

# General Terms and Conditions of Sale and Delivery

Prepared in: 10/2019

The following General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTC") shall be part of all transactions of the entities of umdasch Store Makers (hereinafter referred to as "umdasch"). The contracting party shall be the group entity with which the contract will actually be concluded. These General Terms and Conditions of Sale and Delivery shall be supplemented by the Terms and Conditions of Sale and Delivery for General Contractor's Work for transactions regarding general contractor's work and related assembly work, or by the Terms and Conditions of Sale and Delivery of Digital Products and Services for digital products and services of umdasch.

## 1) General

- 1.1. If any provisions of the parties' contracts or any provisions of these Terms and Conditions are or become ineffective or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected thereby. The ineffective or unenforceable provision shall be replaced by a valid analogous regulation which comes as close as possible to the business purpose of the ineffective or unenforceable clause.
- 1.2. General terms and conditions of the customer, if any, shall not apply, even if umdasch does not object thereto or even if they are not in conflict with regulations of umdasch's GTC. Amendments to these General Terms and Conditions of Sale and Delivery shall only become effective upon umdasch's written consent.
- 1.3. If any provisions of the parties' contracts or any provisions of these General Terms and Conditions are unclear or ambiguous, the interpretation which is most favourable to umdasch shall apply at all times.

## 2) Written form

Statements made, advice given or transactions concluded by umdasch shall become binding only upon umdasch's written confirmation. The same shall apply to special agreements that may be concluded by and between umdasch staff (employees, agents, etc.) and the customer. Statements which the customer has to make on the basis of these GTC, such as objections as defined in Clause 3., rescission of a contract as defined in Clause 8.3. and 8.4., notice of defects as defined in Clause 11. and the like, shall be made in writing in order to be effective.

## 3) Services; Conclusion of and amendments to contracts

- 3.1. Unless otherwise agreed in a specific case, offers made by umdasch shall be subject to change without notice and non-binding. No warranty is given for accuracy or completeness of cost estimates made by umdasch. Rights of ownership and copyrights in samples, cost estimates, drawings and similar information in physical or non-physical form, including electronic form, shall be reserved to umdasch; they shall not be made available to third parties.
- 3.2. Information contained in catalogues, drawings, illustrations, dimensions or weights or other information on services shall be binding only if this is expressly agreed.
- 3.3. Contracts shall be concluded only upon dispatch of a written acknowledgement of order by umdasch and not later than upon delivery or rendering of the service by umdasch. An acknowledgement of order issued by umdasch will definitively determine the specific contents of the supply contract (scope of the service, prices and other individual terms and conditions).
- 3.4. If the scope of products or services has not been finalised at the time the purchase order is placed (e.g. with regard to the technical design, etc.), umdasch shall prepare a preliminary acknowledgement of order. Subsequently, the customer shall define the purchase order in such a timely manner that the agreed dates and periods can be observed. Only thereafter will the final acknowledgement of order be prepared by umdasch and sent to the customer, provided that umdasch can agree to the final definitions and/or details provided by the customer. If the customer fails to fulfil or does not timely fulfil his obligation to provide details regarding his order, all consequences resulting from such default shall be borne by the customer and the preliminary acknowledgement of order and/or the contract shall remain in force without change.
- 3.5. The parties agree that umdasch shall engage suitable and capable subcontractors for rendering the service. If the customer raises objectively substantiated objections to continued engagement of a specific subcontractor, umdasch shall no longer engage that subcontractor, provided that this is reasonably acceptable to umdasch, in particular in view of the project schedule.
- 3.6. Any services that are not covered by the offer, such as carrying out functionality tests, test runs or sampling, shall require a separate agreement.

## 4) Rescission of contract

- 4.1. The grounds which entitle umdasch or the customer to rescind a contract that has been concluded are regulated in Clauses 5. Prices, 7. Payment and late payment, 8. Dates and deadlines and 12. Retention of title.
- 4.2. Apart from that, umdasch may rescind a concluded contract if the customer acts in violation of the Code of Conduct of umdasch Store Makers (download from <https://www.umdach.com/en/Company/The-Store-Makers/Responsibility>).
- 4.3. A contract may also be rescinded with regard to a part of the scope of the contract. In such a case, umdasch shall perform the validly existing part of the contract after payment by the customer.
- 4.4. If umdasch rescinds the contract for reasons within the customer's sphere of control, the customer shall pay for the upstream services which have already been provided by umdasch in preparation of performance of the contract (in particular procuring of material, rendering special services, and labour costs). For these upstream services umdasch may charge the higher of a lump sum of 25 % of the contract value or the costs actually incurred, without having to furnish evidence of the value of the upstream services rendered. Products and services already produced or delivered shall be fully paid for considering expenses and savings, if any.

