



# General Terms and Conditions

Last update: April 2022

Version: 1.0

## 1. General Information and Applicability

- 1.1. Unless expressly agreed otherwise, these General Terms and Conditions ("T&Cs") shall apply to all contracts (individually "the Contract") between Turtle Deutschland GmbH, Engelbecker Str, 144 b, 41066 Mönchengladbach, Germany ("Turtle") and the contracting party ("Customer") concerning products and services provided by Turtle, in particular (i) sales and rentals of climate-controlled crate for the transport of works of art ("Turtle Boxes") and related items, (ii) for workshops, works and services related to Turtle Boxes, and (iii) for all other offers of Turtle that are based on these T&Cs ((i) - (iii) collectively "Turtle-Products").
- 1.2. Deviating or conflicting general terms and conditions of the Customer shall not apply.
- 1.3. The Turtle products are flexible. Safe and sustainable climate-controlled packing solutions for transporting works of art. For more than 20 years, Turtle has been used by leading museums around the world for the safe transport of precious and valuable works of art. The purpose of a Turtle box is to provide reusable, climate-proof, shock- and vibration-absorbing means of transporting artworks, protecting their integrity.
- 1.4. Turtle products are intended exclusively for businesses within the meaning of section 14 of the German Civil Code (BGB) and not for consumers within the meaning of section 13 BGB.

## 2. Terms and conditions applicable to all Turtle-Products

With respect to all contracts involving Turtle-Products, the following rules shall apply:

### 2.1. Order process and conclusion of the Contract

- 2.1.1. If Turtle sends customers an offer or a price list for Turtle products, this does not constitute a legally binding offer, but is non-binding until the final agreement. To accept the offer to conclude a contract, the customer can either use the digital signature process offered by Turtle or download the offer, print it out, sign it and send it back to Turtle by email or post. If the customer chooses the digital signing process, the IP address is recorded and displayed together with the signature on the signed offer. By sending or submitting the offer, the customer submits a legally binding offer to conclude a contract specified in the offer. The customer is bound to this offer for 10 days.
- 2.1.2. A binding contract for the offered Turtle products comes about with confirmation by Turtle. The acceptance takes place through the receipt of a separate declaration of acceptance, which is sent to the customer by e-mail.
- 2.1.3. In the event of a cancellation by the customer, 50% of the offer amount is due from 14 days before implementation and 100% from 7 days before implementation. In any case, the third-party costs incurred up to the time of cancellation are due. This regulation applies unless another provision has been expressly agreed in writing.



**Die sichere, innovativste und nachhaltigste Museumskiste der Welt**

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## 2.2. Liability of Turtle

### 2.2.1. Turtle is liable

- I for all damages or expenses resulting from a grossly negligent or intentional breach of duty by Turtle, a legal representative or a vicarious agent of Turtle;
- II for injury to life, body or health resulting from an intentional or negligent breach of duty on the part of Turtle, a legal representative or a vicarious agent of Turtle;
- III for all damages or expenses based on the absence of a characteristic or durability that was guaranteed by Turtle;
- IV for all damages or expenses caused by a breach of cardinal obligations by Turtle or its legal representatives or a person used by Turtle to fulfill an obligation. Cardinal obligations are those basic obligations which constitute the essence of the Contract, which were decisive for the conclusion of the Contract and on the fulfillment of which the Customer may rely. If Turtle breaches its cardinal obligations through simple negligence, the resulting liability shall be limited to the amount that was foreseeable for Turtle at the time the respective service was provided;
- V under the German Product Liability Act (ProdHaftG).

2.2.2. The parties agree that the typically foreseeable damage does not exceed an amount of EUR 10,000.

2.2.3. Turtle expressly excludes any further liability.

## 2.3. Indemnification of Turtle by the Customer

2.3.1. If a third party asserts a claim against Turtle, the Customer shall indemnify Turtle insofar as the claim is based on (i) a breach of the provisions of the T&Cs or the Contract by the Customer, (ii) a violation of the law by the Customer or (iii) changes and additions to Turtle-Products made by the Customer and not approved by Turtle. This shall not apply unless the Customer acted at least negligently.

## 2.4. Insurance for goods of the Customer

2.4.1. Unless expressly agreed, Turtle shall not take out insurance for the benefit of the Customer. Should it be agreed that Turtle shall take out insurance, Turtle shall do so on behalf of the Customer.

