

General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 1 of 9

1 Scope

1. These General Terms and Conditions for Deliveries, Work, and Services (referred to hereinafter as “General Terms and Conditions”) shall apply only to entrepreneurs conducting their commercial or free-lance professional activities and to legal entities under public law. They apply to all business transactions between GU BKS SERVICE GmbH (referred to hereinafter as “GU BKS SERVICE”) and the client, even if they are not mentioned in subsequent contracts.
2. Any terms and conditions of the client that conflict with, supplement, or deviate from these General Terms and Conditions shall not become part of the contract unless GU BKS SERVICE would have agreed to their validity in writing. These General Terms and Conditions shall also apply if GU BKS SERVICE supplies delivery to or carries out work or services (hereinafter also referred to as “performance”) for the client without reservation in the knowledge of the client’s conflicting, supplementary, or deviating terms and conditions.
3. Agreements that contradict, supplement, or deviate from these General Terms and Conditions that are concluded between GU BKS SERVICE and the client in order to perform a contract must be set out in writing in the contract. This also applies to the revocation of this written form requirement.
4. Rights to which GU BKS SERVICE is entitled under statutory provisions or other agreements going over and above these General Terms and Conditions shall remain unaffected.

2 Conclusion of Contract

1. Offers made by GU BKS SERVICE are subject to change and non-binding unless GU BKS SERVICE states otherwise.
2. Descriptions of the services set forth in the documents comprised in the offer are approximate only, unless they are expressly designated as binding. They do not constitute any form of agreement or guarantee unless they have been expressly agreed as such in writing. Expectations of the client with regard to the services or their utilisation also do not constitute an agreement or guarantee.
3. Insofar as the parties have agreed a condition (in particular type, quality, functionality, compatibility, interoperability), a specific intended use, specific accessories or specific instructions for the products, only this condition, the suitability for this intended use, these accessories and these instructions are contractually owed. In this respect, the customary use of the products or the quality of the products, the accessories or the instructions that the client can expect without further agreement are not relevant. This does not apply if the supply chain ends in a purchase of consumer goods (= end customer is a consumer).
4. GU BKS SERVICE reserves all property rights, copyrights, and other industrial property rights in all offer documentation. Such documents are not permitted to be disclosed to third parties. At the request of GU BKS SERVICE, the client shall return all offer documentation to GU BKS SERVICE without delay if it is no longer required in the ordinary course of business. The same applies in particular to all other documents, drafts, samples, specimens and models.
5. An order becomes binding only if it has been confirmed by GU BKS SERVICE, in writing, within two weeks or if GU BKS SERVICE executes the order, in particular if GU BKS SERVICE fulfils the order by providing the services. An order confirmation created with the aid of automated systems that does not include a signature and name shall be deemed to be in writing. If the order confirmation contains obvious mistakes, typographical errors, or miscalculations, it shall not be binding on GU BKS SERVICE.

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General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 2 of 9

6. Silence on the part of GU BKS SERVICE in response to offers, orders, requests or other declarations by the client shall be deemed to constitute consent only if this has been agreed in advance and in writing.
7. If the client's financial circumstances deteriorate significantly, or if a legitimate application for the initiation of insolvency proceedings or comparable proceedings against the client is rejected due to lack of assets, GU BKS SERVICE shall be entitled to withdraw from the contract in whole or in part.

3 Scope of Service, Amendments

1. The written order confirmation of GU BKS SERVICE is authoritative as regards the scope of services. Changes to the scope of services by the Client are subject to the written confirmation of GU BKS SERVICE in order to be effective. GU BKS SERVICE reserves the right to make changes to the form or design of the products that do not impair functionality or value and do not constitute defects. GU BKS SERVICE also reserves the right to deviations that are customary in the trade or industry, deviations that are due to legal regulations or represent technical improvements, deviations that are within the DIN tolerance threshold, and deviations that are not significant and are reasonable for the client.
2. GU BKS SERVICE is not under any obligation to check the information provided by the client and the documents provided to it to verify accuracy and suitability for the intended purpose.
3. Performance in parts is permissible unless this is unreasonable for the client, giving due consideration to the interests of GU BKS SERVICE.