## 5) Prices

- 5.1. The prices stated in brochures and price lists shall be net prices ex works (according to the Incoterms 2010) exclusive of ancillary costs (for packaging, insurance, if any, assembly and the like) and shall be subject to change without notice.
- 5.2. If no prices are stated in the purchase order of a customer, the umdasch price lists relevant at the date the purchase order is received by umdasch shall apply. Prices stated in calls for tenders or specifications or prices for individual services shall be binding only after a pre-award negotiation and written confirmation. The prices stated by umdasch in the acknowledgement of order plus statutory value-added tax shall be relevant to the contract.
- 5.3. Unless otherwise agreed, lump-sum prices shall always mean detailed lump-sum prices that are based on specifications. Services that have not been stated and any overrun of more than 10% shall not be covered by the lump sum. For such services umdasch shall be paid separate remuneration with no separate offer or acceptance of the same being required.

- 5.4. If deliveries are made or services are rendered only after the agreed performance date by no fault of umdasch, umdasch shall be entitled to adjust the agreed prices accordingly. Such adjustments of prices shall be made according to the change in costs necessary for rendering the services in the period between the agreed performance date and the actual performance date. This shall include but not be limited to changes in labour costs regulated in collective bargaining agreements and in any and all other costs necessary for rendering the services, such as cost of material, downtimes, energy, transports, financing of third-party work, etc.

## 6) Exchange rate guarantee

As a matter of principle, export deliveries shall be charged in euros and shall be paid in euros. If a different currency is expressly agreed upon, invoices shall be issued on the basis of the exchange rate between that currency and the euro on the day of conclusion of the contract. The exchange rates calculated by the Austrian Central Bank [OeNB] shall be relevant to such calculation.

## 7) Payment and late payment/insolvency of the customer

- 7.1. Unless agreed individually, the following payment terms shall apply:
  1. 50 % of the contract value shall be due for payment at the date the acknowledgement of order is issued;
  2. 40 % of the contract value shall be due for payment upon delivery/commencement of work;
  3. 10 % of the contract value shall be due for payment upon completion of the order.
- 7.2. All payments shall be remitted to the bank accounts advised by umdasch. umdasch's field staff shall not be entitled to accept payments unless they hold a specific written power of attorney to that effect.
- 7.3. The customer shall not be entitled to withhold payments on account of notices of defect given or claims for damages raised or to offset counterclaims unless the counterclaim was ascertained by a court or recognised by umdasch. In the case that umdasch has accepted a notice of defects as being justified the customer shall make a payment that is in line with the quantity of goods delivered that are free from defects without delay.
- 7.4. If there are different accounts payable by the customer umdasch shall be free to decide which of those will be covered in whole or in part by the payments received.
- 7.5. If umdasch accepts bills of exchange eligible for discount or cheques from the customer, they shall only be accepted on account of payment; such bills or cheques shall be credited less interest and charges and subject to actual receipt of payment.
- 7.6. In the case of late payment by the customer umdasch shall be entitled from the due date to charge late payment interest at the statutory rate and at least at a rate of 3% above the Euribor 3 M (or the applicable interbank offered interest rate for other currencies). Moreover, umdasch shall be reimbursed all dunning and collection expenses (i.e. at least EUR 10 per reminder and at least EUR 4 per half year for monitoring the debt, each plus VAT, if applicable). If a collection agent is instructed, the customer shall also reimburse the related costs in accordance with the ministerial regulation on the maximum rates of collection agencies. If the customer is late in paying his debts for more than 14 (fourteen) days despite a reminder and having been granted a reasonable grace period, umdasch shall be entitled to rescind the contract.
- 7.7. If umdasch learns of circumstances which make the customer's creditworthiness appear to be heavily reduced, umdasch shall be entitled to demand advance payments or instalments and/or collateral security and to rescind the contract if no such payment is made or security is furnished. A heavy reduction in creditworthiness shall include but not be limited to a situation where the customer has been late in making the payments or the down payment requested for more than ten (10) banking days. If a petition for opening of insolvency proceedings is filed or if insolvency proceedings are opened over the assets of the customer or if a petition for opening of insolvency proceedings over the assets of the customer is dismissed for lack of assets to cover the costs, umdasch's performance obligation shall become due only concurrently with the customer's performance of the contract, notwithstanding any duties of umdasch to provide advance services that may have been agreed.
- 7.8. Any payment claims of umdasch shall become time-barred ten (10) years after they have become due. All payment claims under the contractual relationship shall become due by request for payment, issuing of an invoice or at the agreed date.
- 7.9. If the contracting party furnishes collateral security for the benefit of umdasch for complete performance of the contract, the same shall be deemed insolvency-proof to the extent permitted by the provisions applicable from time to time.

