

General Terms and Conditions for Contractual Performance by DI as Contractor



Preamble

These General Terms and Conditions of Contract shall be binding on all contracts entered into by DISPLAY INTERNATIONAL (hereinafter referred to as "DISPLAY INTERNATIONAL"): DI) as the contractor. This shall also apply if DI plans and/or creates an exhibition stand in whole or in part on behalf of a contracting partner according to the latter's specifications and then rents the exhibition stand to the contracting partner. In this case, the warranty for the creation of the exhibition stand shall be governed by the law on contracts for work and services. The transfer of use of the exhibition stand by DI after acceptance by the contracting partner shall be governed by the provisions of tenancy law in the case of rental of the manufactured exhibition stand.

1.1

These contractual terms and conditions shall apply in the event that DI refers to them in its own offer or in its own order confirmation or if the prerequisites pursuant to No. 1.2 are met, even if DI performs the contractual service without reservation in the knowledge of conflicting or deviating contractual terms and conditions of the other party, unless DI has expressly agreed to the validity of such deviating contractual terms and conditions.

DI does not recognise any terms and conditions of the contracting partner that conflict with or deviate from these contractual terms and conditions, unless DI has expressly agreed to the validity of such deviating contractual terms and conditions.

1.2

These contractual terms and conditions shall also apply to all subsequent contracts between a contracting partner and DI, unless otherwise agreed in writing.

I. Contract Conclusion Regulations / Changes to the Contractual Performance

1.1

Contracts are concluded by DI exclusively with the content of the order confirmation.

The execution of the contract shall only be based on such documents which DI has acknowledged in its own order confirmation as binding for the contractual performance.

Agreements on amendments to agreements are only effective in writing.

1.2

If the contractual partner orders modification or supplementary services within the scope of section 650 b subsection 1 of the German Civil Code (BGB), DI shall have a claim against the contractual partner for payment of additional remuneration for these modification or supplementary services. This additional remuneration will be calculated by DI in accordance with § 650 c section 1 BGB. DI's offer for additional remuneration for the requested modification or additional services will be made by stating unit prices which are not to be itemised in detail, but which are to be justified upon the contracting party's request in accordance with section 650 c subsection 1 of the German Civil Code (BGB).

The order for the execution of the changed or additional services by the contractual partner must be made in text form.

The contractual partner has no right to issue instructions to DI regarding the type of execution, the construction process and the contractual construction period.

Discounts and rebates for contractual performance do not apply in the pricing of change and/or additional services.

1.3

The provisions in these General Terms and Conditions of Contract shall also apply to ordered supplementary and/or additional services.

II. Contractual Components

The following are always integral parts of the contracts mentioned in the preamble

- the contract with its terms of reference, the text of which shall take precedence over any plan as part of the terms of reference;

- the content of public law approvals for the contractual object;

- all mandatory provisions of public law at the place of performance, including the relevant accident prevention regulations there, the rules of technology at the place of performance and the rules of occupational health and safety there, insofar as they apply to the contractual object;

- the respective trade fair regulations at the trade fair venue;

- these General Terms and Conditions of Contract;

- German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

III. Performance of the Contracting Parties

1.1

The contracting partner shall provide DI with suitable workplaces free of charge until acceptance or, if acceptance is not legally possible, until fulfilment of the contractual performance and, upon request, also places free of charge for storage of the material that DI requires for the contractual performance for the contracting partner.

All utility connections, such as the main electrical connection as well as the water, telephone and other connections including internet access, which serve DI for the performance of the contractual service, shall be provided by the contracting partner to DI at its own expense, unless expressly agreed otherwise.

Costs for installations and any fees or other public charges incurred shall also be borne by the contracting partner, unless otherwise agreed in the contract.

Material provided by the contracting partner or other third parties on behalf of the contracting partner to DI for the performance of the contract will not be insured by DI. The agreed risk transfer provisions in No. VIII of these General Terms and Conditions of Contract shall not be affected by this provision.

1.2

If planning services are part of DI's duty to perform, DI shall perform these planning services in accordance with the contractual basis recognised by DI pursuant to Nos I and II of these General Terms and Conditions of Contract.

1.3

The reference to standards, technical regulations as well as the technical specifications, descriptions or illustrations of the subject matter of the contract in offers and brochures or in attachments to these offers or brochures shall only be part of the contractual target quality if this has been expressly stated as such by DI. Otherwise, these are non-binding general descriptions of services.

