

GENERAL PURCHASING CONDITIONS FOR CONTRACTORS/SUPPLIERS

WEST4MEDIA Filmproduktions GmbH

1. General – Scope of application

- 1.1. WEST4MEDIA Filmproduktions GmbH – hereinafter referred to as WEST4MEDIA – orders and purchases supplies and services from contractors/suppliers (hereinafter jointly referred to as “Supplier”) exclusively on the basis of these General Purchasing Conditions (hereinafter referred to as GPC). These GPC shall also apply to all future transactions, whereby their applicability does not need to be agreed upon in each single case.
- 1.2. Ancillary agreements, amendments or additions of these GPC are only valid if made in writing; this also applies to the deviation of the written form requirement.
- 1.3. Contractual terms contrary or divergent to these GPC, in particular in the Supplier’s business terms or contract forms, are – even if WEST4MEDIA is aware of them – only effective if WEST4MEDIA expressly and in writing approves them.
- 1.4. Nullity or invalidity of individual provisions in this GPC do not affect the binding nature of the remaining conditions or the contracts concluded on the basis of them. The ineffective provision is to be replaced by an effective provision which comes as close as possible to its meaning and purpose.

2. Orders / contract

- 2.1. Binding orders by WEST4MEDIA must be in writing in each single case to become legally valid. Transmission via fax and e-mail shall suffice to meet this formal requirement. In case the written order deviates from any precedent request or from a non-binding notice of an order, the written order shall be deemed accepted by the Supplier, unless the latter communicates his refusal in writing within 3 days. In case the Supplier communicates his refusal, a contract shall not be deemed concluded. If the Supplier maintains silence with regard to an order placed by WEST4MEDIA the order shall be deemed accepted upon the expiration of a term of 3 days.
- 2.2. Offers made by the Supplier shall in any case be binding for a period of four weeks of receipt by WEST4MEDIA. Offers and cost estimates shall be free of charge.
- 2.3. The Supplier shall not have the right to assign the contract, neither as a whole nor in part, to third parties without the written consent of WEST4MEDIA. In case such assignment is permitted the Supplier shall be liable as for his own conduct. Such assignment to third parties shall be conducted in the name and at the expense of the Supplier.

3. Scope of supply and services / Processing of orders - General

- 3.1. The order comprises, unless otherwise agreed upon in writing in the individual case, all necessary incidental, ancillary and additional supplies and services. The Supplier is obliged to insure personnel and equipment for all risks at its own cost and produce the policies upon request of the principle.
- 3.2. Subsequent changes of the scope of supply and services by WEST4MEDIA are to be carried out and included in the fee, provided that thereby no considerable additional expenditure originates for the supplier. Artistically or technically necessary changes after conclusion of the contract which lead to add-on costs have to be communicated to WEST4MEDIA immediately in writing and to be approved by WEST4MEDIA.
- 3.3. The Supplier is obliged to review the requests, documents, information and orders transmitted by WEST4MEDIA as to whether they contain any ambiguities or incompleteness and whether the object of the order is suitable for the intended use. The Supplier undertakes to immediately notify any noticeable defects and objections in writing.
- 3.4. A work day for production services – all services associated with the creation of a film production, especially direction, acting, camera, assistance, cutting, lighting, broadcasting and live production – comprises 10 working hours. The Supplier’s working time begins upon arrival on location (filming location, WEST4MEDIA production site, etc.).

- 3.5 Journey time (to and from location) and mileage allowance for distances of 50 kilometres and over between the residential or company address - whichever is shorter - and the production location may be charged, providing this was agreed with the principle in advance. The fee charged per hour of journey time – unless otherwise agreed – is one twentieth of the Supplier's day rate. The fee is charged per hour or part thereof.
- 3.6 If 10 working hours/a work day is exceeded, the overtime recorded in writing by the Supplier shall be additionally compensated by WEST4MEDIA. The rate per full hour of overtime is – unless otherwise agreed – one tenth of the Supplier's day rate. The fee is charged per hour of part thereof. Overtime hours for equipment provided by the Supplier cannot be charged. If a flat rate was agreed, remuneration for overtime hours is excluded.
- 3.7 The supplier shall be obliged to obtain any and all rights referring to the footage (film material) and the documents (photos, logos etc.) used for the realization of the order up to the necessary extent in its own name and on its own costs or indicate in writing (email is sufficient) that such copy rights, trademark rights or other third party rights exist. WEST4MEDIA shall not liable for the breach of such rights. If WEST4MEDIA is claimed by a third party for the breach of such rights, the Supplier shall indemnify and hold harmless WEST4MEDIA; the Supplier has to pay damages for all disadvantages incurred to WEST4MEDIA resulting from a claim by a third party.
- 3.8 Footage must be delivered on a digital storage device in the agreed coding and organised in clearly structured folders. The Supplier is obliged to make a double back-up of the footage/storage device (a copy separate to the original incl. verification of the checksum) by the end of the production day at the latest. Instead of the second copy, the original storage device can be retained. A back-up of the files shall be passed on to the principle; a second back-up is to be kept by the Supplier until instructed otherwise. If agreed, a shot-list must also be provided. Finished clips and films must be delivered with a log file and music cue. Finished programmes must be delivered with a running order in an Excel document, a manuscript with time codes and a music cue.