## 8) Dates and deadlines

- 8.1. As a matter of principle, agreed delivery periods shall commence at the date of the acknowledgement of order. If documents necessary for execution of the order, such as, in particular, dimensions, original measurements, etc., are not available to umdasch by that date (commencement of the period), the period shall commence to run on the day on which the last document necessary for execution of the order is received by umdasch. The customer shall ensure timely transmission of such documents. In the case assembly is delayed as described in Clause 9.3. delivery periods shall be extended by the duration of the delay in assembly. If the customer is required to make a down payment, the delivery period shall commence not earlier than on the day on which umdasch receives the down payment.
- 8.2. If acceptance is delayed or the service is not accepted at all due to circumstances which are not attributable to umdasch, the risk shall pass to the customer from the day of notification of readiness for delivery or acceptance, and umdasch's service shall be deemed rendered timely and free of defects.
- 8.3. Moreover, umdasch shall be entitled to charge a handling fee and costs of downtimes or a storage fee for goods. Irrespective thereof umdasch shall be entitled to rescind the contract and charge the customer the full amount or the difference between the agreed price and the amount saved or in the case of deliveries of goods the difference between the agreed price and the proceeds to be expected from realisation of delivery items, if any. If, subsequently, in the course of actual realisation, it turns out that the difference is higher than initially expected, umdasch shall be entitled to subsequently invoice this additional loss to the customer.
- 8.4. If umdasch fails to meet agreed dates for more than three (3) weeks, the customer may rescind the contract after having granted a reasonable grace period of at least three (3) weeks. If the date is not met due to unforeseeable reasons occurring at umdasch (including strikes, business interruptions, shortage of raw material, unexpected failure of a subcontractor to perform, etc.), the customer's right to rescind the contract shall be subject to the condition that a date has not been met for at least two (2) months and a reasonable grace period of at least three (3) weeks was granted.
- 8.5. If a fixed-date transaction has been expressly agreed, the contract shall, in principle, terminate if and when the date is not met. However, if this is due to force majeure (in particular strikes, natural disasters which are beyond umdasch's control, unforeseeable official decisions or requirements, etc.), the contracting party shall immediately be informed thereof and the contract shall only terminate if and when a date has not been met for more than two (2) months.

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8.6. umdasch shall not be liable for delays caused by official decisions which could not be foreseen by umdasch at the time the order was placed, in particular in cases where the project was planned by the customer or third parties instructed by the customer; such delays shall cause agreed dates to be postponed at least for that period. If the customer is responsible for the delay, umdasch shall be entitled to charge a handling fee and costs of downtimes or a storage fee for goods and/or to rescind the contract after having granted a reasonable grace period.

## 9) Shipping and assembly>Returns

- 9.1. In all cases goods shall be shipped at the risk of the customer, even if delivery freight paid has been agreed. The customer shall inspect the delivery item immediately, have the carrier mark any damage immediately on delivery documents and notify umdasch in writing of any transport damage immediately; otherwise all claims will be forfeited.
- 9.2. If assembly by umdasch has been agreed, the customer shall store the shipments in lockable and dry rooms immediately upon arrival, irrespective of the fact that the customer bears the risk.
- 9.3. In the case that assembly by umdasch has been agreed, the customer shall ensure that assembly can be carried out without delay and, in particular, that umdasch's assemblers will not be disturbed by other craftsmen. In addition, rooms to be fitted for the assembly project shall be kept available by the customer at his own cost, where necessary heated, cleaned, sufficiently lighted and equipped with an electricity and water connection. The costs of electricity and water consumption shall also be borne by the customer. The customer shall ensure that fitted carpets are non-slip and covered sufficiently in order to protect them against soiling and/or damage. The customer shall ensure proper and risk-free access for vehicles immediately up to the rooms to be fitted and shall provide means of transport that may be available (such as cranes or lifts) to umdasch free of charge.
- 9.4. If, in the course of assembly, connections with property of the customer have to be made (e.g. fastening to the wall by means of drilling or mortising), the customer shall inform umdasch about dangerous spots prior to commencement of the work by umdasch; in particular, the exact location of electricity, gas, water and other line or pipe systems shall be advised.
- 9.5. umdasch shall be under no obligation to examine the features of the walls or structures onto which items are to be fixed in the course of assembly. In contrast, the customer shall inform umdasch about the quality of walls or structures and about any circumstances that might make assembly more difficult. Any additional expenses incurred by umdasch due to unknown features or qualities of walls or structures shall be borne by the customer.
- 9.6. In all cases in which umdasch carries out assembly for a lump sum by order of the customer, additional costs for overtime ordered by the customer or delays in assembly caused by the customer and any work not included in the acknowledgement of order shall be charged separately.
- 9.7. If assembly cannot be carried out immediately after delivery for reasons for which the customer is responsible, umdasch shall charge additional costs resulting therefrom (in particular due to a delay in assembly) separately; the same shall apply if the customer has requested that delivery and assembly be carried out in parts.
- 9.8. The customer shall clean the rooms after assembly has been completed at his cost.
- 9.9. In principle, umdasch does not owe installation and connection of electrical devices of all kinds or light fixtures. Unless otherwise agreed, the customer shall have this work done by skilled staff qualified for such jobs at his cost.
- 9.10. Packaging material used shall be the property of the customer and shall therefore be disposed of by him. Transportation aids used by umdasch, such as pallets, etc., shall be returned to umdasch; otherwise the customer shall pay a compensation.

