TERMS OF SERVICE

of pixelart GmbH, hereinafter referred to as pixelart.

Version October 2024

1. Scope of application

1.1. Contract basis. pixelart concludes contracts and provides services exclusively on the basis of written quotes prepared by pixelart and the specifications, as valid from time to time, which form part of a quote (e.g. individual documents or general folders), price lists and these Terms of Service.

Unless specific to a certain project (e.g. individual documents), specifications, price lists and terms of service, as amended from time to time, are thus applicable to all legal relationships between pixelart and the client and, from the conclusion of the first contract, therefore automatically govern also all other contracts that are concluded between pixelart and the relevant client, even if those price lists, product descriptions and Terms of Service are not explicitly incorporated by reference into these contracts.

1.2. Future changes. Changes in the specifications, price lists and the pixelart Terms of Service will be notified to the client in writing and shall be deemed to have been agreed, unless the client objects to changes within two weeks.

Once the new agreement enters into force, changes in the Terms of Service will be applicable also to all other current contracts.

1.3. Supplementary agreements. Any supplementary agreements, both prior to the conclusion and during the term of a contract, are valid only if made in writing. This shall also apply to any waiver of the written form requirement.

1.4. Contract elements of the client. Even if pixelart is aware of the client's requirements in respect of the service content, these will form part of the contract only if pixelart has integrated these into the offer or explicitly acknowledges these otherwise, for example by reference to these requirements.

Even if pixelart is aware of legal texts of the client, such as terms and conditions or contract clauses, these will be applicable only if pixelart accepts these by way of an additional note (such as "Terms and conditions accepted") which expressly refers to and covers a legal text. Otherwise, pixelart expressly objects to the inclusion of the client's legal texts such as terms and conditions or contract clauses.

Simply by having acknowledged the client's service content requirements, pixelart shall not be deemed to have accepted the client's legal texts, even if these contain legal elements (such as "Our terms of service are applicable".)

1.5. Inconsistencies. In case of any inconsistency between the quote, specifications (project-specific documents, general documents), price lists, if any, and pixelart' s Terms of Service, these shall apply in the above order. The more individual elements will hence automatically amend the more general elements of the contract.

In case of any inconsistencies between pixelart's contract elements and the client's contract elements, the pixelart contract elements will prevail in their entirety.

1.6. Severability. Should any term of a contract be invalid or unenforceable, the invalid term shall be replaced by a valid term that closest reflects the economic meaning and purpose of the invalid term.

2. Conclusion of contract

2.1. Offer by pixelart. All offers submitted by pixelart to the client, for example as an individual offer to the client or as a non-personalized offer such as an order form, catalogue or web shop, are non-binding without exception.

Offer by the client. Should the client award a contract to pixelart based on an offer made by pixelart or also absent an offer (e.g. if additional contracts are awarded in current business relationships), the client shall be bound by that order two weeks after it was received by pixelart.

2.2. Offer by the client. Should the client award a contract to pixelart based on an offer made by pixelart or also absent an offer (e.g. if additional contracts are awarded in current business relationships), the client shall be bound by that order two weeks after it was received by pixelart.

2.3. Acceptance of an order by pixelart. A contract is therefore concluded only once pixelart has accepted the client's order.

An order shall generally be accepted by way of acknowledgement, unless pixelart takes action on behalf of the client based on the order in a manner which suggests that pixelart will accept the order.

pixelart shall not be deemed to have accepted an order simply by confirming receipt of an order.

2.4. Receipt. If offers are submitted and accepted via electronic communication facilities or an electronic order management system which can be accessed by both parties, declarations issued on work days, i.e. on Mondays through Fridays (except on public holidays in Austria) between 8 a.m. and 4 p.m. are deemed to have been given on the same day; declarations issued outside these hours are deemed to have been received at 8 a.m. the next working day.

3. Scope of services, order processing and client's duty to cooperate

3.1. Place of performance. Place of performance shall be the domicile of pixelart.

3.2. Scope of services. The scope of services to be provided by pixelart is defined in pixelart's written specifications evident from all parts of the contract.

Information from other sources (such as presentation documents, websites or catalogues) that are not included in the offer do not form part of the specifications.

The client shall examine whether the specifications correspond to his requirements. Changes in the specifications can be made only consensually after the order was placed and can lead to changes in prices, deadlines and target dates.

3.3. Agile project management. In case the order is executed in agile form, the method of agile cooperation and the detailed services to be provided will be consensually determined in the course of the project execution, unless already incorporated in the offer.

3.4. Skillful and professional services. pixelart owes the client skillful and professional services subject to the order submission date, unless the written specifications provide otherwise. If several options of professional execution exist, pixelart has a degree of freedom in executing the services, within the framework of the written specifications.

