



## 1. Präambel

Arch DI Lena Schacherer, as the owner of the non-recorded individually-owned firm BEST(un)BUILT® (hereinafter referred to as "B(u)B") with registered office in AUT 7100 Neusiedl am See, Seestrasse 23, runs a platform at the website [www.best-un-built.com](http://www.best-un-built.com) where plans and further products of single-family houses may be acquired. All projects have been developed by selected architects specifically for one owner and one property. The customer saves, depending on the project, up to 70% of the conventional planning costs by using a finished planning product and the omission of an individual planning process.

## 2. Scope of application

2.1 These GTC shall apply to all deliveries and other services of B(u)B for customers as well as the resulting rights and obligations.

2.2 Opposing GTC shall only apply if B(u)B submits to them expressly and in writing.

2.3 The customer accepts these GTC by using the online service, particularly by clicking the acceptance button.

2.4 These GTC shall also apply to future business transactions between the contractual parties, even if they do not separately refer to the GTC again.

2.5 B(u)B shall reserve the right to change these GTC at any time without stating reasons. If the internet service is used, the consent to the changed GTC shall be deemed granted.

## 3. Conclusion of contract

3.1 Only natural persons of full age with legal capacity shall be permitted to use the platform. The use shall be subject to their own responsibility. Commercial use by e.g. property developers shall not be permitted. However, there is the option to conclude special agreements between B(u)B and the property developer; they shall be prepared in writing and individually by mutual consent of both parties.

3.2 Each visitor of the platform shall have the option to receive free of charge and without registration a general project overview, namely the project title, one to two publications of the floor plans on a scale of 1:200, visualisations and/or model photos, net floor space of the house in total, number of storeys, requirements of the property, the name of the author / architect's office as well as prices for the grant of an exclusive exploitation right (according to item 4.2, 4.7) of the individual plans and prices for all other products offered in relation to a project.

3.3 For the online access on the website to detailed project information (cf. item 4), the entry of name and email address is required to a designated online window. The customer shall enter the requested data correctly, completely and truthfully.

3.6 B(u)B shall also undertake to keep the customer's access data confidential.

## 4. Reciprocal services / grant of rights

4.1 After the access data have been entered, the customer shall be provided with further project information, namely all relevant floor plans on a scale of 1:200, at least one section at a scale of 1:200, further presentation of the building perspectives on a scale of 1:200 or in the form of visualisations, information of the production costs as rough estimate, information of the net and gross base areas, a description of the characteristics of the house as well as information on the creation of the project. Moreover, many projects have YouTube videos where the architects introduce themselves and their planning.

4.2 Every project has a product box that provides information on all products available in relation to this project. (Not every project has all possible products.)

An order process shall be completed by the customer through filling the order form and requesting the desired



products.

An order may be placed online by means of the order form or after contacting B(u)B by email. The order form completed by the customer and submitted to B(u)B or the email including order and/or confirmation of order shall establish a binding offer by the customer.

For product no. **A|05 SUBMITTED PLAN (editable)**, the customer shall provide a binding offer for grant of an exclusive exploitation right of a project posted online and conclusion of a sales contract to B(u)B according to item 4.7 of these GTC.

Upon receipt of the order form, B(u)B shall send confirmation of order and invoice to the customer. All products shall be paid by remittance (prepayment) by the customer to the indicated bank account of B(u)B. Payment shall be due immediately after receipt of the invoice. The confirmation of order shall not constitute acceptance of the customer's offer. The acceptance and thus the grant of the exclusive exploitation right and the sales contract shall only be effected by the provision/submission of the plans and further data.

4.3 After prepayment has been made, the respective product shall be sent to the customer. Delivery times shall be notified to the customer upon invoicing.

The delivery times shall be between 3 working days (e.g. for product no. **A|01 DESIGN BOOKLET**) and a maximum of 4 weeks (e.g. for product no. **A|05 SUBMITTED PLAN (editable)**).

4.4 The customer shall have the option to cancel orders free of charge within 14 days as from sending the order in writing by email if the prepayment has not yet been made and the production has thus not yet been started by B(u)B. If the payment has already been made and thus the production has been started by B(u)B, the customer shall have to pay a staggered cancellation fee:

Within 1 work day after receipt of the payment: 10% of the purchase price

Within 3 work days after receipt of the payment: 50% of the purchase price

Within 4 work days after receipt of the payment: 80% of the purchase price

As from the 5th working day after receipt of the payment, the full purchase price shall become due as cancellation fee and/or (partial) reimbursement of the payment shall no longer be possible.

(See item 4.15 in this regard.)

4.5 After the remittance has been effected, the respective product shall be delivered to the customer within the previously agreed delivery period (according to item 4.3) by mail or by email (according to the product description).

4.7 After the contract has been concluded (according to item 4.2), the customer shall have the non-exclusive, irrevocable, non-transferable, restricted right to use the ordered products and the related project documents provided for their own private building project. (exclusive exploitation right).

