

General Terms & Conditions

(in accordance with the guidelines of Illustratoren Organisation e.V.)

1. Scope

These terms and conditions apply exclusively to all contracts between the Illustrator and the Commissioner. Any deviating individual agreements, contractual terms, or terms and conditions must be agreed in writing. These terms and conditions apply to all business dealings, including all future transactions, even those concluded verbally, in particular by telephone, even if no explicit reference is made to them in subsequent transactions.

2. Copyright protection and licensing

The services to be provided by the Illustrator are subject to copyright protection. The legal provisions of the law governing contracts for work and services (Werkvertragsrecht) and the German Copyright Act apply. Payment of a fee for the work alone does not confer the right to use the work. This rather requires a separate license agreement and appropriate remuneration therefor.

3. Commissions

Confirmations or meeting minutes sent by the Illustrator are binding unless the Commissioner objects without delay. The Illustrator is entitled to engage suitable third parties to fulfil the contract. In this case, the Illustrator shall acquire any licenses and other rights from such third parties to the extent required by the Commissioner and shall license these rights to the Commissioner.

4. Remuneration

All work carried out by the Commissioner, including presentations, drafts and final artwork, is subject to remuneration unless otherwise agreed in writing. The remuneration comprises:
a) the drafting fee
b) the final artwork fee
c) the remuneration for the license to the final artwork.

In the absence of any other agreements, any remuneration promised and/or paid by the Commissioner shall be credited against the individual components of the remuneration as follows:
30% against the drafting fee
30% against the fee for the final artwork
40% against the fees for usage rights, where such rights are licensed.

The entitlement to remuneration for any licensing arises irrespective of whether, and if so to what extent, the Commissioner makes use of those rights. If no license is granted, the remuneration for such use shall lapse, but not the remuneration for the work performed up to that point. Suggestions made by the Commissioner or any other form of cooperation on their part shall have no influence on the amount of the remuneration.

If no license is agreed, the allocation changes as follows:
50% of the drafting fee, 50% towards the fee for the final artwork.

The fees are net amounts, to which the applicable VAT must be added. The artist's social insurance contribution is to be paid additionally by the Commissioner and is not included in the fee.

5. Terms of payment

The fee is due upon delivery. It is payable without deduction. If the execution of a Commission extends over more than four weeks or if it requires the Illustrator to make financial advance payments exceeding 50% of the payable fee, the following instalments shall be paid:
1/3 of the total remuneration upon placing the commission
1/3 upon completion of 50% of the work
1/3 upon delivery.

If the contract is terminated prematurely, the Illustrator shall retain, at the very least, the right to any instalment payments that have already become due at the time of termination in accordance with the provisions set out above. In all other respects, sec. 648 of the German Civil Code (BGB) shall apply. The Commissioner shall be in default of payment, in whole or in part, if they fail to pay within 14 days of delivery, without the need for a reminder.

If the Commissioner does not use the services to the agreed extent, this shall not entitle them to a reduction in or refund of the remuneration. The Commissioner shall only be entitled to set-off rights if their counter-claims have been legally established, are undisputed, or have been acknowledged by the Illustrator.

6. Usage rights, ownership, self-promotion

Where agreed, only a license is granted in the Illustrator's works or services. No ownership is transferred, in particular in drafts (sketches, layouts) and final artwork (final art) which the Illustrator creates or commissions. All two- and/or three-dimensional items (drafts, final art, models, dummies, samples) handed over to the Commissioner as part of the commission remain the property of the Illustrator. The Commissioner is granted a right of possession only for as long as possession of the items is absolutely necessary for the Commissioner to use the Illustrator's services in accordance with the contract. In any event, the right of possession shall end at the latest upon termination of the contractual relationship between the Illustrator and the Commissioner.

Unless otherwise agreed in writing, the work items must be returned undamaged once the right of possession has ended. The return shall be at the Commissioner's expense and risk. In the event of damage or loss, the Commissioner shall pay a compensation amounting to 100% of the agreed remuneration, without acquiring any ownership rights through such payment. The drafts provided to the Commissioner are intended for consultation with the Commissioner. No further license is granted to the Commissioner. Unless expressly agreed otherwise, any further licensing relates exclusively to the approved artwork. The Illustrator's services and works may only be utilised to the extent agreed for the Commission or as arises from the purpose of the commission.

In the absence of any other written agreements, the Commissioner shall be granted only non-exclusive licenses or other rights, and these shall apply solely for the agreed duration and within the agreed scope of use in terms of extent and territory; in the absence of any other written agreement, the territory of the license shall, as a minimum, not extend beyond the territory of the Federal Republic of Germany.