## 10) Damages

- 10.1. The customer shall have claims for damages vis-à-vis umdasch under or in connection with the contract, including assembly work, only if he can prove that umdasch acted with wilful intent or gross negligence. Liability for slight negligence shall be excluded. In any case consequential damages, compensation for pecuniary loss and damages based on claims of third parties vis-à-vis the customer shall be excluded.
- 10.2. Strict liability for damages or reimbursement of expenses shall be excluded at all times.
- 10.3. The customer shall in any case claim damages in court within twelve (12) months of the date the damage became noticeable and the party who caused the same could be identified and in any case within three (3) years of delivery and/or service.

## 11) Warranty

- 11.1. umdasch warrants that the goods and services are free from defects at the time of delivery. Rights or claims under warranty shall be excluded if the customer fails to fulfil his duty to inspect the goods and to notify defects as laid down in Clause 11.3., if a defect is caused by parts or services (including but not limited to planning services) provided by the customer, if alleged defectiveness is the result of the customer's improper handling or excessive use, and in the case of normal wear and tear. umdasch assumes no warning or inspection obligation whatsoever, except in the case of obvious defects that directly affect umdasch's service.
- 11.2. The customer shall assert rights or claims under warranty within 24 (twenty-four) months for immovable goods and within twelve (12) months for movable goods and within six (6) months for delivered electrical devices and light fixtures. Any presumption of defects under the relevant national jurisdiction shall be excluded, as shall any rights of recourse of customers.
- 11.3. The customer shall inspect goods or services immediately after receipt and notify umdasch of defects in writing without delay and in any case not later than eight (8) days after they became noticeable and include information on the type and extent of the defect; otherwise the goods delivered or the service rendered shall be deemed accepted and, consequently, warranty claims and claims for damages and avoidance on account of mistake by the customer shall be excluded in particular.
- 11.4. If the customer violates his duties under Clause 9.5., he shall not be allowed to claim defects in assembly vis-à-vis umdasch which have resulted from his breach of duties.
- 11.5. The following shall be excluded from warranty:
  - goods provided by the customer;
  - used products and items;
  - compatibility of materials used by umdasch with other parts or properties of rooms to be fitted by umdasch as, for example, third-party FF&E, colours of light, heating, etc.;
  - deformation and cracking in solid woods used;
  - the function of a delivery item and suitability of the material used, if the design was made by the customer or a representative authorised by him (e.g. his architect);
  - similarity of colour shades or surface or veneer texture of the different delivery items;
  - statics, building physics and the condition of the building.
- 11.6. If umdasch is subject to a warranty obligation, umdasch shall be free to choose whether to make improvements or render substitute deliveries. Improvements or subsequent del-

iveries made by umdasch shall not extend the warranty period; thus, the warranty period for improved or subsequently delivered movable items shall also end not later than twelve (12) months after the original delivery.

- 11.7. Services rendered by umdasch due to unjustified notices of defects shall be considered a new order and shall be separately invoiced to the customer.

## 12) Retention of title

- 12.1. Goods delivered by umdasch shall remain the property of umdasch until full payment of all accounts receivable under the delivery (including but not limited to the invoice amount, even if increased in accordance with the contract, interest, expenses and costs).
- 12.2. Deliveries and services for a single project shall be deemed a single order, even if items were ordered, delivered or invoiced in separate stages. Retention of title to all goods shall only cease if and when all accounts receivable by umdasch under the order have been settled.
- 12.3. Claiming retention of title shall only be considered rescission of the contract if rescission is expressly declared by umdasch. Retention of title may be claimed, with or without rescission of the contract, for the entire delivery or for specific goods.
- 12.4. The customer shall only be allowed to resell goods title to which has been retained by umdasch if they were expressly declared by umdasch to be goods for resale or if retention of title has ceased due to payment or if umdasch expressly agrees. In the case of resale the customer already at this point assigns his claim vis-à-vis third parties which arises from the resale to umdasch by way of security until settlement of all claims vis-à-vis him and undertakes to ensure at his own expense that the acts of public disclosure (entry in the books, etc.) necessary for such assignment of security are taken and maintained.
- 12.5. If goods title to which has been retained are combined or commingled with other goods, umdasch shall have a right of co-ownership to the new items in the proportion of the value of the item title to which has been retained to the value of the other item at the time of combination or commingling. If this newly created item is resold, the customer shall assign to umdasch the prorated purchase price from resale as defined in the foregoing Clause 12.4.

