

Terms and Conditions of medialounge GmbH

1. Scope, General Information

1.1 Unless agreed otherwise, these terms and conditions are valid for all services (event concepts, organization and planning of events and their realization, customer service and selection of third-party services for the purpose of event execution) between the client and the event agency: medialounge GmbH, represented by Nadine Wamser, Managing Director, Königswarterstr. 54a, 90762 Fürth (hereinafter: agency). Each offer, delivery and service that the agency provides shall be determined exclusively by the following conditions.

1.2 Conflicting conditions of a client will only become a part of the contract if the agency explicitly agrees to these conditions in written form. Acceptance of the agency's services by the client shall apply in any case as a recognition of these terms and conditions.

2. Offers, Conclusion of Contract, Contract Content

2.1 Basis of each contract is the respective written offer of the agency. The subject of the offer is a description of the individual services and fees of the agency.

2.2 All offers of the agency are always conditional and unbinding and are an invitation to the client to commission the agency with the execution of the order. All offers provided by the agency and labeled as "Budget", "Cost Estimate" and/or "Rough Cost Calculation" are explicitly unbinding.

2.3 By commissioning the execution of a chosen service, the client declares his binding offer for conclusion of a contract. The contract between client and agency is generally accepted and comes into being after the agency agrees to its conditions in writing or by fax. The acceptance shall be deemed as issued if the agency does not refuse to agree within 14 business days after receiving the order.

2.4 Should the agency develop offers according to the client's specifications and to documents submitted by the client or the respective exhibition management, the agency shall not be held liable for the correctness and the suitability of these documents, that is unless their faulty and unfit nature goes unrecognized either in a deliberate or a grossly negligent manner.

2.5 Documents, drawings, illustrations, technical data and description of services displayed on our website, in brochures, newsletters, advertisements and in price lists are non-binding, unless they have been labeled explicitly as binding in the order confirmation.

3. Range of Services

3.1 The range of contractual services is defined by the written order confirmation. Ancillary agreements and/or alterations and supplements have to be confirmed in writing.

3.2 Should changes or variations of individual services that deviate from the content agreed upon in the contract be necessary after the contract has been signed, the agency will inform the client immediately.

3.3 If the agency delivers additional services and/or benefits for free that are not part of the contractual agreement, it may cancel these services and/or benefits at any time. This shall not entitle the client to a claim for termination, reduction, reimbursement or any other right.

4. Rental Equipment

4.1 The agency is obliged to deliver ordered rental equipment of average kind and quality. The agency may replace ordered rental equipment with rental equipment of equal or better nature.

4.2 All information about rental equipment displayed in brochures, lists or documents of all kind is non-binding as far as it concerns technical specifications, operational characteristics or usability. This does not apply to details that have been confirmed by the agency in writing. The agency shall not be liable for the correctness of manufacturer specifications.

4.3 The agency shall not be liable for power outages.

4.4 The client may not rent or pass on rental equipment to third parties. The renter may not remove rental equipment from the event area. The client shall be held liable for damages that are being caused by non-compliance with this requirement.

4.5 The rental fee is due starting with the day the client has access to the rental equipment. It is no longer required when the client returns the rental equipment to the agency according to the time agreed upon as return time. If the equipment is not returned on time, additional costs based on the daily rental fee will be charged. All rights to continued legal claims remain reserved. The rental equipment shall be returned in its original condition. The client shall be held liable for any damages.

5. Prices, Payment, Due Date, Default

5.1 The prices listed in the offer are stated in Euro and are only valid when placing the order. All prices are understood to be net and excluding VAT.

5.2 Unless explicitly stated otherwise, the agreed upon fee shall be due immediately after the invoice has been issued. In case of late payment, a default interest of nine percent above the base interest rate will be added.

5.3 The agency has the right to charge for each individual service immediately after its realization.

5.4 Furthermore, the agency has the right to require advances to cover its expenses according to these two options:

a.)

- 40 % of the fee agreed upon with the order placement,
- 30 % of the fee agreed upon on the day of the event,
- 30 % of the fee agreed upon after the receipt of the final invoice.

b.)

- 50 % of the fee agreed upon with the order placement,
- 50 % of the fee agreed upon after the receipt of the final invoice.

The choice of option will be determined in the contract in advance.

