

## Terms and Conditions

ColorDigital GmbH, Im Zollhafen 24, 50678 Cologne, Germany (Local Court of Cologne, Commercial Registry 85179) ("**ColorDigital**") offers a software solution for professional color design. The software solution consists of client software (the "**Client Software**") furnished by ColorDigital at no charge as well as a fee-based it infrastructure furnished upon the basis of software-as-a-service (the "**itInfrastructure**"). These Terms and Conditions, including the enclosed form contract, shall govern the contractual relationship between ColorDigital and the Customer concerning the use of the Client Software as well as the it Infrastructure.

**The services of ColorDigital are directed exclusively at business enterprises.**

### 1 Purpose and formation of the Agreement; Customer's general terms and conditions of business

- 1.1 These Terms and Conditions shall apply to the free provision of the Client Software and to the fee-based furnishing of the it Infrastructure by ColorDigital.
- 1.2 The use of the Client Software and of the it Infrastructure shall be offered only to business enterprises within the meaning of § 14 of the *Bürgerliches Gesetzbuch* (the Civil Code, the " **BGB** "). 'Business enterprises' are natural or legal persons or legally constituted business partnerships (*Personengesellschaften*), which in entering into the Agreement are acting in the exercise of their commercial or freelance professional work activity.
- 1.3 The Agreement shall be formed by signature of the contract form by both parties.
- 1.4 The General Terms and Conditions shall then become a component of the Agreement only if such has been expressly stipulated in writing.

### 2 ColorDigital services

- 2.1 ColorDigital shall provide Customer at no charge the Client Software requisite for the use of the it Infrastructure.
- 2.2 ColorDigital shall furnish the Customer access over the internet, limited in time to the term of the Agreement, to the furnished it Infrastructure ("**Software-as-a-Service**"). The operation and servicing of the it Infrastructure shall be incumbent upon ColorDigital. The location for delivery of the service shall be the router terminus of the computing center. Customer shall independently ensure that it is able to receive the service. In particular, furnishing the requisite hardware and software (the Client Software excepted) by ColorDigital is expressly not a component of the Agreement. Customer shall have no claim to access to the source codes of the it Infrastructure or Client Software furnished by ColorDigital. It shall be incumbent upon the Customer to operate and to configure the Client Software as well as the it Infrastructure.
- 2.3 The precise scope of the services to be furnished by ColorDigital shall appear in the description of services in the form contract.
- 2.4 The digital availability of the it Infrastructure averages 99% during the course of the year. Exceptions to this shall be necessary, scheduled servicing work as well as any disruptions which remain outside ColorDigital's sphere of influence, particularly such as *force majeure*. ColorDigital shall, wherever possible, inform the Customer about any scheduled servicing work, doing so in a timely manner through the contact person appointed for ColorDigital and using the text-form (*Textform*). However, ColorDigital shall expressly reserve the right to carry out unannounced servicing work as well, if need be, especially if such is necessary for data and operational security.
- 2.5 ColorDigital shall perform daily data back-ups of the it Infrastructure and the data deposited by the Customer, which back-ups shall be kept for three (3) days. No individual review of the accuracy and completeness of the data back-ups shall be effected or shall be owed.
- 2.6 ColorDigital shall provide the Customer with online retrievable documentation of the Client Software and of the it Infrastructure as well as directions for its use in electronic form in the German and/or in the English language. Customer shall not have the right to process or to disseminate the documentation or the user directions or to make such publicly accessible.
- 2.7 For rendering the services, ColorDigital shall have the right to engage, at its own discretion, sub-contractors as vicarious agents.
- 2.8 ColorDigital shall have the right, but not the obligation, to expand and further develop the functional scope of the Client Software as well as of the it Infrastructure. ColorDigital shall reserve the right to offer expansions and further developments only in exchange for payment of added compensation. If the Customer orders a fee-based expansion or further development for such purpose by means of a corresponding agreement supplementing this Agreement, then these Terms and Conditions shall apply *mutatis mutandis* to said order. If ColorDigital, after entering into the Agreement, provides expanded or additional functions at no charge, then these furnished functions shall be considered voluntary performance by ColorDigital.
- 2.9 ColorDigital shall be able to modify the functional scope of the Client Software as well as of the it Infrastructure at any time to a degree which is reasonable for the Customer. The modification shall be reasonable in particular if it is necessary for cause – for example, from disruptions in the rendering of the service by sub-contractors or for reasons of technical security – and the performance features defined in the performance description (*Leistungsbeschreibung*) as well as the primary performance duties of ColorDigital essentially remain in place. If the modifications concern (i) more than exclusively expansions of the functions or

