

# GENERAL TERMS AND CONDITIONS OF BUSINESS

**In accordance with the guidelines of I.O. – Illustratoren Organisation e. V.**

## 1. Applicability

These Terms and Conditions govern all agreements between Kevin M. Heibel (hereafter: the illustrator) and the customer and have exclusive applicability. Individual agreements, contractual provisions and terms and conditions of business which diverge must be made in writing. These General terms and Conditions of Business apply to all business transactions including such business as is concluded orally, particularly by telephone even if no explicit reference is made to them in the subsequent business transactions.

## 2. Copyright and right of use

The services to be performed by the illustrator are protected by copyright. The provisions of the law relating to contracts for work and services and the provisions of the German Copyright Act (Urheberrechtsgesetz) apply. The simple payment of a fee for work does not entitle the party making the payment to use of the work. Entitlement to use of the work requires a separate agreement on the grant of rights of use and reasonable remuneration for such use.

## 3. Orders

All confirmations or minutes of meetings transmitted by the illustrator are binding, unless the customer objects without undue delay. The illustrator is entitled to involve suitable third parties for the performance of the contract. In this case the illustrator will acquire, to the extent due to the customer, any rights of use and other rights of use held by the third parties and will grant these rights to the customer.

## 4. Remuneration

All services rendered to the customer, including presentations, drafts and work drawings, are subject to fees, unless otherwise agreed in writing. The remuneration is composed of:

- a) The draft fee
- b) The work drawing fee
- c) The fee for the grant of rights of use to the work drawing.

Unless otherwise agreed, fees promised and/or paid by the customer shall be credited as follows to the individual fee components:

- 30 % to the draft fee
  - 30 % to the work drawing fee
  - 40 % to the rights of use
- in so far as any such rights are granted.

The entitlement to the fee for any rights of use arises irrespective of whether and, if so, to what extent such rights of use are used by the customer. If no rights of use are agreed, the illustrator will receive no fee for use of the work but will receive fees for work performed up to that point. Proposals or any other contributions by the customer have no effect on the amount of the fees.

If no rights of use are agreed, the allocation is amended as follows:

- 50 % to the draft fee
- 50 % to the work drawing fee.

All fees are net amounts and, if the illustrator is subject to VAT, VAT will be added to each fee at the rate applicable at the time. Premiums due to the Artists' Social Security Fund are to be paid by the customer in addition and are not contained in the fees.

## 5. Payment terms

If a contract is performed over a time period of more than four weeks or requires advanced payments by the illustrator in excess of 50 % of the fees due to the illustrator, the following instalment payments are due:

- 1/3 of the total fee at the time the order is placed
- 1/3 on completion of 50 % of the work
- 1/3 on delivery.

If the agreement is terminated early, the illustrator is entitled at least to those instalment payments that have already become due to the illustrator on the termination date in accordance with the above provisions. In all other respects § 649 of the German Civil Code (Bürgerliches Gesetzbuch) applies. The customer is in default with payment, in whole or in part, if he fails to make payment within 14 days of delivery; no demand note is necessary.

If the customer fails to use works of the illustrator to the extent agreed, the customer is not thereby entitled to a fee reduction or refund. The customer is only entitled to rights of offset if his counter-claims are have been judged to be final and absolute, are undisputed or are accepted by the illustrator.

## 6. Rights of use, ownership, advertising

In so far as is agreed, only rights of use are granted to the illustrator's work or services. Title, particularly to drafts (sketches and layouts) and work drawings (final art) which he creates or causes to be created is not granted. All two-dimensional and/or three-dimensional works delivered

to the customer in connection with an order (drafts, work drawings, models, dummies, samples) remain the property of the illustrator. The customer has a right of possession to such works only for as long as possession of the works is absolutely necessary for the agreed use of the illustrator's work.

In all cases the right of possession will terminate at the latest when the contract between the illustrator and the customer terminates. After the right of possession has terminated, the works will be returned to the illustrator in an undamaged condition unless otherwise agreed in writing. The works will be returned at the cost and risk of the customer. In the event of damage or loss, the customer is liable for damages in the amount of 100 % of the agreed fees, with the customer acquiring no ownership rights as a result of the payment of such damages.

The purpose of the drafts passed to the customer is consultation with the customer. No further rights of use to such drafts are granted to the customer. Unless otherwise expressly agreed any additional contractual rights of use apply exclusively to the approved drawing. The illustrator's work and services may only be used to the extent agreed for the order or which arise from the purpose of the order.