4 Deadlines and Dates for Performance

1. The agreement of deadlines and dates for performance must be made in writing. Deadlines and dates are non-binding unless GU BKS SERVICE has designated them binding in advance and in writing.
2. The time period for the provision of services begins upon conclusion of contract, but not before the provision of all documentation, permits and approvals to be procured by the client, the clarification of all technical questions and the receipt of an agreed deposit payment or, in the case of a foreign transaction, after receipt of full payment. In the event of a deadline for the provision of services, the deadline shall be postponed as appropriate if the client does not provide the documents and approvals to be procured by it in good time, does not issue authorisations in good time, or if all technical issues have not been fully clarified in good time or the agreed deposit payment or, in the case of a foreign transaction, the entire payment has not been received in full by GU BKS SERVICE. Compliance with the deadlines and dates is conditional on the timely and proper fulfilment of the client's other obligations.
3. The date or deadline for the provision of the service shall be deemed to have been met if GU BKS SERVICE commences provision of the service by the expiry of the period or deadline. Compliance with the deadlines and dates is subject to proper, in particular timely, delivery to GU BKS SERVICE by its suppliers, unless GU BKS SERVICE is responsible for such improper delivery. GU BKS SERVICE is entitled to withdraw from the contract in the event of improper delivery to it by its suppliers. GU BKS SERVICE shall inform the client immediately if GU BKS SERVICE exercises its right to withdraw from the contract and shall refund any advance payments made by the client.
4. In the event of default in performance, the client shall be entitled to withdraw from the contract after the fruitless expiry of a reasonable grace period set by the client for BKS SERVICE upon entry into default in performance.

| a company of the GU group

General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 3 of 9

5 Prices, Invoicing, and Payment

1. Unless otherwise agreed in writing, assembly, installation, and other services provided by GU BKS SERVICE in connection with the delivery of products, as well as other work and services, shall be invoiced on a time and material basis at the applicable rates plus a flat rate for travel, provided travel was involved. Working hours shall be charged per quarter of an hour or part thereof. Any waiting times shall be deemed to constitute working hours. The travel allowance is charged per travelling employee and per day of work.
2. The prices for the products, the invoicing rates and the flat-rate travel charges do not include any statutory taxes or other charges. Furthermore, the prices for the products do not include any shipping, transport or packaging costs. If shipping, transport or packaging costs are incurred, these shall be invoiced to the client separately, unless otherwise agreed in writing. Value added tax at the applicable statutory rate shall be stated separately on the invoice at the rate applicable on the date of invoicing.
3. If production-related or other price increases occur up to the date of delivery or provision of the service, GU BKS SERVICE is entitled to adjust the price, the billing rates, and the flat rate travel charges accordingly, regardless of the offer and order confirmation.
4. If the total order volume exceeds EUR 20,000.00 net, the following terms of payment shall apply:

■ Following conclusion of the contract:	40 % of the net order volume
■ On commencement of performance:	40 % of the net order volume
■ On completion of services and acceptance (if this has been agreed and in the case of work)	20 % of the net order volume

The foregoing amounts are exclusive of VAT at the applicable statutory rate, if VAT is payable. The above payment terms do not apply to continuing obligations.

5. In the absence of any special agreement, invoices are payable net within 14 days of receipt of the invoice. The payment date is the day on which GU BKS SERVICE can dispose of the remuneration. In the event of default in payment, the client shall pay interest on arrears at a rate of 9 percentage points above the respective base interest rate per annum. Further claims of GU BKS SERVICE remain unaffected.
6. In the case of foreign transactions, in deviation from subsection 4, payment shall be made prior to the performance of the service irrespective of the total order volume, unless otherwise agreed in advance and in writing.