3.5. Interchangeable services. pixelart may deviate from the specifications and replace services by other equivalent services, if this is compatible with the objectives of the order.

3.6. Third-party services. pixelart may execute the services itself or rely on qualified third parties for the provision of the services (third-party services).

3.7. Agreed third-party services. Whenever the pixelart services are based on specifically agreed services, components or rights of third parties, these components, services or rights constitute an agreed third-party service /third-party.

In this case, pixelart's contractual obligation consists only in professional commissioning, coordination and processing, but not in professional execution of agreed third-party services / third party products.

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3.8. Divisible services. In case of divisible services, pixelart may make partial deliveries.

3.9. Deadlines and target dates. Any deadlines and target dates indicated by pixelart are non-binding, unless their binding nature is explicitly confirmed.

3.10. Term of a contract. Contracts concluded for an indefinite time can be terminated with three months' notice at the quarter after the expiration of their minimum term, if any.

3.11. Inevitable or unforeseeable events. In case of inevitable or unforeseeable events, including but not limited to any delay in the fulfilment of obligations by the client, and if inevitable or unforeseeable events occur with pixelart or its contractors, deadlines will be extended or target dates postponed for as long as such an inevitable and unforeseeable event prevails, including the time it takes to take the necessary organisational measures in such a case. pixelart shall notify the client thereof in writing.

3.12. Client's duty to cooperate. The client shall promptly provide any information in writing and make available all services to pixelart without request and in a format which permits these to be processed, which pixelart requires to provide its services.

This includes, but is not limited to nominating a contact person for the implementation of the contract, the provision of documents, materials and facilities, the coordination of order details, and the acceptance (release) of partial services and services.

The client shall promptly supply any information or provide any services that may be necessary only in the context of pixelart providing the services.

The client shall independently verify the fitness, accuracy and lawfulness of any information and services provided by them.

The client shall be liable for any damage suffered or incurred due to the client's insufficient, delayed or omitted cooperation, including but not limited to any extra effort which pixelart has thereby incurred. If pixelart is unable to execute the services as agreed due to any omission of, delay in or insufficiency of cooperation by the client, pixelart, notwithstanding other rights, may discontinue the service, provide other services for other customers instead, and continue the execution of the services for the client hereunder not until after the completion of these services, provided that the client has fulfilled his cooperation duties until then. All target dates and deadlines will thereby be postponed.

If pixelart is held liable by third parties due to any infringement in connection with information or services provided by the client, the client shall hold harmless and indemnify and assist pixelart in connection with the defence of any claims of third parties.

3.13. Scope of verification duties of pixelart. pixelart shall execute the services such that the services provided by pixelart are not as such unlawful (e.g. use of a copyrighted work without the author's consent).

However, pixelart is not obliged to subject the services provided by pixelart to legal analysis to verify as to whether they infringe third-party rights or whether the client's proposed use (e.g. use of graphics as logo) triggers infringements, if any.

3.14. Client's verification obligations. The client shall conduct such legal analyses either itself or through a qualified legal expert to ensure that pixelart's services fulfil all legal requirements of the client, particularly in terms of administrative law, criminal law, competition law, trademark law, design law, copyright law, personality rights and data protection.

3.15. Rights to services. As a matter of general principle, all rights to the agreed services are due to pixelart or its licensors. The client is merely granted the right to use the services, having paid the agreed compensation in its entirety, in a scope that has been agreed or predefined by the licensors.

If no license scope was agreed, the client shall have the non-exclusive right to use the services for its own purposes and in its own business, but not the right to sublicense or transfer the services to third parties (or affiliated companies), with the right to process the services being limited to the legal unavoidable minimum.

The client acknowledges that the services of pixelart are often based on works or services of third parties, subject to most different license terms. The customer shall comply with any license terms applicable to services or works of third parties, which form part of pixelart's services and works.

3.16. Right to the end product. The client is only entitled to use the service in the agreed form as an end product, but is not entitled to receive the fundamentals, work tools, interim results necessary to create the services. Unless this was agreed, pixelart is not obligated to keep these fundamentals, work tools, interim results, etc. after conclusion of its activities.

3.17. Reference. On all services pixelart has created for the client, pixelart may refer to the client and to another author, if appropriate, and pixelart may include information such as the client's name and logo, product description, project illustrations and the like in its own promotional materials in order to refer to or indicate the business relationship with the client, without any compensation being due to the client; the client may revoke that right by written notice at any time.