(ii) more than non-essential components of the services to be rendered by ColorDigital, then ColorDigital shall advise the Customer via e-mail about the modification at least four (4) weeks prior to its entering into effect.

2.10 ColorDigital shall have the right to suspend Customer's access to the it Infrastructure if:

- a) there exist any indications (i) that Customer's login credentials were misused or are being misused or (ii) that the login credentials were given or are being given to an unauthorized third party or (iii) that login credentials are being used by more than one natural person;
- b) there exist any indications that third parties have, in another manner, obtained access to the it Infrastructure furnished to the Customer;
- c) the suspension is required for technical reasons;
- d) ColorDigital is obligated to block the access for legal, judicially ordered, or officially ordered reasons;
- e) Customer is more than two (2) weeks in default in making the stipulated payment;
- f) Customer has deposited false or invalid contact data and communication between ColorDigital and the Customer is no longer possible;
- g) Customer has provided false banking data and a proper fulfillment of the Customer's performance duties is not guaranteed.

ColorDigital shall announce any blocking to the Customer in the text-form (*Textform*) or in the written-form (*Schriftform*) by no later than one (1) business day prior to the blocking's entering into effect, to the extent that the announcement is reasonable with a fair balancing of the interests of both sides and is compatible with the purpose of the blocking.

### **3 Duties of the Customer**

- 3.1 Customer shall have to safely store the login credentials to the it Infrastructure and shall be allowed to make these data accessible only to those employees who have the right to such. Customer shall obligate its employees to deal with the login credentials in a confidential manner and to notify ColorDigital without undue delay if suspicion exists that the login credentials could have become known to any unauthorized persons.
- 3.2 Customer shall have to back up its data regularly and in a risk-commensurate manner, to the extent that such is technologically possible for the Customer. Such shall apply both to the data on the Customer's local systems and to those data which the Customer saves on the it Infrastructure furnished by ColorDigital.
- 3.3 Customer shall appoint in its business enterprise a contact person to ColorDigital, which contact person shall be authorized to receive and to give declarations of intent (*Willenserklärungen*) in connection with the Agreement with ColorDigital.
- 3.4 Customer shall grant ColorDigital in all content which the Customer transfers to ColorDigital's server in the course of the use of the Client Software or it Infrastructure a simple, spatial, and temporally unrestricted use right to use the content to the extent that such is necessary to fulfill the Agreement with the Customer, including, but not limited, to the right to reproduce the content and to make such accessible to third parties in accordance with the Customer's parameters. ColorDigital shall have the right to issue sub-licenses to its vicarious agents, to the extent that such is necessary to fulfill the Agreement. Apart from the foregoing, the right of use shall not be transferrable. ColorDigital shall have the right to retain the content of the Customer beyond the term of the Agreement, insofar as such is technologically or legally required. In particular, ColorDigital shall be authorized to keep back-up copies of the content furnished by the Customer and to temporarily or permanently save such information that is necessary for purposes of bookkeeping, documentation, or billing.
- 3.5 Customers guarantees that in the use of the Client Software and of the it infrastructure, all applicable legal requirements shall be observed, including, but not limited to, those of copyright and data protection law. Customer shall indemnify ColorDigital from any and all claims of third parties who assert such claims against ColorDigital on account of the use of the Client Software or of the it Infrastructure by the Customer. ColorDigital shall inform the Customer without undue delay about any claims being asserted by third parties and shall make available the information and documents necessary for the defense thereof. In addition, ColorDigital shall leave the defense either to the Customer or shall take up such in consultation with the Customer. In particular, ColorDigital shall neither acknowledge nor stipulate to such claims of third parties without dispute. The provisions of this section shall apply *mutatis mutandis* to any liquidated damages (*Vertragsstrafen*) as well as to any fines or penalties imposed by the authorities or by the courts, to the extent that the Customer is responsible for such.