4. Powers

- 4.1 The Supplier guarantees to comply with all requirements which are necessary to execute the order, such as, in particular, but not limited to duly qualified personnel, technical equipment, industrial property rights, know-how, official permits and authorisations etc. The Supplier further guarantees, to – according to § 38 paragraph 1 Austrian Copyright Act (Urheberrechtsgesetz) – possess all necessary copyright utilization rights – provided that these do not belong to a collecting society, in particular the duplication, spreading, broadcasting, performance and ancillary copyrights necessary to fulfil the contract.

5. Delivery / Dates

- 5.1 The delivery date agreed upon in the order/call sheet placed by WEST4MEDIA shall be binding. The delivery date of the order does not require the written form. Deliveries on credit or part deliveries require the written consent of WEST4MEDIA. Over-deliveries, which exceed the ordered amount, may, at the choice of WEST4MEDIA either be kept or sent back at the Supplier's cost and risk.
- 5.2 The supplier must inform the principle of any paid or unpaid additional employment activity conducted during the assignment that is in conflict with the interests of the principle or that impairs the work of the supplier for the principle.
- 5.3 In any case the Supplier undertakes to inform WEST4MEDIA immediately about any difficulties in keeping to the delivery date an early enough for WEST4MEDIA to obtain substitute services from a third party. All costs and damages that arise as a result of failing to meet the delivery date and/or delivering late shall be borne by the Supplier, whereby slight negligence suffices.
- 5.4 In case the Supplier - even when viewed objectively - is behind schedule with his supplies, WEST4MEDIA shall – without prejudice to further claims, such as claims to performance, damages, etc. – be entitled to withdraw from the contract without the granting of a period of grace.
- 5.5 Deliveries shall be effected – unless otherwise provided in the individual case – “DDP” unloaded according to INCOTERMS 2000” or, as amended at the time of the order, to the place of destination, named by WEST4MEDIA in the order; in case no place of destination has been specified to A-1050 Wien, Schloßgasse 13. The transport instructions given by WEST4MEDIA are to be complied with.

6. Dispatch / packaging

- 6.1. In case goods or other items are dispatched, they have to be dispatched in a packaging that is suitable for protecting the goods from any kind of transport damages. Packaging costs shall not be incurred by WEST4MEDIA. The Supplier undertakes to strictly comply with the supply and packaging instructions given by WEST4MEDIA.
- 6.2. If a delivery does not comply with the aforementioned specifications or other supply and packaging instructions, WEST4MEDIA shall be entitled to refuse the acceptance of the delivery.

7. Cancellation by WEST4MEDIA

- 7.1. WEST4MEDIA shall have the right to cancel the order at any time. Only the services provided until the cancellation shall be remunerated with regard to the actual costs. The expenditures shall be supported by documents by the Supplier.
- 7.2. Additional claims of the Supplier of whatsoever kind, in particular compensations or indemnities as well as loss of profit shall be excluded.

8. Withdrawal from the contract

- 8.1. WEST4MEDIA is entitled to withdraw from the contract for good reason, in particular if
 - a) the execution of the supplies or services is impossible or further delayed despite granting an extension of time;
 - b) the Supplier infringes essential contract duties.

