



# Terms and Conditions of Sale

## §1 Scope of Validity

The following Terms and Conditions apply to all the deliveries, services and quotations provided by UXMA GmbH & Co. KG (hereinafter: "UXMA"). On receipt of the goods or services at the latest, the customer acknowledges having read and agreed to these Terms and Conditions. Conflicting acknowledgements based on the customer's own Terms and Conditions and/or purchasing conditions will not be recognized. The following Terms and Conditions apply regardless of whether the offer covered by the contract emanates from the customer or UXMA. Any deviations from these Terms and Conditions require written confirmation from UXMA. These Terms and Conditions also apply to all future contracts between UXMA and the customer.

## §2 Quotation and Conclusion of Contract

Quotations made by UXMA are subject to change; any order placed by the customer is binding for a period of four weeks after receipt by UXMA. The declaration of acceptance and all order placements require written confirmation from UXMA (e-mail and fax are sufficient) unless a written quotation from UXMA is accepted without any changes. Supplementary verbal agreements must be confirmed in writing in order to be valid.

## §3 Scope of Services

The scope of services to be provided by UXMA is based on individual customer agreements. Maintenance services are not part of the contract unless agreed in writing by both parties. Unless explicitly agreed otherwise, the customer is responsible for the installation and assembly of the supplied products and the associated costs. If UXMA has to supply and/or install spare parts, UXMA is entitled to use construction parts of identical design. Upon provision of receipts, the customer shall bear all costs, such as travel and accommodation costs, expenses and any other claims for payment by third parties made for services performed during the execution of the contract. UXMA is entitled to charge the customer a processing fee equal to 10% of the net order value for handling orders involving third parties, whose costs are passed on directly to the customer. The services of UXMA are charged on a time basis and invoiced monthly. The

rates valid on conclusion of the contract shall apply. If the parties have made no express agreement about payment for a service, which, given the circumstances, the customer should expect to have to pay for, then the customer shall be obliged to pay the standard amount. In case of doubt, the standard rates charged by UXMA for this service apply. Deadlines that cause UXMA to fall behind its obligations and for which no warning is issued must be set out in writing and marked accordingly. Documents, etc. are returned to the customer at his risk and expense.

## §4 Cooperation Obligation

The customer is obliged to provide UXMA with at least one competent contact with the authority required to ensure that everything runs smoothly. The contact must have the authorization to make decisions himself or to bring them about at short notice. The contact is responsible for providing UXMA with all the materials, data and documentation required for the execution of the contract in good time and in the format required, with the aim of promoting rather than hampering progress. The customer shall bear the costs.

## §5 Prices and Terms of Payment

All prices are given in euros and must be paid without deduction. All prices are subject to VAT. Purchase prices must be paid within ten days of receipt of goods; payments for contractual services must be paid within ten days of approval by the customer. If partial services are provided, UXMA is entitled to issue interim invoices. If the customer is late in accepting the goods, this shall be deemed equivalent to the goods having been received. If the customer refuses approval on unfounded grounds, this shall be deemed equivalent to the goods having been approved. Rent, licence fees and leasing rates must be paid in advance by the third working day of the period to which they relate. Unless agreed otherwise, payments must be settled monthly. Payments must be made within ten days of the invoice date. A payment is considered to be made when it enters the account of UXMA or, in the case of payment by cheque, when the cheque has been cashed without reservation.

## §6 Special Conditions of Contract (VOB)

If the parties have agreed to perform particular services based on the Verdingungsordnung für Bauleistungen (German construction contract procedures, VOB/B), the agreed VOB/B provisions apply exclusively for the applicable services.



