

TERMS AND CONDITIONS

I. Basis of contract

The following Terms and Conditions shall govern the relationship between conform GmbH (‘Contractor’) and its client (‘Client’) where the Client is an entrepreneurial undertaking under Section 14 German Civil Code (Bürgerliches Gesetzbuch, BGB).

They shall apply to the exclusion of all others to all quotations, deliveries and services made by the Contractor for the Client, subject to varying, individual arrangements or agreements between the Parties. Any standard reference to Client terms and conditions shall hereby go unrecognised by the Contractor.

II. Commencement of contract

1. The contract shall take effect on signature of the contract document or on written order confirmation from the Contractor.
2. Contractor Information marked as ‘budget’, ‘estimated costs’ or ‘rough calculation of costs’ shall be non-binding.

III. Provision on a hire basis

1. Should objects of the Contractor be provided to the Client on the basis of a hire or rental agreement, and should it be requested by the Contractor, a formal return of the hired objects shall take place directly after the trade show or event ends. The Client shall be required to attend on the return date or be represented by an agent with corresponding authorisations.
2. The Client shall handle such objects provided on a hire or rental basis with care and return them immediately after the event ends.
3. Confirmations of return from the Contractor shall always only be issued subject to a physical inspection.
4. Hire fees shall be calculated by calendar day unless otherwise explicitly arranged. The day of handover of the hired objects shall count as the beginning of the hire and the day of their return shall count as the end of the hire. Where return of the hired objects is delayed for reasons of the Client’s fault, the full hire fee for one day shall be charged for each additional day.
5. The Contractor shall be entitled to a reasonable deposit for the duration that objects are provided on a hire basis. This deposit shall not attract interest.

IV. Prices

1. All prices and pricing information shall be considered as in euros and exclusive of statutory taxes and fees and other potential public charges, even when they are not marked out explicitly.
2. Quoted prices shall only be valid when the order is not split.
3. Quoted prices shall be valid for the four months following conclusion of the contract. Should delivery deadlines be agreed in excess of this four-month period, the Contractor shall be entitled to pass on to the Client price increases from manufacturers or suppliers or wage rises. The Client may withdraw from the contract if the price becomes more than five per cent more than the price at the time of conclusion of the contract. In this case, the Contractor shall be entitled to payment for the services rendered up to that point in time, also counting among rendered services the entitlements of third parties subcontracted by the Contractor in the belief that the contract would be performed. Entitlements in excess of the above shall be ruled out for both Parties.
4. Should the beginning or continuation of service delivery be delayed for reasons not of the Contractor’s fault, the Contractor shall be entitled to charge separately for any additional expenses incurred as a result of that delay. The Contractor’s rates applicable as at the day of execution shall then be used as a basis for charges.
5. Services not quoted in the quotation and executed at the request of the Client or additional expenses incurred as a result of erroneous information from the Client or as a result of preliminary work not performed properly or in time by the Client or other third parties, unless those third parties are agents of the Contractor, shall be billed to the Client additionally. The obtaining of required government permits, licences or other approvals shall only form part of the quotation if it is explicitly listed. The same shall apply to customs formalities for international deliveries.
6. Services performed and goods provided for the Client at its request as part of the planning and execution of exhibits shall be paid for separately. The Contractor shall be entitled to charge an advance handling fee for amounts that are paid in advance in this context. The Contractor shall further be entitled to contract out such services to third-party companies in the name of the Client.
7. Where services are performed at trade show venues, the quoted prices shall not include the expenses and costs for deliveries and services that need to be utilised solely by venue companies or third parties contracted by them, such as forwarding services on the venue grounds (e.g. transport on the venue grounds, provision of forklifts and lift trucks, handling of empty containers, disposal etc.) unless these services are explicitly specified in the quotation.

V. Delivery/transport

1. If there is no explicit date agreed for the beginning of performance or completion, the specified completion/delivery date shall only apply as an approximate date.
2. If there are changes or adjustments of performance put forward by the Client after conclusion of the contract, fixed execution/delivery dates that may have been agreed shall also lose their binding nature. The same shall apply to obstacles for reasons not of the Contractor’s fault, especially for non-timely provision of Client documents and materials.
3. Should there be disruptions to business operations for reasons not the fault of the Contractor or its upstream suppliers or subcontractors, particularly in cases of force majeure, strike and lockout, with these disruptions being based on an unforeseeable and involuntary event and leading to major business disruptions, the delivery/completion deadline shall be postponed accordingly. Should performance of the contract become impossible due to the aforementioned disruptions, both Parties shall be entitled to withdraw from the contract. In this case, the Contractor shall be entitled to payment for the services rendered up to that point in time, also counting among rendered services the entitlements of third parties subcontracted by the Contractor in the belief that the contract would be performed.
4. The products and (delivered) objects from the Contractor shall always travel at the Client’s expense and risk unless otherwise agreed. Unless there exists a special instruction, the Contractor shall determine the delivery method at its own discretion with no liability to use the cheapest, fastest method. Desired packaging or packaging considered necessary by the Contractor shall be billed separately. For consignments arranged by the Client, the carried goods shall only be insured at the explicit instruction of the Client, who shall pay the associated costs. Unless otherwise agreed, all risk shall pass to the Client when the goods leave the Contractor’s premises or are otherwise provided to the Client. This shall also apply in cases where free of charge delivery has been agreed.
5. Objects belonging to the Client that are intended to be used when rendering services shall be supplied free of charge at the point of usage on the agreed date. The Contractor shall not be required to return such objects. Should the Contractor be contracted with the objects’ return, the return shall take place carriage forward, from the place of usage and at the Client’s risk.
6. If the dispatch-ready goods cannot be dispatched or provided to the Client for reasons of the Client’s fault, the risk of accidental loss or deterioration of the goods shall pass to the Client on the day the goods become ready for dispatch. The Contractor’s services shall be deemed rendered on delivery of notice of being ready for dispatch to the Client.
7. Should the Client’s goods or exhibits be carried (with other goods), the above provisions shall apply accordingly.

