

Standard Terms of Business

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emotions4life Studios GmbH

Zum Haberland 44

32051 Herford

(hereinafter referred to as "EMOTIONS4LIFE")

1. General

1.1.

Orders are executed only on the basis of the provisions set out herein below. Any deviating terms and conditions of customers are effective only if expressly confirmed by EMOTIONS4LIFE.

1.2.

Unless otherwise agreed in writing in an individual case, these Standard Terms of Business ("Terms") apply to all orders accepted by EMOTIONS4LIFE in the areas of design consultation, conceptual design, and implementation.

1.3.

As used in these Terms, "photographs" means all works and photographs created by EMOTIONS4LIFE, regardless of their stage of creation or technical format (e.g. print, slide, negative, digital, paper printouts, still videos, stop motion, electronic still images in digital form, on the internet or on other image carriers).

1.4.

Design consultation and conceptual design are separate services. They may be invoiced by EMOTIONS4LIFE on a separate basis insofar as they are not included in the photo order placed and are additionally requested by the customer.

2. Scope

2.1.

The subject of orders placed is the creation of photographs as digital images. Such orders may also include the provision of data, data carriers, files, graphics services, and/or the conceptual design of such services.

3. Rights and obligations as between the customer and EMOTIONS4LIFE

3.1.

As between the parties hereto, all rights in the photographs within the meaning of copyright law are vested exclusively in EMOTIONS4LIFE.

3.2.

Upon full payment of the order, EMOTIONS4LIFE will assign copyright use rights to the customer for the agreed purpose.

3.4.

Unless otherwise agreed, EMOTIONS4LIFE has the right to be named as the author when EMOTIONS4LIFE photographs are used. Unless agreed otherwise in the relevant order, usage rights are granted as non-exclusive usage rights only.

3.5.

Any kind of duplication or reproduction on other image carriers requires the written consent of EMOTIONS4LIFE as far as such duplication or reproduction goes beyond the contractually agreed usage.

3.6.

After publication, the customer shall, without request, deliver specimen copies to EMOTIONS4LIFE. All specimen copies serve as reference material to EMOTIONS4LIFE and as such may also be published on its homepage or on Facebook, provided the customer does not object to such publication.

3.7.

The customer of an image within the meaning of section 60 of the German Act on Copyright and Related Rights (UrhG) does not acquire the right to duplicate and/or disseminate the photograph unless the corresponding rights have been assigned to the customer. The application of section 60 of the UrhG is expressly excluded.

3.9.

EMOTIONS4LIFE may use and publish all products (photographs, graphics, etc.) created by EMOTIONS4LIFE for its own promotion free of charge.

4. Remuneration

4.1.

For the production of the photographs, EMOTIONS4LIFE charges a fee as lump sum, hourly rate, or daily rate, plus VAT at the current rate, on the basis of the current price list or the current offer or, if required, based on cost.

The customer shall be responsible for incidental expenses (e.g. costs of styling, hair/make-up artist, model fee, props, costs of setup/redesign and dismantling, decoration, out-of-pocket expenses, cost of materials, third-party costs, location rent, rentals, etc.) as well as other out-of-pocket expenses and travelling expenses.

EMOTIONS4LIFE may demand an adequate prepayment in case of extraordinary advance expenditures.

4.2.

All invoices are payable immediately upon receipt, however not later than within 10 days of receipt, without any deduction. In the event of any delay in payment, default interest in the amount of 9 percentage points above the applicable base interest rate must be paid. This is expressly without prejudice to the right to assert claims for further damages.

5. Retention of title and set-off

5.1.

The photographs and graphics created by EMOTIONS4LIFE remain the sole property of EMOTIONS4LIFE until full payment of the order.

5.2.

The customer may only offset or exercise a right of retention against undisputed or legally enforceable claims.

6. Complaints; warranty; acceptance

6.1.

The customer shall always immediately examine the product created by EMOTIONS4LIFE for conformity with the contract (see 8.1.). In case of defects that are not immediately apparent, the customer shall notify us in writing within a period of one week after receipt of the product created by us.

6.2.

EMOTIONS4LIFE will generally carry out the design at its sole direction if the customer has not provided EMOTIONS4LIFE with a layout or briefing and thus no express instructions for the design of the photograph or the object to be graphically designed. If the customer requests any changes to be made during or after production of the shot(s), the customer shall also be responsible for the advised additional costs as agreed. Additional expenses resulting from subsequent changes of the briefing or layout will be invoiced to the customer by mutual agreement. We retain the right to remuneration for work already begun.

6.3.