4. Special types of services

4.1. Content such as text, photos & graphics. Whenever services of pixelart include the creation of content such as text, photos and graphics, the offer covers only one draft and minor changes. Should the client not like the draft although it was professionally executed according to the terms of the contract, the creation of further drafts is chargeable.

4.2. Domain registration. Whenever the services of pixelart include the registration of domains on behalf of the client, registration will always be carried out according to the terms of the relevant provider / registrar. When registering domains for the client, pixelart owes only a corresponding effort to procure registration, but not successful registration, as the latter depends on numerous factors beyond pixelart's control.

4.3. Search engine optimization. Whenever the services of pixelart include measures relating to search engine optimization, pixelart merely owes professional execution fit to achieve the agreed objectives, but not the achievement of certain objectives.

4.4. Service and maintenance. pixelart does not owe any service and maintenance or similar support, unless these services have been agreed. If pixelart's services include service and maintenance, pixelart does not owe a certain response time, unless certain response times were agreed in a particular case.

4.5. Integration or use of third-party components and services. Unless pixelart's services include the integration or use of components, services, platforms or similar offers of third parties, pixelart owes the client only the design as specified on the order date. Any subsequent changes do not form part of the agreed service provision and will be offered, ordered and billed separately.

Furthermore, pixelart owes the client only professional implementation suitable to achieve the agreed objectives but is not liable for the achievement of certain objectives, since numerous platforms often arbitrarily change or limited possible uses.

4.6. Cross-browser compatibility. Whenever the services of pixelart include the creation of web applications, it is envisaged, applied technology permitting, to achieve compatibility with those web browser versions which have an at least 1,5% market share (https://browsers.pixelart.at) at the contract execution commencement date.

4.7. Use of AI Tools. To continuously improve the quality of our services and achieve more efficient results, we utilize modern AI tools in the delivery of our services. We are committed to responsible data handling and, where possible, use team or plus licenses to ensure that no customer data is used for the training purposes of these AI tools. Our goal is to maintain the highest standards of data protection while leveraging innovative technologies that provide maximum value to our clients.

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5. Confidentiality & no solicitation

5.1. Loyalty obligations. The parties shall enhance the reputation of the respective other party and shall not express any criticism especially vis-à-vis third parties with regard to the relevant other party. This obligation survives perpetually after termination, if any, of the contract.

5.2. Trade secrets. Trade secret shall mean any information which

- is secret, because, either as a whole or in the exact order or composition of its elements, it is neither known to nor easily accessible by the persons in circles that usually deal with that kind of information;

- is of commercial value due to its secret nature, and

- is the object of reasonable secrecy measures appropriate to the circumstances by the person who exercises the lawful right of disposition over such information.

Trade secrets include, but are not limited to the business ideas and business strategies pursued by pixelart as well as the implementation thereof, the details and object of any contract concluded by the parties and, in case of software, in particular its architecture, source code, developer and administration documentation and any other data specifying the functionality of software or the relevant parts of software.

The client shall adopt technical and organizational measures to ensure the secrecy of trade secrets and to prevent unauthorized acquisition, use or disclosure of such trade secrets.

The client may use trade secrets only to the extent agreed.

Any infringement of these obligations carries a penalty of EUR 50,000 per breach.

5.3. No solicitation. The client undertakes not to entice away any employees or suppliers of pixelart. This obligation survives three years after termination, if any, of a contract. Any breach by the client of this obligation carries a penalty equal to the gross annual salary of the solicited employee or the gross annual turnover of the solicited supplier.

6. Compensation

6.1. Prices. All prices are denominated in Euros, plus statutory value added tax, ex pixelart business domicile or office.

6.2. Cost estimates. A cost estimate, if any, is non-binding. Cost estimate means that an estimate of expected costs is referred to as cost estimate.

If actual costs are expected to exceed the costs budgeted in writing by more than 15 % after pixelart has given a non-binding estimate, pixelart shall notify the higher costs to the client in writing. The client shall be deemed to have approved the cost overrun, unless he objects in writing within one week after such notification, simultaneously indicating in writing a less expensive alternative. Cost overruns of up to 15% need not be notified separately. Any such cost overrun shall be deemed to have been approved by the client in advance.

6.3. Flat-rate billing. Flat-rate billing covers all services which are necessary to execute the agreed services, except for costs arising from unpredictable events, extra costs due to client's failure to cooperate according to the terms of the contract, as well as extra costs due to hidden defects of services provided.

6.4. Expenditure-based billing. Services billed based on expenditure are billed based on expenditure actually incurred. Expenditure-based billing means that anticipated expenditure is indicated as an approximate, anticipated or estimated amount.