The ordered product may only be used once and in accordance with the scope described for the respective product. The customer shall be entitled to make individual copies of the plans and documents for private purposes and for arrangement with the further processing and constructing persons and authorities. The customer shall not be entitled to any other form of use, particularly further copying, processing, publication, commercial use, construction within the framework of an undertaking, forwarding or making accessible to third parties not authorised to use, sub-licensing or other forwarding of rights in whatever form.

The customer shall be responsible for all services connected with the authorisation procedure of their project with the respective building authority, with the handling of the construction method and with the detailed planning and for the fulfilment of necessary requirements and the obtaining of the necessary permits.

4.8 A so-called reservation of title under copyright law shall expressly be agreed, i.e. the customer shall receive the exclusive exploitation right particularly for one-off execution according to 4.7 only after complete payment of the price.

4.9 B(u)B seeks to advise the customer as good as possible in order to keep the plan adjustment works cost-effective.

Changes and adaptations to the planned product for the execution that exceed the extent of 10% of the total appearance at most and of 30% of the internal appearance at most shall thus not be permitted.

As far as third parties assert claims against B(u)B or the customer due to any changes/adaptations of plans carried out by the customer (including to permitted extent), the customer shall completely identify B(u)B and hold it harmless.



For individual projects, no changes to the appearance shall be permitted and/or shall be subject to express consent by the authors that will be obtained by B(u)B for the customer in these cases.

In these individual cases, the authors shall also be entitled to reject the sale of the plan where applicable.

B(u)B shall inform the customer in writing and immediately upon request if a project they are interested in is subject to this additional agreement.

4.10 The compliance with the provisions of items 4.7 and 4.9 shall constitute an essential contractual obligation. If they violate any of these provisions, the customer shall undertake to pay a contractual penalty in the amount of 10 times the order value (this is the price of the contractual plan or product).

4.11 If it turns out the plans are not works in terms of copyright, this shall not change anything about this agreement.

4.12 The customer shall undertake to use the platform exclusively in line with the statutory and contractual provisions and without violating rights of third parties. In particular, they shall not be entitled to copy any contents published on the website.

4.13 The customer shall inform B(u)B immediately and in writing about any claims of third parties that they become aware of. They shall refrain from making any statements, acknowledgements or regulation suggestions to the claimant. B(u)B shall acknowledge or defend the claim at its discretion. The customer shall support B(u)B to the best of their ability at the expense of B(u)B. Should the customer be permanently prohibited from the contractual use of the plans due to intervention in existing industrial property rights of third parties, B(u)B shall, depending on the cost effectiveness

- modify the plans so that they no longer infringe.
- obtain the necessary rights to the infringed industrial property rights for the customer.

4.14 B(u)B shall not assume any liability for agreements, settlements or other legal acts the customer has carried out without the express written consent of B(u)B and in relation to services that (also) concern services other than the one provided by B(u)B or for any plan amendments made by the customer.

4.15 Cancellation fees shall apply as described in item 4.4. However, for product no. **A|04 INSPECTION PLAN PRINT**, the following special provision shall apply:

Since this plan serves the inspection of the desired house, the purchase price for this plan shall be set off at 100% against the subsequent purchase of the product no. A|05 SUBMITTED PLAN (editable), as far as the two plan products are planning documents of the same house. This means that the customer only pays the difference with the second purchase.

## **5. Fee / contractual exclusion of set-off / reservation of title**

5.1 The price of the respective product set out on the website shall comprise the licence fee for the exclusive exploitation right and the purchase price for the products exclusive of VAT.

5.2 The customer shall make payments by means of remittance to the account notified by B(u)B respectively in advance.

5.3 If payment is delayed, B(u)B shall be entitled to charge the customer for all costs required for the purposeful legal proceedings as well as default interest of 5% p.a. as from the due date.

5.4 Furthermore, B(u)B shall be entitled to terminate the contractual relationship with the customer without notice in case of non-payment and two previous written reminders.

5.5 The customer shall raise objections against the invoiced receivables within 5 days after the invoice date; otherwise, the receivable shall be deemed acknowledged. B(u)B shall inform the customer about this deadline and the legal consequences resulting from non-compliance.

5.6 The customer shall not be entitled to set off against outstanding receivables from B(u)B, unless B(u)B becomes insolvent or the counter-claim is acknowledged or established as final and absolute by a court.



5.7 Until complete payment by the customer, B(u)B shall remain the owner and the holder of the right of use according to item 4.7 of the products. The customer shall be obliged to take all necessary legal measures to safeguard and protect the property of B(u)B; in particular, pledge, transfer by way of security or other exploitation shall not be permitted.

