

General Business Terms and Conditions for Event Services

I. Definitive terms and conditions

1. The legal relationships of relevance to all goods and services provided by Kirberg GmbH (the Contractor) to and for its customers (Clients) are governed by these terms and conditions as well as other pertinent agreements. These terms and conditions do not apply to goods and services ordered or commissioned by Kirberg GmbH.

2. Other general business terms and conditions do not apply, even if they are not expressly rejected in specific cases. Unless the Contractor is a consumer, these terms and conditions also apply to all future goods and services provided by the Contractor to the Client, even if they are not expressly specified in future agreements.

II. Orders, pricing and payment

1. Oral or telephonic offers by the Contractor shall be recognized as valid only if they are confirmed immediately in writing by the Client.

2. Offers by the Contractor shall expire unless notice of acceptance (including recognition of these business terms and conditions) is received by the Contractor in writing within 10 working days of receipt of the offer by the Client.

3. Unless otherwise specified, prices quoted by the Contractor do not include statutory V.A.T. or charges payable in accordance with public law. Therefore, V.A.T. at the currently applicable rate is to be added to all quoted prices in addition to other taxes, fees and charges incurred in fulfillment of the contract. Quoted prices apply only to the container sizes or quantities and services specified in the offer and for the delivery periods specified therein.

4. Unless otherwise specified by agreement between the parties, payment is due in full as of the invoice date. Payment obligations shall be regarded as fulfilled only when payment is credited in full to an account held by the Contractor. Any and all related fees or charges – especially for payments or bank transfers from abroad – must be paid by the Client. The Contractor is entitled at any time to demand concurrent quid-pro-quo payment for goods or services rendered. Payments are to be rendered in cash or by bank transfer.

5. The Client is entitled to offset only undisputed counterclaims or those defined by enforceable final judgment, counterclaims on which a final ruling is pending and counterclaims that are uncontested by the Contractor or for which the Contractor has expressly approved offsetting in writing. The Client is entitled to exercise his right of retention only in the cases cited in the preceding sentence.

6. No restrictions are imposed on the Contractor's rights of retention and entitlement to offset claims. Thus the provisions of the law apply.

7. The Client shall render a down payment equivalent to 80% of the value of the contract upon placement of the order. Said down payment must be received by the Contractor within three days of receipt of a written order. The remaining 20%, plus remuneration for special and/or additional services, will be billed after the event and shall be due and payable within 10 days of the invoice date.

III. Scope of services / changes, notice of termination/cancellation

1. Agreements on quality must be recorded in writing. Unless otherwise specified by express agreement, product descriptions, presentations or samples (including

sample meals, in particular), shall not be regarded as agreements on quality.

2. In the event that the Client cancels the contract or fails to accept services to be rendered by the Contractor without issuing prior notice of cancellation, the Contractor shall be entitled to claim compensation at the following rates (expressed as a percentage of the total contract value) – provided the Client has given no good cause for the cancellation/lack of use:

- between 9 months and 3 months prior to the beginning of the event: 20 %
- up to 1 month prior to the beginning of the event: 35 %
- up to 7 days prior to the beginning of the event: 80 %
- thereafter: 90%

of the contract value plus any costs incurred for the purpose of commissioning third-party services which are not covered by the compensation. The Client is entitled to show evidence that the actual damages incurred in a specific case are less than the specified lump-sum amount or that no damages were incurred at all. Instead of the lump-sum amount, the Contractor can calculate the specific amount of compensation to which he is entitled on the basis of the costs he has incurred, with reference to the individual and total prices quoted in the offer.

3. The Contractor's claim for compensation is based on the number of persons engaged to perform services under the contract. The Client must notify the Contractor of an increase or decrease in the number of persons in writing no later than 14 days before the beginning of the event. Should the punctually updated and reported number of persons differ by no more than 10% from the number of persons originally engaged under the contract, the amount of compensation due to the Contractor shall be adjusted upward or downward accordingly on a pro-rated basis. Should the punctually reported increased or reduced number of persons differ by more than 10% from the number of persons originally engaged under the contract, the Contractor shall be entitled to reject an adjustment of the contract value in excess of a difference of 10% or to present a new offer, thereby amending the contract to reflect the change in the number of persons. If the Client refuses this offer, the Contractor shall not be obliged to render services valued in excess of the difference of 10%.

4. In the event that the number of persons required to provide event services exceeds the number of persons originally engaged under the contract and the Contractor is either not notified of the change in time or is not notified at all, the Client shall be obliged to pay additional compensation for the increased number of persons to the Contractor. Said additional compensation is to be calculated on a pro-rated basis reflecting the difference in the number of persons engaged. The Client is not entitled to demand an adjustment of the scope of services provided by the Contractor. However, the Contractor agrees to make every reasonable and feasible effort to adjust the scope of services accordingly. Should the number of persons engaged to render services decrease due to failure to provide timely notification or in the course of the event, the Client shall not be entitled to reduce the amount of compensation specified in the contract. He shall be required to pay the full amount of compensation specified in the contract.