### **4 Use rights**

- 4.1 Upon commencement of the Agreement, ColorDigital shall grant the Customer the non-exclusive, worldwide, non-transferrable, and non-licensable right, temporally restricted to the term of the Agreement, to use the Client Software and the it Infrastructure in a contractually consistent manner.
- 4.2 Excepted from the granting of said right shall be components of the Client Software and of the it Infrastructure which are subject to the rights of third parties discernible to the Customer and in particular open source licenses. As 'discernible' shall be deemed

in particular, but not exclusively, such components that are disclosed by ColorDigital within the Client Software or the it Infrastructure or in text data files delivered therewith as content of third parties.

## **5 Payments**

- 5.1 ColorDigital shall furnish the Client Software at no charge.
- 5.2 Customer shall pay ColorDigital the fee stipulated in the contract form for the use of the it Infrastructure.
- 5.3 To the extent not otherwise specified, the payments shall be deemed as monthly and net plus any applicable sales- and value-added tax (*Umsatzsteuer*).
- 5.4 Billing shall be effected in advance as of the beginning of each stipulated billing period. The payments billed shall be due and payable upon issuance. If the Customer issues a sepa direct-debit order to ColorDigital, then ColorDigital shall not book the billed amount from the stipulated bank account prior to the seventh (7<sup>th</sup>) day after the billing date and the sepa pre-notification.

## **6 Warranty**

- 6.1 For services free of charge, ColorDigital shall furnish a warranty as provided by statutory law.
- 6.2 ColorDigital shall be liable for defects in the furnishing of the it Infrastructure exclusively in accordance with the following provisions.
- 6.3 'Defects' are material deviations from the contractually stipulated scope of the functioning of the it Infrastructure.
- 6.4 If the services to be rendered by ColorDigital pursuant to this Agreement are deficient, then ColorDigital shall, within a reasonable period and after receipt of the Customer's written complaint of the deficiency, at its option subsequently improve the services or render them again. In the event of the use of third-party software which ColorDigital has licensed for the purpose of use by the Customer, the defect elimination shall consist of the procurement and installation of generally available upgrades, updates, or patches. Also deemed as 'subsequent improvement' shall be the furnishing of use instructions with which the Customer can reasonably circumvent the defects that have occurred, in order to use the it Infrastructure in accordance with the Agreement.
- 6.5 If the deficiency-free rendering of the services fails for reasons for which ColorDigital is responsible, even within a reasonable period established in writing by the Customer, then the Customer shall be able to reduce the stipulated payment by a reasonable amount. The reduction right shall be limited to the amount of the monthly fixed price affected by the defective part of the services.
- 6.6 If, in two (2) consecutive months or in two (2) months within one quarter, the reduction under Sect. 6.5 reaches the maximal amount set forth in Sect. 6.5, then the Customer shall be able to terminate the Agreement without compliance with any notice period.
- 6.7 Customer shall notify ColorDigital without undue delay of any possibly occurring defects in the written-form (*Schriftform*) or via e-mail. Furthermore, Customer shall support ColorDigital at no charge in the remediation of defects, and shall, in particular, send ColorDigital all information and documents that ColorDigital requires for the analysis and elimination of any defects.