Any other use, or use exceeding the originally agreed scope, is permitted only on the basis of a specific written license and subject to payment of a fee corresponding to the extent of the additional use in relation to the fee for the original use.

The granting of licenses to third parties requires the Illustrator's consent. The Illustrator is entitled to information regarding the scope of use. Suggestions or specifications provided by the Commissioner, as well as any other form of collaboration, do not confer any co-authorship rights on the Commissioner. Rights to the Illustrator's work, in particular usage rights, shall only pass to the Commissioner upon full payment of the Illustrator's total remuneration relating to the Commission.

The Illustrator has the right to sign their work and to be named as the author on the copies. When the works are digitised, the Illustrator's name must be electronically linked to the image data.

The Commissioner is not entitled to edit or otherwise alter the works (neither the originals, digital files, nor reproductions), in part or in full, or to have them edited or altered, unless this is expressly covered by the agreed license. This additional license shall in any case be remunerated separately.

Any use of the works for the purposes of data mining is prohibited, in particular the use of the works for training or prompting generative artificial intelligence models.

The Illustrator is not obliged to retain the works thereafter. In particular, the Illustrator is not obliged to retain and/or hand over to the Commissioner any working files created on a computer, including the source code. Should the Commissioner wish to have files retained and/or handed over, this must be agreed and remunerated separately.

In the event of a breach of the usage, modification, or attribution rights, the Illustrator is entitled to claim a contractual penalty amounting to three times the agreed basic fee. The right to assert claims for damages, monetary compensation, or other rights in addition to the contractual penalty remains unaffected.

All services provided by the Illustrator may be used by them without restriction for the purposes of self-promotion, unless expressly agreed otherwise.

7. Special services, incidental and travel expenses

Unless otherwise agreed, the Commissioner shall be entitled to one (1) optimisation step per draft – not involving the replacement of visual elements – during the drafting phase, in accordance with the Commissioner's specifications, without this being charged as a special service. Any further amendments and/or the creation and submission of new drafts, the amendment and/or creation of working drawings, as well as other additional services (e.g. reviewing manuscripts), incidental costs (e.g. couriers), or technical costs (e.g. for reproductions, data storage media) shall be invoiced separately according to the time and effort involved. The Illustrator shall charge for the work at an hourly or daily rate to be determined at their reasonable discretion, based on the remuneration recommendations of the I.O. (Illustratoren Organisation e.V.). This shall not apply if such services are expressly included in the Commission confirmation with the remuneration specified.

If the contract is not performed for reasons for which the Illustrator is not responsible, the Commissioner shall reimburse the incidental costs incurred, in addition to the partial remuneration payable under clauses 4 and 5. Remuneration for additional services is due upon their completion. Incidental expenses incurred must be reimbursed as and when they arise. Remuneration and incidental expenses are net amounts, to which the applicable value added tax must be added.

8. Cooperation of the Commissioner

The Commissioner is obliged to provide the Illustrator, in good time, with all information necessary for the provision of the delivery and services, as well as the required data material in a standard format.

The Commissioner shall ensure that the Illustrator is granted the necessary rights to use these documents. The Commissioner is further obliged to inform the Illustrator, even without being asked, of any circumstances that may be relevant to the provision of the Illustrator's delivery and services, and which the Commissioner can recognise as being potentially unknown to the Illustrator. The documents provided shall only be retained and returned to the Commissioner if this is expressly agreed, and only at the Commissioner's expense and risk.

If the Commissioner falls into default of acceptance due to a failure to fulfil their obligations to cooperate, the Illustrator may demand reasonable compensation.

Where the Illustrator and the Commissioner jointly define development stages and the Commissioner is required to provide its own services to achieve these development stages, the Commissioner is obliged to perform all services required of it in a timely manner.

9. Delivery, schedule

Compliance with agreed delivery dates is conditional upon all technical issues having been clarified, and upon the Commissioner having provided the necessary documentation, given the required approvals, performed the required services, and fulfilled any other obligations in good time. If this does not occur and timely delivery of the service is no longer possible, even with additional remuneration accepted by the Commissioner to cover increased costs, the delivery deadline shall be extended by a reasonable period. Fixed-date contracts shall not be made. The right to raise the defence of non-performance of the contract is reserved.

The Illustrator's delivery obligations shall be deemed fulfilled as soon as the works and services have been posted. If failure to meet an agreed delivery deadline is attributable to force majeure, union action, fire, machinery breakdown, telecommunications disruptions, computer malfunctions, serious illness, unforeseen obstacles, or other circumstances for which the Illustrator is not responsible, the delivery period shall be extended for the duration of such events. This shall apply mutatis mutandis in the event that the Illustrator is already in default of delivery when one of these events occurs. The Commissioner shall be notified of any delays in performance due to force majeure. If the execution of the commission is delayed for reasons for which the Commissioner is responsible, the Illustrator may claim compensation, which he may calculate at his reasonable discretion by appropriately increasing the remuneration in accordance with the remuneration rules agreed herein. This shall not affect the right to claim further damages arising from the delay.

