

General terms and conditions for the performance of work of b-plus automotive GmbH

§ 1 Introduction

(1) The following terms and conditions are part of every contract entered into with b-plus automotive GmbH, Ulrichsberger Straße 17, 94469 Deggendorf or one of its affiliated companies according to §§ 15 ff. German Stock Corporation Act (herein jointly called "b-plus") concerning the performance of work.

(2) The following terms and conditions for the performance of work shall apply exclusively for all business relationships entered into by b-plus and companies (hereinafter referred to as Customer) within the meaning of section 14 German Civil Code; they shall apply for all first-time, ongoing and future business relationships; and the most recent version shall apply to any and all subsequent business deals, without the need to expressly state or agree such upon the conclusion of subsequent business deals.

(3) Contrary confirmations, counter-offers and other references by the Customer to its terms and conditions are hereby rejected; deviating terms of the Customer shall only apply if they are confirmed in writing by b-plus.

(4) The Customer may only assign claims arising from legal transactions between the Customer and b-plus with the express consent of b-plus.

§ 2 Offers; orders

(1) Offers by b-plus are always non-binding, unless they are explicitly designated binding offers.

(2) The Customer's order of any performance shall include the binding offer of the Customer to receive the performance. B-plus shall be entitled to accept the offer of contract contained in the order within two weeks of receipt of the order.

(3) If the order is placed electronically, b-plus will confirm receipt of the order immediately. The order confirmation shall not be considered a binding acceptance of the order; the order confirmation may, however, be combined with a declaration of acceptance by b-plus.

§ 3 Performance

(1) b-plus shall perform work for the Customer only on the basis of the underlying individual agreement.

(2) Upon request by b-plus, the Customer shall provide b-plus with the complete details of the technical and functional requirements of the works in the form of specifications or otherwise in written form prior to the conclusion of an individual performance agreement. At the request of and to the extent necessary, b-plus may require the Customer at any time to provide additional details on the technical and functional requirements, both before and after conclusion of the individual performance agreement.

(3) The performance agreement contains a description of the performance to be rendered (performance specification). The performance specification is based on the technical and functional requirements provided by the Customer. The Customer shall provide b-plus with all documents, information and data necessary for this purpose. The performance specification shall contain the entire and final description of the characteristics and quality of the work to be performed. Changes to the performance description shall only be carried out pursuant to § 5 of these general terms and conditions. b-plus will render analytical, planning and consulting services only on the basis of an individual performance agreement; this shall also apply with regard to the performance of such services in connection with the performance description.

(4) If the order of a work performance also includes the delivery of similar products as a result of the work performance, the general terms of delivery of b-plus shall apply, unless otherwise agreed in individual cases.

§ 4 Cooperation by the parties

(1) The Customer and b-plus shall each appoint contact persons who are available to provide all necessary information and make any necessary declarations, and who are responsible for making or bringing about any and all decisions relating to the carrying out of the contractual performance.

(2) The Customer shall ensure the accuracy and completeness of the documents, information and data provided by him pursuant to § 3 of these terms and conditions as well as of the requirements determined by the Customer. b-plus will subject the documents, information and data as well as the requirements of the Customer only to a general plausibility check. The Customer acknowledges that b-plus shall only render analytical and consultancy services with regard to the documents, information, data and the requirements of the customer if this is expressly agreed between the parties as an additional service. Should b-plus, in the course of the performance, find, on the basis of the plausibility check, that the requirements are incomplete or contain errors, b-plus shall inform the Customer without undue delay. b-plus shall only be liable in cases of gross negligence and intent for mistakes made in carrying out the checks; in other respects, § 11 of these terms and conditions shall apply.

(3) The Customer shall support b-plus in the performance of its obligations. It shall be obligated to create in its sphere of business all prerequisites necessary for proper completion of the individual performance agreement by both parties.

§ 5 Changes to performance obligations

Both parties may propose changes to the performance description and the rendering of the performance. To this end, the parties agree on the following procedure:

a) Change proposals shall be submitted to the project leader of the other party.

b) b-plus will briefly review every change proposal of the Customer and inform it whether a comprehensive review of the change proposal is necessary or not. b-plus may make a comprehensive review contingent on a compensation for the costs arising from such a review.

c) If a comprehensive review of the change proposal is not necessary or if the requested comprehensive review is completed, b-plus will either (i) inform the Customer that b-plus is not able to implement the change proposal within the scope of the agreed performance or (ii) submit a written offer for the implementation of the changes to the Customer (change offer). The change offer shall include without limitation the changes to the performance description and their effects on the performance period, the scheduled dates and the compensation.

d) The Customer shall, within the stipulated acceptance period (binding period), either reject such a change offer or accept it in written form or in any other form agreed by the parties.

e) Until the change offer is accepted, the work will continue to be carried out on the basis of the prior individual performance agreement. The performance periods shall be extended by the number of calendar days for which the work was interrupted in connection with the change offer or its review. b-plus may demand appropriate compensation for the period of interruption, unless b-plus employs its employees affected by the interruption elsewhere or maliciously refrains from employing them.

f) Unless otherwise agreed, the change procedure will be documented at the request of b-plus, either in writing or text, on a form provided by b-plus. Each change to the performance description shall be agreed by the parties in writing or in such form as the parties may agree.

g) The provisions of the above a) and c) to e) shall apply mutatis mutandi to change proposals made by b-plus.

