

## 1. Scope

- 1.1 These General Terms and Conditions shall apply to all contracts concluded between Astro- und Feinwerktechnik Adlershof GmbH - hereinafter referred to as Astrofein - and a contractual partner concerning deliveries and services of Astrofein, unless otherwise stipulated in the individual contractual agreements.
- 1.2 The scope of application is exclusively business transactions with entrepreneurs
- 1.3 The contract shall be concluded subject to these General Terms and Conditions.
- 1.4 These General Terms and Conditions shall apply exclusively. Conflicting or deviating terms and conditions of the contractual partner shall not form part of the contract and shall not be recognized unless Astrofein has expressly agreed to their applicability. This shall also apply if Astrofein performs its services without reservation in the knowledge of conflicting or deviating terms and conditions of the other party.

## 2. Subject matter of the Agreement

- 2.1 The nature and scope of the services to be provided by Astrofein shall be determined by the offer accepted by the contractual partner or by Astrofein's written order confirmation.
- 2.2 Statements made by employees of Astrofein or third parties as well as advertising statements shall, in case of doubt, only constitute a statement regarding the characteristics of the contractual work or service if Astrofein has recorded this in writing. In case of doubt, statements about the characteristics of the contractual work or service constitute a guarantee only if they are expressly designated as such.

## 3. Implementation of the Agreement

- 3.1 The decision as to which persons are deployed on Astrofein's side within the scope of the performance of the contract lies with Astrofein. The contractual partner may demand the replacement of employees used by Astrofein for the performance of an order only for good cause. The contractual partner shall have no right to issue instructions to Astrofein's employees.
- 3.2 Unless otherwise agreed, Astrofein shall be entitled to have the work or services incumbent upon it performed by its own employees or by third parties commissioned by Astrofein, at Astrofein's discretion.
- 3.3 Astrofein is entitled to perform and invoice partial works or services. Partial works or services that can be separated from each other shall be deemed to be owed independently of each other.

## 4. Prices and terms of payment

- 4.1 Costs for packaging and shipping: All prices are generally ex works Berlin. The costs of packaging and shipping shall be borne by the contractual partner unless otherwise agreed.

4.2 Taxes and duties: All prices are exclusive of the statutory value added tax. In the case of deliveries from or to foreign countries, any applicable taxes and customs duties shall be added.

4.3 Due date of remuneration and reimbursement of expenses: Unless otherwise agreed, the following shall apply:

4.3.1 The invoiced amount is due immediately and without deductions.

4.3.2 Insofar as an advance payment, a down payment or a payment on account has been agreed, the due date shall be upon conclusion of the contract.

4.3.3 Insofar as partial performances, partial acceptances or the like have been agreed upon, Astrofein shall be entitled to demand corresponding partial payments upon their performance or completion.

4.3.4 In the event of termination of the contract or individual parts of the contract defined in the contract, the remuneration with regard to the terminated part shall become due immediately for all works and services rendered but not yet invoiced.

4.4 Delayed payments:

4.4.1 Payment deadline: The contractual partner shall pay the invoiced amount within fourteen (14) calendar days of receipt of the invoice.

4.4.2 Interest: If the contractual partner exceeds the payment deadlines or fails to make payment in response to a reminder after the due date, Astrofein shall be entitled to charge interest on arrears in accordance with the statutory provisions, but at least in the amount of 8% p.a. above the basic rate of interest [translator's note: as set by the Deutsche Bundesbank/European Central Bank pursuant to section 247 of the German Civil Code]. The assertion of further damage caused by delay is not excluded.

4.5 Cost estimates: Cost estimates and budget plans prepared by Astrofein are - unless otherwise agreed - non-binding.

## 5. Obligation of the customer to cooperate

5.1 The contractual partner shall be obligated to reasonably cooperate in the performance of the contractual work or service. In this context, the special circumstances of technology services and projects shall be taken into account which, due to their regularly high complexity and customer-related nature, require a close and trusting cooperation between the contracting parties. The cooperation of the contractual partner is therefore an essential contractual obligation. The contractual partner shall create all prerequisites necessary for the provision of works or services by Astrofein which are agreed upon or lie within contractual partner's sphere. To the extent necessary, the contractual partner shall in particular ensure that competent employees authorized to make decisions are available on the agreed dates to enable Astrofein to perform the work.

