

## GENERAL TERMS AND CONDITIONS of MDS Messebau und Service Gesellschaft für Planungs- Gestaltung- Ausführung mbH

### I. Contractual basics

The following General Terms and Conditions (GTC) govern the relationship between the commissioned company MDS Messebau und Service GmbH ("Contractor") and its customer ("Principal") insofar as the Principal is an entrepreneur within the meaning of Section 14 BGB [German Civil Code]. They shall apply exclusively to all offers, deliveries, and services of the Contractor towards the Principal, subject to individual agreements or arrangements to the contrary between the contracting parties. All orders placed with MDS Messebau und Service GmbH shall be based on these GTC even if the Contractor does not confirm this again each time for subsequent orders.

Reference to the Principal's standard General Terms and Conditions is objected to.

### II. Entering into the contract

1.  
The contract shall be entered into exclusively with the written order confirmation of the Contractor.
2.  
The Contractor's information designated as "offer, cost frame" or "cost outline" is non-binding.

### III. Rental

1.  
If items belonging to the Contractor have been loaned or rented to the Principal, such rented item must be formally returned immediately after the end of the trade show or event at the Contractor's request.
2.  
The Principal must treat items that were loaned or rented to him with care and return them immediately after the end of the event.
3.  
Confirmations of return by the Contractor shall always be made only subject to specific examination.

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BLZ 200 400 00  
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BLZ 240 603 00  
Kto.-Nr.: 201 230 000 0

Hdl.-Reg. Tostedt: HRB 2222  
USt.IdNr.: DE 114953612  
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IBAN:  
DE26 2004 0000 0740 9212 00  
BIC: COBADEFFXXX

IBAN:  
DE63 2406 0300 2012 3000 00  
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DE47 2075 0000 0090 3878 20  
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Netzwerk Holz  
Mitglied  
Qualität  
im Verbund



MEMBER OF  
FAMAB  
ESG  
Engineering and  
Servicegesellschaft

#### **IV. Prices**

1.  
All prices and price quotations shall be understood to be in EUR without statutory taxes and duties and without any other, possibly accruing ancillary duties subject to public law, even if they are not expressly designated as such.
2.  
The offer prices are valid only for undivided order.
3.  
The offer prices are valid for four months from the date of signing of the contract. If delivery periods exceeding these four months have been agreed upon, the Contractor shall be entitled to pass on any price increases of the manufacturers or suppliers to the Principal. The Principal may withdraw from the contract if the price is more than 5% higher than the price at the time the contract was signed. In this case, the Contractor shall be entitled to remuneration for the services rendered up to that point, whereby the services rendered shall also include claims of third parties which the Contractor has commissioned in reliance on the execution of the contract. Further claims are excluded on both sides.
4.  
If the start or continuation of provision of service is delayed for reasons for which the Contractor is not responsible, the Contractor shall be entitled to charge separately for any additional expenses incurred as a result. The Contractor's calculation rates valid on the day of execution shall then apply.
5.  
Services not estimated in the offer, which are carried out at the request of the Principal or additional expenses, which are caused by incorrect information of the Principal, preliminary services of the Principal or other third parties, which are not vicarious agents of the Contractor, shall be invoiced to the Principal in addition. The obtaining of necessary official permits, concessions or other approvals shall only be part of the offer if this is expressly stated. The same applies to customs formalities for deliveries abroad.
6.  
Services and errands performed for the Principal at the Principal's request in connection with the planning and implementation of exhibition participations shall be remunerated separately. The Contractor shall be entitled to charge an advance commission for any amounts advanced in this respect. The Contractor is further entitled to subcontract such services to third parties on behalf of the Principal.
7.  
Insofar as services are provided at trade shows, the offer prices do not include the effort and costs for supplies and services that must be used exclusively by trade show companies or third parties commissioned by them, such as forwarding services on the trade show grounds (e.g. transport on the trade show grounds, provision of forklifts and lift trucks, handling of empties, waste disposal, etc.), unless these services are expressly mentioned in the offer.

#### **V. Delivery/transport**

1.  
If no express deadline has been agreed for the start of execution or completion, the

stated completion/delivery date shall only be approximate.

2.

Any changes or alterations to the execution of the contract made by the Principal after the contract is signed shall also render firmly agreed execution/delivery dates non-binding.