## 13) Provision of parts to the customer

- 13.1. If the customer provides parts under an order placed with umdasch, such parts must be in perfect condition, free from any defects and of first-class quality. Thus, the customer shall, in particular, be liable for the quality, dimensional accuracy, functionality, surface quality, proper packaging and freedom from defects of the parts at the time they are delivered to umdasch, and also for suitability of the parts provided by him for execution of the relevant order and/or for the envisaged processing by umdasch.
- 13.2. If the parts provided by the customer do not fulfil these requirements, umdasch shall be free to choose either to take the measures necessary from umdasch's point of view for repair of the relevant defect or to reject the provided parts. All costs, expenses and damages whatsoever resulting therefrom, including those resulting from a related delay, shall be borne by the customer.
- 13.3. umdasch shall be subject to no duty to examine the parts provided by the customer for their quality, for defects or their suitability for the envisaged processing by umdasch. If umdasch carries out an incoming goods inspection, this shall be done voluntarily and shall change nothing regarding the stated responsibility of the customer and not release the customer from his duty to provide parts in the quality described in Clause 13.1. In particular, the customer shall not claim that umdasch would have been able to identify a defect in quality or other defect in the course of an incoming goods inspection.
- 13.4. The customer represents vis-à-vis umdasch that he holds all necessary rights to goods or parts which he provides, tools, documents, papers, data sets, files, images, videos, etc. and that he will transfer the same to umdasch to the extent that this is necessary for successful performance of the contract by umdasch.
- 13.5. The customer shall provide umdasch with the necessary information regarding the type of processing.
- 13.6. If and to the extent that the customer intends to make changes to the technical documents made available by him, he shall be solely responsible for doing so in writing and for demonstrably delivering them to umdasch. In order for a modification desired by the customer to be effective and binding it shall require an express written confirmation by umdasch, which shall be issued after delivery to umdasch. All costs, expenses and damages whatsoever resulting from such a modification, including those resulting from a related delay, shall be borne by the customer.

## 14) Proprietary right; Advertising; Photos

- 14.1. All drawings, modifications, cost estimates, etc. shall be the intellectual property of umdasch. They enjoy full protection and may be made accessible to third parties only upon umdasch's consent, even after completion and performance of the contract.
- 14.2. It is understood that umdasch may use premises fitted by umdasch in its advertising (reference lists, brochures, press releases, etc.) and shall state the name of the customer when doing so. In particular, the customer grants umdasch the right to take photos of premises fitted by umdasch at the cost of umdasch and shall support umdasch or the person instructed by umdasch where possible.
- 14.3. The parties agree that successful cooperation and any projects that have resulted therefrom may be advertised accordingly. Irrespective thereof umdasch reserves the right to restrict exploitation for advertising purposes as well as use of the company name, in particular for projects that were not entirely carried out by umdasch.

## 15) Data protection

- 15.1. umdasch processes personal data of the contracting party's contact person(s) to perform its contractual obligations, in its legitimate interest or upon consent. As processing of data only serves the purpose of performance of the actual order by umdasch vis-à-vis the contracting party, this constitutes no processing activities on behalf of a controller as defined in Art. 28 GDPR.
- 15.2. umdasch processes personal data such as the name, business address, business phone number and business email address. Data will in any case be processed for the duration of the contractual or statutory obligations or for as long as there is a legitimate interest. The contracting party hereby agrees that umdasch may pass on personal data to processors and/or group entities. umdasch shall safeguard the data subjects' rights as defined in the GDPR, and the data subject shall, in particular, have a right of access and a right to erasure, as well as a right to lodge a complaint with the competent Data Protection Authority (e.g. in Austria: <https://www.dsb.gv.at/>). For further information please see <https://www.umdasch.com/en/GDPR> or send an email to [legal@umdasch.com](mailto:legal@umdasch.com).

## 16) The Austrian Consumer Protection Act [Konsumentenschutzgesetz]

As a matter of principle, umdasch concludes contracts exclusively with entrepreneurs. If, in an exceptional case, the customer is a consumer as defined by the Austrian Consumer

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THE STORE MAKERS

Protection Act, he shall be obliged to inform umdasch thereof. If, in an exceptional case, a transaction is a consumer transaction nonetheless, the General Terms and Conditions of Sale and Delivery shall apply only insofar as they do not violate mandatory statutory provisions.

