

PROFASHIONAL

PROFASHIONAL GmbH - Paul-Lincke-Ufer 8b - 10999 Berlin

Geschäftsführung: Rebecca Rupcic - Amtsgericht Charlottenburg HRB 135315 B - USt.IdNr. DE278362773

General Terms and Conditions of PROFASHIONAL GmbH for the Purchase of Goods and Services

§ Section 1 Definition, scope of application

The terms Contract, Client and Contractor are to be construed within the meaning of commercial law. Contract means the agreement between the parties, regardless of the agreement's actual legal classification. Contractor means the party owing the principal service. PROFASHIONAL GmbH will hereinafter be referred to as Client who is provided with the principal service and is under the obligation to pay a fee for it.

The General Terms and Conditions (GTC) below shall apply to all agreements made between the Client and the Contractor. These GTC shall apply regardless of whether the Client awards the Contract in its own or a third party's name. Differing GTC of the Contractor are opposed. Contractor's GTC shall only apply to the extent that the Client has expressly consented thereto in writing. Agreements made with the Contractor on a case-by-case basis (including collateral agreements, supplements and amendments) shall invariably prevail over the Contractor's GTC.

§ Section 2 Deadlines, delivery periods, default

Whenever deadlines and delivery periods are agreed, the same shall be deemed to be fixed.

The Contractor shall immediately inform the Client whenever there is reason to assume that deadlines and delivery periods cannot be complied with. This shall also apply if the Contractor is not responsible for such reason.

If, after having awarded the Contract, the Client requests changes that necessitate extensive rescheduling, the course of the agreed periods will be stopped thereby. Any new time schedule required shall be agreed by common consent.

In the event that the Contractor is in default, the Client may demand contract penalty at a level of 2% of the aggregate Contract value per working day of delayed delivery, limited to a rate of 10% of the total fee. The Contractor shall be at liberty to furnish evidence to show that the Client has not suffered any loss or a lower loss. The assertion of claims for rescission and damages shall not be affected thereby. If damages are claimed, contract penalty shall be applied towards the amount of damages claimed.

§ Section 3 Scope of the Contract

Cost estimates by the Contractor and the scope of the Contract shall be binding. The Client may, even after having entered into the agreement, request changes of the service to be provided, except if such changes cannot reasonably be expected of the Contractor. The fee for the additional expenditure, if required, shall be amicably agreed between the contracting parties. If it is impossible to reach agreement, the Client shall decide at its reasonable discretion in a manner verifiable by a court.

Contractor's delivery and service must conform to state-of-the-art technology and to the samples, models or other drafts provided by the Client.

§ Section 4 Acceptance

If no formal acceptance inspection is carried out, the work shall be deemed to be accepted as soon as it is put to use, no later than 14 days after its delivery. This shall not apply in situations where acceptance was refused.

§ Section 5 Notice of defects, warranty

Any notice of defects – even if it must be given without delay – shall be deemed to be given in due course if it is sent to the Contractor in the ordinary course of the Client's business within one week after delivery or after the detection of the defect. Payment shall not constitute a waiver of such notice.

The Client shall be entitled to fix the period for the assertion of claims for performance, supplementary performance, remedial works or other claims in a manner enabling the Client still to award the Contract to another party and to meet follow-up deadlines in the event that the period fixed by it is not observed.

The Client shall be entitled to the statutory warranty rights without any limitation.

Any supplementary performance shall be deemed to have failed as soon as the first attempt at it has been unsuccessful.

§ Section 6 Invoices, setoff

Invoices shall be sent to the Client within seven days of delivery. The agreed price must not be changed. Additional costs shall only be borne by the Client if it had approved the same in advance.

The Contractor shall not be entitled to any setoff against Client receivables, unless the Contractor's claims are undisputed or finally established by a court of law. The same shall apply to the assertion of any right of retention.

§ Section 7 Special conditions for photographers

The Contractor shall provide the service personally. The rights of use created in favour of the author when the service is performed shall pass to the Client at the time of their creation, being compensated for by the agreed fee.

For the purpose of fulfilling the Contract the Contractor may employ artists and use props and equipment for the Contractor's own account and at the Contractor's own risk. In case of non-appearance or unavailability the Contractor shall bear the artist's fee, the cost of replacement props and replacement equipment and other costs. This shall even apply if the Contractor is not responsible for such non-appearance or unavailability.

