MILLA & PARTNER

General Terms and Conditions

Status 11/2024

1. GENERAL

1.1. These Terms and Conditions shall only apply to entrepreneurs (§ 14 German Civil Code – BGB), legal entities under public law and special funds under public law. These Terms and Conditions shall apply exclusively to all deliveries and services (hereinafter uniformly referred to as "services"), including future deliveries and services, provided by the Agency, in particular the conception and realisation of trade fair stands, events and exhibitions as well as media productions including the creation of software. Deviating or additional conditions of the Customer are non-binding for the Agency, unless the Agency recognises them in writing; in this case they are only valid for the respective individual contract. Agreements concluded in writing with the Customer which deviate from these Terms and Conditions shall remain unaffected.

1.2. If written form is required in these Terms and Conditions, text form shall suffice.

2. CONCLUSION OF CONTRACT

2.1. The Agency's quotations are always subject to alteration without notice; this applies in particular to so-called cost frameworks, cost sketches and cost calculations. The contract is concluded upon issue of the Agency's written order confirmation or on provision of the services ordered.

2.2. The conclusion of the contract shall be subject to the reservation that the Agency shall be supplied by its own suppliers, even if the Agency's services depend on preliminary services provided by third parties (e.g. works services). This shall not apply if the Agency is responsible for the non-delivery or non-performance of the advance performance, in particular if it has not concluded a congruent hedging transaction. The Agency will inform the Customer immediately of non-availability and will reimburse any payments made immediately.

2.3. The Agency shall be entitled, as far as reasonable, to render partial services.

3. SERVICES

3.1. The Agency shall perform the agreed services with due diligence as is customary in the industry and in accordance with the state of the art.
It is entitled to engage subcontractors.

3.2. Within the scope of the agreed services, the Agency shall have freedom of scope.

3.3. The obtaining of necessary official permits, permissions or other approvals as well as customs formalities for services to or from abroad shall only form part of the Agency's services if this has been expressly agreed upon.

3.4. Information regarding the dates and deadlines for services are non-binding unless a deadline or date has been expressly agreed as binding by way of exception. Adherence to dates and deadlines always presupposes that all commercial and technical questions have been clarified between the parties and that the Customer has fulfilled all their obligations in terms of cooperation and provision. Otherwise dates and deadlines shall be extended accordingly. The Agency shall only be in default by means of a written reminder after the due date.

4. PROVISIONS, COOPERATION, APPROVALS, TEMPLATES

4.1. The Agency's services require the close cooperation of the client. The Customer must provide the necessary materials and cooperate in other ways (e.g. deliver texts or images, provide approvals) in good time. The delivery must be made free of charge to the Agency or to the location specified by the Agency. The return delivery shall be made carriage forward from the point of use at the Customer's risk. If the Customer does not comply with its obligations to cooperate in a timely manner or does not do so sufficiently, the Agency shall be exempted from its obligation to provide the services. Costs incurred by the Agency as a result shall be borne by the Customer.

4.2. Suggestions, drafts, test versions and the like which the Customer receives from the Agency shall be checked quickly and carefully, in particular if approvals are necessary for the continuation of the services and the Agency is informed immediately of complaints and requests for changes or approvals. By issuing an approval, the Customer declares that the service provided by the Agency is in accordance with the contract.

4.3. If the Customer hands over drafts, samples or other templates to the Agency, the Customer shall indemnify the Agency if claims are asserted against the Agency due to the infringement of third party rights as a result of the use of the templates.

5. ACCEPTANCE, TRANSFER OF RISK

5.1. If acceptance has been agreed for services, the Customer shall accept the Agency's service after completion.
In the case of events, acceptance shall regularly take the form of dress rehearsals or trial runs; in the case of planning sevices, acceptance shall take the form of approval. The Customer shall participate in the acceptance meeting in person or be represented by an authorised representative. In the case of trade fairs in particular, acceptance meetings at short notice, e.g. one hour before the start of the trade fair, are not inappropriate. The Customer may only refuse acceptance if there is a material defect in the service. A service shall be deemed to have been accepted if the Customer does not object to a significant defect in writing within one week of handover of the service or notification of readiness for acceptance.

5.2. If the Customer uses the service in whole or in part, acceptance shall be deemed to have taken place by dint of the act of use, unless a defect has previously been notified in writing which prevents acceptance.

