

Standard Terms of Contract (STC) of Scholz & Friends Group (“Agency”) for Purchase of Goods and Services (Stated of 05/2020)

I. Definitions, Applicability, Issue of Orders

1. These Standard Terms of Contract apply to all orders issued by all companies belonging to the Scholz & Friends Group. The terms “order” and “contractor” shall be interpreted in accordance with commercial law. The term “order” describes the contractual relationship irrespective of the type of contract involved. The term “Contractor” describes the person principally responsible for performance of the order. Scholz & Friends is hereinafter referred to as “Agency”. The term “Client” describes persons who have a contractual relationship with the Agency and are the ultimate recipient of the goods and services to be provided by the Contractor.
2. These Standard Terms of Contract apply to all declarations of intent issued and all contracts entered into by the Agency and/or the Client vis-à-vis the Contractor and also to all other legally binding or similar transactions taking place between the aforesaid parties, irrespective of whether the Agency concludes the contract in its own name and for its own account, in its own name for a third party’s account or in the name and for the account of a third party.
3. Any terms and conditions stipulated by the Contractor but conflicting with these Standard Terms of Contract shall not be applicable. Unless otherwise expressly confirmed by the Agency’s written acceptance, any counterclaims upheld by the Contractor with reference to his own terms of contract shall be null and void and shall in no case constitute an integral part of the contract.
4. Any verbal agreements, order confirmations or amendments or other agreements of any kind whatsoever shall not be valid unless confirmed in writing.

II. Deadlines, Delivery Dates, Place of Performance

1. All agreed deadlines and delivery dates shall be binding. The Contractor must inform the Agency immediately of any circumstances which could result in failure to meet these obligations.
2. The Contractor shall effect delivery of all goods and/or services ordered to the address designated as place of performance at his own expense and risk.
3. In the event of the Contractor’s failure to meet an agreed delivery date, the Agency shall be entitled to demand payment of a penalty equivalent to 0.1% of the net order value for each working day of delay. Should the delay relate to a clearly definable part delivery, the penalty will be calculated on the value of that part delivery. The maximum penalty payable shall not exceed 5% of the net order value. The Contractor shall be entitled to show proof that the actual loss caused by the delay was less than the penalty or that no loss was involved at all. The Agency reserves the right to press additional claims, in particular to cancellation of contract or compensation, whereby the amount of any already imposed penalty payment relating to the same delivery or part delivery shall be deductible from the compensation thus claimed. The Agency shall be entitled to claim payment of the penalty at any time prior to final settlement, even in cases where it has not expressly reserved this right when accepting performance.

III. Order Specification

1. The quantitative specification stated in the order shall be binding. No payment will be made for excess quantities, even in cases where these are attributable to technical circumstances. Sketches, outlines, drafts etc., especially those relating to alternative proposals, are included in the order specification and shall not constitute claims to supplementary payments.
2. The Agency shall be entitled to demand changes in design or execution after conclusion of the contract, subject to the proviso that such changes do not constitute an unreasonable burden for the Contractor. In such cases, the parties shall negotiate appropriate contractual amendments to make allowance for ensuing cost variances and adjustment of delivery dates. In the event of failure to reach agreement, the Agency shall be entitled to take an equitable decision on the matter at its sole discretion, the Contractor being entitled to refer the matter to the competent court.

IV. Liability

1. The Contractor’s liability shall be in accordance with the relevant legal provisions.
2. The Agency and its vicarious agents shall not be liable for minor acts of negligence except in cases where a substantive breach of contract (cardinal obligation - “Kardinalspflicht” -, i.e. such obligation the fulfilment of which makes the proper performance of the contract possible in the first place and on the fulfilment of which the other party to the contract regularly relies and may rely) or where loss through delay in or impossibility of performance is involved. The liability of and the compensation payable by the Agency and its vicarious agents resulting from minor negligence involving breach of contract or tortious act or liability for loss incurred through unproductive expenditure shall be limited to amounts which are foreseeable and typical. The foregoing limitations of liability shall not apply in cases involving absence of guaranteed characteristics, fraudulent intent, death, bodily injury, health impairment, defects of title or liability under the German Product Liability Act.
3. The Contractor shall not be entitled to file claims for compensation of loss resulting from the Agency’s justifiable challenge of printing or transmission errors not caused through his fault.