2.4.2. If it is necessary for the performance of the Contract that Turtle stores, transports, packs, processes or otherwise handles goods belonging to the Customer, the Customer shall take out insurance for all such goods. The relevant insurance conditions shall stipulate that Turtle's actions are also insured and that recourse is waived in favour of Turtle.

## 2.5. Prohibition of set-off and exercise of rights of retention

2.5.1. The Customer shall not be entitled to offset claims of any kind against claims of Turtle unless the Customer's claim is undisputed, has been acknowledged by Turtle, has been legally established or is in a reciprocal relationship with Turtle's claim. The Customer shall only be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.





### 3. Special terms and conditions applicable to the rental of Turtle- Products

If the subject matter of the Contract is the rental of Turtle-Products, the following provisions shall apply:

#### 3.1. Payment and term of payment

- 3.1.1. The agreed rent shall be paid after the rental period on a regular payment term of twenty-one days (21) days, apart from specific agreements in the contract.
- 3.1.2. The agreed rent is exclusive of the statutory value added tax.
- 3.1.3. The agreed rent shall be paid into an account to be named by Turtle. Turtle shall be entitled to notify a change in the account at any time. The rent shall then be paid into the changed account.
- 3.1.4. The decisive point in time for the payment to be on time is the receipt of the payment on Turtle's account.

#### 3.2. Handover and return of Turtle-Products

- 3.2.1. After the conclusion of the contract, the Turtle products are handed over to the customer on the basis of the provision agreed in the offer.
- 3.2.2. Unless otherwise agreed in the offer, the customer will send the Turtle products including any accessories (e.g. operating instructions and packaging) to Turtle's business address within two working days after the end of the rental period. The customer must ensure that the shipment is adequately insured.

#### 3.3. Duties of the Customer

- 3.3.1. The Customer shall carefully inspect the Turtle-Products for damage at the time of receipt and report such damage to Turtle without delay.
- 3.3.2. The Customer shall be liable to Turtle for loss of or damage to Turtle-Products, unless the Customer is not responsible for such loss or damage.
- 3.3.3. The Customer shall use all Turtle-Products solely in accordance with their purpose and with due care and in compliance with all instructions provided by Turtle for the Turtle-Products (such as the Turtle Case Manual). The Customer is obliged to ensure that the Turtle products are operated by trained personnel only.
- 3.3.4. The Customer is prohibited from making any modifications to Turtle products without Turtle's prior written consent.
- 3.3.5. The Customer may not sell, sublease, pledge, encumber, in any other way dispose or attempt to dispose the Turtle-Products without Turtle's prior written consent.
- 3.3.6. At Turtle's request, the Customer shall be obliged to mark the Turtle-Products as Turtle's property in a clearly visible place during the rental period.
- 3.3.7. The Customer must immediately notify Turtle of any seizure of the Turtle-Products or any other infringement or threatened infringement of Turtle's rights.
- 3.3.8. The Customer shall contact Turtle immediately in case of any problems, complaints and/or questions regarding the Turtle-Products.





**3.3.9.** The Customer shall provide Turtle or a representative with access to the premises where the Turtle-Products are stored, or provide such access, upon reasonable notice and at reasonable times and intervals to allow Turtle to inspect the Turtle-Products and their appropriate storage.

### **3.4. Defects of the rental object**

**3.4.1.** Defects shall be reported to Turtle by the Customer in writing immediately after they become known. If a defect does not exist despite notification by the Customer, Turtle shall be entitled to charge the Customer for the costs because of the (attempted) rectification.

**3.4.2.** Section 536a BGB shall be excluded insofar as strict liability is provided for.

**3.4.3.** In the event of a defect, the Customer shall be entitled to the statutory warranty rights, provided that Turtle may choose to remedy the defect by repairing the Turtle-Product or by supplying a comparable Turtle-Product.

**3.4.4.** The Customer shall waive the right to reduce the rent insofar as Turtle is not responsible for the circumstances that would entitle the Customer to do so and insofar as the reduction is not asserted with a non-appealable claim or a claim acknowledged by Turtle.

### **3.5. Term and Termination**

**3.5.1.** If a term is agreed in the Contract, the Contract ends with the expiry of the agreed day or period.

**3.5.2.** If the Contract is for an indefinite period, the notice period shall be two weeks to the end of the month.

**3.5.3.** The right to extraordinary termination for good cause shall remain unaffected.

### **3.6. Special provisions for leasing to Customers who intend to sublet the Turtle-Products**

**3.6.1.** In the event that the Customer intends to sublet the Turtle-Products and has communicated this to Turtle in writing prior to the conclusion of the agreement and Turtle has agreed to this, the Customer shall be expressly authorized to sublet the Turtle-Products.

