

## Terms and Conditions (T&Cs)

Idee und Klang GmbH  
Dornacherstrasse 192 | 4053 Basel, Switzerland  
hereinafter Idee und Klang

### 1. Scope and subject

1.1 These T&Cs govern contractual relationships between Idee und Klang and the service recipient (hereinafter the 'Client'). They apply in particular to orders and contracts for work/the provision of work as well as services in the field of audio production between Idee und Klang and the Client. They also apply to supplementary and follow-up orders.

1.2 The application of Client business and contract terms and conditions is hereby expressly excluded. Where Client T&Cs are agreed in writing by way of exception, their provisions only apply insofar as they do not conflict with these T&Cs. Non-conflicting provisions in the T&Cs remain in force alongside each other.

1.3 Individual provisions being or becoming ineffective or invalid does not affect the validity or effectiveness of the remaining provisions. In such a case, the sense of the invalid provision is to be given a new interpretation or amended so that the intended purpose is achieved as far as possible.

1.4 These English T&Cs are a non-binding translation. They are for informational purposes only. In case of doubt, the provisions of the German version shall prevail.

### 2. Entry into the contract

2.1 Orders by the Client are accepted by Idee und Klang confirming by email, in writing, verbally or by performance. In addition, contracts between Idee und Klang and the business partner may be entered into by both parties signing an individual contract. There is no obligation to enter into a contract.

2.2 Idee und Klang is only obliged to confirm an order in writing if expressly requested to do so by the Client.

2.3 The Client is the party having initiated performance of the order, in writing or verbally, even if the invoice is issued at its request to a third party, i.e. along with the third party it is liable in full for the invoiced amount. Idee und Klang is to be made expressly aware when the order is placed where it is placed for and on behalf of a third party. Idee und Klang is not obliged to check the competence of the party placing the order.

### 3. Quote and scope of performance

3.1 The nature of services to be performed by Idee und Klang and the Client, their scope, duration and consideration are set out in specific quotes or, as may apply, individual orders in particular between the Client and Idee und Klang. Idee und Klang is entitled to terminate contracts in part or in whole even after the order has been confirmed or work has commenced, as well as during production where it deems claims for consideration to be at risk. There is no

obligation to provide the Client with paperwork in this respect.

3.2 Quotes only extend to services listed in the performance brief.

3.3 Unless explicitly agreed in the quote or an individual order, additional services such as electro-acoustic planning, maintenance activities, processing and restoration of existing audio material, dismantling, equipment/material for on-site mixing or review services are not included and must be agreed and paid for separately.

3.4 In the same way, fees for musicians and narrators, costs for instrumental recordings and rights of use beyond specifically agreed purposes are not included unless explicitly agreed in the quote and must be agreed and paid for separately.

3.5 Quotes are valid for 30 days unless otherwise stated.

3.6 All quotes prepared by Idee und Klang and associated documents remain the intellectual property of Idee und Klang. They may be neither copied nor made accessible to external parties in any format.

#### **4. Client preparation**

4.1 At its costs, the Client shall ensure that work can be commenced promptly. Unless otherwise agreed it shall obtain all necessary permits.

4.2 The Client shall allow Idee und Klang and third parties commissioned by it the required access and, on request, provide details about project-specific features such as local characteristics in connection with the project.

4.3 The Client shall ensure the clarity of an order by means of markings on material to be handled or by means of written instructions. Expenses necessary for clarifying doubt (telephone calls, trial runs, checks, outlay for additional material etc.) or due to missing information shall be borne by the Client.

4.4 Any third-party rights shall be clarified by the Client where protected works, e.g. music or speech, are used as part of performance at the request of the Client. Idee und Klang is not obliged to check to what extent the content of works ordered breaches statutory provisions. Where this is the case, the Client is liable for all resulting detriments or damages. Rights from collecting companies (SUISA GEMA, etc.) may invariably not be transferred and are therefore not compensated by payments to Idee und Klang.

#### **5. Deadlines**

5.1 Idee und Klang is entitled to extend agreed deadlines appropriately if performance of the order is delayed by late decisions, pending feedback or other actions of the Client or a third party. Associated extra costs (for example additional project management, more days than originally planned for onsite installation of the work) shall be borne by the Client and invoiced to it.

5.2 Where delays lead to the project being halted on a temporary basis, resumption of work by Idee und Klang requires a reaction time specific to the project (scope, local conditions, time spent etc.) of at least two weeks.

#### **6. Prices**

6.1 Unless otherwise expressly stated, all prices are net without VAT. Unless otherwise agreed, third parties are commissioned in the name of and on behalf of Idee und Klang. In this event, Idee und Klang is not obliged to prepare an invoice regarding performance by third parties or submit invoices from persons commissioned by it.

6.2 The Client is also invoiced for services not listed in the quote and performed at the request of the Client as well as additional spending due to incorrect information from the Client, transport delays without blame or unprofessional or late advance performance by third parties where not vicarious agents of Idee und Klang in accordance with current Idee und Klang payment rates.

## **7. Payment**

7.1 Unless otherwise stated in the order or individual contract, Idee und Klang is entitled to invoice each individual service immediately after being provided. Amounts invoiced become immediately due for payment after receipt of invoice. Unless otherwise agreed, Idee und Klang is entitled to demand milestone payments as follows to cover its expenses:

1/3 of the total quoted when the order is placed

1/3 of the total quoted following commencement of work and no later than by start of production

1/3 of the total quoted on delivery of the finished production

7.2 Deductions of any kind are excluded unless confirmed in writing.

7.3 In each case, 50% of the hours reserved are invoiced with cancellation of less than 3 days before onsite installation.

