

General Terms and Conditions of HMTechnik GmbH

Date: February 2014



Section 1 General

1. HM Technik GmbH, Schillerstraße 13, 38440 Wolfsburg (hereinafter referred to as "HM Technik") renders services at the prices stipulated in the respective quotation for its contractual partners (hereinafter referred to as "Client").
2. The following terms and conditions apply to all contracts concluded with HM Technik on the work on projects, particularly multimedia productions, the creation of computer animations, work in the field of post-production and technical documentation until completion of the contractual relationship with the Client. Oral collateral agreements have not been made. Deviating terms and conditions of the Client do not apply, even if HM Technik has not expressly objected to their validity. Other agreements, particularly assurances, changes and collateral agreements, must be set out in writing and confirmed by the Client in writing.
3. The contractual relationship is established if the Client accepts orally or in writing a quotation issued by HM Technik in writing. If the contract is concluded orally, it becomes effective by written confirmation.
4. The General Terms and Conditions also apply to future contracts between HM Technik and the Client.
5. These General Terms and Conditions exclusively apply to Clients who act as entrepreneurs in terms of Section 14 BGB [German Civil Code].

Section 2 Conclusion of contract, scope of services

1. The exclusive basis of the services to be rendered by HM Technik is the quotation prepared by HM Technik. A contract will be effectively concluded if the Client accepts a quotation by HM Technik with their signature on the quotation and returns the signed quotation to HM Technik (by e-mail, fax or letter).
2. If HM Technik undertakes to prepare specifications, these specifications will be finalised on the basis of the information and documents provided by the Client. They must be checked by the Client for correctness and completeness and marked by them with a written note of consent. If the quotation already includes specifications or if the Client has to provide specifications according to the quotation, only these specifications are binding for the content of the services.
3. If the services shall be rendered directly on the basis of information or documents of the Client (exposés, screenplays, treatments, drawings, etc.), the Client has to provide this information immediately after conclusion of the contract, unless a different time has been fixed. Delays render the schedule agreements for the completion invalid.

4. Change requests made later, particularly changes to the specifications or the processing of documents supplied by the Client, must be separately and expressly agreed in writing in each case and lead to separate schedule and price agreements. HM Technik will only make changes if a written agreement has been made that governs the extent of the changes, additional costs and, where applicable, the new delivery deadline.
5. If change requests are expressed to HM Technik by the Client, HM Technik first checks them for feasibility and prepares a quotation for implementation. If this is not possible, HM Technik will state the reasons. Before the check is started, HM Technik informs the Client that the completion date may be delayed due to the check of the change requests. The Client may set a period of time for HM Technik, within which the check shall be completed and either a quotation or the refusal of changes by HM Technik shall be available.
6. HM Technik generally reserves the right to replace agreed-upon services with services that correspond to the advancing technical development, if this new service equals or exceeds the subject matter of the contract with regard to technology or content.
7. HM Technik renders the service in the contractually agreed scope and format.

Section 3 Release

1. Prior to the passing for press, publication or production, a preliminary will be sent to the Client. The release then issued by the Client is binding for the production. HM Technik only guarantees the correctness of motives and contents within the framework of the release issued by the Client.

Section 4 Delivery date

1. HM Technik delivers the agreed services at the dates stated in the quotation at the latest. However, these dates are only binding as far as the Client provides all necessary documents and information in due time and fulfils their obligations to cooperate to the required extent.
2. HM Technik is not responsible for delays in delivery due to force majeure (such as strike, lock-out, official orders, telecommunication disruptions, etc.). In such cases, it is entitled to postpone the deadline by the duration of the impairment.
3. Likewise, HM Technik is not responsible for delays in delivery caused by incorrect, incomplete or subsequently changed information or documents of the Client or by missing or faulty acts of cooperation by the Client; such events do not constitute default. Any resulting extra expenditure may be charged to the Client.

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4. If HM Technik checks the feasibility of change requests of the Client according to Section 2 paragraph 4, but rejects such changes, the completion date will be postponed by the duration of the check.

If changes are agreed, the original completion date becomes ineffective. Both parties must agree on a new date in writing.

Section 5 Rights of use

1. HM Technik grants the Client the non-exclusive right without geographic restrictions and unlimited in time to use the rendered overall services as provided in the contract. The overall service is always the final product, e.g. the complete film sequence to be created or the first print data. Further use of the service by the Client is subject to the consent of HM Technik.

2. All rights to the data created by HM Technik (e.g. 3D models, 3D individual scenes, first print data, construction data, etc.) that are prepared or provided by HM Technik in the course of the project implementation remain with HM Technik. The Client is provided with a non-exclusive right of use as far as this is required for the contractual use of the overall service.

