

Fournell Showtechnik GmbH

General Terms and Conditions



fournell
SHOWTECHNIK

1. Scope

a. These General Terms and Conditions are an integral part of all quotations and contracts, particularly in relation to hiring, Full-Service, and the delivery of goods undertaken by Fournell Showtechnik GmbH, hereinafter FST, in business transactions with third parties and also for all current or future business relations.

b. These General Terms and Conditions shall have exclusive application. Deviating conditions of the customer or hirer or other deviating agreements shall only apply if FST has given its express approval in writing. This shall also apply in particular to conflicting purchasing or hiring terms. These may only form part of the contract after they have been expressly approved in writing. Such an approval shall be expressly limited to the individual instance for both current and future commercial agreements, without prejudice to further commercial transactions. If an order or hiring is made on the basis of purchasing or hiring terms, any subsequent delivery or fulfilment shall not be regarded as approval of the purchasing terms, but as a new quotation, which is subject to these General Terms and Conditions. The acceptance of the delivery or performance by the customer shall be regarded as approval.

c. The following provisions govern, in particular, hiring and related performances such as transport, set-up, dismantling and implementation (Full Service). The Full Service is also governed by Section 8. Separate general terms and conditions govern other performances, i.e. the delivery and sale of equipment.

2. Quotations, Conclusion of Contract, Terms of Payment

a. All quotations are non-binding unless they are confirmed in writing by the customer/hirer within a period of two weeks after receipt. Following the confirmation of acceptance of the quotation and other orders by the hirer, the contract shall be concluded only by FST's confirmation of the order in writing (this can also be by fax or email). This shall apply in particular to any amendments or subsidiary agreements to, or deviations from, these General Terms and Conditions. If a delivery/performance is provided without prior express confirmation of the order by FST, the contract shall be concluded by the acceptance of the delivery/performance by the customer/hirer, see Clause 1b of these General Terms and Conditions.

b. The conditions and performances set out in the quotation/description of performances shall determine comprehensively and conclusively the scope and the features, as well as the items to be delivered/hired and any other performances, to be provided by FST. Any supplementary documentation accompanying the quotation, such as drawings, illustrations, weights and other dimensional specifications shall be considered as approximations unless they have been expressly designated as binding by FST.

c. FST reserves without restriction all property rights and copyrights to all quotation and contract documentation, which has been made available. Quotation and contract documentation shall not be divulged to a third party or used, in part or in extract, as the basis for requests for quotations or for the customer's/hirer's own productions without the prior express written agreement of FST.

d. In the case of performances/deliveries whose technical features have been specified by the customer/hirer, the customer/hirer shall bear responsibility for ensuring that the property rights of third parties are not infringed. The customer/hirer shall indemnify and hold FST harmless in the event of a claim for damages by a third party.

e. The prices in the quotation/performance description shall be the valid prices. In the event of an ongoing business relationship, the prices that are valid on the day of the delivery/hiring shall be the valid prices. The prices shall be calculated in euros, plus the applicable legal value added tax in each case.

f. Unless otherwise agreed, invoices are payable immediately upon receipt and without deductions. A discount shall require a separate written agreement. Payment shall be deemed to be in default 30 days after the invoice date, without a requirement for a late payment reminder. The date of payment shall be the day on which the irrevocable payment is received by FST.

The interest on arrears for all outstanding claims on the part of FST shall be 8% above the respective base interest rate, pursuant to Section 1 of the German Discount Rate Transition Act (Diskontüberleitungsgesetz), in the case of persons or businesses operating under a registered business name, and 5% above the base interest rate, pursuant to Section 1 of the German Discount Rate Transition Act and Section 247 of the German Civil Code (BGB), in the case of private persons.

g. Any discounts that may have been granted shall be forfeited in full if the purchaser/hirer is in default of payment.

h. The FST has the right to create interim invoices and, accordingly, to demand corresponding interim payments.

i. If the customer/hirer defaults on the payment of an interim invoice, FST shall be entitled to prohibit all further use of the hired items with immediate effect and to demand their return. This applies to all claims arising from the business relationship.

j. Invoices shall be paid free of postal and other charges. In particular, FST is not obliged to accept cheques or bills of exchange. These shall always be accepted solely as a conditional payment. The FST is entitled to assign payments received to settle the oldest outstanding payments

in each case, even if this conflicts with the intentions of the customer/hirer. Payments received shall first be used to settle FST's outstanding costs, then interest, and finally the principal claim.

k. The customer/hirer shall only be entitled to offset or retention rights on the basis of his own claims if these have been legally established or are undisputed.

