

General Terms and Conditions of Business of
STAGE-KINETIK Gesellschaft für Bühnenproduktionen mbH
- hereinafter referred to as „STAGE-KINETIK“ –

The General Terms and Conditions of Business are divided into general terms and conditions (A.) and special terms and conditions for the relevant type of contract (B. - D.). The relevant special terms and conditions shall apply in addition to the general terms and conditions.

A. General Terms and Conditions

B. Additional terms and conditions for contracts for work and services and terms and conditions for services/service orders

C. Additional terms and conditions of rental

D. Additional terms and conditions of sale

E. Additional conditions in connection with the provision of wlan access

A. General Terms and Conditions

I. Scope of application of the General Terms and Conditions of Business

These General Terms and Conditions of Business shall exclusively apply with regard to entrepreneurs, legal entities under public law or a special fund under public law within the meaning of Section 310, Subsection 1 of the German Civil Code (BGB). These General Terms and Conditions of Business shall apply exclusively. STAGE-KINETIK will not recognize any diverging or conflicting terms and conditions unless STAGE-KINETIK has expressly given its consent thereto in writing. By placing orders, the client recognizes these terms and conditions, even if the client's general terms and conditions should conflict with these terms and conditions. These General Terms and Conditions of Business shall also apply to all future contracts between the parties without any new reference to the General Terms and Conditions of Business being required.

Should the contract concluded between the parties contain parts of different types of contract, the provision of said contract relevant to the part of contract concerned shall apply thereto. If, for example, the contract is a combination of a rental agreement and a contract for work and services, the provisions under C. of this contract shall apply to the part containing the rental agreement and the provisions under D. of this contract shall apply to the part containing the contract for work and services. So the provisions of the relevant type of contract shall apply to each performance. If the provisions should conflict, the provisions of such type of contract as forms the legal or commercial focus shall apply.

II. Payment/set-off/right of retention/assignment

II. a. Unless otherwise agreed, invoices issued by STAGE-KINETIK will become due 14 days after the date of invoice and must be paid without deduction.

II. b. Only undisputed claims or claims recognized by declaratory judgment will entitle the client to set-off or retention.

II. c. STAGE-KINETIK is entitled to assign its claims arising out of the existing business relationship.

III. Liability of STAGE-KINETIK

III. a. STAGE-KINETIK shall be liable without limitation for personal damage (injury to life, body, health) based on negligent or intentional breach of duty on the part of STAGE-KINETIK, its legal representatives or vicarious agents.

III. b. For property damage and pecuniary losses based on a negligent or intentional breach of material contractual obligations of STAGE-KINETIK, its legal representatives or vicarious agents, STAGE-KINETIK shall be liable to a limited extent, i.e. limited to the foreseeable damage typical of contracts of this kind, however, the maximum limit being the sum insured under STAGE-KINETIK's liability insurance of EUR 7,500,000.00 in the case of property damage and EUR 1,000,000.00 in the case of pecuniary losses. Material contractual obligations are obligations which protect material elements of the contract for the client, i.e. elements which the contract is to grant the client, whose fulfilment makes the performance of the contract possible at all and on the compliance with which the client may rely. Any claim for damages due to breach of material contractual obligations shall be limited to the foreseeable damage typical of contracts of this kind.

III. c. For any other property damage and pecuniary losses based on a grossly negligent or intentional breach of duty on the part of STAGE-KINETIK, its legal representatives or vicarious agents, STAGE-KINETIK shall be liable to a limited extent, i.e. limited to the sum insured under the liability insurance of EUR 7,500,000.00 in the case of property damage and ~~EUR~~ EUR 1,000,000.00 in the case of pecuniary losses.

III. d. Otherwise, any liability of STAGE-KINETIK shall be excluded. Liability due to culpable injury to life, body or health shall remain unaffected; this shall also apply to the obligatory liability under the German Product Liability Act. Furthermore, there is no restriction of liability if STAGE-KINETIK has maliciously concealed a defect or has, by way of exception, assumed a guarantee as to quality or durability or a procurement risk.

