

GENERAL TERMS AND CONDITIONS OF PILOTFISH FOR DESIGN AND CONSULTING SERVICES

A. Agreement, Offers and Confirmation

1.1 These General Terms and Conditions apply to the exclusion of any purchase conditions or other General Conditions of the CLIENT.

1.2 All offers are valid for two months unless indicated otherwise in the respective Agreement. Prices are exclusive of VAT and other government levies.

1.3 Commissions must be confirmed by the CLIENT in writing. If the CLIENT fails to do so but consents to PILOTFISH commencing the work commissioned, the terms of the offer will be deemed to have been agreed.

1.4 Each contract phase started by PILOTFISH shall be paid in its entirety by CLIENT in case of phase termination by CLIENT. In case CLIENT decides to terminate the PROJECT before its completion, the termination is to be communicated to PILOTFISH in writing. PILOTFISH retains the right to claim appropriate compensation for losses incurred due to pre-allocated resources that may not immediately be used in other projects.

B. Mutual Responsibilities

1. PILOTFISH is responsible for reaching the goals of the PROJECT within the set time frame as well as for the quality and the quantity of the design and deliverables.

2. The CLIENT is responsible for providing PILOTFISH in due time information and decisions to assure smooth progress of the project. It is essential to fix all product specifications prior to the start of the project.

3. All messages and notices shall be communicated between the Responsible Contact Persons of both PARTIES in text form (e-mail, letter, or fax) to be valid and binding.

4. PILOTFISH shall make every reasonable effort to render its services carefully and to promote the interests of the CLIENT. To the extent necessary PILOTFISH shall keep the

CLIENT advised of the progress of the work.

5. The CLIENT must do any and all things that are reasonably necessary or required to enable PILOTFISH to deliver punctually and properly, in particular by supplying or causing the supply of complete, sound and clear data or materials in a timely manner.

6. The performance of tests, the application for permits and the assessment whether the CLIENT's instructions comply with statutory or quality standards do not fall within the scope of contractual services of PILOTFISH.

7. Upon completion of the work commissioned, neither the CLIENT nor PILOTFISH shall have any obligation to retain any of the materials and data used.

C. Warranties

1. PILOTFISH warrants that the design supplied has been made by him or on his behalf and, if the design is protected by copyright, that PILOTFISH is the author and as the copyright owner has the power of disposition of the work.

2. The CLIENT indemnifies PILOTFISH or persons engaged by him in the performance of the work commissioned against any third-party claim or action arising from the application or use of the design created by PILOTFISH or persons referred to above.

3. The CLIENT indemnifies PILOTFISH against any claim or action relating to intellectual property rights in materials or information supplied by the CLIENT and used in the performance of the work commissioned.

D. Liabilities

1. PILOTFISH will not be liable for:

a. errors or defects in materials supplied by the CLIENT;

b. misunderstandings, errors or defects in the performance of the agreement if such misunderstandings or errors were caused by acts of the CLIENT, such as late or missing delivery of complete, sound and clear information and/or materials;

c. errors or defects by third parties engaged by or on behalf of the CLIENT;

d. inaccuracies in offers made by suppliers, or prices quoted by suppliers being exceeded;

e. errors or defects in the design or errors in the text/data if the CLIENT has had the opportunity to perform an inspection and has declined to do so.

2. PILOTFISH will be liable only for direct damage attributable to him. Direct damage will include only:

a. reasonable costs to assess the cause and extent of the damage, to the extent that such assessment concerns damage within the meaning of this Agreement; and

b. any reasonable costs necessarily incurred to have PILOTFISH's defective performance conform to this Agreement; and

c. reasonable costs incurred to prevent or limit the damage, to the extent that the CLIENT gives evidence that those costs led to a limitation of the direct damage referred to in this Agreement.

3. The liability of PILOTFISH for all other damage, such as indirect damage, including consequential damage, loss of profits, mutilated or lost data or materials, or damage due to business interruption is hereby excluded. This does not apply to claims based on mandatory provisions of the Substantive Law to be applied to this Agreement

4. Save in the event of intent or wilful recklessness by the management of PILOTFISH its liability for damage or loss or any wrongful act committed against the CLIENT will be limited to the amount invoiced for the portion of the work performed, less the costs incurred by PILOTFISH in the engagement of third parties.

5. Any and all liability will expire twelve months from the date of completion of the work commissioned.

6. Where reasonably possible the CLIENT

will be required to retain copies of materials and data he has supplied until the work commissioned has been completed. If the CLIENT fails to do so PILOTFISH cannot be held liable for any damage or loss that would not have occurred if such copies had existed.

E. Other Terms

1. The CLIENT will not be permitted to transfer or assign to third parties any of the rights under this Agreement without the prior written consent of PILOTFISH.

2. The PARTIES shall keep confidential any and all facts and circumstances that come to their knowledge from the other party in the context of the PROJECT. The same duty of confidentiality in respect of such facts and circumstances must be imposed on any third parties engaged in the performance of the PROJECT.

3. Additions or modifications of the present Terms and Conditions or of the Agreement to which they apply as well as any waiver of this clause must be made in writing to have legal effect.

F. Substantive Law

Contractual relations between the Parties to this Agreement shall be governed by German law without reference to other laws or terms arising out of multi-national contracts.

G. Arbitration

Any disputes arising out of or in connection with every Agreement to which the above General Terms and Conditions of PILOTFISH for Consulting Services apply, including but not limited to any question regarding the existence, validity, termination or performance of such Agreement, shall be finally settled under the Rules of Arbitration of the German Institute of Arbitration e.V. (DIS) in Bonn (Rules) by three arbitrators appointed in accordance with the Rules. The place of arbitration shall be Munich.