3. Delivery, Shipping, Liability for Prior Damage

a. Delivery dates and performance times shall be binding if they are stipulated in the quotation and order confirmation, and if nothing is agreed to the contrary.

b. FST shall only be liable for a delay in delivery/performance in cases of wilful intent or gross negligence, as defined by German law. Liability in the event of gross negligence shall be limited to foreseeable damages, which are typical of the contract concerned, insofar as liability for injury to life, body, or health is not involved. In addition, the liability for delay in performance shall be limited to compensation of 10% in addition to the performance, and for compensation in lieu of performance to 25% of the value of the originally agreed performance. If it is impossible to fulfil the delivery/performance, FST shall only be liable in the event of wilful intent or gross negligence as defined by German law. Liability in the event of gross negligence shall be limited to foreseeable damages, which are typical of the contract concerned, insofar as liability for injury to life, body, or health is not involved. Furthermore, liability with regard to impossibility shall be limited to compensation and reimbursement of expenditure incurred up to a total of 35% of the value of the originally agreed delivery/performance. Further claims by the customer are excluded. The right of the customer to withdraw from the contract shall be unaffected by this. A change of the burden of proof to the disadvantage of the customer/hirer is not part of the preceding provisions.

c. The place of fulfilment and performance is FST's business headquarters or warehouse, unless the delivery/performance is carried out at a different location at the instigation of the customer/hirer. Risk shall be transferred, at the latest, on the handover of the item for delivery to the forwarder, carrier, or other third party charged with the shipping. The decisive moment for this is the start of the loading activity for which the customer, the carrier, or other authorized third party is responsible. In this case, the start of the loading activity shall be the departure of the item for delivery from FST's business premises or warehouse premises, regardless of whether it has participated in the loading. If other performances, such as erection or installation have been agreed, the risk shall be transferred when operational readiness is achieved. If there is a delay in acceptance by the customer/hirer, the risk shall be transferred in both cases to the customer/hirer for the duration of the delay.

d. The customer/hirer is obliged to inform FST fully about the intended use of the hired item, as well as the place of installation and, on request, the actual location.

e. The customer/hirer shall check the delivery/hired item, and where appropriate any associated fixtures, for fault-free condition, full functionality, and safety immediately upon receipt and/or after installation has been completed. In every case, the customer/hirer shall carry out a complete test before operational use. Any defects, errors, omissions etc. are to be notified to FST without undue delay, if necessary by telephone. Otherwise, any possible warranty and compensation claims shall be cancelled without substitution.

4. Period of Hire and Use of the Hired Item

a. The period of hire begins on the day of delivery and ends on the day of the complete return delivery of all the hired items to FST. If the return is delayed beyond the contractually agreed period of hire, a corresponding additional charge shall be levied. The minimum period of hire is the contractually agreed period of hire in every case.

b. The customer/hirer shall treat the hired items with care and observe all of the obligations associated with the possession, use and preservation of the hired items, and, in particular, comply with the maintenance, care and use recommendations provided by FST and the servicing and care instructions of the relevant manufacturer. The hired items shall only be erected and operated by experienced personnel and within the limits imposed by the technical provisions. The customer/hirer shall be responsible for ensuring continual compliance with all applicable safety guidelines as well as a reliable power supply for the whole of the duration of use. The customer/hirer shall be fully and absolutely liable for any and all damage arising from failure of the power supply, interruptions to the power supply, and power surges. Any official or other permits required for operating the equipment shall be obtained by the customer. The customer shall also be responsible for ensuring compliance with limits, restrictions, and other regulations. FST assumes no liability in this respect.

c. The customer/hirer shall not open up, dismantle, alter, or contaminate the hired items, or damage or remove their identification numbers or company signs. The costs of restoring equipment to its original condition shall be born by the customer/hirer.

d. Sub-hiring to a third party shall only be permitted with FST's express written agreement. In such cases, the customer/hirer shall bear full and absolute liability for the actions of the third party. In particular, he shall

ensure that the hired item is treated with care in accordance with Clause 4.b and Clause 4.c.

