D&B Pharmadesign

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General Terms and Conditions / Sale / Performance of Services

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1. General Terms and Conditions

The following General Terms and Conditions are considered the basis for all services carried out by the company D&B Pharmadesign. They apply exclusively, and are considered accepted by the client when an order is granted to D&B Pharmadesign. They also apply to future business relationships, and do not have to be expressly agreed once again. Individual agreements made with the contractor in specific cases (including ancillary agreements, supplements and amendments) shall always take precedence over these Terms and Conditions. A written contract or written confirmation from D&B Pharmadesign shall be decisive when determining the content of such agreements.

2. Contractual conclusion and content of the contract

The contract with D&B Pharmadesign shall come into being following a binding offer from D&B Pharmadesign and its unconditional acceptance by the client. The same applies (so-called implied contractual conclusion) if D&B Pharmadesign begins to perform its services, and the client is aware of this.

Any contract that deviates from the offer shall be considered a new offer and shall require separate written confirmation from D&B Pharmadesign to be considered accepted. Legally relevant declarations and notifications, i.e. those to be submitted by the client to D&B Pharmadesign after the contract is concluded, shall also require the written form, as shall all agreements, supplements, amendments and ancillary agreements.

3. Commitment period

D&B Pharmadesign shall be bound to the prices and conditions stated in its offer for 30 days from the offer date, unless otherwise agreed.

4. Compensation and payment

Fees do not include statutory VAT, without further discounts. Reservation of payment or offsetting against counter-claims by the client shall only be permitted if and insofar as the asserted claims are undisputed or have been found valid by a court of law. The cost framework and hours indicated in the offer are based on estimates, and are non-binding. If necessary and discernible, D&B Pharmadesign shall inform the client of significant changes.

In the case of continuing obligations and services to be performed more than 6 weeks after the contract is concluded, D&B Pharmadesign reserves the right to change billing and hourly rates if cost reductions or cost increases occur after the contract is concluded, for instance due to collective bargaining agreements, or due to increased personnel and material expenditures. The change must be verified at the client's request. This does not include fixed price agreements.

5. Payment conditions

D&B Pharmadesign issues monthly invoices for its services, unless otherwise agreed. Invoiced amounts are due for payment within 14 days of the invoice date. Invoices shall be considered accepted if the client does not object to them in writing within 2 weeks after the invoice date.

Once the order is issued, D&B Pharmadesign is entitled to request an appropriate advanced payment from the client in the amount of an estimated monthly payment, which shall be due immediately when the invoice is issued.

If the client falls into default, D&B Pharmadesign shall be entitled to charge the client statutory default interest. If D&B Pharmadesign can verify that damages due to the default were higher, then these damages can be asserted. The client is entitled to verify that D&B Pharmadesign suffered no or significantly less damages as a consequence of the payment default.

6. Contractual termination / contractual penalty

D&B Pharmadesign shall charge a flatrate contractual penalty if a contract is terminated prematurely, amounting to 5 % of the offer total. The client is entitled to verify that damages were lower. The flat rate shall not affect any compensation claims of D&B Pharmadesign that have already come about.

7. Contractual fulfilment, acceptance

Services by D&B Pharmadesign shall be considered fulfilled and accepted once one or more of the following conditions have been met:

- work results have been handed over to the client and the client has sold them to another party or modified them,
- the client has confirmed receipt of the work results in writing and without reservation,
- the client has not asserted any written complaints within 14 days in response to a written notification from D&B Pharmadesign regarding the completion of services and handover of work results.

8. Default of acceptance

The agreed fee must be paid even if the client falls into default of acceptance, does not fulfil a cooperative obligation, or cannot use the contractual services, unless this is due to a circumstance for which D&B Pharmadesign is responsible.

In such cases, D&B Pharmadesign is not obligated to provide subsequent performance. However, D&B Pharmadesign must offset any amounts it saves because it is not performing the services or any amounts it earns by using its employees elsewhere, or any amounts it wilfully fails to earn by not doing so, against the agreed fee.

9. Liability for defects, inspection obligation, warranty, claims for damages

D&B Pharmadesign shall perform its services in accordance with good engineering practice and due diligence typical for the industry at the time of commissioning, and shall be responsible for ensuring that services have the agreed characteristics and are suitable for the contractual use.

D&B Pharmadesign shall not provide any assurances or guarantees (in particular no guarantees for specific characteristics), unless otherwise agreed in writing, with an explicit reference to this provision.

The liability of D&B Pharmadesign shall be limited to delivering the services once again and correcting the defects (supplementary performance). The client must assert the claim to supplementary performance promptly. D&B Pharmadesign shall be provided with sufficient time and opportunity to complete supplementary performance.

D&B Pharmadesign is released from its duty of supplementary performance, if the client rejects it.

The client is only entitled to reduce compensation or rescind the contract if supplementary performance fails, or if it is not possible for other reasons.

Any further liability of D&B Pharmadesign is excluded, and shall be limited to damages foreseeable at the time the contract was concluded. The liability of D&B Pharmadesign shall furthermore be limited to the coverage amount of the pecuniary damage liability insurance, if allowed by law.

D&B Pharmadesign shall accept no liability or guarantee for validation work ensuring that the relevant software and process sequences are functional or useful.

Furthermore, in order to assert rights for defects, the client must promptly inspect the function and properties of the service / the project after technical commissioning, and must immediately inform D&B Pharmadesign in writing of any defects that should be found during a proper inspection.

If the client either modifies the contractual object itself, or has it modified by third parties, or if third parties are responsible for carrying out further services / the project, then the client must assert the inspection and complaint before passing it on to a third party or carrying out the modification; otherwise, services by D&B Pharmadesign shall be considered fulfilled and accepted, and free from defects.