### **§7 Arrears, Offset and Rights of Retention**

Upon expiry of the payment period agreed in § 5, UXMA is entitled to charge consumers interest on arrears equivalent to five percentage points above the base rate. In all other cases, UXMA is entitled to calculate interest at a rate of eight percentage points above the base rate. UXMA reserves the right to claim for additional losses. In the case of arrears, UXMA is entitled to demand payment in advance or collateral security for the full amount for all other outstanding contractual obligations vis-à-vis the customer. The customer is only entitled to offset payments against counterclaims if they are undisputed or established by legal judgment. A right of retention can only be enforced if it is based on the same contractual relationship.

### **§8 Reservation of Title**

All goods supplied remain the property of UXMA until all debts have been settled in full, even if the goods themselves have already been paid for. The customer is obliged to inform UXMA without delay of any execution proceedings of third parties relating to the reserved goods and to submit any documents required for intervention. This also applies to any other encroachments. Independent thereof, the customer is obliged to inform third parties in advance of the reservation of title relating to the goods. The customer shall bear the costs of an intervention on the part of UXMA if the third party is not able to reimburse them. If the customer sells on or hires out products subject to the reservation of title, the customer hereby already transfers to UXMA any claims the customer makes against its customers devolving to it as a result of the resale or hiring out of the products to the extent necessary to fulfil all UXMA's claims. If goods subject to the reservation of title are processed, modified or combined with another item, UXMA is deemed to be the manufacturer of the new product. The new product is deemed subject to the reservation of title. If the amount of security provided exceeds the claims of UXMA vis-à-vis the customer by more than 20 %, UXMA agrees to release a corresponding part of the security interests at the customer's request. UXMA shall be entitled to decide which securities to release.

### **§9 Liability for Defects**

(1) To make a warranty claim, the customer must have fulfilled his inspection and complaint notification duties in line with § 377 HGB (German Commercial Code). The notification of defects must be made in writing. Claims relating to identifiable defects must be made within five working days of

receipt of goods, approval of a service or on conclusion of a service. Claims for hidden defects must be made within five working days of discovery. A claim cannot be made if UXMA has acted in accordance with the provisions, specifications or authorization of the customer. UXMA is not responsible for checking points of law, particularly with regards to industrial property. Therefore, UXMA is not liable for the legal admissibility or potential infringements of third party rights resulting from the goods it produces or services it performs, etc.

(2) If UXMA is liable for a defect in the goods in question, it can choose to either eliminate the defect or replace the goods as it sees fit. However, UXMA is not responsible for

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delays in the provision of services or goods as a result of tardy cooperation on the part of the customer. If an item is sent to the customer (who is not the consumer) in line with the agreement, the risk is transferred to the customer as soon as UXMA has submitted the consignment to a suitable third party for dispatch.

(3) If UXMA fails to rectify the situation, if the customer finds the measures unreasonable, or if UXMA refuses to rectify the defect or delays it beyond a reasonable period for reasons for which it itself is answerable, the customer shall be entitled to withdraw from the contract or reduce the purchase price – and to do so without prejudice to any claims for damages. In the case of defects relating to partial deliveries, the customer shall only be entitled to withdraw from the entire contract if the remaining deliveries are not of interest to him.

(4) Claims not made for damages expire one year after delivery of the goods, approval of the product, or conclusion of the service. This does not apply in the case of intentional breach of duty, breaches of warranty or in cases relating to §§ 438 paragraph 1 No. 2, 634a paragraph 1 No. 2 BGB.

(5) If UXMA is held liable in line with the recourse of the entrepreneur, the provisions of §§ 478, 479 BGB take precedence.

(6) In the case of claims for damages, the provisions of § 10 also apply.



### **§10 Limiting Claims for Damages**

(1) Claims for damages cannot be made against UXMA or its agents for infringements of non-essential contractual obligations that involve only slight negligence. Liability for infringements of essential contractual obligations that involve only slight negligence is limited to predictable damages typical for the contract in question.

(2) With the exception of the cases listed in § 438 paragraph 1 no. 2 BGB and § 634a paragraph 1 no. 2 BGB claims for damages against UXMA or its agents relating to infringement of obligations that involve only slight negligence expire a year after their occurrence.