5. Cancellation by the Customer

a. The customer/hirer shall have the right to terminate the performance/hire contract if the hired item has not been transferred and/or no performance has been rendered. In order to take legal effect, the cancellation must be in writing and be received by FST in good time.

b. If, for whatever reason, the customer/hirer cancels or refuses to accept the performance offered by FST, FST shall be entitled to claim compensation from the customer/hirer for incurred expenses and loss of profit, as follows: up to 10 days before the agreed start of the hire/performance - 50% of the contract value; up to three days before the start of the agreed hire/performance - 80% of the contract value. If the cancellation takes place less than 24 hours before the agreed time of delivery, FST shall have the right to claim compensation up to 100% of the contract value. The same shall apply if acceptance of the performance is refused by the customer/hirer after the due date. The right of the customer/hirer to verify that FST has not suffered any damage or only slight damage shall not be affected by this. If no acceptance of the offered performance has been made by the agreed time, FST shall be entitled, after setting a deadline, to rescind the contract and to offer the agreed performance elsewhere. Within the meaning of this clause, the term contract value shall be understood to be the total gross contract value, that is, the agreed payment for the hire and other performances, including taxes and expenses.

6. Termination by FST

a. The contractual relationship can be terminated by FST for good cause. Such good cause shall exist, if:

- the business circumstances of the customer/hirer have significantly and demonstrably worsened after the conclusion of the contract; that is, in particular, if distraints or other compulsory enforcement measures are taken against the customer/hirer, or insolvency proceedings or an out-of-court settlement proceedings have been applied for regarding his assets. The customer/hirer can avert termination by providing sufficient security.
- the customer/hirer uses the hired items contrary to contract and continues this use contrary to contract despite a warning with a period of notice.
- in the case where the payment of the hire charge is determined by periods of time, the buyer/hirer is in default of payment for two consecutive payment dates for more than three working days in each case.

b. In the case of termination for good cause by FST, FST shall be entitled to retrieve hired items that have been transferred to the customer/hirer from the customer/hirer at the cost of the customer/hirer. The customer/hirer shall have no right of refusal of performance or right of retention in this regard. For this purpose, it is agreed that the customer/hirer has granted FST unhindered access to the spaces and areas in and/or on which the hired items are located. Insofar as third party rights conflict with this, however, the customer/hirer has already assigned all claims against third parties arising from the release of the hired items to FST on the conclusion of the hire contract. FST accepts the assignment on the conclusion of the contract.

7. Liability and Warranty

a. Claims for defects shall not apply in the case of merely insignificant deviations from agreed quality conditions or slight impairment of usability. Apart from that, FST shall be liable as follows:

- if, after the transfer of risk, the hired item shows a defect that nullifies or significantly impairs its suitability for its contracted use, there shall be a right to choose between the removal of the defect or a replacement delivery by FST. For the duration of the period when the suitability for the contracted use is nullified or significantly impaired, the hire charge shall be reduced by a corresponding amount.

- if the hired item should break down during its use, compensation shall be limited to the amount of the hire charge. Breakdowns due to normal wear and tear (e.g. lighting), excessive loading, or external effects for which FST is not responsible are excluded from any claim for compensation.

- apart from this, FST shall only be liable for wilful intent or gross negligence, as defined by German law, for injury to life, the body or health, or for the culpable breach of essential contractual obligations. Compensation claims for breach of essential contractual obligations are limited to foreseeable damage, which is typical of the contract concerned, even in the case of gross negligence, if none of the above-mentioned exceptions is concerned. Liability for damage to legal assets belonging to the customer/hirer is excluded. This shall not apply where there is wilful intent or gross negligence, or where there is injury to life, the body, or health.

- the aforementioned provisions shall cover damages together with performance and damages in the place of performance, regardless of the legal grounds, particularly with regard to defects, breach of essential obligations under the contractual relationship, or tort. It shall also apply to a compensation claim for frustrated expenditure. The regulations regarding liability for default and impossibility, in accordance with these provisions, shall remain unaffected by this. A change in the burden of proof to the disadvantage of the customer/hirer is not part of this.

- the customer/hirer shall notify FST without undue delay of any impairments in performance that occur and to cooperate in the elimination of the impairment in performance insofar as he is able. Otherwise, a claim for a reduction in the hire charge shall be excluded.