5.5 Deductions of any kind shall be prohibited. Advance payments are not liable to payment of interest.

5.6 In case of delayed payment and regardless of other claims, the agency shall be entitled to charge interest in the amount of the usual minimum interest rate on debit balances and commissions that is charged by major banks, but no less than nine percent above the respective base interest rate of the Deutsche Bundesbank. The client shall remain free to prove lower damages.

5.7 Furthermore, in case of a payment default and after granting a grace period under penalty of non-performance, the agency shall be entitled to cancel the agreement and demand damages for non-fulfillment. The amount of damages shall be determined in accordance with section 7.3 of these terms and conditions.

5.8 Should the client be in default of payment, the agency is entitled to reject its services.

5.9 The client shall only be entitled to set-off for counterclaims that have been deemed undisputed counterclaims and counterclaims finally asserted by a court. The client is only authorized to exercise a right of retention if the counter claim is based on the same contractual relation.

5.10 Prices mentioned in the order confirmation are only valid if the specifics of the order that form the basis of the offer remain unchanged. Prices do not include costs for shipping and handling, freight, postage, insurance or any other shipping costs.

5.11 Unless agreed upon otherwise, third parties shall be commissioned on behalf and at the expense of the agency. The agency shall not be required to detail the performances of the third parties on its behalf in its invoices or provide invoices submitted by the commissioned parties.

5.12 Services that have not been included in the offer but which are realized upon request of the client or additional expenses that are due to erroneous details provided by the client, transportation delays that are not the responsibility of either party or delays or unprofessional preparatory performances of third parties as long as these are not vicarious agents of the agency shall be additionally billed to the client in accordance with the current compensation rates of the agency.

6. Shipping, Packaging, Delivery Dates

6.1 Unless agreed upon otherwise, the client shall always bear all shipping costs and risks of the necessary deliveries and items. Without special instructions, shipping shall take place in a commercial way chosen by the agency at its discretion without responsibility for special packaging or the cheapest and fastest shipping method.

6.2 The agency is entitled but not obliged to take out transport insurance for the delivery at the cost of the client.

6.3 Any shipping damages must be reported to the agency immediately. On demand, the agency will cede any claims against the shipping provider to the client.

6.4 Any items of the client that the agency needs to fulfill the contract must be delivered free of charge and to the location specified by the agency. These items shall be returned to the client from the event location at the expense and risk of the client.

6.5 Any destruction or loss of the items for which the agency cannot be held responsible or loss at the place of assembly shall be charged to the client.

6.6 Delivery dates shall only be binding if they have been explicitly agreed upon by the agency in writing. Should the agency be late in rendering its services, it shall initially be granted an additional period of four weeks. In the event of this period expiring without result, the client may rescind the contract. Should the delivery or the manufacturing of the goods be delayed due to strike, lockout, war, riot or other cases of force majeure, then the delivery time increases by at least the length of time of the hindrance.

7. Acceptance, Transfer of Risk, Default of Acceptance

7.1 The client shall accept the services provided by the agency by the agreed delivery date if the services rendered are in accordance with the terms of the contractual agreement. Any remaining or incorrect services shall be completed or corrected by the agency as quickly as possible. It shall not be possible to withhold acceptance due to insignificant defects.

7.2 Should the client fail to declare compliance by a specified deadline, the agency can set an appropriate deadline for the submission of the declaration. The services rendered are considered as accepted upon expiry of the respite period if the client does not specify the reasons for refusal of acceptance within this period in writing. If the client has used the services without reservation, the services are considered accepted.

7.3 Acceptance shall be based on regular rehearsals and/or test runs. This does not apply to planning services which shall be deemed complete and ready for approval as soon as they are made accessible to the client.

7.4 If the agency is unable to deliver its services for reasons for which the client is responsible, all risk shall pass to the client on the day the notice of completion is received. The agency shall be deemed to have rendered the services.

7.5 Should the client be in delay in accepting the services of the agency or the goods rendered and/or should the client not pay the advance payment required, the agency shall be entitled to demand a general reimbursement at a rate of 40 percent of the net price of the goods plus any shipping costs already incurred. In case of products that have been specifically designed or manufactured for the client, the agency shall be entitled to a damage claim of 100 percent.

8. Termination

8.1 If the client withdraws from the contract without due reason, the agency shall be entitled to receive remuneration in full for all services rendered up to this point in time. Any services not yet realized shall be charged at a rate of 40 percent of the agreed fee as saved costs.

