client as quickly as possible or repair the damages, where applicable. Only in those cases in which Kunstbetrieb is at fault will this occur at no additional charge.
3. If, for an understandable reason, this is not possible or expedient for the client, he/she is to inform Kunstbetrieb in writing. In this case, Kunstbetrieb is exclusively liable within the conditions formulated in Article 12.
4. All right to complaint is forfeit in the case of force majeure and is exclusively possible in the case of normal practice. This includes proper transport, storage or exhibition according to conservatorial guidelines, and does not include non-professional handling or, for example, the intervention of an exhibition visitor or passerby.
5. Kunstbetrieb gives no guarantee for the works it produces. Kunstbetrieb can assume responsibility for maintenance within the framework of a service contract, for an annual fee of 10% of the total project cost. In certain cases this can be modified.

ARTICLE 8: CANCELLATION

1. Both parties can revoke the order in writing at any time.
2. If the client revokes the order, Kunstbetrieb can present an invoice for costs accrued up until that time. Materials already ordered specifically for the project will be delivered to the client together with the unfinished product and will be charged as agreed. Workers hired specifically for the order and rented spaces will be paid through the period of notice, at the cost of the client.
3. This also applies to cases in which the client cancels the order because of force majeure.
4. If Kunstbetrieb cancels the order, Kunstbetrieb will assume at its own expense the transfer of the order to a third party.

ARTICLE 9: RETURN OR TRANSFER OF OBJECTS

1. Objects that Kunstbetrieb places at the client's disposal are to be returned, cleaned, within 14 days after completion of the order. Cleaning and repair or replacements of objects that have not been returned within 14 days are billed to the client.
2. Originals, sketches, or models that the client has placed at Kunstbetrieb's disposal remain in Kunstbetrieb's possession. Return or storage by Kunstbetrieb is carried out at the client's explicit request only, at his or her expense.
3. Products necessary for and leading up to the production of the end product, e.g. negative molds, pass into possession of the client at the time of corresponding payment. The client then acquires their possession, but not the rights to their use.
4. Kunstbetrieb retains the right at any time and without further notice to dispose of objects that have been left on its premises. Kunstbetrieb is expressly under no obligation to store originals, sketches, models, or negatives under archival conditions, unless this has been expressly agreed upon with the client and is compensated. Kunstbetrieb assumes no liability whatsoever for such objects.

ARTICLE 10: LIABILITY

1. Kunstbetrieb's liability is always limited to the following conditions:
 - a. In the case of direct damage, Kunstbetrieb's liability is limited to a maximum of the total invoice amount or to the remuneration provided by its insurer.
 - b. For orders with a duration of execution longer than six months, liability is limited to a maximum of the amount invoiced in the past six months (in variance to Article 10, point a).
 - c. Direct damage consists exclusively of the following: costs incurred in examination of the cause and extent of damage and costs incurred through the limitation of damage or prevention of subsequent damage.
2. Kunstbetrieb is never liable for indirect damage, e.g. consequential damage, loss of profit or savings, damage through stagnation of business operations.
3. The limitation specified above for the case of direct damage does not apply if the damage ensues directly from the egregious fault of an employee of Kunstbetrieb.
4. Kunstbetrieb is not liable for errors in the end product that were already inherent in a model, prototype, test, or trial.
5. If Kunstbetrieb or a third party hired by Kunstbetrieb is working at a particular location away from its own premises, Kunstbetrieb is not liable for damages at this location, nor for the consequences of vandalism or force majeure.
6. Kunstbetrieb is expressly not liable for undesired signs and consequences of the aging of material, including when these signs appear within a very short time.
7. For damages ensuing from a deficient structure or assembly, Kunstbetrieb is only liable to the extent that this structure or assembly lay expressly and totally within the scope of its function and is demonstrated to have been insufficient in the planning or execution of a professional standard.

ARTICLE 11: SAFEGUARD CLAUSE

1. The client defends Kunstbetrieb from claims made by a third party that place in question the intellectual property of materials and drafts delivered to the client for use in the execution of the agreement.
2. If the client places digital data or software, etc. at the disposal of Kunstbetrieb, he/she guarantees its freedom from viruses and defects or accepts the financial consequences of possible viruses and defects.

ARTICLE 12: TRANSFER OF RISK, ITEMS ON LOAN, AND INSURANCE

1. The risk of loss or damage of objects that are part of the agreement is transferred to the client at the moment that these are legally or actually delivered and thus arrive at the disposal of the client or a third party designated by the client.
2. Insurance against theft, damage, etc. of goods or products that are given on loan by the client to Kunstbetrieb is the responsibility of the client.