5. Should the Contractor incur additional costs in excess

of those originally calculated, e.g. due to the inability of the Client's chosen supplier to deliver as ordered, as a result of an increase in the scope of services required by the Client, the Contractor shall be entitled to pass said additional costs on to the Client. He shall notify the Client immediately once such additional costs have been determined. This obligation to inform shall have no effect on the Contractor's entitlement to compensation for additional costs.

6. The provisions of paragraph 3 notwithstanding, the Contractor shall be entitled in the event of changes that occur after conclusion of the contract to claim reasonable and appropriate compensation for the costs associated with said changes, provided the changes in question are not attributable to behavior on the part of the Contractor.

7. The Client is required to notify the Contractor of the number of persons attending in writing at least 14 days prior to the beginning of the event. Said notification shall be regarded as binding and must be received by the Contractor within this 14-day period. Notices regarding changes received thereafter shall not be considered in determining the scope of the goods and services to be provided by the Contractor. The Contractor shall be entitled to verify the number of persons designated by the Client on the basis of his own calculation.

8. The Contractor shall be obliged to provide services in the manner normally to be expected for services of the same type, i.e. of medium type and quality. Deviations, particularly from preceding test meals or the contents of descriptions contained in the contract, are permissible, provided they are shown to be necessary, imperative or at least appropriate and worthy of acceptance by the Client.

IV. Force majeure

Force majeure, labor disputes, civil unrest, measures imposed by government agencies and other unforeseeable, unavoidable and serious events shall absolve the parties to the contract from their contractual obligations for the duration of the disturbance and within the scope of its impact. This also applies in cases in which such events occur at a point in time at which the party in question is in arrears in fulfilling its obligations. The parties to the contract shall be required, within reason, to provide each other all necessary information and to adjust their demands in good faith to the altered circumstances.

V. Defects, complaints, acceptance, rights relating to defects

1. Changes in the nature of goods and/or services provided under the terms of the contract do not require the prior oral or written approval of the Client, provided they are appropriate or have been requested by the Client and can be effected by the Contractor. Changes of this kind shall not be regarded as defects.

2. In so far as the contract is not a trade transaction for either party, the Client is obliged in view of the specific requirements of this contract to notify the Contractor of any identified defects immediately, if possible via telecommunication channels or orally at the event venue. Art. 377 HGB (German Commercial Code) shall not be affected. The term "immediately" means that the Contractor must be given sufficient opportunity to rectify any identified defects during the event unless the Client is prevented from doing so for reasons for which the Contractor is responsible.

3. Given the nature of the contract, the acceptance inspection can often be performed only immediately preceding the beginning of the event. The Client recognizes that an acceptance inspection shortly before the beginning of the event is not inappropriate. The acceptance inspection is to be performed by the Client in person, by his legal representative or by a representative authorized by him. Said representative shall be obliged to provide proof of authorization if so requested by the Contractor. The acceptance inspection is to be performed immediately once services are rendered and/or goods are delivered. Should the Client be unable to perform said inspection at this time, and if this is not attributable to circumstances for which the Contractor is responsible, the goods and services shall be regarded as accepted.

4. If either the Client or his guests have received or made use of the services partially or completely in the absence of a formal acceptance inspection, e.g. by consuming the delivered foods and/or beverages, the goods/services in question shall be regarded as accepted.

5. The Client's rights with respect to defects are limited in principle to replacement delivery. Should replacement delivery fail to rectify the problem, the Client shall be entitled to choose between reducing compensation and canceling the contract.

6. The Client may choose between rectification and replacement delivery at his discretion.

7. Claims relating to defects shall not be recognized if the defect is attributable to failure to observe operating, maintenance and installation instructions, e.g. for coffee makers or other devices made available to the Client, improper or negligent handling and natural wear and tear or interventions in the delivered object by the Client or third parties, to the extent that they can be assigned in keeping with the terms of the contractual agreement to the scope of risks to be borne by the Client.

8. If the Client demands replacement delivery, cancels or withdraws from the contract for justifiable reasons due to a physical defect or reduces the amount of compensation for justifiable reasons in such a case, the Client's right to demand replacement delivery, reduction of the amount of compensation or reimbursement of the price of the object in question expires after 12 months if the Client is not a consumer.

9. The statute of limitations on rights of recourse in accordance with Art. 479 BGB remains unaffected. Otherwise, the applicable statutory provisions apply to the statute of limitations, including especially those pertaining to the beginning of the limitation period.

10. In cases involving defective or deficient deliveries, claims by the Client based on product liability law, unlawful acts and conduct of business without due authority shall not be affected by the provisions of section V.