8.2 If the client fails to accept the services rendered by the agency without good reason and despite notice of completion or if the client fails to meet his payment obligations or does not do so in due form, the agency shall be released from its contractual obligations and retains the rights to demand compensation on the grounds of non-fulfilment after granting a reasonable period of grace.

8.3 As compensation for non-fulfilment, the agency is hereby entitled to claim reimbursement for all services rendered up until termination of the contract plus 30 percent of the value of any services not yet rendered. The client retains the right to furnish evidence that no damage was caused or that losses were lower. The agency retains the right to furnish that damages were higher.

8.4 The extraordinary right of each party to terminate the contract agreed upon shall remain.

9. Obligations of the Client, Organizer Liability

9.1 In due time, the client has to provide all necessary documents required for the realization of the services of the agency. The agency shall not be held responsible for delays caused by a lack of cooperation on the part of the client.

9.2 The client assures that the data he has provided is correct and complete. The client is obliged to notify the agency about changes of personal data or important contractual conditions immediately and in written form.

9.3 In his role of an organizer, the client is obliged to provide additional measures to comply with legislation such as the protection of minors and to especially obtain all necessary permits in agreement with local authorities in a timely manner.

9.4 The client commits himself to purchase an organizer liability insurance for the course of the event.

9.5 If necessary, the agency will pay GEMA fees and will apply for permits and approvals of all kinds at the expense of the client.

10. Warranty

10.1 The agency shall prepare its events diligently and faithfully and shall select and supervise its service providers with the due diligence of a prudent businessman.

10.2 The client shall inspect all services provided by the agency upon receipt thereof and shall report any deficiencies immediately in written form. If despite careful and immediate examination a defect does not become evident until a later date, it must be reported in written form as soon as possible as it comes to light. At any rate, any defects must be reported to the agency within seven days of the end of the event.

10.3 Under the warranty, the client is only entitled to rectification of the defect in question. The agency shall choose the appropriate type and method of rectification at its own discretion. The agency retains the right to make a replacement delivery at any time.

10.4 The client shall be entitled to demand a cancellation of the contract (conversion) or to claim a reduction in price (mitigation) if at least two attempts to rectify the same defect have failed.

10.5 If rectification is no longer possible because the deadline has expired, i.e., the event has ended, the client retains only the right of mitigation.

10.6 The agency shall retain the right to refuse to rectify defects if the client fails to fulfill his contractual obligations, in particular payment obligations, in due form.

10.7 If defects are not reported immediately or if the client accepts a service unconditionally despite known defects, no warranty claims shall be acceptable. The same shall apply if the client makes alterations himself or if he hinders the agency in establishing and rectifying the defect.

10.8 There shall be no claims for compensation by the client, in particular for breach of an obligation to rectify defects, impossibility of service performance, positive breach of an obligation, negligence in contracting, unsatisfactory or incomplete services or unlawful acts unless these are due to gross negligence or intent on the part of the agency.

11. Liability

11.1 The liability of the agency shall be governed by the inalienable legal provisions.

11.2 The agency can only be held liable for rendering quality services to the agreed date if the client has also performed his contractual obligations in due form, in particular with respect to timely payment.

11.3 The agency cannot accept liability for defective deliveries or services of third-party companies that have been commissioned upon request of the client, unless the agency can be shown to have acted willfully or with gross negligence in failing to exert due diligence in selecting and/or monitoring said companies. The client retains the right to demand the transfer of the claims of the agency.

11.4 Unless otherwise agreed, the agency cannot accept liability for objects belonging to the client unless the damage or destruction of the objects in question has been caused willfully or through gross negligence on the part of the agency.

11.5 The agency cannot accept liability for any claims to damages, including those not affecting the services rendered, for example arising from delay, impossibility of service performance, positive breach of an obligation, negligence in contracting or unlawful acts, as long as the damages have not been caused by gross negligence or intent and as long as an exclusion of the compensation claims does not prevent or endanger the fulfilment of the contract.

11.6 No liability can be accepted for (consequential) damages that are not typical for the contract in question. This also applies in the event of gross negligence.

11.7 Unless the agency has caused the damages willfully or through gross negligence, liability shall be restricted to 30 percent of the agency fee previously agreed upon.