V. Acceptance, Complaints, Warranty

1. Deliveries relating to design or production of advertising material must provide a solution to the specified task and, where applicable, conform to models and instructions submitted to the Contractor, and also to the relevant laws and regulations and the latest technical standards. They must possess the technical, artistic and advertising quality of samples presented by the Contractor prior to conclusion of contract. The Contractor is further responsible for informing the Agency of any discernible legal objections to the planned advertising activities.
2. The Agency is under an obligation to perform an acceptance procedure on the results of any individually definable work performed in connection with the contract, (e.g. advertising materials, drafts, sketches), whereby acceptance will be deemed to have taken place in cases where the work is neither formally accepted nor rejected within two weeks of its submission by the Contractor for acceptance, accompanied by his confirmation that the work is ready for acceptance and his request for its acceptance.
3. All complaints must be filed promptly by the Agency within 10 working days of discovery of the relevant defect during the normal course of the Agency's business. This also applies to obvious defects. Payment for the work thus delivered shall in no way imply waiver of the Agency's right to file complaints.
4. The Agency is entitled to press all warranty claims stipulated under German law without any exceptions whatsoever.
5. The Agency shall be entitled to stipulate method of remedy of defects in all cases including contracts for work and/or services. Section 439 of the German Civil Code (BGB) shall apply accordingly.
6. All defects must be remedied at first attempt; if not remedied at first attempt, the remedy is deemed to have failed.
7. In the event of the Contractor's failure to remedy the defect in the goods supplied or the services performed within a reasonable period stipulated by the Agency, the Agency shall be entitled to remedy the defect itself and demand reimbursement of the expenditure thereby incurred, except in cases where the Contractor can show valid grounds for refusing to remedy the defect. The regulations set out in Section 637 of the German Civil Code (BGB) on rights to make alternative arrangements for performance of remedial action in contracts for work and services shall apply accordingly. The period granted to the Contractor for remedy of defects must be calculated in such a way that the Agency is still able, in the event of the Contractor's failure to remedy the defect, to arrange for performance of the order by another Contractor, thereby enabling the Agency to meet subsequent delivery commitments.

VI. Invoice, Price, Payment Terms, Retentions, Offset of Other Claims

1. Invoices must be submitted to the Agency immediately on completion of delivery.
2. The agreed price must not be exceeded and includes all charges, costs and fees incurred by the Contractor (e.g. for transport, packing, official charges, social security charges for self-employed creative persons and customs duties).
3. Unless otherwise contractually agreed, no remuneration will be payable for travel, meetings, presentations, negotiations and/or for preparation of offers and projects.
4. Unless otherwise contractually agreed, payment will be effected either less 3% discount within 14 days of receipt of invoice or net without any deductions within 30 days.
5. Any interest payable through the Agency's failure to meet agreed payment terms shall not exceed a level of 3% above the base rate (Basiszins) applying at the given time.
6. The Contractor shall only be permitted to refuse performance on grounds relating to the same contract. The Contractor is not permitted to offset counterclaims against due claims of the Agency except in cases where such counterclaims can be shown to be undisputed in a written statement issued by the Agency or are res judicata.

VII. Special Provisions for Photographers

1. In order to ensure optimal execution of the advertising plans approved by the Client, the Agency is entitled, on the Client's behalf, to stipulate the persons to be retained for services in connection with photographic motifs, (in particular, models, make-up specialists, stylists and fashion advisers), the requisites to be used, specific technical effects (especially lighting) and the shooting location. The Contractor is responsible for concluding the necessary service, purchase and hire agreements in the name and for the account of the Agency. All such agreements must be based on cost estimates approved by the Agency.
2. The Contractor is further responsible for hiring, renting, purchasing and reserving the personnel and requisites required for the photo shooting in his own name, for his own account and at his own risk.
3. The Contractor shall bear the cost and ancillary expenses incurred for model fees, requisites and miscellaneous expenses in cases where photo shooting is hindered through late or non-appearance of models hired by the Contractor in accordance with Paragraph 2 of this clause or non-availability of requisites, structures, apparatus etc. for which the Contractor is responsible.