7.4 Idee und Klang reserves title to all work, items and results of services until payment in full.

## **8. Payment arrears**

8.1 Where the Client has neither paid the invoice nor challenged it with justification in writing when it becomes due, Idee und Klang may set a brief grace period and terminate the contract without notice and compensation once it has passed without being effective. Performance by Idee und Klang up until that moment must be satisfied in full. The Client shall bear costs arising due to delayed payment.

8.2 Where the Client is behind with part payments, Idee und Klang is entitled to charge interest of 5% following an initial reminder without further notification.

8.3 The Client is invoiced for any lost revenue due to currency rate fluctuations as of the date of the first reminder in the event of the payment deadline being passed.

## **9. Poor performance and impossibility due to force majeure:**

9.1 Idee und Klang is given an appropriate grace period of four weeks where performance is delayed due to obstacles beyond its control as including but not limited to events of force majeure, strikes, lockouts, official orders etc., even if they occur with suppliers and subcontractors of Idee und Klang.

9.2 In such cases the parties have the option of terminating the contract in part or in whole

where performance is still impossible after four weeks and an end to the obstacle is not to be expected within a further four weeks.

9.3 In these cases, Idee und Klang shall owe the Client no compensation.

## **10. Liability**

10.1 Except (and only if and) to the extent directly caused by the willful misconduct or gross negligence Idee und Klang shall be liable and agrees to indemnify, defend and hold client (including all its officers, directors, employees, contractors and agents) harmless from and against any and all claims, demands, causes of action, damages, liabilities, losses, costs and expenses, including attorneys' fees (collectively, the "Claims"), caused with fault during performance up to a maximum of the amount of consideration for the performance in question, however up to a maximum of CHF 100,000.00. Any liability over and above this, including liability for direct, indirect or consequential losses or loss of profit is expressly excluded.

## **11. Place of performance, benefit and risk**

11.1 Unless otherwise agreed, the place of performance is where the service is provided for Idee und Klang or the work is installed.

11.2 Benefit and risk pass to the Client on delivery of the work. Delivery occurs on acceptance.

## **12. Acceptance**

12.1 Idee und Klang shall notify the Client of completion of the work and agree with it within one month a deadline for accepting the work or parts included in it (partial acceptance). The Client takes part in acceptance. Where the Client does not take part in or refuses such a deadline, work is regarded as accepted at the end of one month after completion being reported.

12.2 Insignificant defects do not prevent acceptance.

12.3 The Client is free to undertake or arrange for a free review of audio tapes, audio files or copies for sound quality, running characteristics etc. prepared by the contractor at the premises on equipment of the contractor or its own equipment brought along before delivery. Complaints resulting after delivery on third-party equipment can only be acknowledged if Idee und Klang can be provided with evidence against claims, standards etc. normal for the industry.

## **13. Warranty**

13.1 In the event of significant defects, an appropriate period for rectification (subsequent improvement) will be agreed by Idee und Klang on the deadline for acceptance, and acceptance will be suspended and resumed within one month once the defect has been rectified. Statutory warranty claims (in particular rescission and reduction) are excluded.

13.2 There is a period for complaint of seven calendar days as of the date of acceptance. Where the Client discovers a defect but fails to report it promptly it shall be bear resulting losses itself.

13.3 The claim to subsequently improve hidden defects is time-barred at the end of two years as of the moment of acceptance, but only if the Client has reported it in writing within seven

calendar days after discovery.

13.4 Idee und Klang is not liable if the Client itself, an assistant of the Client or a third party commissioned by the Client causes the defect.

13.5 With acceptance without inspection, Idee und Klang is not liable for defects that would have been discovered on acceptance with inspection.

13.6 The burden of proof for a hidden defect is with the Client.

## **14. Copyright**

Idee und Klang remains fully as the creator and has the right without charge to use ideas, concepts and procedures developed alone or together with the Client when developing projects of a similar nature for other clients.

## **15. Right of use**

The unrestricted assignment of rights of use in the sense of a full buy out is not intended. On payment in full of the services listed in the quote, Idee und Klang grants the Client the non-exclusive right restricted to the duration of the contract to use the results of performance within the contractual territory or, as may apply, the contractually agreed location for the jointly agreed purpose. Any purpose over and above this requires the consent of Idee und Klang and must be negotiated separately.

## **16. Data protection**

16.1 Idee und Klang sells no data to third parties. Nevertheless, it is entitled to disseminate photos of performance for reference purposes without reciprocal written notification from the Client. The Client is entitled to subsequently prohibit use of particular photos as reference items in writing at any time. Idee und Klang shall delete the images immediately where this communication is after publication on the Idee und Klang website. Nevertheless, following publication on the Idee und Klang website, it can no longer guarantee that the images cannot be subsequently found online on other sites.

## **17. Applicable law and jurisdiction**

17.1 This Agreement shall be governed by and construed in accordance with the substantive laws of Switzerland, without regard to the Conflict of Laws provisions thereof. For the avoidance of doubt, the Parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

17.2 Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction of the ordinary courts of Basel-City, Switzerland.