

General Terms and Conditions the Purchase of Goods and Services

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I. Terms and definitions, range of application, order placement

1. The terms "order, contractor and client" shall be construed in their commercial senses. "Order" shall denote the contractual relationship without regard to the type of contract involved. "Contractor" shall denote the party which owes the main work, "client" the party who has to receive the main work and to pay the remuneration.
2. These conditions shall apply irrespective of whether the agency concludes the contract on its own behalf and for its own account, on its own behalf for third account, or on behalf of a third party for third account.
3. Only orders or order changes issued in writing shall be binding.
4. Any divergent terms and conditions of the contractor shall apply only if the client has recognised them in writing.
5. The order shall be confirmed to the agency immediately in writing.

II. Deadlines, delivery times, place of performance

1. If delivery dates or deadlines are missed by the contractor, the agency can set a reasonable period of grace. If this period of grace is not complied with, the agency shall be entitled to demand damages instead of performance, compensation for futile expenditure, or to withdraw from the contract.
2. In the case of early delivery, the agency shall be entitled, but not obligated, to accept the delivery. The agreed due date for payment claims shall not be altered by early delivery.
3. The contractor must notify the agency immediately in writing of a feared delay in delivery. The agency shall be entitled to withdraw from the contract if it is foreseeable that the goods/services involved are not going to be provided on time and thus a substantial impediment to production must be feared at the agency and/or its customer.
4. Dispatch must be effected to the specified delivery address by the contractor at his/her own expense and risk.

III. Order scope

The quantitative scope of work specified in the order letter shall be binding. Any additional quantities will not be paid for, even if they have been entailed by production necessities. Draft designs and costings, particularly for alternative solutions, shall form part of the scope of delivery.

IV. Warranty, remedying of defects

1. Deliveries which relate to the design or production of advertising material must be able to perform the task concerned, and where appropriate must conform to the copy provided and instructions given, and to the latest state of the art; they must exhibit the technical, advertising and artistic level of the work samples submitted by the contractor before the order was placed.
2. If any deliveries and services are the subject of a complaint, the contractor must take them back immediately after the complaint for purposes of post-performance or remedying of defects. If he/she culpably refuses to accept a return delivery of this kind, the agency shall store the objects until they are collected, but for not longer than 3 months, at the contractor's risk and expense. After this, the agency shall be entitled to destroy the objects at the contractor's expense and risk, 1 week after written notification.
3. Any claims for damages or compensation for defects shall expire by limitation as laid down in statute law.

V. Acceptance, complaints

1. Acceptance shall be construed as having taken place only if the agency has explicitly declared the work to be in conformity with the contract.
2. Receipt of the work and payment before ascertainment of a defect shall not constitute a recognition of flawless delivery and service, and shall not be construed as waiving the right of complaint. This shall also apply in cases where the agency at receipt is aware of the defect or where the defect is detectable, or has remained unknown as a result of gross negligence. The same shall apply for acknowledgement of receipt of incoming goods by the agency or the customer. The contractor explicitly waives his/her right from the approval fiction of § 377 HGB (German Commercial Code), under which the work is construed as approved if notification of the defect is not made immediately after discovery, unless the defect is obvious.

VI. Invoice, price, payment, packing

1. The invoice must be sent to the agency's Incoming Invoices Department immediately after delivery.
2. The agreed price must not be exceeded. If the client after order placement (e.g. due to requests for alteration or supplementation) demands work which entails additional outlay on the part of the contractor, the latter shall be entitled to special remuneration only insofar as he/she has notified the client of the claim concerned in writing immediately.

3. Unless different conditions of payment have been agreed, payment shall be made within 14 days after receipt of invoice with 2 % discount, or within 30 days without deduction.
4. Packing costs will not be reimbursed.
5. The agreed prices shall be understood net, i.e. exclusive of the statutory value added tax.

VII. Special conditions for photographers, stylists

1. For optimum implementation of the advertising concept approved by the client, the agency can, on behalf of the client, prescribe the persons co-designing the photo motif (particularly models, make-up artists, stylists including their costumes), props, certain technical effects (particularly a certain light) and the location. The hiring, purchase and rental agreements entailed hereby must be concluded by the contractor on behalf of and for the account of the client, and within the framework of the costings approved beforehand in writing by the client.
2. For this case, in addition to the General Terms and Conditions of Business, the "Special Conditions for Photographers and Stylists", on which the agreement shall be based, shall apply.

VIII. Insurance

1. The contractor shall be obligated to take out an adequate amount of insurance cover against damage of all kinds in connection with performance of the contract. The agency can in individual cases demand documentary evidence of the insurance cover.
2. Costs for insurance shall be borne by the agency only when these have been incurred by the contractor in compliance with a written order to this effect from the agency.

