

# General Terms and Conditions of Walbert-Schmitz GmbH & Co. KG

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## I. Scope of application

1. These General Terms and Conditions [hereinafter referred to as: „T&Cs“] apply to all legal relationships between Walbert-Schmitz GmbH & Co. KG [hereinafter referred to as „Contractor“] and the Principal, that means all of the Contractor's offers, contracts, services, and deliveries.
2. The General Terms and Conditions only apply to business persons.
3. These General Terms and Conditions apply exclusively. General Terms and Conditions of the Principal are not accepted. Acceptance of a counter-confirmation by the Principal, with reference to its general terms and conditions, does not constitute consent. These General Terms and Conditions shall also apply if the Contractor carries out services and deliveries without reservation in the knowledge of conflicting or deviating general terms and conditions of the customer.
4. These General Terms and Conditions apply in their respective valid versions for all future legal transactions with the Principal. For these subsequent transactions the Contractor provides the Principal with the opportunity for reasonable acknowledgement of these General Terms and Conditions.

## II. Conclusion of a contract

1. The contractor makes a non-binding offer.
2. The contract between the Contractor and the Principal is formed upon acceptance of the Contractor's offer by the Principal by means of an order confirmation.
3. Planning, designs, drawings, models and templates shall be created and paid for in addition, if they are required by the Principal in writing or informally and the negotiations do not lead to a contract pertaining to the construction of a trade-fair stand.

## III. Particulars of the contract

Dimensions, weights, illustrations, descriptions and drawings, as well as other documentation, are only approximations unless explicitly assured as binding. Minor deviations in the consistency of the materials, dimensions, and forms are permissible.

## IV. Delivery, ex works

1. The services of the Contractor shall be carried out „ex works Contractor factory Aachen“ in accordance with Incoterms 2010. For purposes of clarification it is pointed out that the Contractor delivers the goods by providing the goods to the Principal at the nominated place of delivery at the agreed location, however without loading onto the collecting means of transport. If a specific location was not agreed upon at the place of delivery, and if several locations could be considered, the Contractor may select the location best suitable for the purpose.
2. If the service is delayed by the Contractor, then the deadlines set by the parties are extended adequately to the duration of the respective circumstances. This is also valid in the event of delays due to circumstances, which are not attributable to either the Contractor or the Principal, in particular acts of God, terrorist attacks, official decrees, strikes, lockouts, fire, war, energy failure, accidents, water shortages and natural disasters.
3. If the Principal is in default of acceptance, they shall reimburse the Contractor for the resulting damages and additional costs. If the goods are stored with the Contractor or a third party, the Principal is obligated to pay storage costs, which are negotiated separately. The obligations regarding the payment of agreed remuneration remain unaffected.
4. If the Contractor is not able to deliver or provide the services according to the agreement on schedule, they shall inform the Principal of this fact as soon as possible, stating the reasons for the delay and the expected duration of the delay.

## V. Transfer of risk

The services of the Contractor shall be carried out „ex works Contractor factory Aachen“ in accordance with Incoterms 2010.

The Contractor thus bears all risks of loss of or damage to the goods until delivery.

## VI. Remuneration

1. All remunerations and prices are plus VAT; as well as all incurred levies and customs fees in cases of delivery from or to a foreign country.
2. Plans, drafts and drawings, as well as required additional services, are calculated according to the rates of the Scale of fees for Architects (GOA). They are principally included in the offers but are to be paid for separately if the Principal has contracted them and no contract pertaining to the construction of an trade-fair stand has been concluded.
3. Unless otherwise agreed, the invoices must be paid net within 8 days of the invoice date. Discounts are excluded. Timeliness is based on the date of validation.

## VIII. Material defects, approval

The Principal is obligated to accept the trade-fair stand as soon as they are notified of its completion. If the trade-fair stand proves not to be as contractually agreed then the Contractor is obligated to remedy the defects at their costs. This is not valid if the defect is irrelevant for the Principal or is based on circumstances, which can be attributed to the Principal. If an insignificant defect exists then the Principal cannot decline acceptance, if the Contractor has explicitly recognised their obligation to remedy the defect.

Once accepted the Contractor is no longer liable for obvious defects provided that the Principal has not reserved the right to remedy a specific defect.

## IX. Liability of the contractor, above all for the damage of exhibits

1. The Contractor is liable for compensation according to the legal regulations, however, their liability for compensation is limited to the following:
  - a) in the case of simple negligence liable only for injury to life, body and health.
  - b) In the case of the intent of simple vicarious agents, in the case of gross negligence on the part of the legal representatives, employees or vicarious agents, liability is limited to the foreseeable, typically occurring damage. The limit does not apply to damage caused by injury to life, body or health. Nor does it apply to consumers.
  - c) In the event of a breach of an essential contractual obligation, the Contractor shall be liable in deviation from lit. a) even in the case of simple negligence, but limited as in the case of b). An essential obligation under the contract is understood to be an obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on whose compliance the contractual partner may regularly rely upon.
2. The mandatory provisions of the product liability law and liability in the case of a guarantee remain unaffected. In the case of any other breach of duty, in particular fault at the time of conclusion of the contract, delay or offence, no further liability shall be assumed than is regulated above.
3. The legal representatives, senior executives and general employees are not liable beyond the Contractor themselves.
4. In case of negligent default of the Contractor, they are liable for a maximum of 0.1 % of the order amount per full hour. The compensation due to delay is limited to 5 % of the order amount in total.
5. The contractor is obligated to inform the Principal in writing of any potential damages in accordance with preceding stipulated liability regulations so that the Principal is informed as early as possible and damage-reducing measures can be conducted potentially together with the Contractor.