VIII. Copyright, Usufructuary Rights, Ancillary Copyright

1. The Contractor and the Agency hereby confirm their mutual understanding that the Agency must be in a position to use and exploit the results of the Contractor's work and services (hereinafter collectively called Work Results), either itself or through third parties (in particular, through its clients), in the broadest conceivable way. To this end the Contractor hereby grants the Agency exclusive, unlimited temporal and geographical rights of exploitation of the contents of his Work Results for all currently known and as yet unknown types of use, and also the right to use images of the model, in accordance with the object of each individual contract. The foregoing use can be for advertising or non-advertising purposes and for first or multiple exploitation. The type of use can include all forms of printed advertising material (advertisements, posters, supplements, catalogues, brochures, packaging materials and any other form of printed advertising material), compilations, films (for projection in cinemas, on TV or through the internet), magnetic tapes (film cassettes, audio and video cassettes), online and offline use from electronic data carriers (databanks, CD-ROM, CD-I, MO drives, DAT, discs, internet, multimedia). Permitted methods of duplication include printing, copying on to film or magnetic tape, machine-readable storage and electronic copying. Permitted methods of dissemination include distribution to the general public, broadcasting, performance, exhibition, (remote) data transmission. Further authorised uses include use of parts of the Work Results (including exploitation of extracts, photo composing, film composing), modification rights, transfer of exclusive usufructuary rights, in whole or in part, to third parties, in particular to Clients. The Agency is entitled to use the Work Results for an indefinite period as an integral part of its own advertising activities on its website and on the CD-ROMs regularly produced by it for self-advertisement purposes, and to submit the Work Results as entries to advertising competitions.
2. When submitting his offer, the Contractor must therefore inform the Agency whether and, if so, which of the usufructuary rights listed in Paragraph 1 of this clause he has transferred to performing rights or copyright collecting societies.
3. The Contractor undertakes to give the Agency prompt notice (in textual form) of any change of the address to which a planned new use of the Work Results should be communicated.
4. Should transfer of usufructuary rights be excluded under a separate written agreement, notwithstanding the provisions contained in Paragraph 1 of this clause, the Agency shall be entitled to demand their subsequent transfer, in whole or in part, in return for appropriate remuneration. The level of any such remuneration shall be based – as far as possible – on the rates already agreed by the Contractor or on the rates usually applying with copyright collecting societies. In cases where neither of these comparative options is available, the Agency shall be entitled to take an equitable decision on the matter at its sole discretion, the Contractor being entitled to refer the matter to the competent court.
5. The Contractor acknowledges that provisions for enforcement of claims relating to the Agency's or the Client's rights to use the Work Results or to determine whether the amount of remuneration for purchase of usufructuary rights decided by the Agency (see Paragraph 4 of this clause) by recourse to the competent courts are fair and adequate and constitutes adequate legal protection of his rights, and consequently waives his right to claim preliminary legal protection (by temporary injunctions or seizure) in cases where the Agency decides the level of remuneration payable and has actually paid that amount to the Contractor.
6. Should the Contractor make use of employees and/or subcontractors and/or other third parties for performance of the order, he undertakes to acquire the full range of usufructuary rights listed in Paragraph 1 of this clause owned by all these persons and to transfer these to the Agency. He further undertakes to impose on these persons for the work and services provided by them the same obligations vis-à-vis the Agency as he himself has accepted for his own work and services.
7. The Contractor hereby guarantees that no third-party rights (e.g. personal privacy rights of photographic models) exist, which could hinder or impair transfer of the usufructuary rights to the Work Results provided by him under the contract and/or the agreed use of these Work Results. Should any third party file substantiated claims against the Agency or its Client alleging infringement of rights through use of the Contractor's Work Results, the Contractor undertakes either to modify those Work Results or to produce new Work Results no longer infringing any third-party rights on or before a date stipulated by the Agency, or to acquire the necessary rights from those third parties at his own expense. In the event of the Contractor's failure to take the foregoing remedial action on or before the stipulated date, the Agency shall be entitled, at the Contractor's expense, to make the necessary modifications, either itself or via a third party, or to obtain the necessary approval from the third parties filing the complaint. The Contractor indemnifies the Agency against third-party claims arising from infringement of property rights through his fault. The Contractor shall also bear the cost of legal defence necessitated through his fault.
8. The Contractor must offer the usufructuary rights to be transferred by him not only for unlimited use as stipulated in Paragraph 1 of this clause, but also and in addition for limited use for the type of advertising material for which they were intended at the time of issue of the order. Any other restriction of their use must be explained in a supplementary alternative offer, in which the fee for work and services and the fee for transfer of rights must be shown as separate items. In the event of failure to comply with this requirement, the agreed remuneration shall be deemed to constitute payment in full of both these items.
9. The Contractor undertakes to obtain a signed statement from photographic models confirming their agreement to transfer of usufructuary rights and to submit this to the Agency on or before date of acceptance of the Work Results.
10. The Contractor acknowledges that there is no obligation to name authors within the limits which are customary in the advertising sector.