ARTICLE 13: FORCE MAJEURE

1. If there are circumstances or their consequences that hinder or prevent the execution of an agreement, Kunstbetrieb cannot be bound to execution if these circumstances are not its fault according to law or to the common practice of business.
2. In these terms and conditions, force majeure consists of any unforeseeable event that is beyond the control of the management of Kunstbetrieb and that cannot be avoided through the exercise of reasonable caution. According to this document, employee strikes are force majeure.
3. During the period in which the consequences of force majeure persist, the mutual responsibility to the agreement is held in abeyance. If this period lasts longer than two months, both parties can absolve themselves from the agreement upon request, under the precondition of the settlement of costs accrued by Kunstbetrieb for labor or the ordering of materials in direct connection with the agreement.

ARTICLE 14: CONFIDENTIALITY

1. Both parties are bound to preserve the confidentiality of all private information that has been acquired within the framework of the agreement or from another source. Private information includes that which is termed as such or that which is generally treated as private, such as circumstances of ownership, prices and technical specifics.
2. If, in the course of a legal proceeding, Kunstbetrieb finds itself required to make confidential information public, and if the right of confidentiality is not recognized by the judge, Kunstbetrieb cannot be held liable for the consequences of making this information public. As well, in this case the agreement as it has been made still applies.

ARTICLE 15: INTELLECTUAL PROPERTY, RIGHTS OF AUTHORSHIP, RIGHTS TO USE

1. Kunstbetrieb reserves all rights of authorship – irrespective of statements made at other locations in these terms and conditions.
2. All contents delivered by Kunstbetrieb (reports, advice, agreements, drafts, sketches, drawings, software, etc.) are exclusively intended for use by the client. These cannot be duplicated or made public without the prior consent of Kunstbetrieb, unless this was a component of the order.
3. Unless otherwise specified in the agreement, Kunstbetrieb retains all rights of intellectual property issuing from technical implementation (including patents, rights to the model, and rights of authorship).
4. Kunstbetrieb reserves the right to apply to subsequent projects such knowledge, experience, and references as have been acquired through execution of previous ones, as long as third parties are not given access to any confidential information.
5. In specific cases, the rights of intellectual property arising from an order (including patents, rights to the model, and rights of authorship) can come partially into Kunstbetrieb's possession. The transfer to the client of Kunstbetrieb's part in jointly held rights is negotiable.
6. The right to use first appertains after complete payment of all invoices for production, transport, or assembly.
7. Kunstbetrieb retains the right to manufacture and implement images of artworks in any stage of production, for the purpose of documentation and in connection with marketing, research, and education. Whenever possible, it does so with the appropriate credit of those involved, as long as this information is available or as soon as it has been made available by the client.

ARTICLE 16: SAMPLES AND MODELS

1. If a sketch, sample, or model is shown to a client or placed at his or her disposal, it is to be assumed that this is only meant to give an indication of the end product, and not that it will conform perfectly to what is delivered.
2. Measurements provided by Kunstbetrieb give a reflection of dimensions, but the delivered product does not necessarily have to correspond to them 100%.

ARTICLE 17: IN THE EVENT OF CONFLICT

1. These terms and conditions and all related stipulations as well as changes and additions are subject to Swiss law. If it should happen that one of the above contract conditions is invalid due to incompatibility with a compulsory legal regulation, the validity of the remaining conditions is not affected, and the omitted condition is to be replaced with another condition that achieves the originally intended purpose to the greatest possible extent, in a way that conforms to the law.
2. All disputes in connection with these terms and conditions are to be settled through mediation before the pursuit of ordinary legal action. If this mediation is not successful, the parties are to agree upon an arbitrator, for example an independent art expert whose judgment of the technical execution and aesthetic quality of the result is conclusively recognized by both parties.
3. If the parties do not agree upon an arbitrator within 30 days, one will be appointed by motion of a representative of the currently officiating President of the Cantonal Court of Baselland. The proceeding will be carried out according to the concordat on arbitration, as well as subsidiarily the code of civil procedure of the Canton of Baselland.
4. The place of arbitration is the residence of the arbitrator.

ARTICLE 18: INTERPRETATION AND ALTERATION OF THE TERMS AND CONDITIONS

1. For interpretation of the text, the German language version is binding.
2. The version that is available at the time an order is placed is the version that applies. In order to become applicable, alterations and additions to the terms and conditions that are made during the course of execution of an agreement must be put in writing and approved by all participants.

ARTICLE 19: CREDIT AND REPUTATION

1. Unless the object is not suitable to this end for technical reasons, Kunstbetrieb reserves the right to apply its signature to the products it has manufactured.
2. The parties are mutually obligated not to take any action or to make any communications that could harm the good name, the reputation or the image of the other.

Münchenstein, July 30, 2008
Kunstbetrieb AG Münchenstein