#### **X. Statute of limitation**

1. The general statute of limitation for claims based on material defects and legal deficiencies is one year from delivery. Where an approval is agreed, then the period of limitation commences with the approval.
2. However, if the goods are a structure or a thing, which have been used for a construction in accordance with its usual use and has caused its defectiveness (building material), the limitation period is 5 years from delivery, in accordance with the statutory provisions. Other special legal provisions for the limitation period remain unaffected (in particular, § 438 para. 1 Nr. 1, para. 3, §§ 444, 445b BGB-German Civil Code).
3. The above limitation periods of the sales law also apply to contractual and non-contractual claims for damages by the buyer, which are based on a defect in the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB-German Civil Code) would lead to a shorter limitation period on a case-by-case basis. Claims for damages by the buyer in accordance with IX. (a) and in accordance with the Product Liability Act, however, are time-barred exclusively after the statutory limitation periods.

#### **XI. Insurance**

The Principal is obligated to insure exhibits against damages in transit.

#### **XII. Moulds and tools**

1. Moulds and tools which are manufactured and delivered by the Contractor, or a third party on its behalf, remain the property of the Contractor subject to a special contractual agreement.
2. The costs for manufacturing the moulds and tools are borne by the Principal.
3. The Contractor shall store such forms and tools for the purpose of possible subsequent orders, free of charge, for maximum 1 year after the last order. The Principal shall be informed prior to their destruction.

#### **XIII. Vendor parts**

1. If an agreement has been made with the Principal regarding the supply of parts for the assembly and the completion of the agreed goods or similar, these parts have to be delivered at the expense of the Principal, ex works of the Contractor.
2. The Principal is responsible that these parts are delivered to the Contractor in sufficient quantities, considering any rejects, in ample time to ensure continuous production.
3. If the Principal violates this obligation to cooperate, they are liable for the resulting damage.

#### **XIV. Copy and property rights**

1. All plans, drawings, drafts, manufacturing and assembly documents, models, etc. produced by the Contractor remain their property together with all related rights. The Principal is not permitted to utilise these protected works themselves or have them utilised by third parties. In case of violation, the Principal is liable based on the legal protective regulations, however at least in the amount of the remuneration usually achieved by the Contractor, for each case of violation excluding continued violation.
2. The Contractor is entitled to continue using the works.
3. If the Contractor utilises planning documents which were provided to them by the Principal, the Principal is responsible that the Contractor's services based on these planning documents do not violate any third party rights. The Contractor is not obligated to check the provided documentation to verify that third party rights are not violated.
4. Immediately upon the assertion, the Principal exempts the Contractor from all third party claims resulting from the violation of third party rights in this context. In particular this also includes the costs incurred by the Contractor for their legal defence.

#### **XV. Termination of the contract**

Upon termination of the contract each party has to return to the other party all technical documentation, materials and tools provided by the other party according to this contract as well as any existing copies thereof without undue delay. The Contractor dismantles the trade-fair stand at their own expense and takes over the dismantling and return transport of the exhibits to the Principal.

#### **XVI. Offsetting, retention, assignment**

1. The Principal is only entitled to offset their own claims or assert a right of retention if their claim has been conclusively determined, is uncontested or accepted.
2. The Contractor is entitled to assign their claims from ongoing business relations with the Principal to a third party (§ 354 a HGB-German Commercial Code). The parties agree that respective assignment exclusions in the Principal's General Terms and Conditions do not apply.
3. The assignment of accounts receivable against the Contractor without the written consent of the Contractor is excluded.

#### **XVII. Data protection**

1. Protecting the Principal's personal data, which is disclosed to us within the scope of the initiation and/or implementation of a contract is extremely important to us. Therefore, we adhere strictly to the German Federal Data Protection Act (BDSG) and Telemedia Act when collecting, processing and using data.
2. For further guidelines please visit [www.walbert-schmitz.de/datenschutzhinweise](http://www.walbert-schmitz.de/datenschutzhinweise), where our Data Protection Notice can be found.

#### **XVIII. Final conditions**

1. The Contractor reserves the right to alter these General Terms and Conditions at any time. The Principal shall be informed in writing regarding the executed changes. The Principal agrees to the changes unless he objects to them within a period of 14 days from notification of the change/s. The Contractor shall inform the Principal of this fact in the notification.
2. Verbal additional agreements to this contract do not currently exist. Changes and amendments must be in the written form to be effective, also for other forms of agreement. This does not apply to services, which in the first instance are considered to be appropriate for the work in situ. It also does not apply to the other contract for the creation of planning, designs, drawings, models and templates.
3. If a regulation in these General Terms and Conditions should be or become ineffective or unfeasible, the effectiveness of the General Terms and Conditions in general is not affected. In such a case the parties are in fact obligated to replace the ineffective or unfeasible condition with an effective or feasible condition, which corresponds as closely as possible to the original.
4. Place of jurisdiction for all disputes arising from this contractual relationship is Aachen. However, the Contractor is entitled to also sue the Principal at any other admissible place of jurisdiction. The contract language is German. The applicable law shall be exclusively the law of the Federal Republic of Germany excluding the UN-Convention.