- 5.2 The contractual partner shall, without being requested to do so, inform Astrofein in due time of all circumstances and events which are of importance for the performance of the agreed services.
- 5.3 The contractual partner shall be obliged to ensure that its data is properly backed up.
- 5.4 Unless otherwise agreed, the contractual partner shall provide the cooperation services which it is obliged to provide, free of charge.
- 6. Deadlines and dates**
- 6.1 Astrofein shall perform the contractual works and services within a reasonable period of time.
- 6.2 Dates for the performance of services stated in the offer or in other documents are in principle non-binding planned dates. These dates shall only be deemed to be binding performance dates if they are expressly designated as such.
- 6.3 If Astrofein is prevented from meeting a delivery date or performance date due to unforeseen circumstances beyond the control of Astrofein or its vicarious agents, such deadlines shall be reasonably extended, at least by the duration of such obstacles. Such circumstances are, for example, force majeure, labour disputes, network failure or general disruptions of telecommunications. In such a case, the contractual partner shall in principle only be entitled to withdraw from the contract in accordance with section 323 of the German Civil Code (BGB) if a bindingly agreed delivery date is exceeded by more than thirty days. Prior to this, the contractual partner may only withdraw from the contract if the conditions of section 323 para. 2 no. 2 or 3 BGB (simple time-fixed transaction or unreasonableness) exist. Any other existing rights or claims of the contractual partner shall not be affected by this.
- 6.4 Astrofein shall not be responsible for delays due to circumstances for which the contractual partner is solely or predominantly responsible (delayed performance of cooperation services, delays by third parties attributable to the contractual partner, etc.). In such cases, Astrofein shall be entitled to postpone the performance of the affected services for a period of time commensurate with the duration of the aforementioned circumstances.
- 6.5 For Astrofein's liability in case of delays in deliveries and services, see the section "Limitation of Liability".
- 7. Passing of risk**
- 7.1 The passing of risk of accidental loss and accidental deterioration of the subject matter of the contract shall be governed by the following terms:
- 7.1.1 In principle, the risk shall pass to the contractual partner upon handover;
- 7.1.2 in the case of sale by delivery to a place other than the place of performance, upon handover to the forwarding agent, the carrier or any other person designated to carry out the shipment; in this case, the choice of shipping method and person shall be left to Astrofein's free decision, unless otherwise agreed.
- 7.2 Delivery shall be deemed to have taken place if the contractual partner is in default of acceptance.
- 8. Retention of title for deliveries**
- 8.1 Astrofein shall retain title to the delivered items until all claims arising from the ongoing business relationship with the contractual partner have been satisfied in full.
- 8.2 The contractual partner is obliged to notify Astrofein without undue delay of any access by third parties to the contractual works and services, for instance in case of seizure, as well as of any damage to or destruction of the contractual object of performance.
- 8.3 The contractual partner shall be entitled to resell the contractual object of performance under the contract in the ordinary course of business. The following shall apply: The contractual partner hereby assigns to Astrofein all claims in the amount of the invoice amount accruing to it against a third party as a result of the resale. Astrofein accepts the assignment. After the assignment, the contractual partner shall be authorized to collect the claim. Astrofein reserves the right to collect the claim itself as soon as the contractual partner does not duly meet its contractual obligations or is in default of payment.
- 8.4 Other disposals of the reserved goods, in particular pledging and assignment as security, are prohibited. Any intervention costs shall be borne by the contractual partner.
- 8.5 In case of breach of duty by the other party, in particular in case of default in payment, Astrofein shall be entitled, after setting a reasonable time limit and after expiration of such time limit, to demand the handover of the delivered item and/or to rescind the contract; the other party shall be obliged to hand over the delivered item. The demand for handover does not constitute a declaration of rescission by Astrofein, unless this is expressly declared.
- 9. Setting-off and rights of retention**
- 9.1 In general, the following shall apply: The contractual partner may only set off claims that are undisputed or have become res judicata and may only assert a right of retention on account of such claims.
- 9.2 In the event of defects, the contracting party shall only be entitled to a right of retention insofar as the amount retained does not exceed the reduced value of the affected object of performance due to the defect or the anticipated costs of the cure or rectification of the defect.
- 10. Warranty**
- 10.1 **Obligation to inspect and give notice of defects:** The contractual partner is obliged to inspect the contractual object of performance after delivery or handover and, if a defect becomes apparent, to notify Astrofein without undue delay. If the customer fails to notify Astrofein, the work or service shall be deemed approved, unless the defect was not recognizable during the inspection. If such a defect becomes apparent later, the notification must be made immediately after discovery; otherwise the work or service shall be deemed approved also in view of this defect. The foregoing shall not apply to the extent that Astrofein has fraudulently