## 17) Place of Performance and Place of Jurisdiction

- 17.1. The exclusive place of performance for all services (in particular deliveries and payments) shall be Amstetten, unless agreed otherwise in the agreement made with the customer. The exclusive place of jurisdiction for all disputes arising directly or indirectly out of the contractual relationship shall be the court having jurisdiction over Amstetten and the subject matter; however, umdasch shall be entitled to also sue the customer in the court having jurisdiction over 3300 Amstetten and over the subject matter or, at umdasch's option, in any other court in Austria.
- 17.2. The contractual relationships shall be subject to Austrian law; the conflict of laws rules of private international law and UN Sales Law shall be excluded.

## Terms and Conditions of Sale and Delivery of Digital Products and Services:

The following Terms and Conditions of Sale and Delivery of Digital Products and Services (hereinafter referred to as "GTC Dig") shall be part of all transactions of the entities of umdasch Store Makers (hereinafter referred to as "umdasch"). The contracting party shall be the group entity with which the contract will actually be concluded. The General Terms and Conditions of Sale and Delivery shall be supplemented by the Terms and Conditions of Sale and Delivery of Digital Products and Services for transactions involving digital products or services of umdasch.

### 1) General

- 1.1. The contracting party shall prepare the place of performance and take all preparatory measures necessary for performance by umdasch. This shall include but not be limited to the provision of networks, interfaces, passwords, system access rights, electricity connections, etc.
- 1.2. "Digital Products" means both hardware components and parts, overall concepts and solutions, and services related to information technologies.

### 2) Intellectual property rights

- 2.1. Unless otherwise agreed, umdasch and/or its licensors shall be entitled to all rights to the agreed works or services derived from patent rights, trademark rights, registered design rights, mask-work rights and/or copyright or otherwise from creation of the works or services provided to the customer.
- 2.2. The customer shall only be granted a non-exclusive and non-transferable right to use those works or services after full payment of the agreed price in compliance with the contractual specifications at the agreed place of installation for the purpose agreed in the contract for the number of licences acquired.
- 2.3. Unless otherwise agreed, the customer only acquires a licence to use the work under the present terms and conditions. By his contribution to production or user-specific adaptation of the software the customer acquires no rights other than the right to use defined in the relevant contract. umdasch shall grant the customer rights to use software and databases only to the extent that is necessary for performance of the specific contract. If the subject matter of the contract is the creation and/or use of databases, the customer shall acquire no rights to the programming work beyond the right to use it in connection with the database.
- 2.4. umdasch owes no transfer of the source code to the customer, neither for standard nor for individual software.
- 2.5. The customer shall be allowed to make copies for archiving and data back-up purposes, provided that the software contains no express prohibition by the licensor or third parties and provided that all copyright notes and proprietary notes are also transferred to those copies without changes.
- 2.6. If interfaces must be disclosed for establishing interoperability of the software, umdasch shall do so only after separate instruction, but without any obligation to accept such an order. The customer shall be permitted to decompile the software only if umdasch rejects such an order. In such a case the results may be used exclusively for establishing interoperability. In the case of unauthorised decompilation umdasch shall be entitled to reasonable payment and/or damages.
- 2.7. Proprietary notices, trademarks, network identifications and the like on the works or services of umdasch or third parties must neither be removed, edited, altered nor made illegible by the customer.
- 2.8. After full payment of the agreed price the customer shall be granted a non-transferable and non-exclusive right to use programs, databases, websites or other works that are protected by copyright and, if agreed, pertaining documentation in compliance with the contractual specifications for the purpose agreed by contract. In the case of hardware that is also supplied by umdasch that right shall exclusively be restricted to use on such hardware; in the case of independent software it shall be restricted exclusively to the hardware defined in the contract according to type, number and place of installation.
- 2.9. All other rights to the works or services shall be reserved to umdasch and/or its licensors so that the customer shall, without umdasch's prior written consent, in particular, not be entitled to reproduce, alter, reverse engineer, retranslate, extract parts from, disclose to third parties, use on hardware other than the one that is the subject matter of the contract, analyse, decompile or disassemble the software. The works or services may be used on hardware that is no subject matter of the contract only under a separate written agreement and against payment.
- 2.10. umdasch assumes no warranty for software retrieved by the customer that originates from third parties or is qualified as "public domain" or "shareware". If umdasch makes use of such software in performing the contract, umdasch shall be under no obligation whatsoever to provide necessary enhancements or updates. In this connection all claims of the customer shall be excluded.
- 2.11. The customer shall ensure that the works or services including the reproductions permitted by umdasch, including in edited, extended or altered versions, will not become known to third parties without umdasch's prior written consent; this obligation shall be unlimited in time.
- 2.12. Unless otherwise agreed, the customer shall acquire all rights to use the works customised by umdasch for him for a separate price upon full payment of the agreed price, except for the right of exploitation vis-à-vis third parties; such rights shall be unlimited as to time, place and contents. In this case umdasch shall continue to be entitled to use the works or services for its internal purposes without restrictions and to exploit the same vis-à-vis third parties. The customer undertakes to hand over all adaptations at umdasch's request and grant umdasch all intellectual property rights of use which are currently known or will become known in future, which shall not limit use thereof by the customer in accordance with the contract.
- 2.13. Any violation of these terms and conditions shall in any case result in claims to a cease and desist order and claims for damages; in such a case umdasch shall be fully compensated.