6.5. Additional services. All services provided by pixelart which are not expressly covered by the agreed compensation, including but not limited to extra services agreed later on, will be charged separately.

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6.6. Billing. The client shall make equal partial payments when the order is placed, when the entire project is completed, and when agreed interim targets are achieved.

6.7. Partial services. Furthermore, pixelart is entitled to bill partial services. Partial services mean, in any event, the individual items of the specifications and, in case of agile project management, the services provided in connection with an individual sprint.

6.8. Advance on costs. Furthermore, pixelart may ask for cost advance to cover its entire own expenditure for partial services to be provided next; this applies to new clients, if agreed third-party services are charged to the client or if the client appears to have economic difficulties, in case of the client's prior default in payment and if the client appears to be unwilling to pay.

6.9. Price adjustment. pixelart is entitled to reasonably adjust the prices under contracts concluded for an indefinite term and those under contracts that are renewed automatically on an annual basis in consideration of the standard wage index for advertising and market communication (January 2024 basis).

pixelart may also reasonably adjust the prices of individual services after the conclusion of the contract if the costs of these services increase by more than 3% beyond pixelart's control. pixelart must prove an increase in costs and demonstrate the lacking possibility of influence.

6.10. Wrongful withdrawal. pixelart is still entitled to the agreed fee if the client withdraws from the entire or parts of the contract without pixelart having acted with gross negligence or premeditation. In these cases, pixelart must only accept savings from purchases not yet made. The same applies if pixelart withdraws from the contract for good cause within the client's control.

7. Payment

7.1. Due dates. Invoices of pixelart are payable without any deduction as of the invoice date. Services are generally provided not until full payment was made.

7.2. Payment due date. Invoices of pixelart are payable within 14 days of the date of receipt of an invoice.

7.3. Bank transfer. Payment must generally be made by transfer to the bank account. Cash payments are not acceptable.

7.4. Debits. Furthermore, payments via SEPA debits are acceptable. If the client has signed a SEPA debit authorization, pixelart may collect the invoice amount from the client's account 7 days after sending the invoice.

7.5. Other forms of payment. Furthermore, the client may use all other forms of payment offered by pixelart. Payments are debited when the payment is made by the client.

7.6. Agreed third-party services. pixelart is entitled to commission third-party services either in its own name or in the name of the client, and for its own account or for the account of the client.

If pixelart thdraws from the contract for good cause withi concludes the contract in its own name and/or for its own account, pixelart will do so solely in the client's interest to simplify the implementation of the contract and the payment procedure.

7.7. No set-off and retention. Even in case of closely related claims, the client may not set off its own claims against the claims of pixelart, unless the client's claims were acknowledged by pixelart in writing or determined by a court. The client has no right of retention.

7.8. Payment by instalments. Where pixelart and the client have agreed on payment by instalment, the full amount is due even if only one instalment was not paid in due time.

7.9. Late payment. In case of late payment, statutory interest applicable between business undertakings, at least at a rate of 9% per year, are payable. The client shall pay all costs and expenses arising in connection with the recovery of an amount due, including but not limited to collection charges or other costs necessarily incurred for the proper assertion of rights.

7.10. Continued delay in payment. After pixelart has unsuccessfully notified the client and granted another extension of at least 7 days, pixelart n the client's control. may immediately accelerate the payment of all services and partial services already provided,

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including those provided under other contracts concluded with the client, and temporarily suspend the provision of yet unpaid services until all compensations are paid in full.

If the client has not paid an invoice after pixelart has sent another reminder directly to the client's management, granting another extension of at least 7 days, pixelart may withdraw from all contracts and recover compensation for lost profit. Also, pixelart is entitled not to execute or suspend services already paid.

Notwithstanding the above, pixelart is certainly entitled to lodge a complaint with the court immediately after the expiry of the due date.

8. Liability

8.1. Classic works contract. If pixelart provides services under a classic works contract, pixelart is liable for the attainment of objectives.

8.2. Agile project management. In case of agile project management, pixelart is liable for the attainment of objectives only if the objective was clearly defined prior to the conclusion of the contract. Otherwise, pixelart is liable only for the execution of the project sections in accordance with the contract along with the detailed services defined by the client.

8.3. Purchase of resources. Whenever resources, such as working time, are purchased, the client is independently responsible for the achievement of objectives. pixelart is liable only for the execution of the specifically ordered detailed services in accordance with the contract.

8.4. Interference by the client. If the client arbitrarily interferes with the services of pixelart contrary to the terms of the agreement or makes undocumented changes which are no longer easy for pixelart to trace, the client shall be liable for any extra effort incurred by pixelart, e.g. in connection with completion, follow-up reviews, documentation, identification and allocation of defects, and corrective action.