VI. Basis of credit

Creditworthiness of the Client shall be a requirement for service obligations of the Contractor. Should the Client have provided inaccurate or incomplete information about the circumstances underlying its creditworthiness, or have missed payments, the Contractor shall not be required to render services. In these cases, the Contractor may demand advance payment or other appropriate security for its entitlement to payment. Should the Client not comply with this demand, the Contractor may cancel the contract for good cause in accordance with Section XIV of these Terms and Conditions or withdraw from the contract and obtain compensation. The provision in Section XIV (2) of these Terms and Conditions shall govern the amount of compensation.

VII. Acceptance/handover

1. Acceptance and handover shall normally occur based on set, formal procedures immediately after completion. The Client shall be required to attend on the acceptance date itself or be represented by an agent with corresponding authorisations. The Client shall explicitly accept that, in exceptional situations, an acceptance time one hour prior to the show’s beginning is not unreasonable.
2. Should the Client have put the service or a part thereof into use without preceding, formal acceptance, the action of usage shall be deemed acceptance unless defects opposing acceptance are reported beforehand.
3. Outstanding part-services or reported defects shall be rendered or resolved as quickly as possible. Unless they considerably impair the functionality of the object of the contract, they shall not form an entitlement to refuse acceptance.
4. Should the service exist in the form of planning and/or execution of events, acceptance shall normally occur in the form of dress-rehearsal acceptance testing or test runs. This shall not apply to planning services, which shall be considered as complete and ready for acceptance on receipt by the Client.

VIII. Offset of counterclaims and assignment

1. The Client may offset counterclaims or enforce a right of retention only in respect of claims that are undisputed, upheld by legal proceedings or ready for decision. This shall not apply where the claim originates from the same contractual relationship as the claim of ours that is intended to be offset against.
2. The rights of the Client in this contractual relationship shall only be able to be assigned with the prior approval of the Contractor.

IX. Liability for defects

1. Liability for defects shall be based on statutory provisions unless otherwise arranged in these Terms and Conditions.
2. Should there exist a defect for which the Contractor is responsible, the Client may normally only request subsequent performance in the form of subsequent improvement work first. The type and nature of appropriate improvement work shall be determined at the discretion of the Contractor. The Contractor shall at all times maintain an option of making a substitute delivery.
3. The expiry date for Client claims against the Contractor that are based on defects shall be one year after passage of risk. The above restrictions shall not apply to claims for compensation or reimbursement that are based on gross negligence, intent or breach of contractual obligations whose fulfilment enables performance of the contract in the first place and on whose fulfilment the Client can typically rely (‘cardinal obligations’). They shall also not apply where claims for compensation or reimbursement are based on injury to life, limb or health or concern entitlements on the basis of the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG). Where a cardinal obligation is breached as a result of negligence, the Contractor’s liability shall be limited to the amount for damages and expenses that are typically associated with and foreseeable under such a contract. Unless otherwise declared in writing, product descriptions, samples or presentations shall not represent warranties or assurances of characteristics.

X. Liability

1. Contractor liability for damages and expenses based on simple negligence shall be ruled out unless the claims are based on the breach of contractual obligations whose fulfilment enables performance of the contract in the first place and on whose fulfilment the Client can typically rely (‘cardinal obligations’) or concern claims based on injury to life, limb or health. Claims based on the Product Liability Act shall also not be affected thereby. In the event of a claim for payment, the Client’s entitlements to interest shall not be affected by the above. The same shall apply to the entitlement of the Client for a claim to payment of the lump sums under Section 288(5) BGB or to compensation for a loss incurred through the costs of legal action.
2. Where a cardinal obligation is breached as a result of negligence, the Contractor’s liability shall be limited to the amount for damages and expenses that are typically associated with and foreseeable under such a contract. The aforementioned shall also apply to breaches of obligations by agents and legal representatives of the Contractor.
3. The Client shall be liable to the Contractor for all objects provided to the Client on a hire or rental basis, including the exhibition display, up to a total of the amount of restoration costs or the new purchase value (if destroyed or lost).