IV. Value-added tax

Should STAGE-KINETIK erroneously treat a turnover as non-taxable or exempt from tax although such turnover is subject to value-added tax, STAGE-KINETIK may also demand the value-added tax actually accrued from the client at a later point in time as soon as STAGE-KINETIK has issued a corrected invoice in this regard.

V. Travelling expenses

Any travelling expenses and out-of-pocket expenses incurred by STAGE-KINETIK in connection with the performance of the contract are to be reimbursed separately by the client.

VI. No deduction of penalty

An agreed penalty will not be deducted from existing claims for damages of STAGE-KINETIK.

VII. Copyright protection

STAGE-KINETIK undertakes to grant the client simple rights of use for all industrial property rights in accordance with the contract and the purpose thereof which arise as a result of the contractual performance, in particular for copyrights or ancillary copyrights or industrial property rights in the technical concept offered, in artistic or technical drawings or graphics, parts of text, photographic works or photographs or data collections; such granting will be limited to the term of contract. The client shall only be permitted to use the works protected by copyright or other industrial property rights and/or the protected objects beyond the immediate purpose of the contract in so far as STAGE-KINETIK has given its consent thereto in writing. The client shall in particular not be permitted to pass on to third parties, publish, reproduce or work on the technical concept offered without the written consent of STAGE-KINETIK. The client undertakes to pay a penalty of EUR 5,000.00 to STAGE-KINETIK for each case of infringement. STAGE-KINETIK's right to claim higher damages shall remain unaffected.

VIII. Saving clause, place of jurisdiction, applicable law

VIII. a. Should individual provisions of this contract infringe binding law in whole or in part or be void or ineffective for other reasons, the validity of the other provisions shall not be affected thereby. Any void or ineffective provisions are to be replaced by provisions which come as close as possible to the commercially intended purpose of the provision.

VIII. b. The court at the place of STAGE-KINETIK's registered office shall have jurisdiction over all disputes arising out of the contractual relationship or in connection with same. The registered office of STAGE-KINETIK is in 44577 Castrop-Rauxel.

VIII. c. The law of the Federal Republic of Germany shall apply. The official language of the contract is German. Only the original German version shall be legally binding. The provisions of the UN Sales Convention shall be excluded.

B. Additional terms and conditions for contracts for work and services and terms and conditions for services/service orders

I. Offers and documents

I. a. Offers, calculations, plans, drawings or comparable documents may not be reproduced, altered or made available to third parties by the customer without the consent of STAGE-KINETIK. If no contract is concluded, the documents, including copies, must be returned to STAGE-KINETIK without delay. Corresponding documents in digital form are to be deleted permanently from all drives and storage media.

I. b. Unless otherwise agreed, official permits or other permits required in order to perform the contract are to be obtained by the customer and put at STAGE-KINETIK 's disposal.

II. Unjustified notices of defects

If STAGE-KINETIK complies with the customer's request to remedy defects and if the customer does not grant access to the premises at the agreed time or if it turns out that, objectively, STAGE-KINETIK's performance is not defective, the customer shall reimburse STAGE-KINETIK for the expenses incurred. In the absence of an agreement, the usual local rates shall apply.

III. Suitable setup location

STAGE-KINETIK is not obliged to examine the setup location prior to performance of the contract to see whether it is suitable. Therefore, STAGE-KINETIK owes performance of the service at a usual setup location without any impediments. The customer has to ensure suitability of the setup location for materials to be installed, erected or set up by STAGE-KINETIK. If the setup is delayed due to circumstances for which STAGE-KINETIK is not responsible, the customer will have to bear the additional costs incurred as a result (e.g. waiting times, additionally required trips of the staff, etc.).

IV. Subcontractors

STAGE-KINETIK is permitted to engage subcontractors to provide the service.

V. Power of representation

The technicians shall not be authorized to represent.

VI. Access to the premises

The customer has to ensure that the technician(s) will be granted access to the premises on the date of performance; otherwise, the customer will have to refund the additional expenditure incurred.