A guarantee shall only apply if DI has expressly assumed and confirmed it in writing.

If DI requires information from the contracting partner for the contractual services, DI is not obliged to check whether this information is correct. DI is also not obliged to check whether items provided by the contracting partner for the contractual performance by DI are suitable for the agreed function.

DI shall only assume liability for the function of its contractual services if this has been expressly agreed as a contractual target condition.

IV. Price Components and Additional Remuneration

1.1

Unless expressly agreed otherwise, DI's offer prices are net.

In the absence of any other agreement, the transport costs, the costs for equipment that DI has to rent from third parties as necessary for the performance of the contract and all costs for the space occupied by the subject matter of the contract as well as all fees, contributions and other public charges incurred for setting up and operating as well as dismantling and disposing of the subject matter of the contract will be charged by DI in addition to the contract price, insofar as such costs are necessary for the performance of the contract.

1.2

VAT shall be shown by DI in the invoice at the statutory rate on the date of issue of the invoice.

1.3

DI is entitled to reasonably increase the agreed prices in the event of an increase in material procurement or production costs, taxes, wage and ancillary wage costs as well as energy costs or transport costs and costs due to environmental requirements until acceptance, completion or termination of the contractual performance (Article 315 BGB) if more than 2 months have passed since conclusion of the contract. An increase is excluded insofar as such cost increases can be compensated with the reduction of other costs for the contractual service.

DI shall provide evidence of the cost reductions or cost increases to the contracting partner upon its request.

V. Contract Execution Time / Legal Consequences of Default

1.1

Binding contract dates or contract periods shall be agreed exclusively in writing.

1.2

Delivery or performance periods shall commence with the immediate receipt of DI's order confirmation by the contracting partner, but not before all details of the execution of the contractual performance have been clarified and all other prerequisites to be fulfilled by the contracting partner have been met, in particular not before agreed down payments or agreed advance payments have been made.

If the contracting partner places change or additional orders for the contractual performance, new delivery and performance dates for the new overall performance shall be agreed.

1.3

The due date of DI's contractual performance requires the timely and proper fulfilment of the contracting partner's own obligations. If the acceptance of the service, the acceptance of the service or the dispatch of the goods to be delivered is delayed for a reason for which the contracting partner is responsible or if the contracting partner culpably fails to comply with a contractually agreed call-off obligation, DI shall be entitled, without prejudice to any further rights, after setting and expiry of a one-week grace period, at its discretion either to demand immediate payment from the contracting partner for the services rendered or to withdraw from the contract or to claim damages instead of the entire contractual service. The deadline must be set by DI in writing. A reference to the aforementioned rights is not necessary in this context. Any further rights to which DI is entitled in addition to withdrawal or the demand for damages in lieu of the entire performance shall remain unaffected.

1.4

In the event of force majeure, a pandemic or unforeseeable circumstances not caused by DI, e.g. operational disruptions due to fire, water or similar circumstances for which DI is not responsible, in the event of a breakdown of production facilities and machinery for which DI is not responsible, in the event of strike and lockout or official intervention for which DI is not responsible, a shortage of labour, material, energy for which DI is not responsible, as well as a shortage of transport facilities for which DI is not responsible or an impediment to transport facilities for which DI is not responsible, agreed contract dates and contract periods shall lapse. This shall also apply if the aforementioned circumstances occur at DI's subcontractors through no fault of DI and DI is thereby prevented from fulfilling its own obligations in a timely manner. In this case, DI shall inform the contracting partner of the impediment in writing and in good time.

In such cases, DI is entitled to postpone the delivery or service by the duration of the impediment or to withdraw from the contract in whole or in part due to the part not yet fulfilled if the fulfilment of the contract is no longer possible for DI. The prerequisite is that DI has complied with its aforementioned duty to inform and that DI has not expressly assumed the procurement risk or manufacturing risk for its own contractual performance by contract.

If a delivery or performance date or a delivery or performance period have been agreed in a binding manner and if this agreed performance or delivery date or the agreed delivery or performance period is exceeded by more than 4 weeks due to the events described in the preceding paragraph, the contracting partner is entitled to withdraw from the contract due to the part not yet fulfilled. Further rights of the contracting partner, in particular claims for damages, do not exist in this case.