XI. Insurance

1. For consignments arranged or carried out by the Client, the carried goods shall be insured at the new purchase price only at the explicit instruction of the Client, who shall pay the associated costs.
2. Obvious damage sustained during delivery shall be immediately reported to the Contractor. If dispatched with a forwarder, obvious damage shall immediately be noted on the consignment note and, if dispatched by rail, certification of the damage by the train operating company shall be obtained; said documents shall be sent to the Contractor. Claims against delivery companies shall be assigned to the Contractor if requested.
3. Client goods taken by the Contractor based on a written confirmation for storage shall, unless otherwise agreed, be insured by the Contractor against fire and water damage and theft at new purchase value and at the Client’s expense for the duration that they are in storage.

XII. Retention of title

1. Title to all objects supplied and products of services being transferred shall remain vested in the Contractor until full discharge of all liabilities arising from the contractual relationship between the Parties.
2. Each transfer of usage and exploitation rights shall only take effect on full discharge of all liabilities arising from the contractual relationship between the Parties.
3. The Client shall not be entitled to resell goods with retained title or to modify or process them without the explicit approval of the Contractor. Notwithstanding the above, the Client hereby assigns to the Contractor all claims arising from the resale of goods with retained title in the amount of the final invoice value (value of the delivery including value added tax). The Contractor hereby accepts this assignment.

XIII. Usage and exploitation rights, concept design

1. Title to quotations, plans, drafts, drawings, production and installation documents, concept descriptions, descriptions of exhibit and event concepts; print templates and film material belonging to the Contractor shall remain vested in the Contractor along with all rights, including when they have been provided to the Client. In this respect, the preceding objects shall be entrusted to the Client in the sense of Section 23 Act on the Protection of Trade Secrets (Gesetz zum Schutz von Geschäftsgeheimnissen, GeschGehG). The Client shall be required to refrain from any other exploitation in any other form, particularly reproduction and distribution, carrying out modifications, disclosure to third parties or direct or indirect replication. An explicit, written agreement shall be required to transfer usage rights in excess of those required to perform the contract, regardless of whether industrial property rights or copyrights exist or not.
2. Unless otherwise agreed in writing, only the Contractor may make changes to plans, drafts, concepts etc. This shall apply even if these documents become the property of the Client.
3. It shall be assumed that the Client has breached the obligations in this section if it hosts exhibits or events that for the most part match the plans and concepts belonging to the Contractor. The Client shall in this case be free to provide evidence to the contrary.
4. The Contractor shall be entitled to compensation of 50 per cent of the agreed hire price in instances of violation of the obligations listed in this section where the products of a service are provided on a hire basis, particularly in instances of unapproved replication. The Client shall be free to provide evidence that no loss has been incurred or that any loss was of a different amount.
5. Should the Client provide materials or documents for the rendering of services, the Client shall be liable for ensuring that the industrial property rights or copyrights of third parties are not violated through the production and delivery of the services rendered based on its documents. The Contractor shall not be required to investigate whether the information and documents provided by the Client breach the industrial property rights of third parties. The Client shall indemnify the Contractor for all claims arising from a breach of such industrial property rights or copyrights.
6. The Contractor shall be entitled to record the event and use the recordings along with background information about the project for the purpose of documentation and the Contractor’s public relations.
7. If desired by the Contractor, the Client shall be required to name the Contractor in all publications.

XIV. End of contract

1. The Client shall be entitled to cancel the contract at any time.
2. Should the Client cancel the contract without illustrating good cause for doing so, the Contractor shall in this case be entitled to payment for the services rendered up to that point in time, with the rendered services also including the entitlements of third parties subcontracted by the Contractor in the belief that the contract would be performed. With regard to services not yet rendered, 40 per cent of the payment agreed for them shall be agreed as saved expenses. The Contractor shall factor this rate into its entitlement to payment unless the Contractor provides evidence that expenses of only a smaller amount were actually saved. Vice versa, the Client shall be free to provide evidence that the Contractor has actually saved on expenses of a higher amount.
3. The right to cancellation for good cause shall remain unaffected. A requirement for this shall be that a corresponding, written request to resolve the issue underlying the good cause be made beforehand, providing a reasonable deadline which then passes fruitlessly. In particular, good cause shall exist if the Client has breached its contractual obligations grossly or with lasting effect and especially if the Client does not duly discharge its payment obligations despite demands to do so.
4. In the event of cancellation for good cause by the Contractor or of withdrawal from the contract for reasons attributable to the Client, the above provision in paragraph 2 shall apply accordingly. The Client shall be free to provide evidence that no loss has been incurred or that any loss was of a different amount. It shall not be prohibited to exercise claims for further losses.

XV. Final provisions

1. The place of performance and venue for all disputes arising from the contractual relationship shall be in the city where the Contractor has its principal place of business, provided the Client is a merchant registered under the German Commercial Code or legal entity under public law, including one with access to special public funds, or the Client is based in a foreign country.
2. German law shall underlie decision-making in respect of the contractual relationship; application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and conflict of laws shall be prohibited.