10. Passing of risk

Unless otherwise stated in the Commission confirmation, delivery shall take place at the Illustrator's registered office. Should the Commissioner request delivery to a different location, this shall be at the Commissioner's risk and expense. Risk shall pass to the Commissioner upon handover to the carrier or, if no carrier is engaged, at the latest upon acceptance of the service by the Commissioner or their agents, even if partial deliveries are made or if the Illustrator has undertaken to provide additional services (e.g. transport costs or delivery).

11. Warranty for defects, liability

The Illustrator enjoys creative freedom in the artistic execution of the Commission entrusted to them. If their work does not meet the Commissioner's taste or if their style does not correspond to the Commissioner's expectations, this alone does not constitute a defect in their services. The Commissioner's warranty rights are subject to the condition that the Commissioner has inspected the work and services delivered by the Illustrator upon receipt without delay – and in any event before any further processing takes place – and has given notice of any defects upon discovery without delay. Minor colour variations between the printed results and the on-screen display or computer printout are due to technical reasons and do not, in this respect, constitute a defect.

In case of a defect for which the Illustrator is responsible, the Illustrator is initially entitled to remedy the defect within a reasonable period. If the remedy fails, the Commissioner is entitled, after the expiry without result of a reasonable period set by the Commissioner for the Illustrator to remedy the defect, at the Commissioner's discretion, either to withdraw from the contract or to demand a corresponding reduction in the remuneration. Remediation shall be deemed to have failed if the defect has still not been remedied even after the second attempt.

The warranty period is 12 months, calculated from the transfer of risk. This period is a limitation period and also applies to claims for compensation for consequential damage arising from defects, provided that no claims arising from tort are asserted; for such claims, the statutory limitation period applies.

The Illustrator shall be liable for damages – irrespective of the legal basis – only in the event of wilful misconduct or gross negligence, including wilful misconduct or gross negligence on the part of his representatives or agents. Insofar as he has not breached the contract wilfully, liability for damages shall be limited to the foreseeable, typically occurring damage. Excluded from this limitation of liability are damages resulting from injury to the Commissioner's life, body, or health, as well as damages arising from breaches of the Illustrator's fundamental obligations.

Insofar as the Illustrator merely passes on the services of third parties (e.g. photographers, service providers) to the Commissioner, their liability is limited to negligence in the selection of such third parties. Liability for computer viruses is excluded, unless the Illustrator acts with intent or gross negligence.

The Commissioner undertakes to verify the legal admissibility of the services provided by the Illustrator. If the Illustrator's services infringe the rights of third parties or are otherwise unlawful because they are based on unlawful instructions and/or templates provided by the Commissioner, the Commissioner shall be solely liable in the internal relationship between the parties. The Commissioner shall compensate the Illustrator for all resulting damage, including the reasonable costs of legal defence, and shall indemnify the Illustrator against all claims by third parties. However, the Illustrator shall notify the Commissioner of any infringements associated with their services as soon as they become aware of them. In particular, this liability provision applies to factual statements or other materials provided to the Illustrator by the Commissioner or otherwise made available to him; to the same extent, the Commissioner shall be liable for ensuring that all usage and exploitation rights, as well as any other necessary rights to the materials supplied by him, are in place to the extent required.

Insofar as the Illustrator's liability for damages is excluded or limited in accordance with the foregoing, this shall also apply with regard to the liability of his employees, staff, freelancers, agents and vicarious agents.

12. Sample copies

The Commissioner shall provide the Illustrator, free of charge, with at least five flawless, unfolded sample copies of all reproduced works. The Illustrator is entitled to use these samples for the purposes of self-promotion.

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

The parties agree that the place of performance and, to the extent permitted by law, the exclusive place of jurisdiction shall be the Illustrator's registered office. The laws of the Federal Republic of Germany shall apply exclusively.

14. Final provisions

Any amendments or additions to this contract must be made in writing to be valid. The same applies to any amendments to the requirement for the written form.

Should any individual provision of this contract be void or invalid, this shall not affect the validity of the remaining provisions. The same applies to any omissions in the contract. The invalid provisions shall be replaced, or any omissions filled, by the legally permissible provision that most closely reflects what the contracting parties intended or would have intended in accordance with the spirit and purpose of the contract.