## **7 Compensatory damages and liability**

- 7.1 For services at no charge, ColorDigital shall be liable in accordance with the provisions of statutory law.
- 7.2 Apart from the foregoing, ColorDigital shall have unlimited liability for willful intent (*Vorsatz*) and gross negligence and in the event of damages arising from injury to life, limb, or health.
- 7.3 In cases of simple negligence, ColorDigital shall be liable in the event of a breach of a material contractual duty. A 'material contractual duty' within the meaning of this section is (i) a duty the fulfillment of which constitutes a condition *sine qua non* of the Agreement and (ii) upon the fulfillment of which the contracting partner may therefore rely in due course.
- 7.4 In the case of Sect. 7.3, ColorDigital shall not be liable for deficient economic outcomes, lost profits, and indirect damages.
- 7.5 Liability pursuant to Sect. 7.3 above shall be limited to the typical damage foreseeable at the date of entering into the Agreement.
- 7.6 Liability for damages due to data loss shall be restricted in the case of 7.3 to the amount for the reconstruction of data the loss of which would have been incurred even with regular, risk-commensurate data back-up performed by the Customer.
- 7.7 The liability restrictions shall apply *mutatis mutandis* to the benefit of the employees, designees (*Beauftragte*), and vicarious agents of ColorDigital.
- 7.8 Such shall be without prejudice to any liability of ColorDigital for guarantees made and for claims based on the *Produkthaftungsgesetz* (the Product Liability Act).
- 7.9 Any further liability on the part of ColorDigital shall be excluded.

## **8 Non-disclosure (*Vertraulichkeit*) and secrecy**

- 8.1 Customer shall be obligated (i) to treat ColorDigital's confidential information and documents ("**Confidential Information**"), which is either manifestly to be regarded as confidential or is designated by ColorDigital as confidential, as operational secrets and (ii) not to make such accessible to third parties. Even affiliated business enterprises in which the Customer does not possess any capital or voting majority are to be deemed 'third parties' within the meaning of this Agreement. The Customer's employees as well as other third parties retained by the Customer (including sub-contractors and freelancers) are to be obligated *mutatis mutandis*.
- 8.2 'Confidential Information' shall include, but not be limited to, (i) the it Infrastructure retrievably by means of the Client Software, (ii) all technologies of ColorDigital, (iii) information which ColorDigital issues within the framework of support inquiries or cooperation for the purpose of eliminating error, and (iv) this Agreement, including the contract form. Such shall be without prejudice to the use rights granted by ColorDigital.
- 8.3 Customer shall have the right to share with third parties the information and documents made available to the Customer, insofar as and to the extent that (i) such is indispensable for the fulfillment of this Agreement or for the exercise of contractual rights or (ii) such is compulsorily required for legal or reasons pursuant to supervisory law. In the event of inquiries from third parties, from judicial authorities, or from administrative authorities concerning the disclosure of Confidential Information, the Customer shall have to inform ColorDigital in writing or the text-form (*Textform*) without undue delay and support ColorDigital in its efforts to prevent the disclosure of the Confidential Information.
- 8.4 The duty of non-disclosure shall not apply to the extent that the Confidential Information (i) was already known to the Customer prior to the disclosure by ColorDigital, (ii) is generally known or becomes known at no fault of the Customer, (iii) was developed by the Customer itself without resorting to the Confidential Information of ColorDigital, or (iv) was made known to the third party by a third party in good faith and having the right thereto. The compulsory statutory duties to inform shall be reserved. If the Customer invokes one or several of the aforementioned grounds, then the Customer shall have to prove such by submitting suitable material as evidence.
- 8.5 The duty of non-disclosure shall commence with the notice of the Confidential Information and shall exist over the entire term of this Agreement and beyond, five (5) years from the termination or the end of the contractual term, to the extent that provisions of law do not establish any duty of non-disclosure lasting for a lengthier period of time. Customer warrants within the framework of what is legally possible that the duty of non-disclosure shall also bind legal successors, assignees, and affiliates.
- 8.6 During the period in which this duty of non-disclosure applies, Confidential Information is to be returned undamaged and whole, without undue delay, upon initial demand by ColorDigital. In addition, ColorDigital shall be able to order that certain Confidential Information be destroyed, deleted, or kept securely, and that these steps are to be confirmed in writing by the Customer. The aforementioned provisions in this section shall apply only to the extent that such does not significantly impair the use of the service contracted in a manner in conformity with the Agreement.
- 8.7 Notwithstanding the aforementioned provisions, ColorDigital shall have the right to name the Customer as a reference in marketing materials (including websites), stating the full company name and using the company logo.
- 8.8 With the exception of Sect. 8.7, the aforementioned provisions shall not establish any intellectual property rights of use whatsoever. The aforementioned provisions shall be without prejudice to any and all use rights granted under this Agreement.