Furthermore, services of D&B Pharmadesign shall be considered defect-free with respect to non-discoverable defects, if the client does not inform D&B Pharmadesign accordingly within 4 weeks before passing on or modifying the performance object / the project.

Liability claims are excluded for defects if the client intends to assert them more than 12 months after technical commissioning or handover of project documents.

Furthermore, D&B Pharmadesign shall not be liable for damages resulting from a modification or handover of the performance object/project if this was not initiated or approved by D&B Pharmadesign itself. The client shall be responsible for proving that the asserted damages did not result from a modification to the performance object / the project.

D&B Pharmadesign shall also not be liable for the process and service, and market-specific or other economic objectives of the performance object / the project, including external damages and any claims resulting from product liability that do not result from the performance object itself.

The above exclusions and restrictions of liability shall not apply to claims for damages if these result from intentional or grossly negligent actions, nor to claims due to the lack of a guaranteed characteristic, for claims according to Sections I, 4 of the Product Liability Act, injuries to life and health, or slightly negligent violations of essential contractual obligations.

The client is obligated to ongoing controlling and security obligations in order to prevent damages and subsequent damages.

Liability for subsequent damages, in particular for lost profits and production shutdowns, is excluded.

10. Limitation period

The client's defect claims and claims for damages shall expire 12 months from acceptance or (if no acceptance is planned) from the end of the calendar month in which the service in question was performed or the breach of duty in question was committed. This deadline is a limitation period, and also applies to claims for reimbursement of consequential damages, unless these are excluded. Statutory limitation regulations for intentional actions and claims resulting from the Product Liability Act shall remain unaffected.

11. Intellectual property

If services by D&B Pharmadesign result in the creation of intellectual property, then D&B Pharmadesign shall be entitled to said property. D&B Pharmadesign shall grant the client a charged right of use/license for contractual use of the intellectual property.

12. Retention of ownership

D&B Pharmadesign reserves ownership to all delivered services until all payments are received in relation to its business relationship with the client. If the client is a merchant, then the retention of ownership shall also apply to claims which D&B Pharmadesign has as a result of receivables from ongoing business relationships with the client, and those which it will obtain from future orders after handover (current account reservation).

Upon request by the client, D&B Pharmadesign is obligated to waive its retention of ownership if the client has fulfilled all claims associated with the contractual object and there is some other appropriate security for the other claims resulting from the ongoing business relationship.

This retention of ownership shall also apply in particular to goods delivered to the client by D&B

Pharmadesign in relation to performing its services. The client is entitled to sell services delivered by D&B Pharmadesign to others in the normal course of its business and without agreeing to a prohibition of assignment. The client hereby already assigns its claims resulting from the sale to a third party to D&B Pharmadesign, along with all ancillary rights, up to the receivable amount as per the final invoice total (including VAT); if the client has any current account agreements with third parties, then this applies accordingly to the balance from the current account, if the client is a merchant.

The client remains entitled to collect the assigned claims even after the assignment. The right of D&B Pharmadesign to collect the claim itself shall remain unaffected.

D&B Pharmadesign, however, hereby undertakes not to collect the claim if the client fulfils its payment obligations from the received sales, does not fall into default of payment, and does not submit any application to open bankruptcy proceedings or fall into insolvency. If this is the case, then D&B Pharmadesign can request that the client notifies D&B Pharmadesign of the assigned claims and their debtors, provides all information necessary to collect such claims, delivers associated documents and informs the debtor (third party) of the assignment.

If goods are also delivered in association with performing services, then the following shall also apply: Any agreement or restructuring of delivered goods by the client shall always be considered undertaken on behalf of D&B Pharmadesign.

If the goods are processed along with other objects that do not belong to D & B Pharmadesign, then D&B Pharmadesign shall obtain co-ownership to the new object in relation of the value of the purchased object (final invoiced amount including VAT) to the other processed objects at the time of processing.

Otherwise, the same conditions apply to objects produced through processing as to goods delivered with reservations. The client may not pledge goods subject to a retention of ownership, nor transfer them by way of security, and shall notify D&B Pharmadesign promptly if goods are seized at third party companies. D&B Pharmadesign finally hereby undertakes to release securities to which it is entitled upon request by the client if the recoverable value of the securities exceeds the claims to be secured by more than 20 %. D&B Pharmadesign is responsible for choosing the securities to be released.

13. Deterioration of the client's financial standing

If, after the contract is concluded, facts come to light that put the client's solvency into question, then D&B Pharmadesign is entitled to request full payment or an appropriate security before continuing to carry out the contract, or to withdraw from the contract after setting an appropriate deadline for full payment or providing a security.

Facts that put the clients solvency into question include, in particular, ongoing seizures or other compulsory enforcement measures, or a request to open insolvency proceedings.

14. Miscellaneous

D&B Pharmadesign is entitled to process personal or business data of the client or third parties in accordance with data protection law regulations.

German law shall apply exclusively to all legal relationships.

The place of fulfilment and place of jurisdiction is the headquarters of D&B Pharmadesign. D&B Pharmadesign is also entitled to bring suits at the client's headquarters instead.

If a provision of these General Terms and Conditions is or becomes invalid or unenforceable, this shall not affect the validity of the remaining provisions. The Parties hereby already undertake to replace the invalid or unenforceable provision with a provision fulfilling or coming as close as possible to the purpose of the invalid or unenforceable provision. The same applies to any contractual gaps.

The Parties shall always attempt to settle any discrepancies on a working level. If they fail to do so, then both Parties shall be entitled to take legal recourse.