

PROFASHIONAL

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

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

GTC Agency Services (Sales)

§ Section 1 Definition, scope of application

The terms Contract, Client and Agent 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. Client is the party that purchases the principal service and is expected to pay a fee for it.

PROFASHIONAL GmbH will hereinafter be referred to as Agent who provides the principal service. The General Terms and Conditions (GTC) below shall apply to all agreements made between the Agent and the Client. GTC of the Client shall apply only to the extent that the Agent has expressly consented thereto in writing.

§ Section 2 Deadlines and delivery periods

Deadlines and delivery periods are non-binding and serve as guidelines only, except if expressly agreed as fixed ones in writing.

The Agent shall not be liable for delayed delivery caused by the Client's failure to cooperate. If the Client defaults on accepting a service or acts in breach of duties of cooperation, the Agent may claim compensation for the losses suffered by the Agent.

§ Section 3 Services and remuneration

The scope of the service and the fee payable for it shall depend on the Agent's cost estimate (offer). Such cost estimate will reflect the scope of costs expected to be incurred at the time of its submission, to the extent that it is possible to quantify them already.

Any additional expenditure required shall be communicated by the Agent, be endorsed by the Client and remunerated on the basis of the daily rates agreed in the cost estimate.

Additional expenditures caused by Client requests for changes shall be remunerated on the basis of the same criteria.

The Agent shall be entitled to have services performed by subcontractors. The Client may not reject the subcontractors unless there is good cause to do so, inherent in the subcontractor's person.

The Agent shall obtain any rights of use and exploitation as may be required for the provision of the service or any consent needed from the persons engaged by it for performing the service. The legal review of the work results (e.g. with regard to competition, trademark and copyright law) is not owed by the Agent, except where this has been expressly agreed in writing. Such review shall then be conducted by third parties engaged on terms and conditions customary in the market. The costs or fees incurred for this purpose shall be charged to the Client.

§ Section 4 Acceptance

If the contract between the parties provides for a certain work result (.e.g. delivery of a promotional film), the Client shall be required to accept the same. In the event that the work is not formally declared accepted within one week after its completion and delivery to the Client, the work shall be deemed to be accepted. Putting the work to use or paying for the work shall be tantamount to acceptance. Apart from this, sections 640 et seq. BGB [German Civil Code] shall apply.

§ Section 5 Terms of payment, right of retention, setoff

The Agent's invoices shall be immediately due and payable. If the Client exceeds deadlines for payment or is otherwise in default, the Agent shall be entitled to refuse to continue the performance of the service. The transfer of the rights of use shall be subject to the condition precedent that the final invoice is fully settled.

The quoted prices are prices net of tax. VAT, other fees and contributions (e.g. those payable to the artists' social insurance fund) shall be borne by the Client. This shall also apply where amounts are claimed subsequently. If invoiced items remain unchanged compared to the endorsed cost estimate there shall be no third-party documentary proof.

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

§ Section 6 Agent's liability and warranty

The Agent and the persons engaged by it for the performance of its service shall only be liable for wilful intent and gross negligence according to the laws and regulations. If property and pecuniary damage is caused by ordinary negligence the Agent and the persons engaged by it for the performance of its service shall not be liable unless a material contractual duty has been breached, such liability, however, being limited in terms of amount to the foreseeable damage typical of the contract. A limitation of liability shall not apply in the case of injury to life, the body or health, breaches of warranty or liability under the Product Liability Act.

The Agent may not be held liable for third-party claims, especially not in respect of claims based on trademark, copyright and competition law which relate to the image content. Amounts subsequently claimed pursuant to sections 32, 32a and 32c UrhG [German Copyright Act] shall be borne by the Client.

Warranty on accounts of defects shall be given for a period of 12 months following the acceptance of the work or performance of the service, as the case may be.

§ Section 7 Client's liability

Within the Client's sphere of risks shall be the destruction or deterioration of props and the nonappearance of models or artists engaged or booked by the Agent upon the Client's explicit wish. If the procurement of replacements causes additional costs, the same shall be borne by the Client.

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 Client's sphere of risks. Where deadlines have been agreed as fixed, the Agent shall not be deemed to be in default as a result.

If the Client terminates the contract prematurely at no fault of the Agent, the Agent shall be remunerated for the work performed by such point in time in accordance with the cost estimate. The fee for the services not performed as yet shall be determined according to sec. 648 BGB. In derogation of sec. 648 s. 3 BGB, the Agent shall be entitled to assert 15% of the agreed fee allocable to the part of the service not performed as yet. The Client shall be at liberty to furnish proof to show that the fee owed to the Agent is substantially lower than the flat rate.

§ Section 8 Transfer of rights

Subject to the condition precedent that the final invoice is paid in full, the Client shall acquire the agreed rights of use. Any retransfer of the rights of use shall require the Agent's written approval.

The Agent shall, for the purpose of own advertising, be authorised to use individual photographic and/or cinematic products or parts thereof on its homepage for an unlimited period.

Excluded from the transfer of rights to the Client shall be work results of the Agent rejected or broken off by the Client. These rights of use shall remain with the Agent.

§ Section 9 Final provisions

German law shall apply.

Place of jurisdiction shall be Berlin.