## **9 Term and termination**

- 9.1 The Agreement shall commence on the effective date set forth in the contract form.
- 9.2 To the extent not stipulated otherwise in the contract form, the term of the Agreement shall be one (1) year from the commencement of the Agreement.
- 9.3 The Agreement shall be extended by the stipulated term if the Agreement is not terminated by one of the parties in writing with a notice period of six (6) months as of the end of the respective term.
- 9.4 Furthermore, ColorDigital shall have the right to terminate the Agreement without notice if (i) the Customer is in default with payment of the stipulated fee for longer than six (6) weeks and (ii) ColorDigital has threatened the Customer with termination in the text-form (*Textform*) or written-form (*Schriftform*) with a notice period of two (2) weeks as of the entering into force of the termination.
- 9.5 ColorDigital reserves the right to limit or to adjust the functionality of the Client Software or of the it Infrastructure for reasons other than those set forth in Sect. 2.8 and 2.9, under the prerequisites of Sect. 10. If the Customer objects to the modifications as contemplated under Sect. 10, then ColorDigital shall have a right of extraordinary termination as of the date that the modifications take effect.
- 9.6 Termination for cause for both parties shall not be affected.
- 9.7 Upon the end of the Agreement, regardless of the reason, ColorDigital shall delete the Customer's data. ColorDigital shall have the right, but not be obligated to, save data for security reasons for a time period of four (4) weeks beyond the end of the contractual relationship, in order to protect the Customer from accidental data loss. In addition, ColorDigital shall have the right

to keep data beyond the end of the contractual relationship if ColorDigital is obligated to do so by law or by the authorities, including, but not limited to, for reasons grounded in tax law and in the Commercial Code.

## **10 Amendments to the General Terms and Conditions of Business**

These General Terms and Conditions between the Customer and ColorDigital shall be amendable by a commensurate agreement as described below: ColorDigital shall convey the modified terms and conditions prior to the planned entering into effect in the text-form (*Textform*) and shall separately note the new provisions as well the date of the planned entering into effect. At the same time, ColorDigital shall grant the Customer a reasonable period of at least two (2) months in length to declare whether or not it shall accept the modified terms and conditions of use for the further availment of the services. If no declaration is effected within this period, which shall commence running from the receipt of the notification in text-form (*Textform*), then the modified terms and conditions shall be deemed as stipulated. ColorDigital shall separately advise the Customer at the commencement of the notice period as to this legal consequence, i.e., the right of objection, the objection period, and the implications of remaining silent.

## **11 Final provisions**

- 11.1 Any amendments and side agreements to this Agreement shall require the written-form (*Schriftform*). Such shall also apply to this written-form clause (*Schriftformklausel*).
- 11.2 In the event of any contradictions between the contract form and the General Terms and Conditions of Business, the provisions of the contract form shall take precedence over the General Terms and Conditions of Business. In the event of contradictions between other exhibits and the contract form or these General Terms and Conditions of Business, the provisions of the other exhibits shall take precedence.
- 11.3 Customer shall be able to offset against receivables of ColorDigital or to assert a retention right only if the counterclaim is undisputed, judicially acknowledged, or stands in a synallagmatic (bilateral) contractual relation to the respective claim concerned.
- 11.4 The language of the Agreement shall be German. Translations into any other languages shall serve exclusively to facilitate understanding and shall not be legally binding.
- 11.5 The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.
- 11.6 The sole venue for any and all disputes arising from or in connection with this Agreement shall be Cologne, Germany, provided that (i) the contracting parties are merchants (*Kaufleute*) or (ii) the Customer does not have any general venue in Germany or in any other eu Member State or (iii) the Customer has transferred its fixed domicile abroad subsequent to these General Terms and Conditions entering into effect or (iv) the domicile or usual whereabouts of the Customer are unknown at the time of filing the complaint.

As of: 8. June 2017