The same shall apply to obstructions for which the Contractor is not responsible, in particular for the untimely provision of documents and materials of the Principal.

3.

If disruptions in business operations occur for which the Contractor or his upstream suppliers or subcontractors are not responsible, in particular cases of force majeure, strike and lockout, which are based on an unforeseeable event for which the Contractor is not responsible and which lead to serious disruptions in operations, the delivery/completion period shall be extended accordingly. If the fulfilment of the contract becomes impossible due to the aforementioned disruptions, both parties are entitled to withdraw from the contract. In this case, the Contractor shall be entitled to remuneration for the services rendered up to that point, whereby the services rendered shall also include claims of third parties which the Contractor has commissioned in reliance on the execution of the contract.

4.

The Contractor's products and (delivery) items shall always travel at the expense and risk of the Principal, unless otherwise agreed. Unless specifically instructed, the Contractor shall determine shipment at his discretion without responsibility for the cheapest and fastest way. Any packaging requested or deemed necessary by the Contractor shall be invoiced separately. For transport arranged by the Principal, the goods to be shipped will only be insured at the express instruction and expense of the Principal. Unless otherwise agreed, all risk shall pass to the Principal when the goods leave the Contractor's premises or otherwise when they are made available to the Principal. This shall also apply in cases where freight paid delivery has been agreed.

5.

Items of the Principal which are to be used in the provision of service must be delivered free to place of use on the agreed date. The Contractor shall not be obligated to return such items. If he is commissioned by the Principal with return delivery, this shall be made freight collect from place of use at the risk of the Principal.

6.

If goods ready for shipment cannot be delivered or made available to the Principal for reasons for which the Principal is responsible, the risk of accidental loss or accidental deterioration of the goods shall pass to the Principal on the day on which the goods are ready for shipment. The Contractor's services shall be deemed to have been rendered after delivery of the notice of readiness for shipment to the Principal.

7.

If goods to be shipped or exhibits of the Principal are to be (co-)transported, the above provisions shall apply accordingly.

## **VI. Loan basis**

The prerequisite for the Contractor's performance obligations is the Principal's creditworthiness. If the Principal has provided incorrect or incomplete information regarding the facts that determine his creditworthiness or has suspended his payments, the Contractor shall not be obligated to provide such service. In such cases, the Contractor may demand advance payment or otherwise suitable security for the claim to remuneration. If the Principal does not comply with this request, the Contractor may terminate the contract for good cause in accordance with item XVI of these Terms and Conditions or withdraw from the contract and claim damages. With regard to the amount, the provision in item XVI, item 2. of these Terms and Conditions shall apply.

## **VII. Acceptance/handover**

1.

Acceptance or handover takes place regularly formally and immediately after completion. The Principal undertakes to be present at the acceptance date himself or to be represented by a duly authorized representative. It is expressly acknowledged that in special cases an acceptance date one hour before the start of the trade show is not unreasonable. The acceptance date shall be determined by the Contractor in accordance with the completion schedule and communicated to the Principal. Any waiting times of the Contractor for which the Principal or his vicarious agent is responsible, e.g. in the event of a late arrival of the Principal, shall be additionally remunerated by the Principal.

2.

If the Principal has used the service or a part of the service without prior formal acceptance, acceptance shall be deemed to have taken place with the act of use, unless defects are previously reported that prevent acceptance.

3.

Any outstanding partial services or reported defects shall be made good or remedied as quickly as possible. Provided that they do not significantly impair the subject matter of the contract, they shall not entitle the Principal to refuse acceptance.

4.

If the service consists of the planning and/or execution of events, acceptance shall take place regularly on the occasion of final rehearsals or trial runs. This shall not apply to planning services which are deemed to be completed and ready for acceptance upon receipt by the Principal.

## **VIII. Offsetting and assignment**

1.

Offsetting or the assertion of a right of retention by the Principal can only be made with undisputed, legally established, or ready for decision claims. This shall not apply if the claim originates from the same contractual relationship against which it is to be offset.

2.

The rights of the Principal arising from this contractual relationship shall only be transferable with the prior consent of the Contractor.

## **IX. Liability for defects**

1.

Liability for defects shall be governed by the statutory provisions unless otherwise agreed in these General Terms and Conditions.

2.

If there is a defect for which the Contractor is responsible, the Principal may initially only demand subsequent performance in the form of rectification of the defect. The manner of proper rectification shall be at the discretion of the Contractor. The Contractor shall be free to make a replacement delivery at any time.