## **6. Dispatch / risk of loss**

6.1 Place of performance for deliveries and services of B(u)B shall be the registered office of B(u)B.

6.2 In the event of force majeure, the contractual obligations of both contractual parties shall be suspended. Force majeure shall also include labour disputes in own or in third party companies, transport delays, machinery breakage, product-related failures B(u)B is not responsible for, government measures and other circumstances none of the parties is responsible for.

6.3 The dispatch of the products according to items 4.3 and 4.5 shall be made at the expense of B(u)B (excluding items 6.6) and at customer's risk. B(u)B shall select the means of transport. If the dispatch type, the dispatch route and/or the company commissioned with dispatch is to be selected by the customer, the customer shall bear the potentially resulting extra costs.

6.4 The risk shall be transferred to the customer with the handover to the means of transport.

6.5 The customer shall take delivery of the delivered items, even if they show potential defects. Partial deliveries shall be permitted.

6.6 For Austria, shipping costs for all products are included in the indicated purchase price. For all other countries, the shipping costs shall be separately indicated on the invoice.

6.7 The customer shall declare with the completion of the order process conducted electronically via the internet to have taken note of the further information posted on the B(u)B website on the dispatch and the delivery of goods.

## **7. Data protection / advertising / safety**

7.1 The data protection provisions in the valid version of the Data Protection Act shall be complied with.

7.2 The customer shall agree to their indicated data being stored and processed by B(u)B. This agreement may be revoked in writing at any time.

7.3 B(u)B shall be entitled to regularly send promotional mails and newsletters to the email address notified by the user. The customer may revoke this in writing at any time.

7.4 The contractual parties shall be obliged to carry out regular data back-up to the required extent. In particular, they shall protect the systems they can access against unauthorised notice, modification as well as other unauthorised access and attacks of whatever kind by third parties, particularly by means of protection against viruses and other malicious programs or program routines.

## **8. Guarantee / liability**

8.1 B(u)B shall ensure that it is not aware of any circumstances, particularly of any industrial property rights of third parties that make it more difficult or unlawful to sell the contractual products or grant exclusive exploitation rights.

8.2 B(u)B shall expressly declare that the correctness of the indicated project production costs (rough estimate) is not guaranteed. The indicated costs shall be a guideline. Furthermore, it shall be listed which services are included in the estimate and which are excluded. This list shall not be exhaustive. Accordingly, B(u)B shall not be liable if the indicated production costs are exceeded.



8.3 B(u)B shall guarantee the correctness of the planning according to the state of the art and that the service has the contractually agreed and usually assumed characteristics. The legal basis of the planning (respectively applicable building law) shall be indicated in the project description. Accordingly, B(u)B shall not guarantee that the building project will also be approved at customer's intended site; the customer shall be responsible for that.

8.4 The platform shall be illustrated and provided according to the current usual technical standard. B(u)B shall not assume any guarantee for defects, malfunctions or damages that occur outside their sphere of influence and are to be attributed particularly to improper use, contamination with computer viruses, use of unsuitable data carriers, non-functioning of the mains connection or to transport damages.

8.5 The statutory provisions of section 9 KSchG shall apply.

8.6 B(u)B shall be liable for damages, as far as it is guilty of intention or gross negligence, within the framework of the statutory provisions. B(u)B shall be liable for personal injuries even with slight negligence. The limitation of liability shall also apply for employees, staff, representatives and vicarious agents of B(u)B.

## 9. Blocking, revocation and termination

9.1 B(u)B may take the following measures if there are specific reasons to believe that a user violates statutory provisions, rights of third parties, these GTC or public policy, misuses the internet service, provides incorrect, incomplete or misleading details, does not comply with agreements, becomes legally incapacitated or if there is another justified interest particularly for the protection of other users, affected third parties or B(u)B itself: Warning to customers, provisional blocking, final blocking (= termination without notice).

9.2 B(u)B shall be completely free to select the measures, but will take the justified interests of the user into account.

9.3 B(u)B may particularly finally exclude a user from the use of the platform (final blocking) if the blocking is required to safeguard the interests of the other users, the user provides incorrect contact details, particularly an incorrect or invalid email address, if the user causes damage to other users or B(u)B to a considerable extent, particularly misuses services of B(u)B or if there is another good cause such as the violation of a contractual provision.

9.6 The user shall not have any claims whatsoever against B(u)B if it takes one of the measures stated in item 9.1.

9.8 B(u)B shall be entitled to discontinue the platform without stating reasons.

## 10. Final provisions

10.1 Oral collateral agreements have not been made. Potential modifications and supplements shall be made in writing; the same shall apply to the waiver of the written form requirement.

10.2 The invalidity of individual provisions shall not affect the validity of the remaining provisions of the GTC. The invalid clause shall be replaced by a valid clause that comes as close as possible to the purpose of the invalid clause as regards economy and law. This shall also apply if the GTC contain a gap.

10.3 Austrian law excluding the conflicts of law provisions shall apply. Place of jurisdiction shall be in accordance with section 14 KSchG.