VII. The customer's warranty rights shall at first be limited to the rectification of defects.

After a number of attempts to remedy defects which is acceptable to the customer have failed, the customer will be entitled to the statutory rights, in particular the right to reduction of the price and cancellation of the contract. The foregoing sentence shall not apply if STAGE-KINETIK unjustifiably refuses to remedy the defects or unreasonably delays such rectification of defects; in that case, the customer will immediately be entitled to the statutory rights.

C. Additional terms and conditions of rental

I. Cash deposit

STAGE-KINETIK shall be entitled to demand from the renter a cash deposit of 30% of the probable rental charge resulting from the rental agreement prior to delivery of the rented item, which is to be handed over concurrently with delivery of the rented item. No interest has to be paid on the cash deposit by STAGE-KINETIK. STAGE-KINETIK does not have to invest the cash deposit separately from its own assets.

II. Delivery to third parties and international use, return

II. a. The renter may only hand over the rented item to third parties against or without payment or take it abroad with the express consent of STAGE-KINETIK.

II. b. If the renter continues to use the item after expiry of the rental term, the rental agreement will not be extended, even without any objection from STAGE-KINETIK.

III. Compensation in the event of late return, penalty

III. a. If the renter fails to return the rented item after termination of the rental agreement, STAGE-KINETIK may, for the duration of the withholding, demand compensation in the form of the agreed rental charge or such rental charge as is customary in the locality for comparable items. STAGE-KINETIK's right to claim higher damages shall remain unaffected. For the duration of such withholding, the renter shall, even without any fault on its part, be responsible vis-à-vis STAGE-KINETIK for the damage arising from the fact that the rented item is impaired, lost or destroyed or cannot be handed over by the renter for another reason.

III. b. In addition to the compensation stipulated in C.III.a. of this contract, the renter shall pay a penalty to STAGE-KINETIK. Said penalty shall amount to 20% of the daily rental charge for each day of withholding. If necessary, the daily rental charge is to be determined by calculation. The penalty will not be deducted from the compensation.

IV. Right of retention

The renter shall not be entitled to a right of retention with regard to the rented item after expiration of the rental term.

V. Renter's duties

V. a. The renter has to treat the rented item with care. Any pieces of advice given by STAGE-KINETIK with regard to the rented item are to be followed by the renter. The rented item may only be set up and operated by skilled personnel.

V. b. The renter shall be obliged to protect the rented item from damage or loss (in particular from effects of the weather and theft) and take appropriate measures.

V. c. If, during the term of rental, a defect of the rented item manifests itself, the renter will have to inform STAGE-KINETIK thereof immediately.

VI. Renter's liability

VI. a. The renter shall be liable for loss, destruction of or damage to the rented item (in particular damage by fire and water, transport damage, damage to the rented item during use, and loss of the rented item), even if this happens through no fault of the renter. The period of liability shall be the time of delivery of the rented item until return of the rented item.

VI. b. In the event of loss of the rented item, the renter will have to replace the original value; in the event that the rented item is damaged, the renter will have to replace the original value if repairing would be impossible or uneconomical.

VI. c. STAGE-KINETIK does not have to accept that a deduction for the excess value of a new replacement or repair is applied against its claim under C.VI.a. or C. VI.b. of this contract. STAGE-KINETIK reserves the right to assert a claim for further damages.

VI. d. After having made a concrete enquiry to STAGE-KINETIK, the renter may take out insurance via STAGE-KINETIK (materials insurance) against the risk of loss, destruction or damage at its own expense. If the materials insurance subject to payment is chosen, the renter shall be liable for loss, destruction of or damage to the rented item (in particular damage by fire and water, transport damage, damage to the rented item during use, and loss of the rented item) only to the extent of the agreed excess (C.VI.e. of this contract). The renter's liability vis-à-vis third parties shall not be affected thereby. Reference is hereby made to the possibility of taking out one's own liability insurance policy for third-party damage.