In case of justified complaints EMOTIONS4LIFE is entitled at its option to provide a repair and/or replacement. If EMOTIONS4LIFE fails to provide a repair and/or replacement, the customer may rescind the contract or demand a reduction in the purchase price.

6.4.

EMOTIONS4LIFE shall transmit its work immediately after production to the customer or, at the customer's request, to a third party named by the customer. The customer shall inspect the work immediately to determine whether or not the work is suitable for acceptance. This also applies if EMOTIONS4LIFE has transmitted the work to third parties at the customer's request. If the customer does not declare within seven (7) days after receipt of the work by the customer or by the third parties named by the customer that and why the work is not being accepted, the work is deemed accepted unless it has obvious defects.

6.5.

Any notice of defects must be received by EMOTIONS4LIFE within one calendar week in writing (including fax, e-mail, etc.) and signed. After expiration of such time, the work is deemed to have been delivered in accordance with the contract and free from defects with regard to any unresolved defects. The statutory limitation period of 12 months, beginning upon official acceptance, applies to hidden defects.

6.6.

EMOTIONS4LIFE shall exercise the greatest possible care when executing an order. If EMOTIONS4LIFE uses the services of a third party to prepare and/or execute any order, EMOTIONS4LIFE will be liable for damages for defects resulting from acts or omissions on the part of that third party only by way of secondary liability.

In any such case, the customer shall first file an extra-judicial claim for damages against the third party. This applies, without limitation, in case of any defects in title with regard to the work, e.g. third-party rights in photographed items preventing the contractual use and exploitation of the work.

6.7.

If EMOTIONS4LIFE uses any items provided to EMOTIONS4LIFE by the customer under the contract as a motif for the ordered work, EMOTIONS4LIFE is not required to examine if and to what extent such items are subject to third-party rights which might prevent the contractual use and exploitation of the work. If third parties assert such rights against the customer or against EMOTIONS4LIFE or its vicarious agents, the liability lies with the customer alone.

6.8.

Shipping and returning of data carriers, files, and data, both online and offline, as well as films, images and artwork are at the customer's expense and risk. The customer may decide how and by whom shipping and/or returning is carried out.

6.9.

EMOTIONS4LIFE is liable for its own or its agents' [*Erfüllungsgehilfen*] breach only in cases of gross negligence or wilful misconduct. This does not apply in cases of material breach of duty and/or injury to life, body, or health attributable to EMOTIONS4LIFE.

Shipping of the customer's own material is at the customer's expense and risk.

6.10.

EMOTIONS4LIFE is liable for light stability and durability of the photographs only within the scope of the warranty of the manufacturers of the photo material. EMOTIONS4LIFE is liable for durability of the data carriers only within the scope of the warranty of the manufacturer of the data carrier.

7. Ancillary obligations of the customer

7.1.

The customer warrants that the customer owns the rights of reproduction and dissemination in all artwork delivered to us. With regard to portraits, the customer also warrants that the customer has obtained the depicted persons' consent to publication, duplication and dissemination. The customer is responsible for any claims by third parties based on breach of such obligations. The customer shall hold harmless and indemnify EMOTIONS4LIFE from and against such third party claims.

7.2.

The customer shall make the shooting items available in a timely manner, if necessary and agreed up to one week prior to the time of the shooting / time of production. The customer also agrees to collect, or instruct a third party to collect, the shooting items in a timely manner directly after production.

If the shooting items have not been collected from EMOTIONS4LIFE at the latest within 4 weeks of our request, EMOTIONS4LIFE is entitled to charge reasonable storage costs. In addition, a one-time amount of € 150.00 (one hundred fifty euros) plus packaging cost (staff, material, etc.) is due for payment unless the customer proves that the actual cost incurred is lower. The storage costs due amount to € 1.50 per cubic metre per day. In the event that studio space is blocked by the shooting objects, EMOTIONS4LIFE is entitled to move the shooting objects at the customer's expense. The customer shall be responsible for any costs incurred as a result. The customer shall, after previous notification by EMOTIONS4LIFE, bear the costs of disposal, if any.

8. Cancellation fee / shooting project waiting times

8.1.

In order to allow efficient operation, releases and/or corrections of the image data sent to the customer must be provided within 10 to 20 minutes of electronic transmission. Delivery of the agreed services in accordance with the agreed terms and conditions is subject to prompt provision of releases and/or corrections. If the above-mentioned deadline is exceeded, EMOTIONS4LIFE is entitled to invoice additional costs incurred as a result of the waiting period after consultation with the customer.

8.2.