In the absence of any other written agreements, the customer will receive only simple rights of use or other rights, and only for the agreed term and for the agreed purpose and territory of the use; unless agreed otherwise in writing, rights of use are granted only for the territory of the Federal Republic of Germany.

Any other use or use over and above the use originally agreed is only permissible on the basis of a particular written grant of a right of use and payment of an additional fee in the proportion of the additional use to the original use.

The transfer to third parties of rights of use already granted is subject to the consent of the illustrator. The illustrator will have a right to disclosure of the extent of the use. Proposals or any other contributions by the customer rise to no shared copyright of the customer. Rights to the illustrator's services, particularly rights of use, do not pass to the customer until payment of the total relevant remuneration to the illustrator for the entire order has been made in full.

The illustrator has the right to sign his work and to be named as the creator on all copies. Any digital copies of the works must electronically link the name of the illustrator to the image file.

The customer is not entitled to edit or modify the works (whether originals or digital files or reproductions) in whole

or in part, or to modify them in other ways and/or to have them edited or modified by third parties unless this is expressly agreed as part of the agreed grant of rights. This additional grant of rights is subject to payment in every case.

After performance of the service the illustrator is not under any obligation to archive the files. The illustrator is, in particular, not under any obligation to archive work files created in the computer including source codes and/or pass such files to the customer. If the customer requires the files to be archived and/or surrendered, this must be agreed and remunerated separately.

In the event of any violation of the rights of use, editing rights or credit rights, the illustrator is entitled to demand a contractual penalty in an amount which is three times the agreed basic fee. The right to bring claims for compensation or an indemnity or other rights in addition to the contractual penalty remains unaffected.

Unless expressly agreed to the contrary, all works created by the illustrator may be used by the illustrator to advertise his services.

#### **7. Special services, incidental and travelling costs**

Unless expressly agreed otherwise, during the draft phase the customer may request one (1) optimisation (but which does not amend the image elements) according to his instructions without this being invoiced as a special service. Each additional change and/or creation and submission of new drafts, any change and/or creation of new work drawings, or any other additional services (e. g. manuscript study), incidental costs (e. g. courier service) or technical costs (e. g. for reproductions, data carriers) will be charged separately depending on the time and effort involved. The illustrator will charge such additional services based upon hourly or daily rates as determined at the illustrator's reasonable discretion in conformity with the recommended fees of I.O. (Illustratoren Organisation e. V.). This does not apply if such services and the fees due for such services are expressly included in the order confirmation.

If the contract is not performed for any reasons for which the illustrator bears no responsibility, the customer will pay all incidental costs incurred by the illustrator in addition to the partial fee due in accordance with Clauses 4 and 5. Payment for additional services is due after services are rendered. Reimbursement of any incidental costs advanced by the illustrator is due after they are incurred. Fees and incidental costs are net amounts; VAT applicable at the time must be paid in addition.

#### **8. Cooperation by the customer**

The customer is obliged to make available to the illustrator in good time all information and data in a standard format that is needed for the execution

of the goods and services. The customer will ensure that the illustrator receives the rights necessary for the use of these documents. The customer is also obliged to notify the illustrator, without being so requested, of any circumstances which may be significant for the execution of his goods and services and which the customer can see are possibly unknown to the illustrator. The files passed to the illustrator will only be returned to the customer if this was expressly agreed; if such a transfer takes place it is at the risk and for the account of the customer.

If the customer fails to accept agreed works in breach of his duties of cooperation, the illustrator may demand reasonable compensation. In so far as the illustrator defines development stages together with the customer and the customer must contribute work of his own to reach those development stages, the customer is obliged to complete and deliver all such work in good time.

### **9. Delivery, delivery time**

Compliance with the agreed delivery dates presupposes that all technical questions have been resolved and that all documents and approvals to be supplied by the customer are available in good time and that all activities and obligations incumbent on the customer are available and have been completed in good time. If this is not the case and timely delivery of the illustrator's work is no longer possible even for an additional fee covering the additional costs as agreed with the customer, the delivery period will be extended for a reasonable time period. Contracts with fixed dates under German law (Fixgeschäfte) are not concluded. The illustrator reserves the right to raise the defence of non-performance.

The illustrator's delivery obligations have been met as soon as the goods and services have been despatched. If non-compliance with an agreed delivery period is due to force majeure, a labour dispute, fire, broken machinery, disrupted telecommunications, computer malfunction, severe illness, unforeseen obstacles or any other circumstances for which the illustrator is not responsible, the delivery period is extended for the duration of such events. The same applies, mutatis mutandis, if delivery by the illustrator was delayed at the time any such an event occurs. The illustrator will inform the customer of any delays in delivery due to force majeure. If performance of the order is delayed for reasons for which the customer is responsible, the illustrator may claim damages which he may invoice by reasonably increasing the fee at his discretion according to the provisions on remuneration in this agreement. The illustrator's right to claim additional damages for delayed performance remains unaffected thereby.