**3.6.2.** In this case, any sublet agreement shall be concluded by the Customer in his own name and for his own account.

**3.6.3.** Third parties may not derive any rights from the Contract between Turtle and the Customer.

## **4. Special terms and conditions applicable to the sale of Turtle-Products**

If the subject matter of the Contract is the purchase of Turtle-Products, the following provisions shall apply:

### **4.1. Payment and term of payment**

**4.1.1.** The purchase price shall be paid in Euro within twenty-one days (21) days after conclusion of the Contract, unless expressly agreed otherwise. The agreed purchase price is exclusive of the statutory value added tax.





**4.1.2.** Unless expressly stipulated in the Contract, the shipping costs for each order shall be invoiced separately to the Customer and shall be based on the volume of the order.

## **4.2. Delivery time and transfer of risk**

**4.2.1.** Unless expressly agreed otherwise, Turtle-Products shall be delivered to the Customer's address specified in the Contract. Turtle products are shipped after they have been manufactured. The delivery dates stated by Turtle are only estimates and Turtle shall not be liable for any delays in delivery due to causes beyond Turtle's control.

**4.2.2.** The risk of accidental loss shall pass to the Customer when the shipment has been handed over to a shipping company by Turtle.

## **4.3. Retention of title and right of withdrawal**

**4.3.1.** Turtle shall retain title to the Turtle products until the purchase price has been paid in full. Until this time, the Customer must store or label the Turtle products in such a way that they are clearly recognizable as the property of Turtle.

**4.3.2.** In the event of a (possible) seizure of Turtle-Products that are still the property of Turtle, the Customer must inform Turtle immediately.

**4.3.3.** Insofar as this is possible, Turtle undertakes to release the security at the Customer's request to the extent that the value of the security exceeds the claim to be secured by more than 10%.

**4.3.4.** Turtle has the right to withdraw from the Contract if, despite duly congruent covering transactions, Turtle itself has not been supplied on time and the lack of availability is not Turtle's fault, the Customer has been informed of this without delay and Turtle has not assumed any procurement risk. In this case, any payment made shall be refunded without delay.

**4.3.5.** Turtle reserves the right to withdraw from the Contract and demand the return of the Turtle products in the event that the Customer defaults on payment.

## **4.4. Warranty and repairs**

**4.4.1.** The Customer shall be entitled to the statutory warranty rights. The Customer's claims for defects shall become statute-barred one year after handover of the Turtle product.

**4.4.2.** Section 377 of the German Commercial Code (HGB) shall apply and shall also apply in the same way to the rights set forth in sections 4.4.3. to 4.4.7. above.

**4.4.3.** With regard to Turtle boxes, the rights granted in the following clauses shall apply in addition to the statutory warranty rights:

**4.4.4.** Turtle's obligations under Sections 4.4.4, 4.4.5 and 4.4.6 are subject to the following cumulative conditions:

- I the Turtle Box and all of its components have been used solely for their intended purpose. "Intended use" of the Turtle Boxes does not include, without limitation, any of the following or similar situations: Accidents involving large forces, such as falling from a vehicle, fire, collision with heavy objects or machinery, falling from a great height, and violent conduct, such as forcible opening of Turtle boxes by customs officials;





- II the Turtle Box and all of its component parts have been used and handled with due care and in accordance with all operating instructions issued for it, including but not limited to the Turtle Case Manual; and
- III the Turtle Box and its components have never been repaired or adjusted by any third party and have never been repaired in a manner inconsistent with any operating instructions issued for the Turtle Box, including but not limited to the Turtle Case Manual.

- 4.4.5.** If Turtle provides new components to Customer at no charge pursuant, Customer shall install such components in/on the Turtle Box in accordance with all repair instructions provided by Turtle. Turtle shall not be liable for any damage resulting from repairs where the repair instructions have not been followed.
- 4.4.6.** Turtle expressly reserves the right to inspect the Turtle Box, all of its components and compliance with the specified conditions by visiting the Customer's premises in the event that the Customer makes a claim under clauses 4.5.4, 4.5.5 and/or 4.5.6. If the Customer fails to comply with a request for inspection, Turtle may, at its sole discretion, refrain from making the requested repairs free of charge and/or provide the requested component(s) free of charge.
- 4.4.7.** For the avoidance of doubt in relation to clauses 4.4.4. to 4.4.6., Turtle will not repair Turtle Boxes and/or provide components free of charge if the relevant Turtle Box and/or component(s) have suffered damage that does not render the Turtle Box unfit for its intended use, such as scratches and scuffs. In the event that all conditions of this section are not met, repair and/or replacement will be at Customer's expense and at the then quoted rates.