If the shooting project cannot be completed within the proposed period of time for reasons for which EMOTIONS4LIFE is not responsible (e.g. weather conditions in case of outdoor shootings; missing or deficient shooting objects; poor preparation of shooting project etc.) the fee of EMOTIONS4LIFE increases accordingly. If an hourly rate or daily rate has been agreed upon, any waiting time is added to the hours or days invoiced. The same applies to any lump sum agreed, which increases accordingly. The customer shall bear the burden of proving that no damage has been incurred by EMOTIONS4LIFE.

8.3.

If an order cannot be executed for reasons for which EMOTIONS4LIFE is not responsible, a cancellation fee may be charged to the customer.

The cancellation fee will be calculated as 50 % of the originally agreed fee, without proof of the damage actually sustained.

8.4.

If an already commenced order is not completed for reasons beyond the reasonable control of EMOTIONS4LIFE, EMOTIONS4LIFE is entitled to the full amount of the agreed fee.

A "commenced order" means a service that is to be rendered pursuant to the relevant contract and that EMOTIONS4LIFE has begun rendering.

The customer is free to prove that a damage or loss was not incurred at all or was significantly lower than claimed.

8.5.

The customer is aware that EMOTIONS4LIFE regularly works together with so-called food stylists to create food photographs / shots. In this regard, reference is made to the liability provisions in section 6.6. hereof. Before starting his or her work, the food stylist shall prove to EMOTIONS4LIFE that he or she has taken out a professional liability and/or commercial liability insurance policy.

8.6.

If, despite exercising the greatest possible care, EMOTIONS4LIFE suffers loss or destruction of photographs for reasons for which EMOTIONS4LIFE is not responsible, the agreed fee claim will not be affected. In such a case, EMOTIONS4LIFE shall deliver a replacement. In that case, the cost price is payable unless the customer is responsible for such loss or destruction.

9. Use rights in photographs not made for and on behalf of the customer

9.1.

The use rights in the photographs / shots are assigned insofar as the photographs / shots have not been created for and on behalf of the customer. EMOTIONS4LIFE remains the owner of the photographs / shots.

9.2.

After the photographs / shots have been used, they are sent back to EMOTIONS4LIFE at the customer's expense. The same applies to photographs / shots that have not been used at all. Such photographs / shots shall be returned to EMOTIONS4LIFE at the customer's expense within one month from the day of completion of production.

9.3.

If photographs / shots are not returned after two written reminders or if such photographs / shots are lost in transit for reasons for which EMOTIONS4LIFE is not responsible, EMOTIONS4LIFE is entitled to charge a loss fee.

Such loss fee is five times the agreed fee per photograph / shot (e.g. photo montage, image file, etc.), however not less than € 1,500.00 (one thousand five hundred euros), unless the customer proves that the actual cost incurred is lower.

10. Processing of shots / images

10.1.

If a new work is created through montage, composing, etc., this must be indicated. The authors of the new work are co-authors within the meaning of section 8 of the UrhG.

10.2.

Insofar as practicable, the customer shall digitally store and copy photographs in such a manner that the name of EMOTIONS4LIFE is electronically linked with the image files. Furthermore, the customer shall, to the best of the customer's electronic abilities, create this electronic link in such a manner that main shots are preserved and EMOTIONS4LIFE can be clearly and unambiguously identified as the author of the work in any reproduction on screens, in any type of data transmission, during any screen projection, including without limitation during any public showing.

10.3.

Insofar as EMOTIONS4LIFE has been engaged to perform electronic image processing, the customer warrants that the customer has the rights in the third-party photographs. The customer shall hold harmless and indemnify EMOTIONS4LIFE from and against all third-party claims based on a false representation.

10.4.

The services included in the media packages "Milieu", "Detail" and "Outline Mask" (*Freisteller*) comprise only the image composition including integration of window backgrounds as well as image processing of the scenery components and room elements provided by EMOTIONS4LIFE. Any further image processing is regarded as special retouching and will be charged on a separate basis.

11. Data protection

11.1.

EMOTIONS4LIFE is entitled to store personal data of the customer subject to compliance with the provisions of the Federal Data Protection Act. EMOTIONS4LIFE shall keep confidential all information which became known to it in connection with the order.

12. Final Provisions

12.1.

If any provision of these Standard Terms of Business is or becomes invalid in whole or in part, this will not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid provision which comes as close as possible to the economic purpose and objective of the invalid provision.

12.3.

The contractual relationship is governed by German laws exclusively. The application of the uniform UN sales convention (CISG) is expressly excluded. The place of performance for all obligations resulting from the order is the registered office of EMOTIONS4LIFE if the customer is not a consumer.

12.4.

To the extent permitted, the exclusive place of jurisdiction is Herford. If the customer does not have a registered office or a usual place of residence in the Federal Republic of Germany, the exclusive place of jurisdiction shall also be Herford.

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