5.3. If the service cannot be made available to the Customer for reasons for which the Customer is responsible, the risk shall pass to the Customer upon receipt of the notice of completion.

6. REMUNERATION, TERMS OF PAYMENT

6.1. Quotation prices shall only be valid for undivided orders.

6.2. All amounts are net plus statutory value added tax and plus any other public levies which might be due. Expenses and other ancillary costs shall be invoiced additionally according to the expenses incurred; this shall also apply in particular to costs for the artists' social security fund (Künstlersozialkasse) or copyright collecting agencies such as GEMA. Discounts require prior written agreement.

6.3. In the event of default in payment, the Agency shall be entitled to statutory rights, in particular to the statutory default interest.

6.4. The assignment of third parties shall be made in the name and for the account of the Agency. The Agency shall not be obliged to invoice third parties for services rendered by third parties on its behalf or to submit third parties' invoices.

6.5. Services not stated in the quotation which are carried out at the request of the Customer or additional expenses which are caused by incorrect or incomplete information provided by the Customer, delayed or improper advance performance or provision by the Customer or other third parties, insofar as these are not vicarious agents of the Agency, will be invoiced to the Customer additionally.

6.6. If services are provided at trade fairs, the expenses and costs for services which must be used by trade fair companies and third parties commissioned by them (e.g. forwarding services at the trade fair centre, transport at the trade fair centre, provision of forklifts and pallet trucks, disposal) are to be remunerated separately, unless expressly agreed otherwise.

6.7. The Customer shall only be entitled to offset if its counterclaim has been legally established or is undisputed. This shall not apply to a counterclaim arising from a defect based on the same contractual relationship as the Agency's claim. The customer shall only be entitled to exercise a right of retention to the extent that the counterclaim is based on the same contractual relationship.

6.8. If the Customer makes use of work results to a greater extent than originally agreed, the Customer is obliged to pay a fee for the additional use which is calculated on the basis of the ratio of the additional use to the original use.

7. DELIVERY, TRANSPORT

Deliveries made by the Agency shall be made EX WORKS – EXW, premises of the Agency (Incoterms 2010), unless other- wise agreed. If shipment has been agreed, the risk of acci- dental loss and accidental deterioration shall pass upon dis- patch to the Customer – even if the Agency makes the deliv- ery, assumes the shipping costs or carries out the installation or commissioning. In the absence of instructions from the Customer, the type, route and packaging of dispatch shall be chosen in text form at the discretion of the Agency. The Agency shall take out transport insurance only upon request and on behalf of the Customer. The Customer shall examine the delivery on receipt for transport damage. The Customer shall inform the carrier immediately of any transport damage and have the damage notice signed on the consignment note, shipping order or delivery note. The Customer shall also inform the Agency imediately of the transport damage by providing a damage report.

8. TEMPORARY TRANSFER

8.1. If the Agency lends or rents items to the Customer, a formal return shall take place at the request of the Agency immediately on completion of the lending or rental (e.g. at the end of the trade fair). The Customer must participate in the return meeting or be represented by an appropriately authorised agent.

8.2. Objects lent or rented are to be treated with care by the Customer.

8.3. Continued use after the end of the rental period shall not lead to an extension of the rental agreement.

9. INDUSTRIAL PROPERTY RIGHTS, RIGHTS OF USE

9.1. All industrial property rights (in particular copyrights, ancillary copyrights, trademark rights, patent rights) arising in connection with the services to be rendered by the Agency, its employees or third parties commissioned by it shall remain with the Agency, unless expressly agreed otherwise.

9.2. The Agency grants the Customer only rights of use to all work results (including software). Work results are both final results and intermediate results (e.g. plans, drafts, drawings, production and assembly documents, descriptions of exhibition and event concepts). The Customer is granted a non-exclusive, non-transferable right of use for the respective contractual purpose. Granting of an exclusive right of use requires express written agreement; in this case, however, the Agency shall particularly also remain entitled to process and duplicate work results in the context of self-promotion.

9.3. The Customer may not change or remove copyright designations or other identification features of the Agency or of third parties. The Agency shall be named as the author on all copies.