3.

The limitation period for claims for defects of the Principal against the Contractor shall be one year, calculated and starting from the transfer of risk. The foregoing limitations shall not apply to claims for damages or reimbursement of expenses based on gross negligence, intent or breach of contractual obligations, the proper fulfilment of which is a prerequisite for the performance of the contract and the fulfilment of which the customer may regularly rely upon (hereinafter: "main contractual obligations"). They shall also not apply insofar as claims for damages or reimbursement of expenses due to injury to life, body, or health or claims based on the Product Liability Act are concerned. Insofar as a main contractual obligation is negligently breached, the Contractor's liability shall be limited in amount to such damage and expenses as are typically associated with the contract and as are foreseeable.

Unless expressly stated in writing, product descriptions, samples or presentations do not constitute a written guarantee or an assurance of properties.

## **X. Liability**

1.

The Contractor's liability for damage and expenses based on simple negligence shall be excluded unless the claims are based on the breach of contractual obligations whose proper fulfilment makes the performance of the contract possible in the first place and upon whose fulfilment the Principal may regularly rely (hereinafter: "main contractual obligations"), or if claims on the basis of injury to life, limb or health are affected. Claims which find their basis in the Product Liability Act shall also remain unaffected. In the event of a claim for payment, the Principal's claims to default interest shall remain unaffected by the above. The same shall apply to the claim of the Principal for payment of the lump sum pursuant to Section 288 Subsection 5 BGB [German Civil Code] or to compensation for damage resulting from the costs of legal action.

2.

Insofar as a main contractual obligation is negligently breached, the Contractor's liability shall be limited in amount to such damage and expenses as are typically associated with the contract and as are foreseeable. The aforementioned shall also apply to breaches of duty by the Contractor's vicarious agents and legal representatives.

3.

The Principal shall be liable to the Contractor for all items loaned or rented to him, including the trade show booth, up to the total amount of the restoration costs (in the case of repairable damage or the new acquisition value (in the case of destruction and loss).

4.

The Contractor shall not be liable for the Exhibitor's goods unless safekeeping has been expressly agreed in writing. In this case, the Contractor shall only be liable to the extent of the insurance benefits, unless he is responsible for intent or gross negligence.

## **XI. Insurance**

1.

For any transport initiated or carried out by the Principal, the Principal's goods to be shipped shall only be insured to the amount of the replacement value upon the Principal's express instruction and at the Principal's expense. If the Principal fails to take out or commission insurance, the Contractor shall be released from any liability to the extent of the insurance benefit that would otherwise exist.

2.

Obvious transport damage must be reported to the Contractor immediately. In the case of shipment via freight forwarding, obvious damage must be noted immediately on the bill of lading; in the case of rail shipment, a railroad official certificate of damage must be requested and sent to the Contractor. Claims against the transport company shall be assigned to the Contractor upon request.

3.

Unless otherwise agreed, goods of the Principal accepted for storage by the Contractor on the basis of written confirmation shall be insured by the Contractor at the Principal's expense against fire, water damage and burglary for the duration of the storage in the amount of the new acquisition value.

## **XII. Retention of title**

1.

All delivery items and performance results to be transferred shall remain the property of the Contractor until all liabilities arising from the contractual relationship between the parties have been fulfilled in full.

2.

Without the express consent of the Contractor, the Principal shall not be entitled to resell the goods that are subject to retention of title, nor shall he be entitled to any processing of such. Irrespective of this, the Principal hereby assigns to the Contractor claims from a resale of goods that are subject to retention of title in the amount of the final invoice amount (value of the delivery including VAT). The

Contractor shall accept this assignment.

### **XIII. Terms of payment**

1.

Invoice amounts are due for payment immediately upon receipt of the invoice, unless otherwise agreed. Deductions of any kind are excluded; deposits do not bear interest.

2.

Unless otherwise agreed, the Contractor shall be entitled to issue interim invoices or to demand partial payments. As a rule, 50% of the contract sum is due when the contract is awarded, and 50% when the project is completed (handover).

Compensation for the actual additional or reduced costs incurred shall be made with the final invoice by means of a final invoice.

3.