VI. e. The amount of the excess of the materials insurance is as follows:

- in the event of loss of or damage to the rented item as a result of theft, burglary, robbery or looting, 25% of the cost of repairs or of the original value, however, EUR 1,000.00 at least.
- in all other cases, 10% of the cost of repairs or of the original value, however, EUR 1,000.00 at least.

The materials insurance is not effective in the event that the renter fails to return the rented item in time for reasons for which the renter is responsible or in the event of violation of C.II.a. or C.V. of this contract. The materials insurance is also not effective if the renter has caused the loss, destruction of or damage to the rented item in a grossly negligent manner or with intent. Therefore, the renter will have to take protective measures to prevent the loss, destruction of or damage to the rented item during the rental term. The renter shall bear the burden of proof to show that it did not cause the loss, destruction of or damage to the rented item in a grossly negligent manner or with intent.

VII. Warranty STAGE-KINETIK

VII. a. Stage-Kinetik shall provide a warranty in accordance with the statutory provisions unless otherwise stipulated below or individual contractual warranty provisions have been agreed.

VII. b. STAGE-KINETIK strict liability for initial defects in the rented item at the time of conclusion of the contract is excluded. STAGE-KINETIK shall only be liable for initial defects in the rented item upon conclusion of the contract if STAGE-KINETIK was responsible for the defect or was aware of the defect. In this case, the Renter shall bear the burden of proof that STAGE-KINETIK was responsible for this initial defect or that STAGE-KINETIK was aware of this initial defect when the rental contract was concluded. This shall not affect any claims under A.III. of this contract.

D. Additional terms and conditions of sale

I. Shipment, packaging

I. a. The goods are shipped for the account and risk of the buyer unless a different agreement is reached. Insurances against damage and loss are taken out by STAGE-KINETIK at the express request and at the expense of the buyer.

I. b. It is up to STAGE-KINETIK to choose the manner of shipment.

I. c. Unless otherwise agreed, containers and boxes shall remain the property of STAGE-KINETIK and must be returned upon request at the expense of STAGE-KINETIK after being unloaded.

II. Retention of title

II. a. The sold goods shall remain the property of STAGE-KINETIK until STAGE-KINETIK's claim is paid in full.

II. b. STAGE-KINETIK retains title to the supplied goods until all claims to which STAGE-KINETIK is entitled on the basis of the business relationship with the buyer, on whatever legal grounds, are settled. Unless otherwise agreed individually, the buyer shall not be permitted to sell the purchased item until the purchase price is paid in full to STAGE-KINETIK. The buyer hereby assigns to STAGE-KINETIK all claims, including accessory rights, to which the buyer is entitled as a result of the resale, irrespective of whether the buyer may resell the purchased item prior to full payment of the purchase price in the ordinary course of business due to an individual agreement or sells the purchased item in violation of the prohibition to sell prior to full payment of the purchase price. STAGE-KINETIK hereby accepts such assignment. The assigned claims serve to secure all claims arising out of the business relationship. The buyer shall be entitled to collect the assigned claim as long as STAGE-KINETIK has not revoked such authorization. The authorization to collect will expire without any express revocation if the buyer stops its payments. At the request of STAGE-KINETIK the buyer has to inform STAGE-KINETIK immediately in writing to whom the buyer has sold the goods and to which claims it is entitled on the basis of the sale and to issue STAGE-KINETIK with officially certified documents concerning assignment of the claim at its own expense. The buyer shall not be entitled to any other disposals of the items to which STAGE-KINETIK retains title or of the claims assigned to STAGE-KINETIK. The buyer must notify STAGE-KINETIK immediately of any pledging or any other impairment of rights of the items or claims owned by STAGE-KINETIK in whole or in part. STAGE-KINETIK shall at all times be entitled to demand surrender of the goods owned by STAGE-KINETIK if the buyer defaults on a payment or if the buyer's financial situation deteriorates considerably. If STAGE-KINETIK avails itself of this right, there will - notwithstanding any other binding provisions of the law - only be a rescission of contract if STAGE-KINETIK expressly declares so. If the value of the collateral supplied exceeds STAGE-KINETIK's claim by more than 10% in total, STAGE-KINETIK will release the collateral exceeding 10% at the buyer's request at STAGE-KINETIK's option.