The Contractor warrants that the service will be provided free from third-party rights. The Contractor shall obtain third-party rights (e.g. from performers), to the extent that they are required for publication for advertising purposes and are not seconded by the Client, in writing and shall present the same to the Client upon request

In dealings with the Contractor the Client shall be entitled to decide on persons to be employed (e.g. auxiliary staff, performers), props, technical effects and locations. Any agreements as may be necessary (e.g. service, purchase or lease agreements) shall be signed in the name and for the account of the Contractor. Additional expenses incurred thereby, if any, shall be settled between the contracting parties by common consent. Except if provided for otherwise, the agreed fee shall cover all costs incurred by the Contractor in performing the service for the Contractor's own account. Otherwise accounts shall be settled on the basis of supportive documentation.

Work results shall be made available to the Client promptly after the service has been performed, the format being determined by the Client.

§ Section 8 Transfer of rights

The work result will be used for advertising purposes by the Client's customer. For these purposes the work result may be edited or combined with other works and related rights of use may partly or wholly be transferred to third parties.

In case of rights of use that have already been granted such transfer shall be effected on the date of entering into the agreement, otherwise at the time when the rights are created. The fee payable for the transfer shall be agreed in the relevant Contract. The transfer shall cover all copyrights and other rights of use for all types of use conceivable for advertising campaigns now or in future.

The Contractor shall be required to advise the Client on whether and which rights of use relevant to the contractual relationship have been transferred to collecting societies or agencies. The rights required for the achievement of the contractual purposes shall be obtained by the Contractor in writing and be presented to the Client upon request.

The Contractor waives the right to be named as the author. The Contractor warrants that third parties engaged by the Contractor in performing the Contract will likewise waive the right to be named.

The Client is authorised to perpetually use parts of the work result for the purpose of its own advertising on its homepage and within social media.

§ Section 9 Contractor's liability, assignment

The Contractor shall be liable according to the statutory provisions.

Within the Contractor's sphere of risks shall be the destruction or deterioration of props and equipment and the unavailability of artists whom the Contractor explicitly wished to employ or book. If the procurement of replacements causes additional costs, the same shall be borne by the Contractor.

Any increase in expenses caused by force majeure, such as natural disasters, inclement weather conditions, government intervention, closures or strikes shall also lie within the Contractor's sphere of risks. Where deadlines have been agreed as fixed, the Client shall not be deemed to default on formal acceptance as a result.

The Contractor affirms that the use of the work result will not infringe any third-party rights, especially no author's rights, personality rights or trade mark rights.

Claims and rights of the Contractor hereunder may not be assigned to third parties.

§ Section 10 Client's liability

The Client and its agents shall be liable for wilful intent and gross negligence according to the laws and regulations. Where property damage and pecuniary losses have been caused by ordinary negligence, the Client and its agents may only be held liable if a material contractual duty has been breached, such liability being limited, however, in terms of amount to the foreseeable damage typical of the Contract. Liability shall be unlimited in the case of injury to life, the body or health, the breach of warranties or liability according to the Produkthaftungsgesetz [German Product Liability Act].

The Client may not be held liable for third-party claims, in particular claims based on copyright, trade mark and competition law arising from the image content. Amounts subsequently claimed pursuant to sections 32, 32a and 32c UrhG [Urheberrechtsgesetz – German Act on Copyright and Related Rights] shall be borne by the Contractor.

The Client may not be held liable for extended deadlines, the non-appearance of artists or the unavailability of props if the Client is not answerable for the non-appearance or unavailability. In cases of this type the Contractor shall have no claim to being paid deficiency compensation.

§ Section 11 Confidentiality

All documents and any information made available to the Contractor in connection with the performance of the Contract shall be treated as strictly confidential. This duty of confidentiality shall continue to apply even after the contractual relationship has ended or in the event that the Contract is not performed after all. Documents and information may not be made accessible to third parties.

Should third parties be involved in the contractual relations, they shall be committed accordingly.

§ Section 12 Final provisions

German law shall apply.

Place of jurisdiction shall be Berlin.

The place of performance shall be determined by the Client. Delivery shall be effected and service be performed at the Contractor's expense and risk.

As per: March 2018