6 Acceptance of Deliveries and Work, Transfer of Risk

1. If acceptance has been agreed for deliveries or if the service provided by GU BKS SERVICE consists of the performance of work, the client is under an obligation to accept the service immediately after it has been provided. Each party is entitled to demand partial acceptance or formal acceptance. A service shall be deemed to have been accepted (including formal acceptance) in particular if GU BKS SERVICE has set the client a reasonable deadline for acceptance after completion of the service and the client has not refused acceptance within this deadline, stating at least one defect.
2. Acceptance cannot be refused based on insignificant defects.

| a company of the GU group

General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 4 of 9

3. In the case of deliveries, the risk of accidental loss and accidental deterioration of the products shall pass to the client upon handover of the products (or, in the case that acceptance has been agreed, upon acceptance). In the case of the performance of work, the risk of accidental loss and accidental deterioration of the work performance shall pass to the client upon acceptance. If the client is in default of acceptance at an earlier point in time, the risk shall pass to the client at this point in time.

7 Claims based on Defects in Deliveries and Work Performed

1. In the case of deliveries, the client's rights based on defects are conditional upon the client having inspected the products upon delivery (or, in the case that acceptance has been agreed, upon acceptance), if reasonable also by means of a trial use, and having notified GU BKS SERVICE in writing of obvious defects without undue delay, but no later than two weeks after delivery of the products (or, in the case that acceptance has been agreed, upon acceptance). Latent defects must be reported to GU BKS SERVICE in writing immediately upon discovery. The client's notice of defects must include a description of the defects. The client must in addition comply with the specifications, instructions, and conditions in the operating instructions, operating manuals and other documents for the individual products when operating and maintaining etc. the products, in particular, they must carry out and provide evidence of proper maintenance and use recommended components. Claims based on defects arising as a result of a breach of this obligation are excluded.
2. If the client has accepted defective work in knowledge of the defect, the client's rights to subsequent fulfilment, substitute performance, withdrawal, and reduction are conditional on them having reserved the rights based on the defect at the time of acceptance.
3. In the event of defects in the products or work performed, GU BKS SERVICE is entitled, at its own discretion, to subsequent performance by remedying the defect (in the case of deliveries and work) or by delivering a defect-free product (in the case of deliveries) or by providing the work again (in the case of work). In the event of subsequent performance, GU BKS SERVICE must bear all expenses necessary for the purpose of subsequent performance, in particular costs of transport, travel, labour, and materials. Labour and materials costs claimed by the client in this context shall be charged on a cost-price basis. Replaced parts become the property of GU BKS SERVICE and must be returned to GU BKS SERVICE.
4. If GU BKS SERVICE is not willing or able to provide subsequent performance, the client may, at its discretion, withdraw from the contract or reduce the price/remuneration without prejudice to any claims for damages or reimbursement of expenses. The same applies if the subsequent fulfilment fails, is unreasonable for the client or is delayed beyond reasonable deadlines for reasons within the control of GU BKS SERVICE.
5. Defects attributable to natural wear and tear, in particular in the case of wearing parts, improper handling, use, or storage, or improperly carried out modifications or repairs of the products by the client or third parties do not establish claims based on defects. The same applies to defects which are attributable to the client, or which are due to a technical cause other than the original defect.
6. Claims by the client for reimbursement of expenses instead of compensation in lieu of performance are excluded unless the expenses would also have been incurred by a reasonable third party.
7. GU BKS SERVICE does not assume any guarantees unless otherwise agreed in writing in individual cases.
8. The limitation period for the client's claims based on defects is one year, unless the supply chain ends with a purchase of consumer goods (= end customer is a consumer). If the defective product has been used for a building in accordance with its customary use and has caused such building to be defective (for deliveries) or in the case of a defect in a building (for deliveries and work) or in the case of a defect

| a company of the GU group

General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 5 of 9

in the performance of work which, if successful, consists in the provision of planning and supervision services for a building (for work), the limitation period is five years. The limitation period of one year also applies to claims in tort based on a defect in the product or work. In the case of deliveries, the limitation period begins upon delivery of the product (or in the case that acceptance has been agreed, upon acceptance) and in the case of work, upon acceptance. The limitation period of one year does not apply to the unlimited liability of GU BKS SERVICE for damages resulting from the breach of a guarantee or relating to injury to life, limb, or health, in the event of intent and gross negligence, and for product defects or insofar as GU BKS SERVICE has assumed a procurement risk.