- the customer/hirer agreed at the time the contract was concluded to hold FST harmless with regard to all claims from third parties, which may be made against FST in connection with the hire of equipment. This shall also include any and all costs incurred by FST in defending itself against third party claims.

b. The period of limitation for claims and rights regarding defects in delivery/performance shall be one year, regardless of the legal grounds. This shall also apply to all compensation claims against FST, which relate to a defect, regardless of the legal grounds on which the claim is made, and all compensation claims of whatever kind, which do not relate to a defect. The aforementioned periods of limitation shall apply, provided that the claims are not based on wilful intent, the fraudulent concealment of a defect, or the assumption of a guarantee of the quality of the delivery/performance. In this case the periods of limitation under German law shall apply, insofar as these are applicable without the employment of bad faith. Furthermore, the aforementioned periods of limitation shall not apply in cases of injury to life, the body, health, or the freedom of the person, grossly negligent breach of duty, or breach of essential contractual obligations. The period of limitation begins with the delivery in the case of claims, and with acceptance in the case of other performances. Unless stipulated explicitly elsewhere, German statutory provisions regarding the start of the period of limitation, suspension of expiry, suspension, and recommencement of periods remain unaffected. A change of the burden of proof to the disadvantage of the customer is not part of the preceding provisions.

8. Liability and Warranty in the Case of Full-Service Provision

If the Full-Service is provided, FST shall only be liable in accordance with Clauses 3.b. and 7 et seq. of these General Terms and Conditions, that is, only in cases of wilful intent or gross negligence, and with the limitations noted therein. A more extensive liability is excluded. In ordering the Full-Service provision, the customer agrees to assume all responsibility for ensuring unhindered and timely access and a reliable power supply (in accordance with DIN EN 60038).

9. Liability and Obligations of the Customer

a. The customer/hirer shall be liable during the period of hire, and during any possible extension of the period of hire, for all damages to the hired items, and in particular for loss, theft, damage during transport or use, incorrect use, malicious damage, damage by third parties, and force majeure, and also for fire and water damage. He shall notify FST without undue delay of any damage that occurs during the period of hire. The customer/hirer shall be liable for damages, loss, etc. up to the full, as-new, replacement value of the hired items. The assessment of the damage shall be carried out exclusively by FST. Attempts at repair by the customer/hirer are not permitted. The customer/hirer shall pay the appropriate hire charge for the duration of the repair or replacement in the case of write-off or loss.

b. The FST hereby declares that the hired items are not insured. It is recommended that the customer/hirer secures an appropriate new-for-old insurance cover in order to protect himself from the consequences of damage and write-off. The customer/hirer agrees on the conclusion of the contract to assign to FST all claims against the insurer for compensation payments in the event of damage. FST accepts this assignment.

c. The customer/hirer is not permitted to dispose of the hired items through sale, assignment, or in any other manner. Likewise, assignment as security, pledging, or other charges on the hired items shall have no legal validity with regard to FST. The customer/hirer shall be responsible for all costs that FST incurs in taking measures to protect its property.

10. Licences

When operating video and audio systems, the customer/hirer is only permitted to reproduce visual images and sound in accordance with the conditions set down by the licence holder concerned. In the case of computerized systems, the software applied must be that specified for the individual piece of equipment and used in accordance with the conditions set down by licence holder. The customer/hirer shall hold FST free from third party claims arising from the use of visual and audio materials, and software, which do not comply with these conditions.

11. Recovery by FST

The recovery of hired items by FST shall not constitute a confirmation of freedom from defects or completeness. FST expressly reserves the right to check that hired items that have been returned are complete and free of defects within a reasonable period of time and to inform the customer/hirer of defects or losses without undue delay.

12. Place of Jurisdiction, Applicable Law, and Concluding Provisions

a. The Munich Landgericht (Regional Court) or the Munich Amtsgericht (Local Court), as appropriate, shall be the competent court for all disputes arising from the contractual relationship, regardless of whether the customer is a registered merchant, a legal person under public law, or a special fund under public law, or whether the customer has no general legal jurisdiction in Germany. FST retains the right to sue the customer/hirer at its principal place of business or place of jurisdiction.

b. The contractual relationship is also subject to the law of the Federal Republic of Germany.

c. If one or more clauses in the above terms of business are invalid, the contract remains valid in all other respects. An invalid clause is to be replaced by a valid clause, which comes closest to the intended provision.

d. Oral subsidiary agreements shall not be recognised. All additional agreements between FST and the customer/hirer shall be in writing.

With effect from 01.05.2015