

GENERAL TERMS AND CONDITIONS of TOPDOWN Creative Factory GmbH.

(Version of August 25, 2025)

§ 1 SCOPE OF APPLICATION

1. TOPDOWN Creative Factory GmbH carries out all sales and deliveries of services, products, devices, accessories and spare parts (hereinafter referred to as "Products") exclusively under the following General Terms and Conditions (GTC), unless a different arrangement has been expressly agreed upon in writing. This also applies if reference to these GTC is not explicitly made. Any written amendment or supplement to a provision of the GTC does not affect the validity of the remaining provisions.

2. Conflicting purchasing, order, or other general terms and conditions of the customer shall not apply, even if the customer refers to them and TOPDOWN Creative Factory GmbH does not expressly object again.

§ 2 ORDERS / SPECIFICATIONS

1. TOPDOWN Creative Factory GmbH undertakes to carry out the assigned order properly, according to generally accepted technical standards and principles of economic efficiency.

2. A contract with the customer only comes into effect upon written order confirmation by TOPDOWN Creative Factory GmbH. Prior statements from the customer, in particular confirmation letters, shall only be regarded as an offer to conclude a contract.

3. Information on technical data in brochures or promotional materials of TOPDOWN Creative Factory GmbH represents only approximate values. Any statements contained in such documents regarding economic usability are non-binding examples and do not constitute a guarantee of characteristics. It is the sole responsibility of the customer to verify the suitability of the products for their specific application through their own tests.

§ 3 PRICES

1. The prices stated in the order confirmation are decisive.

2. Unless otherwise agreed, prices include packaging and transport packaging. Costs for transport, installation and commissioning are not included.

3. Prices for operating resources include, unless otherwise agreed, a maintenance period and proper storage of 3 years from the first project order or until the agreed lifetime. (guaranteed output). After this period, TOPDOWN Creative Factory GmbH will dispose of the operating resources at its own expense according to the applicable TISAX guidelines for prototypes. The customer will be informed at least three months before the end of the maintenance period.

4. At the customer's request and expense, the operating resources may be kept operational beyond this period by TOPDOWN Creative Factory GmbH.

§ 4 PAYMENT TERMS

1. Payments are due, unless otherwise agreed, 14 days after the invoice date without deduction. Payments from the customer must be made exclusively to TOPDOWN Creative Factory GmbH.

2. If the customer does not make due payments or if payments are deferred, TOPDOWN Creative Factory GmbH is entitled to charge default interest of 3% above the applicable discount rate of the Deutsche Bundesbank, at least 6% p.a., from the original due date.

3. If the customer fails to fulfill their contractual obligations, including obligations from prior orders with TOPDOWN Creative Factory GmbH, the company is entitled to suspend further services wholly or partially and to demand immediate cash payment of due claims, including default interest, or the provision of security. If the customer's financial situation deteriorates significantly, TOPDOWN Creative Factory GmbH is entitled to perform further services only against prepayment or provision of security.

4. Offsetting or retention is only permitted for undisputed or legally established counterclaims of the customer.

§ 5 THIRD-PARTY SERVICES / THIRD-PARTY COSTS

1. TOPDOWN Creative Factory GmbH may also engage other qualified parties as subcontractors to fulfill the contract and assign orders to them in the name and on behalf of TOPDOWN Creative Factory GmbH. However, TOPDOWN Creative Factory GmbH is obliged to inform the client if it intends to have orders carried out by a subcontractor and to give the client the opportunity to object to this subcontracting within one week. In such a case, TOPDOWN Creative Factory GmbH shall execute the order itself.

2. If third-party services are used in the course of a service by TOPDOWN Creative Factory GmbH, these must be cleared before being passed on to the customer by TOPDOWN Creative Factory GmbH. This rule must also be observed if the service was not commissioned or invoiced directly by TOPDOWN Creative Factory GmbH.

3. Services of third parties advertised and assigned by TOPDOWN Creative Factory GmbH in the course of a service will, unless expressly agreed otherwise, be invoiced with a surcharge of 10% of the net order value.

§ 6 CONTRACTING PARTNERS

1. Contracting partners are our facilities accredited according to TISAX guidelines.

2. These contracting partners are explicitly excluded from §5 and are therefore not considered third-party services or subcontractors.

§ 7 DELIVERY AND DELAY IN DELIVERY

1. Delivery and performance periods shall be reasonably extended in the event of force majeure or any other obstacles beyond the control of TOPDOWN Creative Factory GmbH which significantly affect the delivery or performance.

2. TOPDOWN Creative Factory GmbH is entitled to make partial deliveries.

§ 8 CONFIDENTIALITY

1. TOPDOWN Creative Factory GmbH undertakes to maintain confidentiality regarding all business secrets of the customer that become known through cooperation.

2. In addition, the customer is obliged to maintain confidentiality toward third parties regarding content and solutions developed by TOPDOWN Creative Factory GmbH. If disclosure of project content to third parties (e.g., toolmakers, advertising agencies, etc.) becomes necessary during the project, this must be agreed with TOPDOWN Creative Factory GmbH beforehand. In this case, the confidentiality agreement will be extended accordingly.