8 Liability of GU BKS SERVICE

1. GU BKS SERVICE is liable without limitation for damages resulting from the breach of a guarantee or from injury to life, limb, or health. The same applies in the event of intent and gross negligence or if GU BKS SERVICE has assumed a procurement risk. GU BKS SERVICE shall be liable for slight negligence only in the event of the breach of material obligations inherent to the nature of the contract that are of particular importance for the attainment of the contractual purpose. In the event of a breach of such obligations, as well as in the case of default, and impossibility of performance, the liability of GU BKS SERVICE shall be limited to such damage as is typically foreseeable in this kind of contract. Mandatory statutory liability for product defects remains unaffected.
2. Insofar as the liability of GU BKS SERVICE is excluded or limited, this also applies to the personal liability of the employees, workers, staff, representatives and vicarious agents of GU BKS SERVICE.

9 Product Liability

1. The client shall not modify the products; in particular, the client shall not modify or remove existing warnings about the dangers of improper use of the products. In the event of any breach of this obligation, the client shall indemnify GU BKS SERVICE in the internal relationship between them against product liability claims by third parties, unless the client is not responsible for the modification of the products.
2. If GU BKS SERVICE is required to issue a product recall or warning due to a product defect in the products, the client shall cooperate to the best of its ability in the measures that GU BKS SERVICE deems necessary and expedient and will support GU BKS SERVICE in this regard, in particular in determining the necessary customer data. The client must bear the costs of the product recall or warning, unless the client is not responsible for the product defect pursuant to the principles of product liability law. Further claims of GU BKS SERVICE remain unaffected.
3. The client shall inform GU BKS SERVICE immediately and in writing of any risks it becomes aware of when using the products and possible product defects.

10 Force Majeure

1. If GU BKS SERVICE is precluded from fulfilling its contractual obligations, in particular performing the service, due to force majeure events GU BKS SERVICE shall be released from its performance obligation for the duration of the impediment and a reasonable start-up period thereafter without being required to pay damages to the client. The same applies if the performance of GU BKS SERVICE's obligations is rendered unreasonably difficult or temporarily impossible due to unforeseeable circumstances beyond the control of GU BKS SERVICE, in particular as a result of industrial action, official measures, energy shortages, obstacles to delivery at a supplier or significant operational disruptions. This shall also apply if these circumstances are experienced by a subcontractor. This also applies in the event that

| a company of the GU group

General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 6 of 9

GU BKS SERVICE is already in default. If GU BKS SERVICE is released from its performance obligations, it shall refund any advance payments made by the client.

2. GU BKS SERVICE is entitled to withdraw from the contract on expiry of a reasonable period if such impediment lasts for more than four months and GU BKS SERVICE no longer has any interest in the fulfilment of the contract as a result of the impediment. At the client's request, GU BKS SERVICE shall declare on expiry of the deadline whether it intends to exercise its right of withdrawal or perform the services within a reasonable period of time.