If the timely performance of the contractual services becomes impossible due to circumstances for which DI is not responsible pursuant to No. V 1.4 of these General Terms and Conditions of Contract or if the contracting partner withdraws from the contract pursuant to the preceding paragraph, DI shall have a claim against the contracting partner for payment of the deliveries and services already performed as well as for payment of the material additionally delivered by DI to the place of performance for the performance of the contractual services but not yet installed and of the material not yet delivered and also not yet installed which DI can no longer cancel free of charge with its subcontractors and suppliers.

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VI. Invoicing / Measurement / Acceptance / Securities

1.1

DI has a claim against the contracting partner for formal acceptance of contractual services rendered under the contract for work and services. At DI's request, the contracting partner shall separately accept self-contained parts of DI's work performance.

1.2

DI may require the contracting partner to jointly inspect and measure in advance partial services that are no longer visible or accessible at a later date after their completion.

1.3

DI shall also have a claim against the contracting partner even before the start of installation for advance payments for material ordered by DI and required for the performance of the contract, as well as for services which must be performed in order to fulfil the contract with the contracting partner necessarily even before the start of the manufacture of the subject matter of the contract in order to ensure proper and timely performance of the contract.

VII. Rights of Set-Off and Retention

1.1

The contracting partner may only offset against DI's payment claims with undisputed or legally established claims - unless the counterclaim is based on a breach of material contractual obligations by DI. In this case, the offsetting rights of the contracting partner shall exist without restriction.

1.2

The contracting partner may only exercise a right of retention against claims of DI due to undisputed or legally established claims or claims that are in a reciprocal relationship with the claims of DI pursuant to Article 320 BGB and are based on the same contractual relationship.

VIII. Risk Assumption

1.1

DI shall not bear the risk of damage to or destruction of the contractual performance not yet accepted or of theft of or damage to parts of the contractual performance by third parties, unless DI is partly responsible for the damage or destruction or the theft.

1.2

The risk shall pass to the contracting partner when the products or goods to be delivered are handed over to the forwarding agent, the carrier or the undertakings otherwise designated for transport by the contracting partner, but at the latest when they leave the factory, the warehouse or the branch of DI.

If DI justifiably exercises a right of retention vis-à-vis the contracting partner, the risk shall pass to the contracting partner at the latest from the date of notification of readiness for dispatch.

IX. Warranty / Liability for Defects

1.1

In the case of delivery of goods, noticeable breaches of duty due to poor performance or defects are to be notified by the contracting partner without delay, at the latest 12 days after performance of the service. Failure to give notice of defects in due time shall exclude any claim of the contracting partner due to defects or poor performance.

In the event that goods are delivered to the contracting partner by a transport company, the contracting partner must notify the transport company of any recognisable defects upon delivery and arrange for the defects to be recorded.

In the event of hidden, initially undetectable defects or poor performance, the contracting partner shall give notice of the defects or poor performance by DI immediately upon discovery. Failure to give notice of defects in due time shall also exclude any claim of the contracting partner due to the defects or the poor performance in this respect.

Any notice of defects must contain as detailed a description of the defect as possible.

1.2

If there is a defect in DI's contractual performance, DI will, at its option, either remedy the defect free of charge by repairing the defect or by delivering a replacement or remanufacturing the goods. DI shall only be liable for rectification or replacement delivery or new production in the country to which the goods were to be delivered in accordance with the contract or within which the contractual performance was to be rendered by DI.

1.3

DI's warranty and resulting liability are excluded to the extent that defects and related damages are not demonstrably due to defects or breaches of duty by DI at the performance of the contract.

1.4

Any acknowledgement of breaches of duty or defects by DI must be made in writing.

2.1

DI shall not be liable, subject to deviating agreements and provisions also in these General Terms and Conditions of Contract, for claims of the contracting partner for damages, irrespective of the legal grounds. This exclusion of liability does not apply to legally mandatory liability situations, in particular

- for its own intentional or grossly negligent breaches of duty and intentional or grossly negligent breaches of duty by legal representatives or vicarious agents of DI;

- for the breach of essential contractual obligations and an impossibility for which DI is responsible;

- if there is a circumstance that entitles the contracting partner of DI to terminate the contractual relationship without notice;

- in the event of injury to life, body and health also by legal representatives or vicarious agents of DI;

- insofar as DI has assumed the guarantee for the quality of its contracting performance or the existence of a performance outcome or a procurement risk;

- in the event of liability under the Product Liability Act.