### 3) Liability and warranty

- 3.1. The customer shall indemnify umdasch and its agents [translator's note: Erfüllungsgelhilfe as defined by Section 1313a of the Austrian Civil Code [ABGB]] against any and all claims of third parties which are based on unlawful use of the software and related works or services by the customer or with the customer's consent or which result, in particular, from disputes under data protection law or copyright law or other legal disputes that are related to any unlawful use of the software for which the customer is responsible.
- 3.2. Copyright notices, serial numbers and other features serving the purpose of identifying the program shall in no case be removed or altered. The same shall apply to disabling display of such features on the screen.
- 3.3. As a matter of principle, the warranty provisions of the General Terms and Conditions of Sale and Delivery shall apply to defects. As a matter of principle, the warranty provisions of developers and suppliers shall apply to software and digital products.
- 3.4. Offers of products and services of umdasch shall always be subject to the condition that the technical conditions at the customer's are compatible with the products and services.

# General Terms and Conditions of Sale and Delivery

Prepared in: 10/2019

**umdasch**  
THE STORE MAKERS

umdasch shall warrant that the components provided fulfil all functional requirements of the contracting party only subject to explicit representations with regard to properties (e.g. item 3.10. of the specifications).

- 3.5. umdasch shall not be liable for adverse consequences or damage that result(s) from loss of data and resulting consequential damage or for adverse consequences or damage that result(s) from cyber attacks, hacking or phishing attacks on umdasch or the customer.
- 3.6. The warranty period for software and digital products developed by umdasch itself shall be six (6) months from acknowledgement of the order by umdasch.
- 3.7. However, notices of defects shall only be valid if they concern reproducible defects and if they are given in writing and documented within four (4) weeks of delivery or implementation of the agreed work or service. In the case that a notice of defects is justified the defects shall be repaired within a reasonable period of time and the customer shall allow umdasch to take all measures which are necessary for examination and repair of the defects. Shifting of the burden of proof, i.e. the contractor's obligation to prove that he did not cause the defect, shall be excluded.
- 3.8. Used products shall be sold with any warranty being excluded.
- 3.9. If no specifications as described in 3.10. have been prepared and the requirements contained therein have not been declared to be part of the contract between the parties, umdasch neither assumes liability nor warrants that the software delivered by it meets the requirements of the customer, is compatible with other programs of the customer or that all software errors can be eliminated. When setting up firewall systems umdasch follows the relevant state of the art but does not warrant absolute security and shall not be liable for it. Likewise, umdasch shall neither be liable for disadvantages resulting from a situation where the firewall system installed at the customer's is circumvented or disabled.
- 3.10. The customer shall prepare specifications together with umdasch on which the offer shall be based. The specifications shall describe and include the following points in sufficient detail:
  - definition and determination of the objective(s);
  - intended purpose and use of the project result;
  - specific overview of the expected work or service;
  - features necessary (from a technical point of view);
  - all relevant technical data, such as performance, dimensions, weights, etc.;
  - specific requirements of the project result (certification, references, etc.);
  - fixed requirements of the contractor's project management (documentation, monitoring, controlling). If the customer prepares no specifications, we shall prepare specifications together with the customer that meet the requirements, which is subject to a charge and not included in our offer. A version of the specifications declared to be final by the customer shall become part of the contract.

#### 4) Supplementary Terms and Conditions for Leases

- 4.1. During the entire term of lease the entire hardware and software (hereinafter referred to as the "Hardware and Software") shall remain the property of umdasch. Passing on the Hardware and Software to persons, entities or locations other than those stated in the lease contract shall be prohibited. The lessee shall be responsible for compliance with all safety-relevant regulations at the place where the Hardware and Software is located. The lessee shall ensure that the regulations regarding the Hardware and Software are not in conflict with other provisions that apply during the term of lease, such as house rules, fire safety rules, etc. The Hardware and Software will be insured for the term of lease. However, if the lessee has caused damage, the lessee undertakes to reimburse the contribution paid by the lessor. In the case of defects or damage the lessor shall be immediately notified in writing.
- 4.2. The lessee undertakes to use the Hardware and Software with care in accordance with the instructions for use. In the case of temporary failure of the Hardware and Software or other disruptions the lessee shall not be entitled to claim damages, rights of retention or assert any other claims (except for compulsory rights to a reduction in the rent). The above regulations shall apply to any other impairment of the agreed use mutatis mutandis. However, if such impairments result from parts of the Hardware and Software to be maintained and repaired by the lessee, all claims of the lessee vis-à-vis the lessor shall be deemed excluded.