concealed the defect and/or has assumed a corresponding warranty. If Astrofein enters into negotiations about a complaint, this shall in no case constitute a waiver of the objection of late, insufficient or unfounded notice of defects.

**10.2 Modification of warranty rights:**

10.2.1 If the contractual partner demands the cure of the defect, Astrofein may choose to remedy the defect, or to deliver anew, or re-manufacture the defect-free contractual object.

10.2.2 Insofar as the expenses required for the purpose of rectification or cure of the defect are increased due to the fact that the delivered goods and services are taken to a place other than contractually agreed or other than in accordance with the intended use, the contractual partner shall bear the additional costs.

10.3 Obligation to pay for analysis of alleged defects: If a notice of defect proves to be unjustified, Astrofein may demand from the contractual partner compensation for any expenses incurred in this regard and reasonable additional remuneration. Section 612 BGB shall apply accordingly.

**11. Third party rights**

11.1 Astrofein shall be responsible for ensuring that the contractual goods and services provided by it are free of third party rights and that their contractual use in the Federal Republic of Germany does not infringe any third party patents, licenses or other third party rights. This warranty shall not apply, however, if such infringement of rights has its cause in the implementation of contractual specifications, plans, etc., which were provided or made available by the contractual partner.

11.2 Astrofein may - without prejudice to any claims for damages of the contractual partner - at its own discretion and at its own expense make changes with respect to the affected goods or services after prior consultation with the contractual partner which, while safeguarding the interests of the contractual partner, ensure that an infringement of property rights no longer exists, or acquire the necessary rights of use for the contractual partner. Astrofein shall also be entitled to remedy the infringement of third party rights by delivering an adequate replacement product.

11.3 The parties shall be mutually obliged to notify each other in writing without undue delay if claims are asserted against them for infringement of third party rights in connection with the contractual goods and services.

**12. Limitation of liability**

12.1 Astrofein shall be liable without limitation in accordance with the statutory provisions for damages of the contractual partner caused by intentional or grossly negligent conduct of Astrofein or its vicarious agents. The same applies to personal injury and damages under the German Product Liability Act.

12.2 In all other respects, Astrofein's liability for claims for damages - irrespective of their legal basis - shall be limited in accordance with the following provisions, unless otherwise stipulated in a warranty given by Astrofein:

- Astrofein shall be liable for damages caused by slight negligence only to the extent that they are based on a breach of material contractual obligations (cardinal obligations). Cardinal obligations are those contractual obligations the fulfillment of which is essential for the proper performance of the contract and on the fulfillment of which the contractual partner may rely. To the extent Astrofein is liable hereunder for mere negligence, Astrofein's liability shall be limited to the typically foreseeable damage.

- Astrofein's liability for loss of data and/or programs caused by mere negligence shall be limited to the typical recovery effort that would have been incurred if the contractual partner had backed up its data regularly and appropriately under the circumstances.

- For damage caused by delay due to mere negligence, Astrofein's liability is limited to the typically foreseeable damage, but not more than 5% of the total price agreed in the contract concerned.

12.3 The provisions of the preceding paragraph shall apply mutatis mutandis to a limitation of the obligation to compensate for futile expenses (§ 284 BGB).

