

CubiDesign Gehäuse GmbH - General terms and conditions of sales and delivery– status 01/2010

I General

The general terms and conditions of business apply to all contracts with the customer – including future contracts – concerning deliveries and other services. The terms and conditions of our contractual partners are hereby explicitly rejected. Neither shall they be recognised if CubiDesign fails to explicitly refute them once more upon receipt. These general terms and conditions of business shall come into force at the latest on acceptance of the offer, i.e. on issue of the order by the customer as agreed. The terms and conditions of business apply regardless of the type of contract which is completed.

II Completion of contract

1. Our offers are provisional and non-binding. Additions, changes and supplementary agreements or any guarantees made by our employees by telegram, telephone or verbally, must be confirmed in writing in order to come become valid, whereby fax transmission is sufficient.
2. The documentation, illustrations, drawings, specifications of weight and dimensions belonging to the offer are only approximate unless not otherwise expressly and bindingly indicated or guaranteed. We reserve the right to make reasonably changes. CubiDesign reserves the copyright and rights of ownership to all estimates, drawings and drafts and all other documentation. They must not be made accessible to third parties. CubiDesign commits to not making any diagrams and sketches designated as confidential by the customer accessible to third parties without the permission of the customer.
3. The technical documentation and drawings supplied by the customer as the basis for the order with the most current date shall be binding and without restriction.
4. If the customer requires a modification to the technical specification after completion of the contract, but before production of the object, this shall require a written modification agreement. Until then, the original order shall remain valid without restriction.
5. In the event of any orders placed based on a modified offer for reasons of technical changes requested by the customer, written confirmation shall be required for cancellation of the original order.

III. Prices

1. All offers are provisional and subject to change.
2. In the absence of any special agreements, the prices shall be valid ex-works from the respective CubiDesign production workshop including loading on CubiDesign premises but excluding packaging, freight and insurance. Prices are quoted net and shall be subject to the respective rate of value added tax on the day of delivery.
3. Should no other agreement be in place, we commit to the prices stated in our offers for a period of three months from the date of the offer.

IV. Delivery time

1. The delivery period begins when the order confirmation is sent but not before the customer has provided the necessary documentation and approvals. For production of the first samples, the delivery time begins once the order has been technically resolved and payment of the origination costs has been received.
2. The delivery deadline is considered adhered to if the object of the contract leaves the CubiDesign production workshop by the specified date or CubiDesign informs the customer that the object is available for despatch. In this case the date on which the customer is informed of availability for dispatch is definitive.
3. The delivery deadline shall be postponed accordingly in the event of circumstances of labour disputes, in particular strike and lockout or in the event of unforeseen hindrances which are beyond the control of CubiDesign, insofar as such hindrances can be proven to have a considerable influence on the production or delivery of the object of the contract. This also applies if such circumstances arise which affect subcontractors or suppliers. CubiDesign shall only be responsible for the aforementioned circumstances if they arise during an existing delay. In important cases, CubiDesign must inform the customer as soon as possible of the beginning and end of such hindrances.
4. If the customer is late in collecting goods, CubiDesign shall be entitled to deliver the goods after an appropriate advance notice period has elapsed. Alternatively, CubiDesign shall be entitled to choose to withdraw from the contract or demand compensation for non-fulfilment of the contract. In the latter case, CubiDesign shall be entitled to demand 25 % of the order value as compensation for lost profits without the need to provide particular evidence. The customer shall be obliged to provide evidence of lesser or nonexistent damages.
5. If the customer incurs damages due to a delay for which CubiDesign is responsible, the customer shall be entitled to request compensation for the delay to the exclusion of all further claims. The compensation shall be ½ % for every full week's delay up to a maximum of 5% of the respective part of the total delivery which cannot be used punctually or as per the contract due to the delay.
6. If delivery is delayed on request of the customer or should the customer refuse delivery of the object of the contract, either explicitly or implicitly, the customer shall be invoiced for costs incurred for storage on the suppliers premises, at a minimum of ½ % of the invoice amount, starting with the month following announcement of availability. We expressly reserve the right to assert further reaching compensation claims, in particular damages for delays.
7. The customer shall be required to fulfil his contractual obligations as long as the delivery deadline is adhered to.