8.5. Duty to notify defects. In case pixelart requests acceptance of services on an interim basis or after delivery and start of live operation, the client shall accept ("release") the services provided or to be accepted within 8 days in writing, at the latest, or give written notice of defects or damage.

In case of interim acceptance, pixelart can continue its work only after the services were accepted /"released" on an interim basis. The client is deemed to have accepted services automatically if he fails to accept services or notify defects in due time.

The client is required to report any hidden defect or damage that occurs only after the expiry of 8 days, but within the deadlines available for the assertion of guarantee or warranty claims or damages, also within 8 days after a defect or damage was noticeable. Any defect or damage which the client should be able to identify with the care and diligence of a prudent business man, subject to appropriate controls, shall be notified. Since interim acceptance is of particular significance in order to avoid defects and shortcomings that will affect all further process steps, controls performed in the context of the interim acceptance procedure shall be final, detailed and particularly thorough controls. During handover, initial, yet detailed controls shall be performed. Since live operation is particularly important to avoid damage during operation, controls performed when live operation starts shall again be final, detailed and particularly thorough controls.

The client's notice shall describe the defect or damage in a detailed and transparent manner. The client is obliged to specify the exact times and conditions of defects or damages that do not occur on a permanent basis. The client shall allow pixelart to take all measures which are necessary to examine and to rectify any defect or damage. Unless the client notifies defects in due time, the client shall not be entitled to lodge claims based on warranty and for the compensation of damage as well as claims based on other liability rules, including but not limited to recourse claims.

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8.6. Warranty. The right to warranty and the right to assert recourse claims based on warranty is limited to six months from handover. The client is entitled to improvement or replacement or, in case of insignificant defects, to a reduction of the price or, in case of significant defects, to rescission of the contract, at pixelart's election. Any corrective action taken to remedy a defect will neither renew the warranty period nor will such warranty period recommence for the partial service subject to corrective action.

8.7. Duty to provide updates. The duty to provide updates according to Section 7 VGG is excluded.

Error, shortfall exceeding fifty percent. The right to avoid the contract on the grounds of error (Irrtum) or laesio enormis (Verkürzung über die Hälfte) shall be excluded.

8.8. Error, shortfall exceeding fifty percent. The right to avoid the contract on the grounds of error (Irrtum) or laesio enormis (Verkürzung über die Hälfte) shall be excluded.

8.9. Compensation for damage and other claims. The client cannot seek compensation for damage and assert claims based on other liability provisions, including but not limited to recourse claims, unless these are based on severe gross negligence or premeditation of pixelart.

These claims forfeit six months after the damage and the damaging party were identified, and in any event, three years after the incriminated action.

This limitation of liability shall not include claims asserted due to personal injury and other mandatory liability rules.

8.10. Protective effects for the benefit of third parties. For the avoidance of doubt, this Agreement does not produce any protective effects for the benefit of third parties.

8.11. Liability for agreed external services. Third parties providing agreed external services do not act as vicarious agents of pixelart, are not involved in pursing pixelart's interests, and are thus not part of pixelart's sphere of risk.

Accordingly, any liability of pixelart for agreed external services itself based on fault, not including proper commissioning, coordination and processing thereof, is reduced to culpa in eligendo, and any strict liability of pixelart shall be excluded.

If external services are relied upon at the client's instruction, as selected by the client, pixelart shall not be liable in any manner whatsoever.

8.12. Liability for use of third-party services and components. Where pixelart relies upon services and components of third parties according to the terms of the contract, pixelart shall not have any strict liability for such third-party services and components, and any liability based on fault shall additionally be reduced to culpa in eligendo.

8.13. Burden of proof. Where pixelart relies upon services and components of third parties according to the terms of the contract, pixelart shall not have any strict liability for such third-party services and components, and any liability based on fault shall additionally be reduced to culpa in eligendo.

8.14. Grace period. If the client does not fulfil the contract in accordance with the contract terms, the client may assert claims only if he has granted pixelart a reasonable grace period of at least 14 days in writing. This applies also if the contract is terminated for good cause.

8.15. Withdrawal. The client may withdraw from the contract in writing by sending a registered letter.

9. Final provisions.

9.1. Applicable law. All legal relationships and circumstances between the client and pixelart shall exclusively be governed by and construed in accordance with Austrian law, to the exclusion of international conflict of law rules.

9.2. Jurisdiction. All disputes arising between pixelart and the client shall be referred to the Austrian court having jurisdiction ratione materiae for the city of 5101 Bergheim. pixelart may also sue the client at the general venue of pixelart and that of the client.