IX. Usufructuary rights/rights to industrial property and copyright protection

1. The contractor's usufructuary rights and rights to industrial property and copyright protection, plus the right to use the model's image, in each case with reference to the subject-matter of the contract, shall pass with payment of the remuneration to the client, without time-limitation and for sole use worldwide. Purpose of use: advertising and non-advertising, first-time and multiple utilisation; types of utilisation: all conceivable and also future new types of utilisation, all conceivable and also future new duplication techniques; other prerogatives: utilisation also of parts of the contractual object (including excerpt utilisation, photo-composing, film-composing), right of alteration, complete or partial transfer of the sole usufructuary right to third parties.
2. The contractor must, in his/her quotation, inform the client whether he/she has transferred usufructuary

rights to be transferred under (1) above to utilisation companies, and if so, which.

3. If, in contravention of (1) above, usufructuary rights have not been transferred, the client may retrospectively demand their transfer in whole or in part against reasonable remuneration. The remuneration shall, as far as possible, be governed by that already agreed with the contractor, otherwise by the remuneration rates of the utilisation companies; where these do not apply, the remuneration shall be fixed by the client at his/her own fair discretion, standing up to judicial review.
4. If the contractor uses employees and/or subcontractors and/or models in performing the order, he/she shall be obligated to acquire their usufructuary rights to the extent agreed in (1) above for the contractor's own work, and to transfer them to the client. Furthermore, he/she shall impose on these persons the same duties for their contribution to the work in favour of the client as he/she him/herself has to assume for his/her work.
5. The contractor warrants that there are no rights of third parties attached to his/her contractual work which might impair transfer of rights and/or the agreed utilisation of his/her work (e.g. privacy rights of persons illustrated).
6. The contractor must quote the usufructuary rights to be transferred by him/her both comprehensively in accordance with (1) above and restricted to the type of advertising material for which the contractual object is to be ordered, but otherwise as under (1) above. Any further restrictions must be declared in an additional alternative quotation. The fee for the work must be shown separately. If this is not done, it shall be contained in the agreed remuneration.
7. The contractor shall be obligated to have the models sign a declaration on transfer of usufructuary rights, and to submit this to the agency.
8. The contractor shall waive the signing of his/her work and the right to be named, but may be named by the client. The contractor must also impose this waiver on third parties whom he/she involves in handling the order.

X. Acquisition of title to illustrations and reproduction material, safe-keeping, security, right of retention

1. With payment of the fee, the client shall acquire title to illustrations and to the reproduction material produced or procured by the contractor for carrying out the order (e.g. printing documents like typeset matter, photos, die-plates, lithographs, films, tools, electronic files, etc., including draft designs and back-up copies not delivered). From this juncture onwards, the contractor shall keep these objects safe for the client with all due care for a maximum of 24 months, and must notify the client of their destruction in good time beforehand, giving notice of at least 6 weeks.

2. The contractor must make a back-up copy on a separate data carrier of each electronic file, and store this separately from the primary data carrier.
3. Objects which the contractor receives from the client or the agency shall not pass into his/her ownership, may be used only for handling the order, must be kept safe with all due care by the contractor, and be returned at first request.
4. The contractor shall have no right of retention to the objects he/she is obligated to surrender.

XI. Non-disclosure

1. All information and documents becoming accessible to the contractor in connection with the order, plus the advertising material ordered and the objects in conformity with (X) above, must, even after completion of the order, be treated as strictly confidential, even in cases where the order is not actually carried out. The contractor may use copies of the contractual work for his/her own advertising purposes only with prior written permission from the agency.
2. The contractor must impose in writing these non-disclosure obligations on his/her staff engaged in carrying out the order, sub-suppliers, models, etc., insofar as this is necessary for assuring non-disclosure.

XII. Transferability of rights, retention

1. The rights of the contractor arising from the order, particularly the entitlement to remuneration, can be assigned only with the prior written permission from the agency.
2. The contractor may offset only with counter-claims which are undisputed or have been confirmed by an unappealable court ruling.
3. He/she may exercise a right of retention only if his/her counter-claim is based on the same contractual relationship.

XIII. Orders on behalf of the advertiser

The order shall be handled through the agency even in cases where the agency has placed the order on behalf of a third party. In this case, the agency shall be liable neither for performance of the contract by the client nor for his/her creditworthiness, which the agency does not check.

XIV. Concluding provisions

1. The place of performance for delivery and payment shall be Duesseldorf. The place of jurisdiction for all disputes between the contracting parties shall be Duesseldorf, provided the contractor is a businessperson, a legal entity under public law, or public-law separate property. The agency shall, however, also be entitled to sue the contractor at another place of jurisdiction applicable for him/her. The place of jurisdiction shall also apply for persons other than

those specified above, if the contractor does not have a general place of jurisdiction in Germany, moves his/her domicile or place of business out of Germany immediately after signing the contract, or his/her domicile and/or place of business and/or place of habitual residence is not known on the date when the action is brought.

2. The legal invalidity of individual conditions shall not affect the legal validity of the rest of the contract. A legally invalid clause must be replaced using supplementary interpretation by an arrangement which approaches as closely as possible to the original clause's purpose.
3. Unless otherwise agreed German law shall also be applicable to contractual relationships with foreign contractors, with the exception of CISG.
4. Only the law of the Federal Republic of Germany shall apply.