9.4. In the event of a culpable breach of the aforementioned obligations, the Customer shall pay the Agency a contractual penalty of up to 50% of the agreed remuneration, to be determined by the Agency at its reasonable discretion and reviewed by the competent court. The Agency reserves the right to assert further claims for damages.

9.5. The Agency shall grant revocable rights of use only until the remuneration has been paid in full.

9.6. Unless otherwise agreed in writing, the Customer shall receive software in the object code and not in the source code.

9.7. The Agency shall be liable for defects of title under the statutory provisions in accordance with Clause 10.

10. LIABILITY FOR DEFECTS

10.1. The Customer is obliged to check the Agency's services for recognisable defects upon delivery or acceptance and to notify these immediately in writing. If, despite careful inspection, a defect only becomes apparent later, it must be reported immediately in writing. If the Customer violates these obligations, the corresponding defect shall be deemed approved. A notice of defect shall contain as detailed a description of the defect as possible. The Customer shall provide the Agency with information and documents on the notice of defect insofar as this is reasonable.

10.2. If services provided by the Agency under a purchase contract or a contract for works and services are defective, the Agency shall, at its discretion, either remedy the defect or provide a new service (subsequent performance). In the event of failures, unreasonableness or refusal of subsequent performance, the Customer may reduce the remuneration or – if there is a significant defect – withdraw from the contract and/or claim damages in accordance with the liability clause (Clause 11).

10.3. Expenses in connection with subsequent performance arising from the fact that a delivery was to a place other than the agreed place of performance shall only be borne by the Agency if agreed accordingly.

10.4. The Customer may not assign any claims based on defects.

11. LIABILITY FOR DAMAGES AND REIMBURSEMENT OF EXPENSES

11.1. The Agency's liability for damages and reimbursement of expenses for slight negligence, in particular due to breach of duties arising from contractual obligation and tort, shall be excluded unless the Agency has breached an essential contractual obligation, i.e. an obligation the fulfilment of which is essential for the proper performance of the contract or on whose observance the Client may regularly rely. In this case, the Agency's liability shall be limited to the damage typical of the contract, the occurrence of which the Agency had to anticipate when concluding the contract due to the circumstances known to it. However, the liability of the Agency for damages resulting from the violation of body, life or health, for intent and gross negligence, for the absence of a guaranteed quality and under the Product Liability Act (Produkthaftungsgesetz) is unlimited.

11.2. The typical contractual damage is limited to a maximum of EUR 25,000. However, the Agency shall not be liable for indirect or consequential damages such as loss of profit or failure to make savings.

11.3. In the case of services under a rental contract, the Agency's liability for defects, regardless of fault, is excluded in accordance with § 536 a German Civil Code.

12. LIMITATION PERIOD FOR CLAIMS BASED ON DEFECTS AND CLAIMS FOR COMPENSATION

The limitation period for claims on the part of the Customer due to a defect is reduced to one year. The limitation period shall also be one year for the Customer's claims for damages and reimbursement of expenses not based on a defect. However, these reduced limitation periods do not apply to claims of the Customer due to injury to life, body or health as well as to claims due to an intentional or grossly negligent breach of duty.

13. RETENTION OF TITLE, SECURITY RIGHTS

The Agency retains title to deliveries until complete payment has been made of all claims, including future claims, arising from the entire business relationship, including all ancillary claims.

14. TERMINATION

14.1. If the Customer terminates a contract without an important reason, the Agency is entitled to remuneration according to § 648 German Civil Code.

14.2. If the Agency terminates the contract for an important reason, the Agency may invoice the services rendered up to the termination of the contract as well as demand compensation for the services not rendered less expenses saved in accordance with § 648 German Civil Code. The Agency reserves the right to claim higher damages.

15. APPLICABLE LAW, PLACE OF JURISDICTION

German law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). If the Customer is an entrepreneur, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes arising out of or in connection with the contractual relationship shall be the registered office of the Agency or, at its option, the registered office of the Customer. This shall also apply in cases in which the Customer does not have a domestic general place of jurisdiction, has moved their place of residence or habitual abode abroad after conclusion of the contract or neither their place of residence nor habitual abode of the Customer are known at the time the action is filed.

16. SEVERABILITY CLAUSE

If one or more of these conditions are ineffective or become ineffective, the effectiveness of the other conditions shall not be affected by this.