V: Transfer of risk

1. a. If the purchaser is a business, the risk of accidental loss and deterioration of the goods shall be transferred to the purchaser on handover and for shipments, with the handover of the object to the haulier or other person nominated to perform delivery to the purchaser.
b. If the purchaser is a consumer, the risk of accidental loss or deterioration of the purchased item is not transferred to the purchaser until the item is handed over to the purchaser.
c. Handover is considered to have taken place if the purchaser is late in collecting the item.
2. The customer shall be obliged to inspect the delivery for faults and to establish whether it is complete immediately on receipt and to inform CubiDesign of any faults immediately in writing. Should this not take place, all warranty claims of the customer shall be rendered null and void.
3. The delivery can be insured against theft, breakage, transport damages, fire and water damage and other risks by CubiDesign on request of the customer.
4. CubiDesign shall be entitled to make partial deliveries.

VI. Condition of the object of the contract

1. If the purchaser is a business, CubiDesign shall be entitled to select whether to make a replacement delivery or repair the original goods in order to fulfil the warranty agreement. CubiDesign reserves the right to withdraw.
2. If the purchaser is a consumer, he shall have the right to choose between rectification, a supplementary delivery or a replacement delivery. CubiDesign shall however be entitled to refuse the type of rectification if it is only possible at disproportionate cost and another type of rectification is available which has no particular disadvantage for the customer.
3. Should the rectification not be successful, the customer shall have the fundamental right to demand either a reduction of the remuneration (discount) or cancellation of the contract (withdrawal). However, the customer shall have no right to withdrawal from the contract in the event of minor faults. If the customer chooses to exercise his right to withdraw from the contract once an attempt at rectification has failed, he shall be entitled to no compensation for damages arising from the fault. If the customer chooses compensation after an unsuccessful attempt at rectification, the goods shall remain with him if this can be reasonably expected of him. Compensation of damages shall be limited to the difference between the purchase prices and the value of the faulty item. This shall not apply in the event of malicious intent.
4. Businesses shall be obliged to notify us of visible faults immediately on receipt. The customer shall otherwise have no right to assert claims. They are subject to the full onus of proof for all claims requirements.
5. The warranty period for businesses is one year from the point of delivery of the goods. The warranty period for consumers is two years from the point of delivery of the goods. The warranty period for used items is one year from the point of delivery of the goods. These periods shall not apply in the event of malicious intent.

VII. Sample inspection

Due to the problems involved with custom production of the construction to be produced by CubiDesign, which is carried out specially in line with the specifications of the customer, the samples delivered must be inspected by the customer and checked against his requirements and the necessary characteristics and approved.

VIII. Limitation of liability

1. In the event of gross negligent breach of duty, our liability shall be restricted to the average foreseeable direct damages depending on the type of goods. This also applies to gross negligent breach of duty by our legal representatives or vicarious agents.
We shall not be held liable for gross negligent breach of minor contractual obligations.
2. The aforementioned liability limitations do not affect the claims of the customer regarding product warranty or in the event of actual bodily harm, or in the event of loss of life of the customer.
3. The right of the customer to make claims for compensation due to faults expire one year after delivery of the goods except in case of malicious intent.

IX. CubiDesign's right to withdraw from the contract

1. In the event of unforeseen circumstances as per item IV.3 of these terms and conditions of business, CubiDesign shall have the right to withdraw from the contract.
2. In the event of such a withdrawal, the customer shall not have any rights to assert claims for compensation. In the event of such a withdrawal, CubiDesign shall be obliged to inform the customer immediately, including if an extension of the delivery time has already been agreed with the customer due to the unforeseen circumstances.