§ 6 Performance schedule

(1) Deadlines and performance schedules are non-binding target and guiding values, unless expressly agreed in writing as fixed dates in the individual performance description.

(2) The Customer shall not be entitled to compensation in cases of slight negligence; any damages shall be limited to the foreseeable damage, but shall not exceed 5% of the value of the performance affected by the performance delay. The Customer shall only be entitled to withdraw from the contract pursuant to statutory provisions if b-plus is responsible for the delay in performance. The above liability limitations shall not apply in cases of intent or gross negligence on the part of b-plus.

§ 7 Final acceptance; partial performance

(1) b-plus will inform the Customer's designated contact person of the completion of the work performance in writing. The Customer will inspect and accept the performed work at its cost upon receiving written notification of the completion; acceptance shall be declared within 14 calendar days at the latest. This shall also apply if b-plus notifies the Customer of the completion of a separable partial performance. For this, the Customer will use practice-oriented test cases and the test data provided together with the specifications.

(2) The Customer shall inform b-plus without delay of any defects becoming apparent during or after acceptance, but no later than seven calendar days after discovery.

(3) The Customer shall provide b-plus in writing in detailed and understandable form with all information required and relevant for recognition and analysis of the defects. The Customer shall in particular state the work steps causing the occurrence of the defect, its nature and effects.

(4) If the performance or partial performance is not accepted, the performance or partial performance shall be deemed accepted fourteen calendar days after the written notification of completion, if b-plus has provided notice of the beginning of the period together with the notification of completion. The same applies if the Customer puts the performed works or partial performance into regular operation.

(5) If the Customer does not notify b-plus of any defects pursuant to para. 3, the performed work shall be considered accepted after fourteen calendar days, if b-plus requests the Customer in writing to comply with the information requirements, making express reference to this consequence.

(6) The above provisions shall apply mutatis mutandi if the customer has accepted partial performance.

§ 8 Compensation

(1) b-plus shall bill its services based on hourly rate, unless otherwise agreed in the individual performance agreement in exceptional cases (e.g. fixed price). Travelling costs and expenses as well as other expenditures shall be reimbursed; the sums reimbursed shall be no lower than the fixed rates according to tax law. Travelling time shall be deemed work time. b-plus shall be entitled to demand compensation for its expenses, if additional expenses arise due to a failure of the Customer to properly meet its obligations.

(2) The agreed prices are ex works plus any applicable VAT and plus any delivery costs, packaging costs and expenditures. Prices are agreed in euros.

(3) Unless otherwise agreed, payments shall fall due within 14 days of the invoice date. Invoices for services on the basis of expenditures and expenses shall be rendered weekly, unless otherwise agreed in the individual performance agreement. Proof of expenditures and expenses provided by b-plus shall be deemed accepted if the Customer does not submit a detailed written objection within 7 days after receiving the proof.

(4) Subject to the following para. 5, payments shall be made without deductions to the bank account provided by b-plus.

(5) The Customer may set off counterclaims only if they are uncontested or confirmed by a non-appealable judgment; statutory rights of retention may only be exercised on the basis of such claims. The Customer is furthermore limited to exercise rights of retention exclusively based on counterclaims arising from the same individual performance agreement.

(6) The relevant date for timeliness of the payment shall be the day on which the payment is credited to the account of b-plus.

(7) b-plus reserves the right to refuse rendering additional performance due under the business relationship as long as the Customer is in arrears, even if such services are unrelated to the unpaid performance.

§ 9 Warranty

(1) Insignificant deviations of the work performance from the contractual quality or usability shall not give rise to claims based on defects. In other respects, b-plus shall provide warranty (assuming notification of the defect was duly made pursuant to § 7 para. 3) subject to the following:

At first, the Customer shall only be entitled to claim subsequent performance within an appropriate time period. b-plus shall be entitled to decide whether subsequent performance should be in the form of elimination of the defect or substitute performance. If the subsequent performance fails or is unfeasible for other reasons, the Customer shall be entitled, in accordance with statutory provisions, to reduce the compensation, withdraw from the individual performance agreement and/or demand damages or compensation for expenses. In addition, § 11 shall apply for damages and compensation for expenses. The Customer shall decide which rights he wishes to exercise due to the defect within an appropriate time period, which as a rule will be 14 calendar days.

(2) Claims arising from defects shall lapse within a year after acceptance.

§ 10 Defects in title

(1) In accordance with para. 2, b-plus shall only be liable for infringements of industrial property rights and copyrights (hereinafter referred to as "IP rights") of third parties due to its work performance if all of the following conditions are met: (i) the Customer uses the performed work in accordance with the agreement, notably in the contractually agreed field of application; (ii) the Customer has notified b-plus immediately of the claim of an infringement of IP rights asserted vis-à-vis the Customer by a third party; (iii) b-plus has caused the infringement of IP rights intentionally or through gross negligence.