(3) For losses caused by delay as a result of slight negligence, liability is limited to 5% of the value of the goods or services in question.

(4) In the event of data loss, UXMA shall not be liable for damages if the customer has not complied sufficiently with data backup regulations.

(5) The exclusions and limitations of liability as set out above do not apply in the event of warranty infringements or injury to life, body or health.

(6) If UXMA or its agents are bound by the statutory regulations of the Produkthaftungsgesetz (Product Liability Law), those provisions take precedence. The above regulations apply in the event of internal settlement in line with §5 sentence 2 of the Product Liability Law.

(7) The aforementioned principles also limit any customer claims relating to contractual penalties deriving, for example, from his purchasing conditions.

### **§11 Cancellation**

If the customer cancels a purchase or service contract before delivery or utilization of a service, he must pay UXMA ten percent of the total order value if he cannot provide evidence that the costs accrued by UXMA are lower. UXMA is entitled to provide evidence that the costs it has incurred are higher. The customer shall then bear the extra costs.

### **§12 Withdrawal**

UXMA is entitled to withdraw from the contract in the event of its own suppliers failing to deliver or if such delivery is incorrect or is not made on time. UXMA is also entitled to withdraw from the contract if the customer has filed for bankruptcy against his assets, made a statutory declaration in accordance with §807 ZPO (German Code of Civil Procedure) or if a bankruptcy petition against his assets has been instituted or dismissed due to lack of assets.

### **§13 Data Protection and Confidentiality**

The customer agrees to the collection, storage, use, transfer and, if necessary, modification of his personal data if this is required for the handling of the contract with UXMA. In particular, UXMA is entitled to pass on customer data to service partners if this is necessary for order processing. Customer data shall not be passed on for any other purpose. The customer can withdraw his agreement at any time in the future either wholly or partially. UXMA is obliged to delete the personal data immediately on full dissolution of the contractual relationship. Both parties agree to use the documents, information and data that they receive in the course of the contract only for the purpose of executing the contract. The information must be treated confidentially unless agreed otherwise. This obligation applies even after the contract has been completed. In cooperation with the customer, UXMA is entitled to use the contract object in design competitions. UXMA is entitled to name the customer on its website or other media as a reference customer and to reproduce or refer to the products or services provided for demonstration purposes, unless the customer can prove a legitimate conflict of interests.

### **§14 Headhunting Ban**

The customer agrees not to approach the employees of UXMA for the duration of the collaboration between the parties and for a period of one year afterwards. In the event of culpable infringement, the customer is obliged to pay a contractual penalty fixed by UXMA at its discretion. In case of dispute, the contractual penalty must be examined by the competent court.

### **§15 Copyright and Right of Use**

All the preliminary work and the results of work conducted by UXMA shall be treated as subject to copyright protection in accordance with §3 UrhG, even if the requisite threshold of originality is not achieved in each individual case. In the case of all preliminary work and the results of work, the rights of use remain with UXMA – even after the products have been handed over to the customer – unless the rights have been transferred in writing or there is an obligation to do so based on the contractual arrangements and they have been paid for in full. Unless agreed otherwise, the simple right to use is transferred, and UXMA is entitled to be named as the creator on any copies.



#### **§16 Place of Performance, Applicable Law and Place of Jurisdiction**

Place of performance is Kiel, Germany. The contract is subject to the law of the Federal Republic of Germany. If the customer is a company, a legal person governed by public law or a special fund under public law, Kiel is the sole place of jurisdiction for all disputes arising from the business relationship with the customer. UXMA reserves the right to file suit against the customer at the latter's general place of jurisdiction.

#### **§17 Salvatory Clause**

Should individual provisions of the contract with the customer, including these Terms and Conditions, be or become wholly or partially invalid, this will not affect the validity of the remaining provisions.

As at April 2019