9. Prices / invoicing / payment

- 9.1. The prices arranged with the Supplier shall be considered as fixed prices, which are not subject to any increase and cover all expenses of whatsoever kind (charges included). In the case of cost estimates provided by the Supplier their correctness shall be deemed guaranteed.
- 9.2. Disarrangements of shooting dates due to weather conditions (weather risk) or otherwise caused delays or difficulties do not entitle the Supplier to claim additional compensation, provided that the thereby caused additional expenditures are not more than 20%. In case of higher additional expenditures the supplier has to immediately notify WEST4MEDIA of such additional expenditures as well as their amount. The Supplier is only entitled to claim compensation of such additional expenditures if WEST4MEDIA prior consents to them.
- 9.3. All invoices are to be sent to the corporate seat of WEST4MEDIA or via e-mail to invoice@west4.media. The invoice has to be drawn up in accordance with the applicable accounting rules and must be itemized so that it can be clearly compared with the order and the audit performed on a clear basis.
- 9.4. Invoices will become due for payment – without prejudice to the beginning of the limitation periods – only upon complete delivery and due invoicing; this shall apply even if part deliveries are performed. Likewise, the discount period shall not commence before due (above all free from defects) and complete delivery and due invoicing.
- 9.5. Invoices shall become due for payment within 60 days of complete service/delivery and due invoicing, in case payment is effected within 14 days the Supplier will grant a 3% discount. In the case of early delivery the discount period shall not commence before the agreed delivery date. Payments shall be deemed effected in any case on the date the account of WEST4MEDIA is debited. In case cheques are transmitted, payments shall be deemed effected one working day after the cheque has been sent by WEST4MEDIA.
- 9.6. All payments shall be made under the reservation of any error and shall not be considered as acceptance of any claim, neither in respect of its amount nor its legal ground. In case counterclaims of WEST4MEDIA arise against the Supplier, WEST4MEDIA shall be entitled, but not obliged, to set off its debt against its counterclaim up to the amount of the counterclaim. WEST4MEDIA shall have this right – also if it has approved the assignment – also vis-à-vis any assignee or any other person that is entitled to the claim against WEST4MEDIA.

- 9.7. If WEST4MEDIA instructs additional supplies and services or modifications after concluding the contract, they are only to be compensated by WEST4MEDIA if the commissioned supplies and services or modifications cause actual additional expenditures, the Supplier has – before executing the order – notified WEST4MEDIA in writing of the additional expenditure and has reached an agreement on a suitable additional reimbursement with WEST4MEDIA.

10. Reservation of rights and ownership

- 10.1. All rights of WEST4MEDIA to works, which are subject to copyright laws or otherwise protected, documents such as drawings, plans and designs of whatsoever type, know-how, designs, patents etc., are expressly reserved. Such works, documents, know-how, designs, patents etc. shall neither be made available nor transferred nor be used for the Supplier's own purposes without the written consent to be obtained in each single case by WEST4MEDIA. In case of doubt such consent shall not be deemed given.
- 10.2. With placing of order the Supplier assigns and transfers to WEST4MEDIA any and all temporally, objectively as well as geographically unrestricted, transferable exclusive rights (Werknutzungsrechte) to use all works – like film works, screenplays, treatment, drafts etc – created in the course of fulfilling the order. Besides, the sole property of work pieces (e.g. basic material (picture and tone), negatives, master tapes, etc.) is transferred to WEST4MEDIA. The exploitation right encloses in particular also the broadcasting right (fee/pay TV, cable, satellite, mobile TV, IP TV/web TV etc.), use and utilization through electronic media (Internet), the right to make available to the public via the Internet (e.g. download/on-demand rights), the right to present and theatrical rights (e.g. cinema, exhibitions, trade fairs), home entertainment rights (e.g. DVD), the right to reproduce and distribute (e.g. in print publications), as well as the right to use in any media of telecommunication as well as all other media, even if they are not known nowadays. WEST4MEDIA is entitled to edit, rework, shorten and synchronise the material, as well as combine it with other audio/audio-visual productions and exploit it likewise. WEST4MEDIA is entitled to use, exploit, change, edit, amend, synchronize, dispose of, reproduce, spread, make available, send, issue licences to third persons, or to use otherwise all such achievements and creations – also extracts in picture and/or tone – without limitation, at its own discretion and in any way. Nevertheless, WEST4MEDIA is not obliged to use or exploit such works, in which way whatsoever.
- 10.3. WEST4MEDIA acquires the right to transfer open, editable data.
- 10.4. The Supplier is obliged to transfer in writing to WEST4MEDIA by the time of delivery at the latest the necessary information for the statutory notifications to the respective collecting societies. The associated taxes, fees and copyright payments (fees for the use of music and the like subject to licence) are borne by WEST4MEDIA. The Supplier is also obliged to hold harmless WEST4MEDIA from any claims arising from incomplete, incorrect or missing information.