## Terms and Conditions of Sale and Delivery for General Contractor's Work

The following General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTC") shall be part of all transactions of the entities of umdasch Store Makers (hereinafter referred to as "umdasch"). The contracting party shall be the group entity with which the contract will actually be concluded. These General Terms and Conditions of Sale and Delivery shall be supplemented by the Terms and Conditions of Sale and Delivery for General Contractor's Work for transactions regarding general contractor's work and related assembly work, or by the Terms and Conditions of Sale and Delivery of Digital Products and Services for digital products and services of umdasch.

#### 1) Prices

Unless otherwise agreed, all prices communicated to the customer in any way whatsoever shall be DAP "Destination" according to the Incoterms 2010 plus taxes exclusive of incidental costs (for packaging, insurance, disposal and the like) and shall be subject to change without notice.

#### 2) Performance

- 2.1. Unless otherwise agreed in a specific case, umdasch shall owe execution of the order in accordance with the generally accepted rules of technology at the time a contract is concluded. Standards that are published at a later date may be included by notification of the customer, though umdasch is under no obligation to do so.
- 2.2. umdasch shall prepare the execution planning on the basis of its own planning documents or those provided by the customer. umdasch shall be entitled to express doubts about the provided planning or execution documents at any time, but shall be under no obligation to check the same.
- 2.3. If the customer fails to inform umdasch of preferred construction material, materials or special designs at the time the contract is concluded, umdasch shall use suitable materials customary in the market in agreement with subcontractors, if any.
- 2.4. umdasch shall be entitled to use the construction site equipment of the customer and the customer's agents [translator's note: Erfüllungsgehilfe as defined by Section 1313a of the Austrian Civil Code [ABGB]] free of charge, provided that this is agreed in a timely manner.
- 2.5. umdasch shall regularly clean the construction site at reasonable intervals and report to the customer regularly or at the customer's reasonable request. Daily reports shall not be necessary.
- 2.6. Unless otherwise agreed, construction waste and packaging materials shall be disposed in the customer's relevant disposal facilities.

#### 3) Exclusion of services

- 3.1. The following services shall not be provided by umdasch or shall only be rendered under a separate agreement and for separate remuneration:
  - construction of buildings and other services which under Austrian law and standards are reserved for architects and master builders or for persons equivalent to them under the law applicable at the place where the services are to be provided;
  - examination of statics and building physics as well as the condition of the building and existing technical equipment and installations (e.g. power lines and water pipes) of the structure that is the subject matter of the contract. The customer and his agents shall be responsible for providing that information to umdasch;
  - connecting electricity lines and water pipes;
  - construction coordination pursuant to the Austrian Federal Statute on Coordination of Construction Work [Bauarbeitenkoordinationsgesetz/BauKG] / construction supervision pursuant to the Regulations on Contract Awards for Public Works [VOB] / construction management or other similar functions of the builder-owner, in particular those prescribed by law, or any obligations and tasks of the customer with no separate instruction by the customer and in any case only to the extent that this is legally possible and permissible. This shall expressly include the obtaining of official approvals and the representation of the customer before public authorities, which service shall not be provided by umdasch;
  - duties to maintain safety and coordination of access to the site; disposal of waste generated on the construction site;
  - review of planning and execution documents of the customer or third parties attributable to him.
- 3.2. If the customer requests the above-mentioned services, umdasch may recommend an appropriate expert, who shall, however, act on behalf and on the responsibility of the customer. This will not change, even if the expert's services are invoiced via umdasch at the customer's request.

#### 4) Warranty

- 4.1. Unless otherwise agreed or unless mandatory statutory provisions or standards provide otherwise, the customer shall assert rights or claims under warranty in court within 24 (twenty-four) months for immovable goods and within twelve (12) months for movable goods and within six (6) months for delivered electrical devices or light fixtures; this shall apply to all services which umdasch renders within the scope of applicability of these GTC for General Contractor's Work.
- 4.2. The following shall be excluded from warranty:
  - statics, building physics and the condition of the building;
  - defects which result from faulty planning documents, goods or other services provided by the customer or third parties attributable to him;
  - compatibility of materials used by umdasch with other parts or properties of space to be fitted by umdasch, as, for example, third-party FF&E, colours of light, heating, etc.;
  - deformation and cracking in solid woods used;
  - equality of colour shades or surface or veneer texture of the different delivery items.