11.8 If the agency can be shown to have acted with gross negligence, liability for damages is limited to the total agency fee previously agreed upon.

11.9 These liability limitations apply in equal measure to services rendered by vicarious agents commissioned by the agency.

11.10 Claims for compensation under the German Product Liability Act shall remain unaffected by the above limitations on liability.

12. Property Rights

12.1 Unless explicitly stated otherwise, the agency shall retain the exclusive industrial property rights (copyrights and neighboring copyrights, trademark rights, protection of related rights under competition, patent rights) connected with the services provided by the agency or third parties commissioned therewith on behalf of the client. The client shall principally not be entitled to use them in any form whatsoever. Rights of use and exploitation may only be transferred to a third party by written agreement and apply solely to the specific event named in the agreement. Changes to concepts, designs etc. may be made only by the agency or by persons the agency explicitly authorizes and commissions to do so.

12.2 The client is entitled to use the concepts, designs etc. provided by the agency only for his own purpose and scope detailed in the contractual agreement. Copies may only be made with the prior and express agreement of the agency and, in case of the services being protected by copyright, by the owner of said copyright. Print templates, artwork, films and negatives created by or commissioned on behalf of the agency remain the property of the agency, even when being invoiced to the client.

12.3 If the client supplies information to the agency, especially texts, photos, samples etc., they are used on the condition that the client holds the necessary rights for their use. The agency is not obliged to ensure that the information or documents cannot or will not violate any third-party rights. The client shall hereby immediately release the agency from any claims for damages from third parties and shall be liable in full for any damages arising from the breach of third-party rights, making also advance payments where necessary.

12.4 The agency retains the right to record the event and to use the recordings and any background information about the project for documentation and its own PR purposes. With the client's agreement, the agency may refer to itself on the contract products in an appropriate way. The client may withhold his consent only if he is able to present his overriding interest in this matter.

13. Record Keeping

The agency shall store all documents pertaining the order for six months. Whenever original documents have been provided, such as slides, disks, CDs etc., the client is obliged to make copies. The agency cannot accept liability for any documents which the client does not demand to have returned to him within one month after fulfilling the order.

14. Transfer of Rights

Any transfer of client rights arising from this contractual relationship requires the prior agreement of the agency.

15. Privacy

15.1 The client understands and agrees to the fact that in order to carry out the contract, the agency will store the client's personal information on computer disks and that the agency, if necessary in the context of order fulfillment, will pass said information on to affiliated third-party companies. The client expressly agrees to the collection, processing and use of his personal data.

15.2 The agency shall treat personal information confidentially. The agency may share the information with its subcontractors and may transfer it to carefully selected business partners according to § 11 BDSG, for example to review the credit history of a client.

15.3 The collection, processing and use of personal data are carried out and governed in accordance with the Federal Data Protection Act (Bundesdatenschutzgesetz) as well as the Data Protection Act for Telecommunication (Telemediengesetz).

15.4 The client has the right to revoke his consent at any time effective for the future. In this case, the agency shall be obliged to delete all personal information of the client immediately. For current projects, the deletion will take place after the completion of the contract.

16. Reference and Marketing

The agency has the right to refer to its authorship of all services rendered for the client as a reference in other contexts. The client retains the right to object with effect for the future as long as he can demonstrate legitimate interest. The agency may point out its involvement for promotional and similar endeavors. The client is not entitled to claim any compensation for these rights.

17. Fulfillment, Jurisdiction, Applicable Law

17.1 The place of fulfillment and the sole jurisdiction for all disputes between the parties arising from the agreement shall be the domicile of the agency, as long as the client is a businessman entered in the commercial register, a legal person under public law or special assets under public law. The same applies to persons who have no general place of jurisdiction in the Federal Republic of Germany, have changed their place of residence to somewhere outside of the Federal Republic of Germany after entering the agreement or whose place of residence at the moment of filing a complaint is unknown.

17.2 With regard to all claims and rights under this contract, the law of the Federal Republic of Germany shall apply (BGB, HGB). Application of UN Commercial Law (CISG) is explicitly excluded.

18. Final Provisions

Should an individual provision of these Terms and Conditions prove to be ineffective or invalid, it shall not affect the binding nature of the remaining provisions and contracts based on these Terms and Conditions. The invalid provision shall be replaced by a valid one, corresponding as closely as possible to it in purpose and intention.

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