3. HM Technik undertakes to not use or distribute the rendered services as long as the Client has not made the services accessible to the public or expressly waives further use. However, HM Technik is entitled to present the service to potential clients as demonstration for the work of HM Technik, unless a separate confidentiality agreement with the Client applies.

4. Until complete payment of the remuneration, HM Technik is entitled to revoke the grant of rights of use for the duration of the default.

Section 6 Warranty

1. The Client has to check the service received immediately for potential defects and notify any identified defects to HM Technik.

2. HM Technik is entitled to remove potential defects at its cost.

3. Features that are subject to subjective assessment (e.g. colouring, dramaturgy) do not constitute a defect.

Section 7 Liability

1. HM Technik is liable for intention and gross negligence. In the event of slight negligence, HM Technik is only liable for violation of essential contractual obligations and in case of injury to life, body or health.

2. The liability of HM Technik according to paragraph 1 is limited to the sum that corresponds to the contractually agreed remuneration, except in case of intention or gross negligence.

3. HM Technik is not liable for disruptions and failures of services due to force majeure or other circumstances HM Technik is not able to prevent, e.g. disruptions in telecommunications or Internet wires.

Section 8 Client's obligations, release from liability

1. The Client assists HM Technik in the rendering of its contractually owed services. This particularly includes the timely provision of information, data materials, as well as hardware and software.

2. Insofar as the Client has undertaken to procure materials for HM Technik during the course of execution of the contract (e.g. graphics, audio, text or similar materials), they have to provide such materials in a common format that may be used immediately. HM Technik informs the Client in due time about the format requirements. If conversion into a different format becomes necessary for proper execution of the contract, the related costs will be borne by the Client.

3. The Client provides HM Technik with the contents required for the creation of the service. HM Technik is not obliged to check the contents provided by the Client, particularly not with regard to whether they are suitable to achieve the purpose pursued with the subject matter of the contract. Furthermore, HM Technik is not responsible for any contents provided by the Client within the framework of the contract and the commencement of the contract negotiations. In particular, HM Technik is not obliged to check the contents for potential infringements (e.g. rights to trademarks and copyrights as well as other property rights); this is the duty of the Client.

4. If third parties assert claims against HM Technik due to potential infringements resulting from the contents of the Client, the Client undertakes to release HM Technik from any liability and to reimburse HM Technik for the costs accruing due to the potential infringement.

5. The Client is obliged to have all submitted services examined by a competent person immediately as from delivery or availability in accordance with commercial law (Section 377 HGB [German Commercial Code]) and to notify any identified defects in writing by providing exact details. The services are deemed approved by the Client with regard to obvious defects or other defects that would have been identifiable during an immediate and thorough examination, unless HM Technik receives a written notification of defects within seven working days after delivery.

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6. If the Client fails to meet the obligations stated in paragraph 1 or 2 in whole or in part, HM Technik is entitled to rescind the contract.

Section 9 Terms of payment

1. The Client shall pay the contractually agreed remuneration. This also applies if the Client forgoes the further implementation of the project in whole or in part.
2. Unless otherwise agreed, the contractually agreed remuneration shall generally be paid in Euros plus the statutory value-added tax. With regard to international business transactions, the respectively current tax law provisions must be taken into account.
3. HM Technik is entitled to demand partial payments, unless otherwise agreed in writing.

Section 10 Non-solicitation and confidentiality

1. The Client undertakes to not entice away any employees from HM Technik during the term of the respectively concluded contract and for a period of one year after the contract is ended. For each case of intentional or negligent infringement, the Client undertakes to pay a contractual penalty to be determined by HM Technik and, where required, to be checked by the competent court for its appropriateness.
2. Both contractual parties undertake to not make any submitted documents, notified know-how and experiences accessible to third parties, but only use them for the purpose of the contract. Assisting persons not involved in the execution of the contract, such as freelancers, are deemed third parties in terms of above provision.
3. The confidentiality obligation continues to apply after the contractual relationship has ended.

Section 11 Right of rescission

1. The Client may rescind the contract with the written consent of HM Technik.
If such consent is given, 30% of the contract value not yet billed will be charged in addition to the already rendered services.
2. HM Technik is entitled to terminate the contract if the Client fails to supply the materials, documents or information to be procured by them despite at least two requests while setting a grace period or if the Client is in delay with payments.

Section 12 Final provisions

1. Should individual provisions of these General Terms and Conditions be or become invalid, this does not affect the validity of the remaining provisions.
2. The law of the Federal Republic of Germany applies exclusively.
3. Place of performance and place of jurisdiction is Wolfsburg, as far as such agreement is legally permitted.

Section 13 Severability clause

Should one or several provisions of this contract be or become invalid, this does not affect the validity of the remaining provisions. The contractual parties are required to replace such invalid provision with a valid regulation by means of which the contractually intended result is best achieved.

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