III. Right of rescission

In the event of non-occurring, incorrect or unpunctual self-supply, STAGE-KINETIK shall be entitled to rescind the contract.

IV. Warranty, duty to inspect new goods and give notice of defects

STAGE-KINETIK warrants according to the statutory provisions unless otherwise provided below. Any claims under A.III. of this contract shall be unaffected thereby. Sections 377 and 378 of the German Commercial Code (HGB) shall apply to new goods with the proviso that notice of the defect must be given within 2 days. This shall not apply if STAGE-KINETIK has maliciously concealed the defect.

V. Limitation periods for new goods

The limitation period of the buyer's warranty rights shall be 1 year, unless claims of the buyer based on a defect as laid down in Section 438, Subsection 1, No. 2 of the German Civil Code (BGB) or Section 634a, Subsection 1, No. 2 of the German Civil Code are concerned. The limitation period begins at the time of delivery of the goods or when the goods are handed over to the shipper.

VI. Statements about qualities of new goods

As regards new goods, all statements about suitability, workmanship and application, technical advice and other statements is/are made or given by STAGE-KINETIK to the best of its belief; however, they do not release the buyer from carrying out its own examinations and tests.

VII. As regards new goods, the buyer's warranty rights shall at first be limited to substitute delivery and rectification of defects at STAGE-KINETIK's option.

It is STAGE-KINETIK's responsibility either to remedy the defect or arrange for substitute delivery. Rejected goods may only be returned with STAGE-KINETIK's consent. After a number of attempts to remedy defects which is acceptable to the buyer have failed, the buyer will be entitled to the statutory rights, in particular the right to reduction of the price and cancellation of the contract. The foregoing sentence shall not apply if STAGE-KINETIK unjustifiably refuses to remedy the defects or unreasonably delays such rectification of defects; in that case, the buyer will immediately be entitled to the statutory rights.

After replacement or rectification of defects has failed, the buyer will be entitled to the statutory rights, in particular the right to reduction of the price and cancellation of the contract. Rejected goods may only be returned with STAGE-KINETIK's consent.

VIII. Used goods are sold subject to the exclusion of any and all claims based on defects of quality.

Any claims under A.III. of this contract shall be unaffected thereby. The above exclusion shall not apply in the event that STAGE-KINETIK maliciously conceals a defect.

E. Additional conditions in connection with the provision of wlan access

If the order calls for STAGE-KINETIK to provide the client with Internet access via WLAN, use of the WLAN shall be at the client's own risk, in particular with regard to the possibility of access by third parties to the user's terminal device or infection with malware (e.g. viruses or Trojans). The client is responsible for all security measures (e.g. encryption, virus protection, firewall). The client is also responsible for data transmitted via the WLAN, for fee-based services used via the WLAN as well as for business transactions conducted via the WLAN; the client shall bear all costs resulting from such acts. The client is obliged to comply with applicable law when using the WLAN. In particular the client

- shall not use the WLAN to either access or distribute criminal or offensive content or content that is unlawful in any other way
- shall not illegally reproduce, distribute or make available any works protected by copyright or exploit such works in any other way, for example by using file sharing programmes or sharing platforms
- shall observe applicable regulations concerning the protection of minors
- shall not send or distribute any harassing, defamatory or threatening content or use the WLAN to send mass messages (spam) and/or other forms of prohibited advertising.

The client shall hold STAGE-KINETIK harmless from all claims by third parties that are based on a breach of the above conditions or on unlawful use of the WLAN by the client. This applies in particular to claims resulting from legal disputes regarding data protection or copyright or any legal disputes connected with use of the WLAN by the client as well as to the corresponding costs of bringing or defending legal action. If the client recognises that such an infringement of the law and/or such a breach has been or may possibly be committed, the client shall inform STAGE-KINETIK without undue delay.

If the client makes the WLAN provided by STAGE-KINETIK available to a third party, the client shall be liable for all breaches of this agreement committed by such a user in the same way as for infringements committed by the Client.