If the Principal fails to meet his payment obligations or fails to do so in a proper manner, he shall not be entitled to use the Contractor's services. In the event that the services or the trade show booth are handed over on loan, the Principal undertakes to grant the Contractor possession of the handed-over services and materials or the trade show booth as a whole again without delay at the Contractor's request.

### **XIV. Rights of exploitation and use, conception**

1.

Offers, plans, drafts, drawings, production and assembly documents, concept descriptions, descriptions of trade show and event concepts; artwork and film material of the Contractor shall remain the property of the Contractor with all rights, even if they have been handed over to the Principal. In this respect, they are entrusted to the Principal within the meaning of Section 18 UWG [Law Against Unfair Competition]. The Principal undertakes to refrain from any other exploitation in all forms, in particular copying and distribution, making changes, passing on to third parties or direct or indirect reproduction. Any transfer of rights of use beyond those required for the fulfilment of the contract and irrespective of whether or not industrial property rights or copyrights exist shall require express written agreement.

2.  
Unless otherwise agreed in writing, changes to plans, drafts, concepts, etc. may only be made by the Contractor. This shall also apply if these documents have become the property of the Principal.

3.  
The Principal shall be presumed to have breached his obligations under this paragraph if he holds trade shows or events that are substantially in accordance with the Contractor's plans and concepts. The Principal is then at liberty to provide evidence to the contrary.

4.  
The Contractor shall be entitled to claim damages in the amount of 50% of the agreed rental price in the event of a breach of the obligations set forth in this paragraph in the event of rental of the results of performance, in particular in the event of unauthorized reproduction. The Principal shall be at liberty to prove that no damage or no damage in the amount stated was incurred.

5.  
If materials or documents are handed over by the Principal for the provision of services, the Principal shall guarantee that the production and delivery of such services provided in accordance with his documents do not infringe upon the industrial property rights or copyright of third parties. The Contractor shall not be obligated to verify whether the information and documents provided by the Principal infringe upon the property rights of third parties. The Principal shall indemnify the Contractor against all claims arising from an infringement of such industrial property rights or copyright.

6.  
The Contractor is entitled to record the event and to use the recordings together with background information about the project for the purpose of documentation as well as for his own PR efforts.

7.  
If requested by the Contractor, the Principal is obligated to name the Contractor in all publications.

## **XV. Termination of contract/termination/cancellation**

1.  
The Principal is entitled to terminate the contract at any time.

2.  
If the Principal terminates or cancels the contract without the Contractor having given good cause for such, the Contractor shall in this case be entitled to 100% remuneration for the services provided up to that point, whereby the services provided shall also include claims by third parties which the Contractor has commissioned in reliance on the execution of the contract. With regard to services not yet performed, the Contractor shall continue to be entitled to the agreed remuneration as follows:

- 41 and more days until the start of the trade show = 15% of the order total
- 20-40 days until the start of the trade show = 50% of the order total
- 10-19 days until the start of the trade show = 85% of the order total
- 9 or less days until the start of the trade show = 100% of the order total

The Principal shall be at liberty to prove that no damage or no damage in the amount stated was incurred.

3.

The right to terminate this contract for good cause remains unaffected. The prerequisite is that a corresponding written request for the elimination of good cause has been made within a reasonable period of time and the deadline has passed without success. Good cause shall be deemed to exist, in particular, if the Principal has persistently or grossly breached his contractual obligations and, in particular, has failed to duly meet his payment obligations despite being requested to do so.

4.

In the event of termination for good cause by the Contractor or withdrawal for reasons for which the Principal is responsible, the above provision of paragraph 2. shall apply accordingly.

The Principal shall be at liberty to prove that no damage or no damage in the amount stated was incurred. Assertion of further damage is not excluded.

#### **XVI. Final provisions 1.**

The sole place of performance and jurisdiction for all disputes arising from the contractual relationship shall be the Contractor's registered place of business, in this case the District Court of Tostedt, insofar as the Principal is a general merchant, a legal entity under public law or a special fund under public law, or if the Principal has his registered place of business abroad.

The contractual relationship shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and private international law.

2.

There are no verbal agreements to this contract. Amendments and additions to this contract, also the non-individual amendment of this written form clause, must be made in writing.

3.

Should individual provisions be invalid in whole or in part, this shall not affect the validity of the remaining provisions. The parties to the contract shall replace the invalid provision with a valid provision that corresponds to the economic sense and purpose of the contract.

Buchholz, February 2016

