

General Terms and Conditions

1 General

The following terms and conditions are exclusively applicable to any contract that is concluded with BDE and apply in addition to our offer. This applies especially in the event of conflicting terms and conditions of the ordering party. Deviations from our terms and conditions are only valid if they are confirmed in writing by BDE.

2 Subject matter of the contract

The subject matter of the contract follows from the offer / order letter in connection with these contract conditions, the agreement concerning the project processing and the contract specifications.

3 Compensation

The amount of compensation entitlement is based on the offer or order confirmation. The agreed upon prices are subject to VAT in the amount applicable at the time of invoicing, without any type of discount. Ancillary services (e.g. travel, material and transportation costs) are charged additionally, unless specifically included in the offer.

4 Payment terms

Unless agreed to otherwise, the compensation is due without any deductions within 14 days after the invoice date. Deduction of discount is not allowed without a separate agreement.

If the ordering party is in arrears with payments, default interest in the amount of 8 percentage points above the basic interest rate, each plus VAT, must be paid. The default interest must be calculated at a higher or lower amount if BDE can provide evidence for higher interest costs or if the ordering party can provide evidence for lower interest costs.

The ordering party can only offset entitlements of BDE if the counterclaim is not disputed by BDE or if a legally binding title exists; the ordering party can only exercise a right of lien if it is based on entitlements from the contractual relationship.

5 Retention of title

All rights concerning the work result remain the property of BDE until full payment of all entitlements from the business relationships with BDE, especially the property of the produced work result.

6 Assignment exclusion

The ordering party is not allowed to assign any entitlements or rights arising from this contract to third parties without the consent of BDE.

7 Delivery times, target dates

Schedules and project plans that have been communicated for an offer or during the course of the project represent a non-binding forecast of a possible course of the project for orientation purposes. Binding target dates must be clearly defined amicably during the course of the project after each stage of the project or at each review in accordance with current findings and development results.

The delivery times for work results in accordance with the project plan and offer are calculated by BDE as of the technically clarified receipt of the order / release by the ordering party. This also includes clear feedback after review meetings or concerning information and decisions that have been inquired about during the course of the project.

If no release / decision has been provided by a certain date that has been defined by BDE or if changes become necessary at an advanced point in time, the target dates must be redefined. Changes that are requested afterwards or that are required due to technical reasons can either no longer be considered for preparing the work result or they jeopardize the target date. If it becomes necessary due to design engineering and/or development-technical reasons that a bindingly agreed upon delivery date is

exceeded, BDE is entitled to extend the delivery date by a reasonable time period, however no longer than 6 weeks, unless otherwise agreed. BDE shall inform the ordering party accordingly and specify a new delivery date. Once this delivery date has expired, the ordering party may give BDE a notice of default. In the event of negligently caused delay, the damages caused by delay are limited to typical and foreseeable damages.

8 Ordering party's obligations to co-operate, communication

Within the scope of what is reasonable, the ordering party is obligated to reasonably co-operate in the performance of the contractual work. If the ordering party does not comply with its obligations to co-operate, especially by not providing decisions, approvals or information on time, BDE is not liable for delivery delays. Any additional costs that may incur must be borne by the ordering party.

Project-related changes, remarks or information by the ordering party shall always be in text form (e.g. in writing or by e-mail) and with the information as to whether these changes shall be directly implemented or discussed in the next meeting. If requested changes appear to BDE critical in terms of time or complex, an amicable approach shall be agreed upon.

At the start of the project, the ordering party shall define the method of electronic communication (e-mail, PGP, FTP, etc.). If the ordering party does not specify anything communication shall be carried out by e-mail.

9 Warranty for deficiencies

The ordering party must give notice of obvious deficiencies immediately after acceptance. For the rest, the ordering party may request correction of deficiencies within 12 months after acceptance.

In the event of deficiencies, BDE is entitled to two corrections. If the deficiency correction finally fails, the ordering party is entitled to a deduction or to withdraw from the contract.

In the case that the lack of success is not caused by intent or gross negligence by BDE, the right to withdraw is replaced by a right to termination in accordance with Section 12.

BDE is only liable for deficiency follow-on damages in the event of intent or gross negligence in accordance with Section 13.

BDE is not liable for quality deviations or damages that incur because the ordering party has commissioned a third party with the serial production of a product or prototype without BDE having given release of the design version with respect to suitability for such production. Liability for freedom from legal deficiencies is only assumed if BDE is aware of these legal deficiencies.

10 Provisions concerning intellectual property

BDE is and remains owner of inventions and developments that BDE has made prior to the start of the respective project and any proprietary rights and copy rights that have been registered for them. BDE shall disclose such existing proprietary rights to the ordering party if they are applied to the work result or could restrict it and grant a usage right that is unrestricted with respect to time and location, however not exclusive.

Otherwise, the legal ownership of all work results is transferred to the ordering party with the acceptance of the work result and full payment of the agreed upon compensation, including any design utilization fee, if applicable. If the work result is capable of being protected, the ordering party is entitled to register proprietary rights. Any inventions that are made by BDE employees during performance of the project and that are capable of being protected must be utilized without limitation by BDE and the right for the invention must be transferred from BDE to the ordering party.

The ordering party must indemnify BDE from any entitlements in accordance with the German Employee Invention Act. The design or elements resulting from it may only be transferred to items other than the contractually agreed upon items if BDE gives consent.

Otherwise, if the work result is protected by copyrights of BDE, BDE grants the ordering party an exclusive and irrevocable usage right which is unrestricted with respect to time and location at the time of full payment of the compensation.