12.4 The above limitations of liability shall also apply in favor of Astrofein's vicarious agents.

**13. Special exclusion of liability for load and function tests**

13.1 Insofar as Astrofein's contractual performance consists in carrying out load and function tests on an object of the contractual partner (test object) or the like, the following shall apply without prejudice to any other provisions regarding liability:

13.1.1 Astrofein's liability is excluded for such damage to the test object that occurs during regular operation of the test facilities (typically foreseeable test damage).

13.1.2 The burden of proof that damage to the test object is not typically foreseeable test damage or that irregularities occurred during the test for which Astrofein is responsible shall be borne by the contractual partner.

13.1.3 Insofar as Astrofein performs further tests on the test object at the request of the contractual partner, which are outside the scope of the original order and are not specially remunerated, Astrofein's liability for damage to the test object caused thereby shall be excluded; this shall not apply in case of intent.

**14. Limitation of warranty claims and claims for damages**

14.1 The Customer's warranty claims based on defects in Astrofein's deliveries or services or claims for damages in this connection shall become statute-barred one (1) year after the statutory commencement of the limitation period. Insofar as Astrofein's contractual performance consists in the delivery or manufacture of buildings or things for buildings or planning or supervision services therefor, the limitation period shall be three (3) years.

14.2 In cases of intent and deceit as well as claims for damages due to personal injury, product liability or breach of cardinal

obligations or grossly negligent breach of other obligations, the statutory limitation period shall apply.

#### **15. Confidentiality**

- 15.1 Astrofein undertakes to treat any trade and business secrets of the contractual partner strictly confidential and not to disclose them directly or indirectly to any third party not provided for in the contract or to use them for any purpose other than the contractually intended purpose. Astrofein shall ensure that confidentiality is maintained by its employees. The obligation of confidentiality shall also apply after termination of this contract.
- 15.2 The same confidentiality obligations shall apply vice versa to the contractual partner.

#### **16. Early termination of the contract (cancellation and withdrawal)**

- 16.1 If the contractual partner is entitled to withdraw from the contract, it shall declare within a reasonable period of time after Astrofein's request whether it withdraws from the contract or insists on the delivery or service.
- 16.2 Insofar as the contract is not a long-term contract with the character of a contract for work and services, the right of termination of the contractual partner as customer pursuant to Section 648 of the German Civil Code (BGB) shall be excluded.
- 16.3 The possibility of termination for cause shall not be affected by the above provisions.

#### **17. Final provisions**

- 17.1 These General Terms and Conditions and the entire contractual relationship between Astrofein and the contractual partner shall be governed by the laws of the Federal Republic of Germany, excluding the UN International Sale of Goods Convention.
- 17.2 The contract and all amendments and supplements to the contract must be in writing, unless notarial form is to be observed. This shall also apply to the waiver of the written form requirement.
- 17.3 Insofar as the contract is concluded as a business to business transaction by way of electronic communication, the special notice, information and other obligations provided by law for this case (§ 312e BGB) shall be deemed waived.
- 17.4 Unless otherwise agreed, the place of performance for all obligations arising from the contractual relationship shall be Berlin. If the contractual partner is a fully qualified merchant with business operations [translator's note: a business registered or to be registered in the commercial or company register in the terms of the German Commercial Code], Berlin is agreed as the place of jurisdiction for all disputes arising from the contractual relationship.
- 17.5 Should one or more of the provisions agreed between the contracting parties be or become invalid, the validity of the remaining provisions shall not be affected. In place of the invalid provision, a provision shall be deemed to have been agreed which, as far as legally possible, comes closest to

what was intended by the contracting parties according to the original meaning and purpose of the invalid provisions with regard to place, time, extent and scope. Gaps in the contract shall be filled in accordance with what the parties would have agreed had they been aware of the need to regulate the issue on the basis of a reasonable assessment of the factual and legal situation and taking into account the justified interests of the other party in each case. This shall also apply if the invalidity of a provision is based, for example, on a measure of performance or time (period or date) prescribed in the contract; a legally permissible measure of performance or time (period or date) which comes as close as possible to that intended shall then be deemed to have been agreed. This clause shall not apply to these General Terms and Conditions themselves.