## 4.5. Returns

- 4.5.1.** The Turtle-Products may be returned at the Customer's expense within fourteen (14) days of handover with Turtle's prior express consent, provided they are in the same condition as when the Turtle Products were handed over. The granting of consent shall be at Turtle's sole discretion. The Customer shall bear the risk of the return shipment.
- 4.5.2.** Any Turtle-Products returned to Turtle without consent will be retrieved by the Customer within seven (7) days of Turtle's request. Turtle Products not picked up by Customer may be stored or returned by Turtle at Customer's expense.

## 5. Special terms and conditions applicable to Workshops

If the subject matter of the Contract is a workshop to be conducted by Turtle, the following provisions shall apply:

### 5.1. Payment and term of payment

- 5.1.1.** The workshop fee shall be paid in Euro within twenty-one (21) days after the conclusion of the Contract.
- 5.1.2.** The workshop fee is exclusive of the statutory value added tax. Refunds will not be made for workshops that have not been fully attended.

### 5.2. Conducting the workshops

- 5.2.1.** Workshops shall take place online or at the agreed place and at the agreed time.





- 5.2.2. In exceptional cases, on-site workshops may also be held at another nearby location. This shall be determined by the party responsible for the venue no later than two weeks before the start of the workshop and communicated to the other party.
- 5.2.3. In the case of online workshops, all technical requirements, such as suitable hardware and software, shall be provided by the Customer itself and at its own expense, unless expressly agreed otherwise.
- 5.2.4. Turtle reserves the right to replace announced speakers with others and to make necessary changes to the program while maintaining the overall character of the workshop.

### 5.3. Cancellation of the workshops

- 5.3.1. If the workshop cannot be held due to the inability of a speaker to attend, due to disruptions at the venue or due to other circumstances for which Turtle is not responsible, Turtle shall inform the Customer immediately. The workshop fee shall be refunded in such cases.
- 5.3.2. Workshops may be cancelled by the Customer free of charge up to six (6) weeks before the workshop begins. In the event of a later cancellation by the Customer, the entire workshop fees shall be due.

## 6. Special terms and conditions applicable to services provided by Turtle

If the subject matter of the Contract is the provision of other services by Turtle and no separate provisions have already been made for this purpose, the following provisions shall apply:

### 6.1. Payment and term of payment

- 6.1.1. Billing shall take place monthly by sending an invoice. The invoice shall be paid in Euro within twenty-one (21) days after invoicing.
- 6.1.2. The agreed remuneration shall be exclusive of the statutory value added tax.
- 6.1.3. If an all-in or flat-rate remuneration has been agreed, this shall be deemed to include all costs which are normally covered by the service in the normal course of events. For special services, unusual or particularly time-consuming or labour-intensive work, an additional amount - to be determined by Turtle at its reasonable discretion - may be charged as remuneration at any time, unless Turtle is responsible for the additional expense.
- 6.1.4. If the consumer price index determined by the Federal Statistical Office changes by 5 percent compared to the value at the time the Contract was concluded, the remuneration shall be renegotiated between the parties.

### 6.2. Performance of services, obligations of the Customer

- 6.2.1. Turtle may perform the service itself or assign it to third parties.
- 6.2.2. Insofar as this is necessary for the performance of the Contract, the Customer shall ensure that all items, access, information and documents required for proper performance are provided free of charge and in a timely manner.





## 7. Special terms and conditions for works produced by Turtle

Insofar as the subject matter of the Contract is the production of a work and no separate provisions have already been made for this purpose, the following provisions shall apply:

### 7.1. Payment and term of payment

- 7.1.1. A deposit of 20% of the agreed remuneration shall be due for payment upon conclusion of the Contract. The agreed remuneration shall be exclusive of the statutory value added tax. Settlement of the remaining amount shall be effected by means of a separate invoice after completion of the Turtle-Product at the latest. The invoice shall be paid in Euro within twenty-one (21) days of the invoice date. Section 632a BGB shall remain unaffected.
- 7.1.2. Turtle shall be entitled to make the commencement of work dependent on the payment of the deposit.
- 7.1.3. Turtle shall deliver the Turtle Product to the address specified in the Agreement upon completion.