11 Retention of Title

1. The delivered products remain the property of GU BKS SERVICE until such time as the (delivery) price has been paid in full and all claims to which GU BKS SERVICE is entitled from the business relationship with the client have been settled. The client is obliged to treat the products subject to retention of title with due and proper care for the duration of the retention of title. In particular, they are obliged to insure the products at their own expense against fire, water damage and theft at replacement value. On request by GU BKS SERVICE, the client must provide evidence that such insurance has been taken out. The client hereby assigns to GU BKS SERVICE all claims for compensation under this insurance. GU BKS SERVICE hereby accepts the assignment. If such assignment is not permissible, the client hereby instructs the insurer to make any payments solely to GU BKS SERVICE. Further claims of GU BKS SERVICE remain unaffected.
2. The client is only permitted to sell the products subject to retention of title in the ordinary course of business. Furthermore, the client is not authorised to pledge the products subject to retention of title, to assign them as security, or to make other dispositions that jeopardise GU BKS SERVICE's ownership rights. In the event of seizures or other interventions by third parties, the client must notify GU BKS SERVICE immediately in writing and provide all necessary information, inform the third party of GU BKS SERVICE's ownership rights and cooperate in the measures taken by GU BKS SERVICE to protect the products subject to retention of title. If the third party is not in a position to reimburse GU BKS SERVICE for the judicial and extrajudicial costs of enforcing GU BKS SERVICE's ownership rights, the client is obliged to compensate GU BKS SERVICE for the resulting loss, unless the client is not responsible for the breach of duty.
3. The client hereby assigns to GU BKS SERVICE the claims arising from the resale of the products together with all ancillary rights pertaining thereto, irrespective of whether the products subject to retention of title are resold without or after processing. GU BKS SERVICE hereby accepts such assignment. If an assignment is not permissible, the client hereby instructs the third-party debtor to make any payments solely to GU BKS SERVICE. The client is authorised, such authorisation subject to revocation, in their own name to collect the claims assigned to GU BKS SERVICE as a fiduciary for GU BKS SERVICE. The amounts collected must be transferred to GU BKS SERVICE without delay. GU BKS SERVICE may revoke the client's authorisation to collect and the client's right to resell for good cause, in particular if the client fails to properly meet its payment obligations in respect of GU BKS SERVICE, defaults on payment, suspends its payments or if the client applies for the opening of insolvency proceedings or comparable debt settlement proceedings against the client's assets or if the legitimate application of a third party for the opening of insolvency proceedings or comparable debt settlement proceedings in respect of the client's assets is rejected due to lack of assets. In the event of a global assignment by the client, the claims assigned to GU BKS SERVICE must be expressly excluded.
4. On request by GU BKS SERVICE, the client is under an obligation to immediately notify the third-party debtor of the assignment and procure the information and documentation required for collection for GU BKS SERVICE.

| a company of the GU group

General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 7 of 9

5. In the case of any breach of contract, in particular in the event of default in payment by the client, GU BKS SERVICE is entitled, without prejudice to its other rights, to withdraw from the contract on expiry of a reasonable grace period set by GU BKS SERVICE. The client must grant GU BKS SERVICE or its authorised representatives immediate access to the products subject to retention of title and surrender these products. After giving proper and timely notice, GU BKS SERVICE may otherwise utilise the products subject to retention of title to satisfy its due claims against the client.
6. The processing or transformation by the client of the products subject to retention of title by the client is always carried out on behalf of GU BKS SERVICE. The client's expectant right to the products subject to retention of title shall continue in the processed or remodelled item. If the products are processed or remodelled with other items not belonging to GU BKS SERVICE, GU BKS SERVICE shall acquire co-ownership of the new item in the ratio of the value of the delivered products to the other processed or remodelled items at the time of processing or remodelling. The same applies if the products are combined or mixed with other items not belonging to GU BKS SERVICE in such a way that GU BKS SERVICE loses its full ownership. The client shall store the new items for GU BKS SERVICE. In all other respects, the same provisions shall apply to the item created by processing or remodelling as well as combining or mixing as to the products subject to retention of title.
7. At the client's request, GU BKS SERVICE is obliged to release the securities to which it is entitled to the extent that the realisable value of the securities exceeds the claims of GU BKS SERVICE arising from the business relationship with the client by more than 10%, taking into account customary bank valuation discounts. The valuation shall be based on the invoice value of the products subject to retention of title and on the nominal value of receivables. GU BKS SERVICE is responsible for selecting precisely which items are to be released.
8. In the case of deliveries to other jurisdictions in which this retention of title provision does not have the same security effect as in the Federal Republic of Germany, the client hereby grants GU BKS SERVICE a corresponding security interest. If further measures are required for this purpose, the client shall do everything in its power to grant GU BKS SERVICE such security interest without delay. The client shall co-operate in all measures that are necessary and conducive to the effectiveness and enforceability of such security rights.