11. Guarantee / defects

- 11.1. The Supplier guarantees that its goods and services comply with the industry standard (impeccable sound and picture quality) and the goods or services supplied meet all requirements for being put on the market and used in Austria as well as in all member states of the European Union, in particular, that they comply with official authorisations, conditions and approval requirements, marking and labelling requirements etc.
- 11.2. Specifications on the qualities, characteristics or purpose of the ordered goods or service shall be expressly guaranteed by the Supplier. Furthermore, the Supplier guarantees that the ordered goods are CE-certified, of first-class quality, in full working order and that they will remain free from defects during the warranty period, if used in an ordinary way.
- 11.3. The Supplier expressly guarantees WEST4MEDIA that the goods supplied are free from any rights or claims of third parties, in particular free from rights or claims arising from industrial, intellectual and other property rights (e.g. copyrights, trademarks, designs, patent rights etc.). The Supplier shall, irrespective of any third-party notice, indemnify and hold WEST4MEDIA harmless in respect of any encroachment upon such rights of third parties for any claims these third parties may assert in this connection, including interest and costs.

- 11.4. In the case of even minor defects WEST4MEDIA shall have the choice to either withdraw from the contract, or claim a price reduction or repair/replacement or to remedy the defects itself in at the Supplier's expense. Any complaint-discount granted by the Supplier shall cover exclusively minor defects and the latter also only insofar as the damage resulting from the defect (expense to remedy the defects, diminution in value, replacement costs etc.) does not exceed the granted complaint-discount. Serial defects shall by no means be considered as minor defects. WEST4MEDIA shall - without prejudice to any complaint-discount - be entitled to assert all claims resulting from a defect.
- 11.5. The warranty and or guarantee period shall be - without prejudice to any deviating written agreements in the individual case - 24 months of receipt of the goods by WEST4MEDIA. The provisions of Secs. 377 and 378 HGB (Austrian Commercial Code) are expressly excluded. The Supplier shall therefore not be entitled to the objection that the complaint was not raised or raised too late or raised without observing the required form. In case WEST4MEDIA complains about a defect within the guarantee period, the existence of the defect at the time of delivery of the goods to WEST4MEDIA will be presumed. WEST4MEDIA shall be entitled to file guarantee and/or warranty claims resulting from defects against which a complaint was raised, until 6 months after expiry of the guarantee period. Claims for damages of WEST4MEDIA shall be subject to the statutory limitation periods. The acceptance of even defective goods by WEST4MEDIA shall not imply a non-assertion of any claims, such as claims arising from this guarantee, warranty claims or claims for damages.

12. Liability / retention / refusal of service

- 12.1. WEST4MEDIA and third parties acting on behalf of WEST4MEDIA shall not be liable for minor negligence.
- 12.2. Rights of the Supplier to retain goods and to refuse services shall be excluded, unless mandatory statutory provisions provide otherwise. Divergences of opinion shall not entitle the Supplier to stop due services nor to retain deliveries.

13. Prohibition of set-off / prohibition of assignment

- 13.1. The Supplier shall not be entitled to set off any counterclaims which he might have against claims of WEST4MEDIA, no matter what their legal basis is.
- 13.2. The Supplier shall not be entitled to assign claims which he might have against WEST4MEDIA to third parties or to dispose of them otherwise for the benefit of third parties. Assignments performed contrary to this prohibition or other disposals shall have no legal effect.

14. Communications

- 14.1. Communications have to be directed in written form to the last address notified in writing. Transmissions via fax or e-mail shall suffice to meet this formal requirement.
- 14.2. The Supplier is obliged to immediately notify WEST4MEDIA in writing of any modification of addresses, failing which communications shall be deemed served in a legally valid form to the last address of the Supplier notified in writing. Unless otherwise expressly provided, the date of posting shall be relevant for the timely receipt of a communication.

15. Place of performance / venue / applicable law / limitation period

- 15.1. The corporate seat of WEST4MEDIA shall be the place of performance with respect to all duties and obligations resulting from the business relationship.
- 15.2. For all disputes arising from or in connection with the business relationship the court in Vienna – Inner City, Austria, which is competent, shall have exclusive jurisdiction. WEST4MEDIA shall, however, remain entitled, to sue the Supplier at his general domicile.
- 15.3. Austrian substantive law shall apply exclusively. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- 15.4. All claims of the Supplier must be judicially asserted within one year of their becoming due, otherwise they shall be excluded. The date on which the court receives the respective pleadings shall be relevant for assessing the timeliness of such assertion.