11 Contract adjustment, compensation changes

The offer and calculations by BDE are based on the current knowledge about the project scope and project requirements. Therefore, BDE is always only able to provide binding offers for the next project stages, by considering the experience from previous project stages.

Within the scope of performing individual project stages it may occur that corresponding functionalities cannot be implemented due to technical reasons or can only be implemented with great difficulty, cannot be implemented within the cost and time frame of the ordering party or the ordering party decides in favor of higher-quality, however more expensive solutions.

Should the requirement of more time-consuming processing than what has been offered arise during the contract performance, then BDE is entitled to invoice the verifiable additional costs without additional agreement up to an amount of 10% of the agreed upon contract volume.

If it is foreseeable that the agreed upon order volume is exceeded by more than 10% or if any other changes arise, especially change requests from the ordering party, the contractual partners shall inform each other accordingly and record the requirement for changes in writing. On this basis, BDE is entitled to prepare a changed offer for the respective project stages. The contractual parties shall endeavor to reach an amicable contract adjustment.

However, if it is still not possible to reach an agreement about the contract adjustment, both parties are entitled to the right to cancel in accordance with Section 12.

12 Termination

Should major disputes arise over the course of the project with respect to developed contents, achieved goals, costs, etc., the parties shall endeavor to reach an amicable solution via the project manager before exercising a termination or taking legal action. If it is not possible to find a solution at this level, then the issue shall be discussed at management level. In this case, BDE is entitled to suspend further work until clarification. Schedules may have to be adjusted.

If contract adjustments become necessary and if the parties are unable to reach an agreement in this respect, both parties are entitled to cancel the contract.

Otherwise, each party is entitled to cancel this contract for important reasons. An important reason is for example especially if obligations to co-operate have repeatedly been neglected, if non-disclosure obligations have been violated or if insolvency proceedings are instituted against the assets of the other contracting party or if insolvency proceedings are rejected due to the lack of assets.

In the event of a cancellation, BDE is entitled to compensation for the work that has been performed, including a design usage fee, within the scope of the bindingly agreed upon current project stage until the cancellation. This amount is reduced to 70 percent if the ordering party can prove that the work is definitely worthless to the ordering party and cannot be used otherwise. The entitlement for compensation is not applicable if the cause for the cancellation is based on intentional or gross negligent behavior by BDE.

The customer shall receive all project documentation and CAD data that has been created by this point in time, step by step for payment of the open compensation. The compensation entitlement with respect to project stages that have been completed and accepted by then remains unchanged from the cancellation.

13 Liability

BDE is only fully liable in the event of intent or gross negligence for any injury to life, limb or health, in accordance with the regulations of the German Product Liability Act and to the extent of a warranty provided by BDE. In the event of slightly negligent breach of any material contract obligation, BDE is only liable in the amount of the foreseeable and typical damage. Any further liability of BDE does not exist.

The aforementioned limitation of liability also applies to the personal liability of employees, vicarious agents, representatives and organs of BDE.

14 Non-disclosure

The contracting partners commit to treating the work results of the other contracting partner and any other information, especially of technical and business nature, intentions, experiences, findings, design engineering and documents, including the results that they have been disclosed due to the co-operation under this contract (in the following referred to as 'confidential information') confidential towards third parties, not provide any access and protect them against third-party access. This obligation applies even after the contract has been completed.

In addition, the contracting parties shall ensure that also employees, freelancers and subcontractors who are deployed for performing this contract comply with the aforementioned non-disclosure provisions.

The aforementioned obligations do not apply to confidential information that was already known to a contracting partner prior to disclosure within the scope of this contract, that has been gathered independently by the contracting partner or has been obtained otherwise legally or that is general or that becomes generally known without any violation against this contract.

General contract penalty clauses are not accepted by BDE.

After contract termination, any confidential information of a contracting partner that is included in documents for example, including copies, that is held or under the control of the other contracting party, must be returned in its entirety and immediately or – if requested by the other contracting partner – deleted or destroyed.

15 Free copy

BDE is entitled to a free copy that has been produced in accordance with the design, provided that the cost price for the ordering party does not exceed €2000. If the cost price is higher a free copy shall only be delivered upon specific request. In this case, BDE shall pay the amount that exceeds the €2000 to the ordering party. If BDE waives the free copy, it is entitled to pictures in digital format.

16 Advertising

Unless otherwise agreed, the ordering party is allowed to use the name "BUSSE Design + Engineering" on the development and all advertising documentation and other publications. BDE is entitled to reference its co-operation in the respective subject matter of the contract in publications.

17 Written form

Changes and supplements to the contract require the written form; the same applies to waiving this written form clause. Individual agreements between persons who are authorized representatives take precedence in accordance with Section 305b of the German Civil Code.

18 Final provisions

Place of fulfillment for all obligations arising from this contract is 89275 Elchingen.

For all current and future entitlements from the business relationship, the sole place of jurisdiction is 89231 Neu-Ulm. The same place of jurisdiction applies if the ordering party has no general place of jurisdiction in Germany, changes its residence or principal office from Germany to abroad after contract conclusion or if its residence or principal office were not known at the time of instituting legal proceedings.

German law applies exclusively.

If individual provisions are or become invalid or unenforceable in whole or in part, this does not affect the other provisions. The affected provision shall be legally effectively interpreted in a manner that is closest to the intention of the parties.

BDE collects, processes and uses data from the ordering party by complying with the provisions of the German Federal Data Protection Act and only to the extent necessary for processing the contractual relationship.

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