### **10. Transfer of risk**

Unless otherwise stated in the order confirmation, risk passes at the illustrator's place of business/place of

residence. If the customer desires delivery at a different location, delivery will be made at the customer's risk and cost. Risk passes from the illustrator to the customer at the time of delivery to the carrier or, if no carrier is involved, not later than the time when the work is received by the customer or his agents, including if partial deliveries are made and if the illustrator has agreed to provide any additional services (e. g. cost of transport or delivery).

### **11. Warranty for defects, liability**

The illustrator may exercise artistic license in the artistic performance of the order placed with him. If the illustrator's work is not in conformity with the customer's taste or the illustrator's style does not meet the expectations of the customer, this on its own will not be deemed a defect of the illustrator's work. The customer's warranty rights are based on the premise that the customer checks the goods and services supplied by the illustrator immediately on receipt and in any event prior to processing and has complained about any deficiencies immediately after their detection. Minor colour discrepancies between prints and monitor representations or computer print-outs are technically unavoidable and in this respect do not constitute defects.

If the illustrator is responsible for a defect, the illustrator is initially entitled to render remedial performance within a reasonable time period. If remedial performance fails after the expiry of a reasonable grace period set by the customer, the latter has the option of either withdrawing from the contract or demanding an appropriate fee reduction. Remedial performance fails if the deficiency has not been rectified even after the second attempt at remedial performance. The warranty period is 12 months from the transfer of risk. The warranty period is a prescription period and also applies to claims for consequential damages caused by defects, in so far as no tort claims are asserted; any tort claims are subject to the statutory prescription period.

The illustrator is liable for damages for whatever reason in law only in cases of intent or gross negligence including intent or gross negligence on the part of the illustrator's representatives or agents. Except in the event that the illustrator has wilfully infringed the contract, the illustrator's liability for compensation is limited to loss or damage which can be foreseen and which typically occur. This limitation of liability does not apply to loss or damage involving loss of life, bodily injury or impairment of health, or to loss or damage resulting from a breach of any of the illustrator's material obligations. In so far as the illustrator merely passes on services to the customer that were performed by third parties (e. g. service providers), the illustrator's liability is limited to cases where the illustrator made a wrongful selection. Liability for computer viruses is excluded except in cases where the illustrator acts with intent or gross negligence.

The customer is obliged to verify the lawful nature of the goods and services supplied by the illustrator. If any of the goods and services supplied by the illustrator infringes the rights of third parties or otherwise infringes applicable law because it is based on unlawful requirements and/or specifications issued by the customer, the customer, in the relationship between the parties, has sole liability for such infringements or violations. The customer will indemnify the illustrator for all resulting damages, including reasonable legal defence costs and hold the illustrator harmless from all third-party claims. However, the illustrator will notify the customer of any infringements associated with his work as soon as the illustrator acquires positive knowledge of such infringements. This liability provision will apply, in particular, to factual information or other contributions provided or otherwise specified to the illustrator by the customer; to the same extent, the customer is liable for any failure to obtain all licenses and commercial exploitation rights or any other necessary rights to the materials delivered by the customer and with the necessary coverage.

In so far as the illustrator's liability for damages is excluded or limited under the above provisions, this also applies with regard to any liability of the illustrator's staff, employees, independent contractors, representatives and agents.

#### **12. Author's copies**

The customer will provide the illustrator with at least five (5) flawless, unfolded author's copies of all works which are reproduced. The same applies to further print runs, editions and licensed products. The illustrator has the right to use such copies to advertise his services.

#### **13. Place of performance, place of jurisdiction, applicable law**

To the extent permitted by law the parties agree that the exclusive place of jurisdiction will be the illustrator's main business address. This Agreement is governed exclusively by the law of the Federal Republic of Germany.

#### **14. Final provision**

Amendments of and additions to this Agreement must be made in writing to be valid. The same applies for amendments to the requirement for written form.

The invalidity or unenforceability of individual provisions of this Agreement does not affect the validity of the remaining provisions. The same applies for any lacunae in the provisions. The provision which is admissible in law and which comes closest to what the contractual parties wanted or would have wanted according to the intention and purpose of the Agreement is to take the place of the invalid provisions or to complete the lacunae.