3. Confidentiality within project workflows is governed by our TISAX guidelines according to the currently valid prototyping standard.

4. Unilateral termination of the confidentiality agreement is not possible.

§ 9 EXCLUSIVITY

1. During the project period, TOPDOWN Creative Factory GmbH undertakes not to accept or execute development projects from competitors that are similar to the project.

2. This exclusivity applies solely to development projects and does not apply to prototyping or series orders.

§ 10 SAMPLES / REFERENCE COPIES

1. TOPDOWN Creative Factory GmbH is entitled to a free reference copy if the material costs of the product do not exceed the price of a minor economic good. For more expensive goods, the client undertakes, at the request of TOPDOWN Creative Factory GmbH, to provide a copy at the factory delivery price.

§ 11 TRANSFER OF RISK AND PLACE OF PERFORMANCE

1. Risk passes to the customer at the latest upon handover. This also applies if partial deliveries, subsequent deliveries, or corrections are made, or if TOPDOWN Creative Factory GmbH has undertaken transport, installation, or commissioning. For transport, the risk always lies with the customer. If handover is delayed due to circumstances beyond the control of TOPDOWN Creative Factory GmbH, the risk passes to the customer at the time the goods are ready for handover. This specifically means that TOPDOWN Creative Factory GmbH retains its claim for payment even if delivery becomes impossible after this time for reasons beyond its control.

2. The place of performance for the customer is 86551 Aichach.

§ 12 WARRANTY

1. Warranty claims can only be asserted after a notice of defects, which must be submitted exclusively by registered letter within 14 days of delivery of the service or partial service.

2. Warranty is excluded for defects and damages occurring after transfer of risk and resulting from circumstances for which TOPDOWN Creative Factory GmbH is not responsible. In particular, warranty does not apply to products:

- exposed after transfer of risk to environmental conditions beyond normal limits - temperature fluctuations, humidity, dust, gas, magnetism, or other conditions contrary to the instructions of TOPDOWN Creative Factory GmbH.
- used, altered, or modified by the customer contrary to the specifications and instructions of TOPDOWN Creative Factory GmbH.
- resulting from interventions by third parties or the customer that are not authorized by TOPDOWN Creative Factory GmbH, or
- resulting from connecting TOPDOWN Creative Factory GmbH products with other devices, unless the customer can prove that these actions or circumstances were not the cause of the reported defect.

3. Claims for contract rescission or price reduction are excluded. Claims for rectification or supplementation of missing elements must be fulfilled by TOPDOWN Creative Factory GmbH within a reasonable period, which generally corresponds to one-third of the agreed period for performing the service. Claims for damages due to delay cannot be asserted within this period.

4. TOPDOWN Creative Factory GmbH must perform its services with the level of care expected of a professional in its field.

§ 13 RETENTION OF TITLE

1. TOPDOWN Creative Factory GmbH retains ownership of delivered services, developments, and products (hereinafter "Reserved Goods") until full payment of the invoiced amounts plus interest has been made.
2. The customer must store Reserved Goods with commercial care for TOPDOWN Creative Factory GmbH and, at their own expense, insure them adequately against fire, water, breakage, theft, and other liability risks. The customer hereby assigns to TOPDOWN Creative Factory GmbH any claims arising from the insurance contracts, which TOPDOWN Creative Factory GmbH accepts.
3. The customer must immediately notify TOPDOWN Creative Factory GmbH in writing of any enforcement attempts or other interference with Reserved Goods by third parties, providing the documents necessary for intervention. In any case of seizure or confiscation, the customer must immediately object, referring to the rights of TOPDOWN Creative Factory GmbH. The customer bears the costs of necessary protection of TOPDOWN Creative Factory GmbH's rights, insofar as compensation cannot be obtained from third parties.
4. The customer may process, combine, or mix Reserved Goods in the normal course of business. Such processing, combining, or mixing is carried out solely for TOPDOWN Creative Factory GmbH, which acquires co-ownership of the resulting goods or new item proportional to the value of the Reserved Goods relative to the value of the finished or new item. Clause 2 applies accordingly.
5. The customer is also entitled to resell Reserved Goods or items co-owned by TOPDOWN Creative Factory GmbH in the normal course of business under retention of title. The customer hereby assigns any future claims from the resale of Reserved Goods to TOPDOWN Creative Factory GmbH up to the invoiced value of the Reserved Goods until full payment of all claims mentioned in clause 1. If only co-ownership exists, claims are assigned proportionally to the sales value of this share, with priority over other claims. Upon request, the customer must disclose the names and addresses of the buyers and the nature and extent of claims. TOPDOWN Creative Factory GmbH may disclose this assignment at any time to secure its payment claims. Pledging or transferring Reserved Goods as security is not permitted.
6. In case of breach of contract by the customer - especially in the event of default- TOPDOWN Creative Factory GmbH is entitled to repossess Reserved Goods at the customer's expense, demand assignment of the customer's claims against third parties, and revoke the customer's rights to resale, collection, processing, shipment, or mixing of Reserved Goods. These rights also exist if the secured claims have already become time-barred. Repossession or seizure of Reserved Goods by TOPDOWN Creative Factory GmbH does not constitute a withdrawal from the contract, unless mandatory legal provisions oppose this. TOPDOWN Creative Factory GmbH is entitled to realize the Reserved Goods and apply the proceeds to the outstanding claims.
7. If the value of existing securities exceeds the claims by more than 10%, TOPDOWN Creative Factory GmbH is obliged, at the customer's request, to release corresponding securities at its discretion. Where TOPDOWN Creative Factory GmbH is entitled to repossess Reserved Goods, the customer grants TOPDOWN Creative Factory GmbH and its agents the irrevocable right to enter the customer's business premises at normal business hours for the purpose of collecting the goods.

