



**Contract for Work and/or Service
General Terms and Conditions**

I.

Application and Validity

- (1) These General Terms and Conditions shall apply to and be integral part of any offer to conclude a contract for work and/or service between Heimbach GmbH ("Heimbach") and Buyer. These General Terms and Conditions shall also apply to work and/or service that Heimbach renders free of charge.
- (2) All agreements between the parties regarding the execution of a contract for work and/or service are stipulated in such contract in written form. Any conflicting Terms and Conditions shall not be part of such contract, unless expressly agreed between both parties in writing.
- (3) These General Terms and Conditions shall only apply to entrepreneurs according to section 310 of the German Civil Code (BGB).

II.

Scope of Contract

The scope of contract is solely determined by Heimbach's written order confirmation, the agreement for work and/or service and the specifications of Buyer, provided that those specifications are expressly referred to in the order confirmation or the agreement for work and/or service.

III.

Prices and Terms of Payment

- (1) The total amount of payment for work and/or service rendered shall be stated in the order confirmation or the agreement for work and/or service. If the order confirmation or the agreement for work and/or service do not determine the total amount of payment, Heimbach's usually quoted prices apply.
- (2) The prices are exclusive of value-added tax (VAT) and any other applicable sales tax. The VAT will be stated separately.
- (3) A cash discount ("Skonto") is not applicable, unless otherwise expressly agreed between both parties in writing.
- (4) Payment has to be made according to the terms and conditions given in the invoice.
- (5) Unless otherwise stated in the order confirmation, payment shall be made in full within 30 days of receipt of the invoice. If payment is not received by Heimbach within this time, Buyer will be in default, unless he can show that he is not responsible for the delay. During the time of default Buyer must pay interest on the total amount of payment. The interest rate per year shall be 8 percentage points above the basic rate of interest of the European Central Bank. This obligation to pay interest does not preclude Heimbach from claiming further damages.
- (6) Legal rights of Buyer to set-off contested claims, claims that are not finally and non-appealably judicially settled, or claims that are not upon adjudication against claims of Heimbach for payment are excluded.

IV

Time of Performance

- (1) Unless the parties agree on specific performance dates or deadlines, the dates on which work and/or service shall be performed will be stated in the order confirmation or the agreement for work and/or service.

- (2) In case of Heimbach's late performance for whatever cause or reason, Buyer shall grant a one-time reasonable extension of the fixed date or deadline.
- (3) In case of default, Heimbach shall only be liable for damages that have been incurred intentionally or with gross negligence on part of Heimbach, its vicarious agents, legal representatives or persons who Heimbach uses to fulfil its obligations.
- (4) In lieu of section IV para. 3, Heimbach shall also be liable for default which is due to a culpable violation of a so-called cardinal contractual duty. A cardinal contractual duty is deemed a duty, the fulfilment of which is an essential requirement regarding the execution of the contract and the compliance of which can be trusted and expected by Buyer. In this case, liability is limited to predictable and typical damages, unless the violation was caused intentionally or with gross negligence on part of Heimbach's legal representatives or executive employees.
- (5) If Buyer is in default or breaches its obligation of cooperation, Heimbach may claim any resulting damages including possible additional expenditure.

V.

Liability

- (1) Heimbach shall be liable for damages according to statutory provisions, but any and all claims for damages shall be limited as follows:
 - a) For simple negligence, Heimbach's liability shall be limited to injury to life, limb or health.
 - b) For intentional acts by simple vicarious agents and for gross negligence of legal representatives, employees or vicarious agents, Heimbach's liability is limited to predictable and typical damages. In this regard, Heimbach has procured a comprehensive general liability insurance.
 - c) For violation of a so-called cardinal contractual duty, Heimbach shall – in lieu of section V para. 1.1 – also be liable for simple negligence, however, with the limitations stipulated in section V para. 1.2.
- (2) The foregoing limitations shall also apply to claims based on a breach of duty in connection with the conclusion of the contract (*culpa in contrahendo*), as well as to claims based on tort. The liability of Heimbach's legal representatives, executive employees and other personnel shall not exceed the liability of Heimbach.
- (3) The period of limitation regarding any and all claims for damages against Heimbach is one year.
- (4) For culpable injury to life, limb or health, for intentional acts of Heimbach's legal representatives or executive employees and for claims based on tort, the statutory periods of limitation shall apply.

VI.

Arbitration and Choice of Law

- (1) Any and all disputes arising from or in connection with these Terms and Conditions or an agreement thereof shall be finally and exclusively settled under the arbitration rules of the DIS ("Deutsche Institution für Schiedsgerichtsbarkeit e.V.") as effective on the date of the arbitration proceedings.
- (2) The arbitration proceedings shall be held in Düren/Germany. The language of the Arbitrations shall be German.
- (3) These general terms and conditions and any agreement thereof shall exclusively be governed by and construed in accordance with the laws of the Federal Republic of Germany. The United Nations Conventions of the International Sale of Goods (CISG) shall not apply.