X. Changes to the construction by CubiDesign and tolerances

CubiDesign reserves the right to make constructional changes at any time in the interest of optimising production. CubiDesign shall however not be obliged to carry out this kind of optimisation on products already delivered. Products are subject to material-related tolerances as per DIN for technical materials.

XI. Payment Terms

1. The advance costs listed in the invoices can not be discounted. Unless otherwise agreed, the invoices for mass production are payable within ten days as of the invoice date, including a 2% discount.
2. The value date on the specified cash receipt account is applicable for the payment terms. This also applies to payments by check.
3. If the customer is in default, then as of the respective date, interest in the amount of 8% and 5% above the respective prime rate is charged. The agreed upon warehousing compensation listed in number IV.6 is not affected by the above.
4. In the absence of any specific agreement, payments are to be made as follows:
 - The advance net costs for the first sample are due in full immediately on receipt of the order confirmation and the invoice.
 - For production series: Advance costs, in the absence of positive credit information, otherwise 30 days net from invoice date or with 2% discount for early payment within 10 days.
5. Withholding payments or the offset of possible counterclaims contested by CubiDesign is only possible if this has been determined to be a valid or undisputable counterclaim.
6. In the event a customer is in default with more than one payable, then all of the customer's outstanding accounts are due immediately for payment.

XII. Reservation of ownership

1. All goods and parts delivered shall remain the property of CubiDesign (reserved goods) until all receivables have been paid, including in particular all account balance demands which are due for payment to CubiDesign within the scope of the business relationship. This also applies to future and conditional demands, e.g. acceptance drafts, and also if payments are made for specially denoted payments.
2. Reserved goods are processed for CubiDesign as the manufacturer as per § 950 BGB without obligating CubiDesign. Processed goods are considered reserved goods as per item 1. If reserved goods are processed, combined or mixed with other goods by the customer, we shall have joint proportional ownership of the new item equal to the proportion of the invoice value of the reserved goods in relation to the invoice value of the other goods used. If CubiDesign's property expires due to combination or mixing, the customer shall transfer rights of ownership of the new item to the value of the invoice value of the reserved goods and shall keep it safe for us free of charge. Our rights of joint ownership apply as reserved goods as per item 1.
3. The customer may only sell the reserved goods in a normal business in line with his usual terms and conditions of

business as long as he is not in arrears with payments and provided that the receivables from the resale are transferred to CubiDesign as per items 4. to 6. The customer shall not be entitled to dispose of the reserved goods in any other way.

4. The receivables of the customer from resale of the reserved goods are already transferred to us at this point. They serve as security to the same value as the reserved goods. If the reserved goods are sold by the customer together with other goods not sold by us, the respective proportion of receivable shall be transferred to us from the invoice value. On sale of the goods of which CubiDesign has joint ownership shares as per item 2., a share equivalent to our joint ownership share shall be transferred to us.
5. The customer shall be entitled to collect receivables from the resale, unless CubiDesign withdraws the direct debit agreement. On request by CubiDesign, the customer shall be obliged to inform his customers of the assignment of receivables to us - insofar as we do not do this ourselves - and give CubiDesign the necessary information and documentation for collection. The customer shall under no circumstances be entitled to assign the receivables in any other way. This also applies to factoring business. Our direct debit agreement does not constitute the customer's entitlement to such business.
6. The customer shall be obliged to inform CubiDesign immediately if the goods are seized or impaired in any other way.
7. If the value of the existing securities exceeds the secured receivables by more than 20 %, CubiDesign shall be obliged on request by the customer to release securities of CubiDesign's choice.

XIII. Place of contract, place of jurisdiction, governing law and assignment

1. The place of contract for the deliveries made by CubiDesign ex-works is the delivering factory. For other deliveries it is the CubiDesign warehouse.
2. The place of jurisdiction shall be Hildesheim, insofar as this is permitted. We shall have the right to bring action against the customer in his own place of jurisdiction.
3. The respective applicable law for domestic parties in CubiDesign's location shall apply for all legal relationships between CubiDesign and the customer.
4. The customer shall not be entitled to assign claims.