"Material contractual obligations" are obligations which protect the legal positions of the contracting partner which are material to the contract and/or the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the contracting partner has therefore regularly relied and may rely.

2.2

Furthermore, DI shall not be liable for claims of the contracting partner for damages or reimbursement of expenses arising from the present contractual relationship, even in the event of minor negligence.

In the event of liability without fault, e. g. in the case of initial impossibility, liability shall only exist to the extent of the typical and foreseeable damage.

Liability pursuant to Article 536 a (1) 1 BGB for initial defects of a leased subject matter of the contract is excluded. Any warranty obligations of DI under the contract for work and services shall not be affected thereby.

2.3

Liability for consequential harm caused by a defect on the part of the contracting partner is also excluded subject to No. 2.1.

2.4

With the exception of fraudulent intent, wilful misconduct or injury to life, body/health and with the exception of legally mandatory, deviating liability sums, DI's liability shall be limited in total amount to the coverage sums of the benefits of its own business liability insurance. Upon request of the contracting partner, DI shall provide the contracting partner with a copy of the insurance policy.

This limitation of liability does not apply if DI's insurer is not liable to indemnify due to breach of duty or breach of obligation by DI.

2.5

The above exclusions or limitations of liability shall apply to the same extent in favour of DI's executive and non-executive employees or other vicarious agents as well as subcontractors.

X. Retention of Title / Security Deposit for Contracts without Rental of the Exhibition Stand

1.1

DI retains title to all parts and items delivered for the performance of the contract until unconditional receipt of all payments by the contracting partner under the contract.

In the event of a breach of contract by the contracting partner, in particular in the event of default in payment, DI shall be entitled to take back the delivered items and parts, subject to the processing or transformation of the delivered parts or their inseparable mixing with other items not owned by DI. The taking back of the parts and objects shall constitute a withdrawal from the contract.

After taking back the parts/items, DI is authorised to sell them. The proceeds of realisation shall be credited against DI's claims and against the liabilities of the contracting partner - less reasonable realisation costs.

1.2

In the event of seizures or other interventions by third parties, the contracting partner shall notify DI immediately in writing.

1.3

Machining and processing of the parts and items delivered for the performance of the contract shall be carried out for DI as manufacturer pursuant to Article 950 of the German Civil Code (BGB), but without obligating DI from this. If the parts and items delivered for the performance of the contract to which DI's retention of title applies are processed or inseparably combined with other items of the contracting partner not belonging to DI, DI shall acquire co-ownership of the new item in the proportion of the invoice value of its processed or combined parts or items to the invoice values of the other processed or combined parts or items. If the parts or items delivered for the performance of the contract are combined with other movable parts or items of the contracting partner to form a uniform item which is to be regarded as the main item, the contracting partner hereby assigns to DI co-ownership of this main item in the same proportion. The contracting partner shall hold the property or co-property in safe custody for DI free of charge. The co-ownership rights arising hereunder shall be deemed to be reserved goods. Upon DI's request, the contracting partner is obliged at any time to provide DI with the information required to pursue its own ownership or co-ownership rights.

1.4

DI undertakes to release securities to which it is entitled at the request of the contracting partner to the extent that the realisable value of DI's securities exceeds the claims to be secured by more than 10%. DI is responsible for selecting the collateral to be released.

XI. Copyright

1.1

Any copyright of DI embodied in the contractual performance or contained in design, graphics, displays, advertising copy, drafts, drawings or models shall remain with DI with all rights, including exploitation rights, unless otherwise agreed in writing. This also applies to such written documents that are expressly designated as "confidential".

1.2

The provision in (1) also covers the case of a subsequent reconstruction or rebuilding of DI's contractual performance.

XII. Closing Provisions

1.1

The contracting partner undertakes not to disclose the documents handed over to it by DI for contractual performance to third parties without DI's consent.

1.2

This contract is subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

1.3

The place of jurisdiction for all disputes arising in connection with this contract and its execution shall be Aachen if the contracting partner is a registered trader.

1.4

The above provisions shall also apply if the contracting partner is a foreigner or has its registered office abroad.