(2) Under the conditions set out in para. 1, the liability of b-plus shall be limited exclusively to the following: b-plus will, at its own option and cost, (i) provide the Customer with the right to use the performed work or (ii) adapt the performed work to avoid infringement or (iii) take back the performed work while refunding the compensation paid by the Customer (less an appropriate compensation for use), if b-plus is unable to achieve any other solution at reasonable expense. In making this decision, b-plus shall pay due consideration to the interests of the Customer.

(3) Claims of the Customer arising from infringements of IP rights shall lapse in accordance with § 11 para. 6 of these terms and conditions.

§ 11 Liability and limits to liability, lapse of claims for damages

(1) Unless otherwise agreed in an individual performance agreement or pursuant to § 4 para. 2 (plausibility checks) or pursuant to § 6 para. 2 (delay in performance), the following terms apply for any liability of b-plus:

(2) b-plus shall be liable to the Customer at all times for any damage caused intentionally or through gross negligence by b-plus, its legal representatives or its agents employed in the performance of its obligations under the contract.

(3) b-plus shall not be liable for the breach of minor contractual duties due to slight negligence. The liability of b-plus for breach of material contractual duties due to slight negligence shall be limited to the direct average damage foreseeable and typical for this kind of contract. Liability for lost profits, unachieved savings, interruptions to business operations and other remote consequential harm is excluded. The same liability and limitations to liability shall apply for breaches of duty due to slight negligence of the supplier's legal representatives or its agents employed in the performance of its duties under the contract.

(4) The liability limitations pursuant to para. 2 shall not affect claims of the Customer arising from product liability. The liability limitations shall not apply for harm to body or health or loss of life of the Customer attributable to b-plus.

(5) A guarantee shall only give rise to liability of b-plus for damages if the guarantee expressly provides for such damages. In cases of slight negligence, such liability shall be subject to the restrictions of the above para. 2.

(6) Claims for damages shall lapse within a year after the beginning of the statutory period of limitations. The statutory periods shall remain in force for intentional or grossly negligent breaches by b-plus and in the case of injury to life, body or health.

§ 12 Rights of use

(1) Upon full payment of the agreed compensation, b-plus shall grant the Customer the indefinite, non-exclusive and non-transferable right to use the results of the performance for its own internal purposes within the limits of the contractually agreed purpose, unless otherwise stipulated. In other respects, b-plus shall retain all additional rights.

(2) b-plus may revoke the Customer's right of use if the Customer commits a material breach of the limitations of use or other provisions which protect against unauthorized use. Before exercising this right, b-plus shall set a grace period for the Customer to remedy such breach. b-plus shall be entitled to revoke the right of use immediately in case of repeated breaches or if special circumstances apply which justify immediate revocation taking into account the interests of both parties. The Customer shall confirm the cessation of use to b-plus in writing after such revocation.

§ 13 Employing third parties

b-plus may employ freelancers in the performance of its obligations under the contract, and subcontract performance to them.

§ 14 Confidentiality

(1) Both parties undertake to keep confidential the content of the individual performance agreements and any data communicated or made available in any form during or prior to the performance agreement, in particular login data, software, trade secrets, technical know-how or other information, regardless of their content. Such data shall only be used for the purposes of the respective performance agreement and not for the own purposes of the party, either completely or in part, without the written approval of the other party. Employees and third parties coming into contact with such data shall be subjected to equivalent confidentiality restrictions.

(2) Para. 1 shall not apply while and to the extent such confidential information (i) was already known to the respective recipient without being subject to confidentiality requirements or (ii) is or becomes generally known without fault of the respective recipient or (iii) is communicated or passed to the respective recipient by a third party without any confidentiality requirements or (iv) was demonstrably developed by the recipient independently or (v) must be disclosed to public authorities due to legal requirements or (vi) is approved in writing for publication by the disclosing party.

§ 15 Applicable Law

The legal relationship between the parties is governed by the Law of the Federal Republic of Germany. International purchase laws shall not apply. This shall, in particular, refer to the UN Convention (CISG) on the International Sale of Goods. Where standard terms at business are used, the INCOTERMS 2010 of the International Chamber of Commerce shall apply.

§ 16 Place of jurisdiction

The office of b-plus shall determine the place of jurisdiction for any disputes arising from or in connection with an individual performance agreement with a merchant pursuant to German commercial law, a public legal person or a public law special fund; this shall also apply to disputes arising in relation to the conclusion and termination of the agreement.

§ 17 Final provisions

(1) The invalidity of any provision of these general terms and conditions of sale shall not affect the validity of the other provisions. Invalid provisions shall be deemed to be replaced by such valid provisions that shall be suitable to implement the economic purpose of the deleted provision to the greatest extent possible.

(2) This General Terms of Condition and Purchase are written in English and German. In the event of discrepancies or discrepancies in the interpretation the German version shall prevail.