VI. Contractor liability

1. The obligation of the Contractor to pay compensation for damages presupposes fault on the part of the Contractor or the attribution of fault to the Contractor for damages caused by the Contractor. The provisions regarding the statute of limitations set forth in Art. 438 BGB and/or Art. 634a BGB also apply to compensation for damages incurred by the Client or a third party resulting from defects in other generally legally protected rights or assets (e.g. property, physical integrity, etc.), provided Art. 438 BGB and/or Art. 634a BGB are applicable in principle to the contract. Sections V.7. and V.9., sen-

tence 1 and 2, apply accordingly. The following paragraphs in this section are to be considered in assessing the reasons for liability and the extent of liability.

2. The Contractor has unlimited liability in cases of personal injury for which he is at fault. Otherwise, he is liable for compensation for damages only in cases involving acts of willful intent or gross negligence committed by himself or one of his legal representatives or persons he has engaged to assist in fulfilling his contractual obligations. In cases involving slightly negligent violations by the aforementioned individuals, the Contractor shall be liable only if the violation in question can be regarded as a violation of essential contractual obligations. An essential contractual obligation of the aforementioned type is one which is necessary for the proper fulfillment of the contract and which the contract partner can normally and reasonably expect will be met. In cases of slight negligence, the extent of liability is limited to damages typical of the type of contract in question and, if the Client is a businessperson, additionally to the value of the ordered goods and/or services. The Contractor is not obliged to compensate for lost profits or immaterial losses.

3. If the Client is subject to claims based on non-negotiable liability to third parties regardless of culpability, the Contractor shall be liable to the Client only to the extent to which he is liable to the Client in accordance with applicable provisions of the law in keeping with these General Business Terms and Conditions.

4. Claims by the Client shall not be recognized in cases in which the damages in question are attributable to failure by the Client or his representatives to follow operating, maintenance and installation instructions, improper or inappropriate use (e.g. of coffee makers or other devices made available to the Client), improper or negligent handling, natural wear and tear or faulty repairs, to the extent that they can be assigned in keeping with the terms of the contractual agreement to the scope of risks to be borne by the Client.

5. In the event that he intends to file claims against the Contractor on the basis of the aforementioned provisions, the Client shall inform and consult with the Contractor immediately and completely. He must offer the Contractor sufficient opportunity to investigate the claim. The parties to the contract are to discuss measures to be taken in response within the specific context of settlement negotiations.

6. The limitations on liability and the exclusions from liability set forth in paragraphs 1 through 5 of this section apply to the same extent to the legal representatives, management and non-managerial employees and other agents of the Contractor.

7. If the damages incurred by the Client are covered by insurance, the obligation of the Contractor to compensate for damages is limited to the disadvantages that are not covered by insurance.

VII. Contract penalties, lump-sum compensation for damages

Regardless of the type of claim (claims relating to defects, compensation for damages in lieu of or in addition to performance, compensation for damages resulting from delays, product liability, etc.), the Client is obliged to calculate the concrete value of the damages incurred. Lump-sum claims for compensation will not be recognized. The contract does not provide for contract penalties. Agreements regarding lump-sum compensation and contract penalties must be recorded in written form in individual contracts.

VIII. Client obligations and liability

1. In cases involving musical performances of any kind, the Client is required to notify GEMA and ensure proper reporting and payment.

2. Guests shall not be permitted to bring food, beverages or other consumer goods of any kind to the event venue. The same applies to the consumption of such items within the premises of Flora Köln, to include all corresponding outdoor areas. Failure to enforce this prohibition will entitle the Contractor to claim compensation equivalent to the amount of income lost as a result. The consumption of tobacco is permitted in the corresponding outdoor areas. Otherwise, the consumption of tobacco products is prohibited, especially in the indoor areas.

3. The Client shall be liable for all damages caused by the Client, his agents, his guests or third parties engaged by the Client to provide services in support of the event (including set-up and removal operations), unless the damages are not caused by culpable behavior. The Client has been expressly informed about the possibility of obtaining an event insurance policy.

4. The Client shall provide the Contractor and his service providers all necessary permits, concessions, access authorizations, vehicles passes, etc. for the event at the Client's expense and without being requested to do so by the Contractor. The Contractor shall provide all information relating to his business operation to the Client on request.

IX. General provisions

1. In the event that any provision of these terms and conditions or additional agreements made between the parties be or become invalid or unenforceable, the remaining provisions of the contract shall not be affected. The parties to the contract are obliged to replace the invalid or unenforceable provision with a provision that comes as close as possible to ensuring the economic success intended by the original provision.

2. The contract is subject solely to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 does not apply.

3. The place of performance shall be determined on the basis of applicable laws. Agreements which deviate from the terms of the contract must be recorded in written form in individual contracts.

4. If the Client is a businessperson, a legal entity under public law or special fund under public law, the judicial venue for all judicial procedures is the location of the Contractor's registered office. The Contractor also has the right to file claims against the Client at the Client's general court of jurisdiction.