§ 14 INTELLECTUAL PROPERTY RIGHTS / SCOPE OF USE

1. Upon proper conclusion of the contract and provided the customer has complied with all payment obligations under §4, all usage rights transfer to the customer. This applies exclusively to the solution and development proposal selected by the customer for implementation. If the customer wishes to acquire usage rights for alternative proposals developed during the project, an appropriate fee must be paid. Unless explicitly agreed otherwise, all original documents created by TOPDOWN Creative Factory GmbH for communication of solutions must be returned to TOPDOWN Creative Factory GmbH after the contract.
2. Presentation materials created in the course of cooperation may not be used by the customer for marketing, product presentation, public relations, or similar purposes without prior agreement with TOPDOWN Creative Factory GmbH.
3. The customer has the option to protect the content and solutions developed by TOPDOWN Creative Factory GmbH through patents or other measures. If the customer exercises this option, they are obliged to name TOPDOWN Creative Factory GmbH and the respective person as author and inventor in this context. All documents prepared for the protection measures must be approved by TOPDOWN Creative Factory GmbH before filing. If the customer waives this option, TOPDOWN Creative Factory GmbH is free to protect the developed solutions and exploit them economically.
4. Liability of TOPDOWN Creative Factory GmbH for intellectual property infringements exists only if the customer has notified TOPDOWN Creative Factory GmbH in writing without delay of the assertion of alleged third-party rights.
5. Liability of TOPDOWN Creative Factory GmbH for intellectual property infringements caused by the delivered products is excluded if these products are used in a manner not authorized by TOPDOWN Creative Factory GmbH, or if the infringement results from the combination or use of the products with other products or data not originating from or approved in writing by TOPDOWN Creative Factory GmbH.
6. After conclusion of the contract, TOPDOWN Creative Factory GmbH is permitted to use the delivered work for its own advertising purposes.

§ 15 LIABILITY

1. TOPDOWN Creative Factory GmbH is liable for any damages, regardless of the legal basis, only if the damage:
 - a) is caused by the absence of a guaranteed characteristic
 - b) results from mandatory liability under the Product Liability Act,
 - c) arises from the culpable breach of a contractual main obligation (essential obligation) endangering the contract purpose, or

d) is due to gross negligence or intent by TOPDOWN Creative Factory GmbH.

2. Unless explicitly stated otherwise in other sections, any liability of TOPDOWN Creative Factory GmbH for slight negligence, regardless of the legal basis—including delay, impossibility, fault in contract conclusion, positive breach of contract, culpable breach of remedial obligations, and tort—is excluded.
3. TOPDOWN Creative Factory GmbH is not liable for indirect damages, consequential damages, or lost profits, unless liability results from intent or gross negligence of TOPDOWN Creative Factory GmbH's executives or the absence of a guaranteed characteristic.
4. For data loss, TOPDOWN Creative Factory GmbH's liability is limited to the extent that could not have been prevented if the customer had immediately secured copies of the data in machine-readable form after each processing step.
5. In any case, the total liability of TOPDOWN Creative Factory GmbH, regardless of the legal basis, is limited to EUR 36,000 for personal and property damage and EUR 8,000 for financial losses.
6. The exclusion or limitation of liability claims according to the preceding sections also applies to claims arising from tort and claims against employees and contractors of TOPDOWN Creative Factory GmbH.

§ 16 PROHIBITION OF ASSIGNMENT

1. The customer may not assign claims against TOPDOWN Creative Factory GmbH, including any warranty claims, to third parties.

§ 17 MISCELLANEOUS

1. If one or more provisions of these Terms and Conditions are legally invalid, the remaining parts shall nevertheless remain binding.
2. Amendments or additions to these GTC and confirmed orders must be in writing. The requirement for written form can only be waived by a written agreement between the parties.
3. This agreement is exclusively subject to German substantive law.
4. For all legal disputes arising from or in connection with this agreement, the jurisdiction of the competent court in Aichach applies. Notwithstanding this, TOPDOWN Creative Factory GmbH remains entitled to file a lawsuit or initiate other legal proceedings at the general court of jurisdiction of the customer.