IX. Acquisition of Title to Illustrations and Reproductions, Storage, Backup, Right of Retention

1. Through payment of the Contractor's fee the Agency acquires title to all illustrations and reproductions of printed matter, e.g. copy, photographs, matrices, lithographs, films, tools, electronic files etc., produced or acquired by the Contractor for the purpose of performance of the order. This also includes any sketches, outlines and drafts not handed over to the Agency and all backup copies. As from the date of payment of the fee the Contractor is responsible for safe custody of these items until the date of their handover to the Agency. In cases where subcontractors are involved, the Contractor is responsible for ensuring that this transfer of title to the Agency is clearly stated in the relevant contracts. The Agency undertakes to accept delivery of the foregoing items not later than six months after date of acceptance of work results, if this requested by the Contractor.
2. The Contractor must create a backup copy of every electronic file relating to the order on a separate data carrier and store this separately from his primary data carrier.
3. Any items received by the Contractor in connection with performance of the order from either the Agency or the Client, must be used solely and exclusively for this purpose. They remain the property of the Agency or the Client respectively. The Contractor is responsible for their safe custody and must return them to their respective owners on first request.
4. The Contractor has no right of retention on items thus coming into his possession.

X. Secrecy

1. The Contractor must treat all documents and information coming into his possession in connection with the order, including the advertising material and other items listed in Clause IX above, and also any other secret information on the Agency's business in strict confidence. This obligation remains binding after completion of the relevant order and even if the order is not actually performed.
2. The Contractor must also impose this secrecy undertaking on all employees, subcontractors, models etc. involved in execution of the order, in cases where this is necessary for the purpose of guaranteeing secrecy.
3. The Contractor is entitled to use copies of his Work Results for his own advertising purposes subject to the Agency's prior written consent.

XI. Transfer of Rights

The Contractor is not entitled to transfer or otherwise assign the rights and, in particular, the rights to remuneration, accruing to him from the order.

XII. Orders Issued in Client's Name

All orders must be executed through the Agency even when issued on behalf of a third party. When issuing orders on behalf of a Client, the Agency accepts no liability for either fulfilment of contract by the Client or for his creditworthiness (which it does not investigate).

XIII. Minimum Wage

1. The Contractor undertakes to always observe the German Minimum Wage Act („Mindestlohngesetz – MiLoG“) and to always disburse the statutory minimum wage to his employees. This provision also applies for employees of the Contractor's subcontractors.
2. The Agency is entitled at any time to request respective proof from the Contractor (e.g. time sheets, payroll accounting documents, employees lists). In the event of the Contractor's failure to comply with this requirement the Agency shall be entitled to retain due payments.
3. The Contractor undertakes to indemnify the Agency against third-party claims to pay the minimum wage arising from violations against the Minimum Wage Act committed by the Contractor or his subcontractors.
4. In the event of the Contractor's (or his subcontractors) failure to comply with the obligation to pay the minimum wage, the Agency shall be entitled to terminate the agreement for cause; additionally, the Agency shall be entitled to retain due payments. Moreover, subsequent to the withdrawal of the order, the Agency shall be authorised to get executed the remainder of the order by a third party at the Contractor's expense. Regarding further damages the Agency shall be entitled to press all claims for damages stipulated under German law without any exceptions whatsoever.

XIV. WPP CONDUCT GUIDELINES FOR SUPPLIERS AND FOR BUSINESS PARTNERS

The Contractor agrees to the WPP conduct guidelines for suppliers and for business partners, which is attached.

XV. FINAL PROVISIONS

1. The place of jurisdiction for all disputes between the Agency and a Contractor who is registered in a commercial register shall be the Agency's registered office.
2. These Standard Terms of Contract are governed by Federal German law to the exclusion of German international private law.

