

Orfgen Marketing GmbH & Co. KG, Essen

General Terms and Conditions

I. Scope of application, completeness

These General Terms and Conditions (terms) apply to all of our services rendered by order of contractors or corporate bodies under public law or special funds under public law. The applicability of client terms is excluded. It is – refutably – assumed that no collateral agreements exist outside of agreements reached in writing. Any other agreements with our employees are only effective if they are ratified by management.

II. Order volume and processing, notice period for recurrent work

1. The client supports Orfgen Marketing in performing the contracted services. This particularly includes the timely provision of information, data and the performance of other cooperation duties agreed or required based on the nature of the contract.
2. Minutes transmitted by us are binding unless the client objects immediately following receipt.
3. Subsequent changes requested by the client will be charged additionally. Corrections made by customers of the client and all costs thereby incurred are also deemed to be subsequent changes.
4. Drafts, proof copies, samples and similar preliminary work requested by the client will be invoiced, even if the order is not placed.
5. Templates, files and other working materials (in particular, negatives, models, original illustrations, etc.) which we prepare or have prepared in order to perform the contracted service remain our property. The obligation to surrender such materials does not exist. We are not obligated to retain such material.
6. Unless otherwise agreed, contracts on regularly recurrent services may be cancelled at the end of the month subject to a term of notice of two weeks within the first three months of the contract, and a term of notice of three months thereafter.
7. The obligation to review the compatibility of advertising measures with competition law only exists where expressly commissioned. Please note that legal advice is reserved to the legal advisory professions.

III. Commissioning third parties

1. We are entitled to commission third parties to perform the work assigned to us.
2. We place orders for advertising media in our name and on our own account. If volume discounts or frequency discounts are availed of, the client is invoiced a surcharge payable immediately for failure to comply with discount or reduction conditions.
3. We place orders with suppliers, e.g. photo studios, translation agencies, etc., in our name and on our own account.
4. We guarantee the third parties commissioned by us are selected properly. In the event of poor performance of third parties, we assign our warranty claims to the client. The client may only assert warranty claims against Orfgen Marketing after first unsuccessfully making a claim against the third party commissioned by us, if necessary up to a ruling by a state court. Liability limitations stipulated elsewhere to our benefit or the benefit of third parties remain unaffected.

IV. Payment and payment default

1. Payments must be made within 14 calendar days from the invoice date without deduction.
2. When providing large volumes of materials or significant preliminary work, an advance payment may be required.
3. The client may only offset with an undisputed or legally effective claim.
4. If the satisfaction of payment claims is jeopardized due to deterioration of the client's financial circumstances occurring or discovered after conclusion of the contract, we are entitled to demand an advance payment and immediate payment of all outstanding invoices, as well as invoices which are not yet due, withhold goods which have not yet been dispatched and stop processing open orders. We are also entitled to exercise these rights if the client defaults in payment.

V. Delivery, delivery dates and delivery periods

1. Our delivery obligations are met once our work and services have been dispatched. Notwithstanding our – under these terms limited – liability to properly select the forwarder or the forwarding medium, the client bears the transmission risk (e.g. damage, loss, delay).

2. Delivery dates and periods are only effective when confirmed by us in writing. Meeting these requires the timely fulfilment of the client's obligations to cooperate (e.g. obtaining photo samples, documents, approvals).
3. Templates and drafts provided by us are only binding in terms of colour, photo or sound design if the feasibility has been confirmed by us in writing.
4. If we are delayed in rendering services, we must first be granted a reasonable grace period. If this grace period expires without results, the client may at their discretion reduce the agreed remuneration accordingly, forfeiting the delayed service, or, provided the partial service which is delayed is not insignificant in proportion to the overall contract, withdraw from the contract. If the delay is merely due to gross negligence by Orfgen Marketing or its agents, compensation for the damage caused by delay can only be asserted up to the order value (internal labour excluding preliminary work and materials).
5. Disruptions to operations – including relating to third parties commissioned by us – particularly strike, lockout, war, unrest, forces of nature and any other type of force majeure do not qualify as grounds to terminate the contract. The principles relating to frustration of purpose remain unaffected.

VI. Complaints, liability

1. The client must review the work and services rendered immediately upon receipt, but in any case prior to further processing, and promptly report any defects or unsatisfactory services within three business days at the latest. Hidden defects not detectable through proper inspection must be reported immediately, at the latest within three business days of their discovery. If an immediate inspection or timely notice of defects is not carried out, claims for defects, poor performance or unsatisfactory services are excluded.
2. Surplus or shortages in printed products of up to 10% of the ordered print run are not grounds for a complaint. The supplied quantity will be invoiced.
3. In the case of defects, poor performance or unsatisfactory services, we are entitled to two attempts to rectify the situation within a reasonable period.
4. Liability for damages: In the case of harm to body, health or life due to wilful or negligent breach of duty by Orfgen Marketing or its legal representatives or vicarious agents, we are liable in accordance with the legal regulations. For other damages the following applies: a) In the case of gross negligence by Orfgen Marketing or its legal representatives or vicarious agents, we are also liable according to the legal regulations. b) In the case of simple negligence by Orfgen Marketing or its legal representatives or various agents, we are only liable in the case of breach of essential duties, with the extent of liability being limited to typically foreseeable damages. This limitation of liability also applies with respect to legal representatives and vicarious agents of Orfgen Marketing.

VII. Property, rights of use

1. Supplied goods remain our property until paid in full.
2. All services provided by the agency, including any from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final artwork, concepts, negatives, slides, product names), including parts thereof, as well as the specific pieces and original drafts, remain the property of the advertising agency and may be reclaimed by us at any time, particularly on termination of the contract.
3. The client does not acquire the right of use (including duplication) for the agreed or contracted purpose and extent until the fee has been paid. Any further use – irrespective of the service being copyright protected – requires the approval of Orfgen Marketing and, if applicable, the creator, payable separately. This also applies to repeated use (reprints) or multiple uses (e.g. for another product).
4. Authorisation to use copyrighted services granted prior to the full payment being made may be revoked in the event of payment default or payment claims being jeopardised due to a deterioration of the client's financial circumstances.
5. If copyrighted services are being used beyond the agreed or contracted scope, Orfgen Marketing may request five times the amount of the appropriate license under proper licensing. A further claim for damages remains unaffected.
6. Transferring rights of use to third parties requires the approval of Orfgen Marketing.

VIII. Place of fulfilment and jurisdiction, applicable law

1. The place of fulfilment and jurisdiction for all claims and legal disputes arising from this contract including summary proceeding based on documentary evidence, including bills of exchange, is Essen.
2. German law applies under exclusion of the United Nations Convention on Contracts for the International Sale of Goods.