12 XII. Confidentiality

1. The parties are required to maintain strict confidentiality with respect to all trade secrets of the respective other party to which they become privy for a period of five years from the provision of the service, to take suitable and appropriate measures to protect the same and, unless required in the course of the business relationship, neither to record them nor to pass them on to third parties, use, or exploit them. In particular, the parties shall ensure that the business secrets of the respective other party are made accessible only to such employees and other staff and only to the extent that this is necessary and expedient for the business relationship. The confidentiality obligation shall also apply to objects that comprise trade secrets. In particular, the receiving party is prohibited from obtaining the trade secrets embedded therein by reverse engineering a product or item. Trade secrets are all information that is designated as confidential or secret or can be identified as a trade secret based on other circumstances, including, specifically, technical information (e.g. drawings, product and development descriptions, methods, processes, formulas, techniques and inventions) and commercial information (e.g. price and financial data and suppliers).

| a company of the GU group

General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 8 of 9

2. The confidentiality obligation shall not apply if the recipient demonstrably already knew the business secrets before entering into the contractual relationship or if they were generally known or generally accessible to the public before the contractual relationship was concluded or become generally known or accessible to the public through no fault of the recipient. The recipient shall bear the burden of proof.
3. The parties shall ensure by means of suitable contractual agreements with the employees, other staff, and third parties working for them, who have access to the business secrets of the respective other party pursuant to subsection 1 above, that those persons are also required to maintain confidentiality for a period of five years from the provision of the service.

13 Data Protection

1. When executing the contract, the parties are required to observe the statutory provisions on data protection, in particular the EU General Data Protection Regulation ("GDPR") and to require their employees to comply with these provisions.
2. The parties shall process the personal data received (names and contact details of the respective contact persons) solely for the fulfilment of the contract and shall protect this information by means of security measures (Art. 32 GDPR) that correspond to the current state of the art. The parties are under an obligation to delete the personal data as soon as its processing is no longer necessary. Any statutory storage obligations remain unaffected by this.
3. If, in the course of the performance of the contract, one party processes personal data on behalf of the other party, the parties shall conclude a contract processing agreement in accordance with Art. 28 GDPR.

14 Final Provisions

1. The transfer of rights and obligations of the client to third parties is subject to the prior written consent of GU BKS SERVICE
2. Counterclaims of the client shall entitle them to set-off only if such claims have been conclusively legally established or are undisputed. The client may assert a right of retention only if the counterclaim is based on the same contractual relationship.
3. The legal relationship between the client and GU BKS SERVICE shall be governed by and construed in accordance with the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. If the client is a merchant within the meaning of the German Commercial Code (Handelsgesetzbuch), a legal entity under public law, or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the business relationship between GU BKS SERVICE and the client is the registered seat of GU BKS SERVICE. GU BKS SERVICE is also authorised to bring an action at the client's registered seat and at any other permissible place of jurisdiction. The application of arbitration clauses is hereby excluded.
5. Unless otherwise agreed, the place of performance for all services of the Client and GU BKS SERVICE is the registered seat of GU BKS SERVICE.
6. The language of the contract is German.
7. Should any provision of these General Terms and Conditions be or become invalid or unenforceable, in whole or in part, or should there be a loophole in these General Terms and Conditions, this shall not

| a company of the GU group

General Terms and Conditions for Deliveries, Work, and Services of GU BKS SERVICE GmbH as of September 2024

page 9 of 9

affect the validity of the remaining provisions. In place of the invalid or unenforceable provision, the valid or enforceable provision that comes closest to the purpose of the invalid or unenforceable provision shall be deemed to have been agreed. In the event of a contractual loophole, the provision that corresponds to what would have been agreed in accordance with the purpose of these General Terms and Conditions if the parties had considered the matter from the outset shall be deemed to have been agreed.

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