### 7.2. Duties of the Customer

- 7.2.1. The Customer shall ensure that Turtle is provided with all items, access, information and documents required for the proper performance of the Contract free of charge and in a timely manner.
- 7.2.2. The Customer shall accept the Turtle product within seven (7) days of delivery. If the Customer fails to accept the Turtle product within this period, even though there are no or only insignificant defects, acceptance shall be deemed to have taken place. A record of the acceptance shall be drawn up and signed by the parties.

### 7.3. Changes to the Turtle-Product

- 7.3.1. The Customer may request changes to the agreed Turtle-Products.
- 7.3.2. Turtle shall be entitled to demand additional remuneration for changes to the Turtle-Products, at Turtle's discretion. If the parties fail to agree on the amount of the remuneration, Turtle shall be entitled to reject the request for changes.
- 7.3.3. Prior to beginning to implement such changes, Turtle shall submit a written offer to the Customer regarding the amount of remuneration and indicate to the Customer any possible effects on the completion date of the Turtle-Product.

### 7.4. Warranty and transfer of title

- 7.4.1. The statutory warranty shall apply with the provision that the limitation period shall be one year from the transfer of risk.
- 7.4.2. The Turtle product shall remain the property of Turtle until the agreed remuneration has been paid in full.







## 8. Miscellaneos

### 8.1. Confidentiality

**8.1.1.** Under the Contract, it may be necessary for one of the parties to disclose confidential information to the other party. Confidential information means any technical, business or other information disclosed in any manner, including, documents, methods, trade secrets, details, pricing, data marked or deemed confidential by its nature, materials and third party relationships, but not including information with respect to which the receiving party can demonstrate in a documented way that:

- I it is or becomes generally available to the public (other than as a result of the disclosure by the receiving party);
- II it was made available to the receiving party in a non-confidential manner prior to disclosure by the disclosing party;
- III it was made available to the receiving party in a non-confidential manner by a person who is not bound by a confidentiality agreement with the disclosing party or who is otherwise prohibited from disclosing the information to the receiving party;
- IV it was lawfully in the possession of the receiving party before the information was disclosed to it by the disclosing party; or
- V the parties have agreed in writing that it is not confidential or subject to disclosure.

**8.1.2.** Such confidential information shall be provided subject to the following conditions:

- I Unless otherwise specified, the parties shall treat all confidential information provided by one party to the other party as strictly confidential and use it only for the contractually agreed purposes; the party receiving such confidential information shall not disclose it to any third party without the prior written consent of the disclosing party.
- II Each Party undertakes to grant access to the confidential information only to those employees who require it for the performance of their duties. Each party agrees, upon request of the other party, to require its employees to sign and submit to the other party an appropriate confidentiality agreement.
- III Each party will protect confidential information of the other party with the same care as it protects its own confidential information, but with at least a reasonable degree of care.
- IV Neither party will make more copies of such confidential information than necessary.

**8.1.3.** Confidential information may be disclosed if and to the extent necessary to comply with applicable law or pursuant to a governmental or judicial order. In such a case, the receiving party shall notify the disclosing party without undue delay, if possible, prior to disclosure.

**8.1.4.** The confidentiality obligation of the parties shall apply for a period of at least 5 years after the conclusion or end of the term of the Contract.





## 8.2. Governing law, competent court, and contract language

- 8.2.1.** These T&Cs and the Contract, as well as all legal issues arising from or in connection with these T&Cs or the Contract, shall be governed by the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 8.2.2.** The parties hereby submit to the exclusive local jurisdiction of the courts Mönchengladbach, Germany.
- 8.2.3.** The contractual language shall be German. Insofar as Turtle provides the Customer with these T&Cs or other terms of the Contract in another language as part of the conclusion of the Contract, these are merely non-binding translations and a non-binding service provided by Turtle. In the event of any discrepancies, ambiguities or contradictions between the German version and other versions, the German version shall always take precedence.

## 8.3. Conversion

- 8.3.1.** Should one or more provisions of the Contract or these T&Cs be or become invalid in whole or in part or should the Contract or the T&Cs contain an unforeseen gap, the remaining provisions shall remain in force. The invalid or missing provisions shall be replaced by the respective statutory provisions.

## 8.4. Additions and amendments

- 8.4.1.** Amendments or additions to the Contract and these T&Cs must be made in writing. There are no additional written agreements beside the T&Cs and the Contract.
- 8.4.2.** Turtle reserves the right to make additions and amendments to these T&Cs from time to time. The Customer shall be informed of such amendments without delay and shall receive the amended complete text.

