

Jazzunique GmbH
Leipziger Straße 59b
60487 Frankfurt am Main
Managing directors: Jesper Götsch & Mathias Pritzkow

Tel.: +49 69 4015073-0
Fax: +49 69 4015073-99
Mail: desire@jazzunique.de
Web: www.jazzunique.de

Standard terms and conditions for the supply of goods and services

1. General, application and scope, exclusion of other conditions

1.1
The following standard terms and conditions for the supply of goods and services to Jazzunique GmbH (hereinafter 'T&Cs') apply to all purchase orders for goods or services that Jazzunique GmbH (hereinafter 'Jazzunique') places in the course of business with companies in the sense of section 14 of the German Civil Code (BGB), legal entities under public law or a special fund under public law (hereinafter 'contractor') and as governed by contracts of sale, contracts for work or other agreements.

1.2
The T&Cs of Jazzunique GmbH apply exclusively. Jazzunique does not recognise opposing or deviating conditions of the contractor except in cases where Jazzunique has expressly agreed to their applicability in writing.

1.3
The T&Cs of Jazzunique also apply in cases where Jazzunique accepts delivery of goods or services without reservations and in full knowledge of the contractor's opposing or deviating conditions.

1.4
Any individual agreements made with the contractor (including side agreements, supplements and amendments) always take precedence over these T&Cs. The authoritative source of the content of such agreements is, in the absence of evidence to the contrary, a written contract or our written confirmation.

2. Contract conclusion (order, order confirmation), scope of contract

2.1
Jazzunique places orders by sending the order form to the contractor. The text form as defined by BGB section 126b is sufficient for this order placement and a signature is not required.

2.2
The contractual content and conditions stated in the order are binding.

3. Pricing, costs, payment terms, offsetting

3.1
The prices stated in the order form from Jazzunique are understood to be exclusive of VAT at the statutory rate. The price is binding and inclusive of all services and ancillary services of the contractor, as well as all ancillary costs (e.g. proper and correct packing, transportation costs including any carriage or third-party insurance).

3.2
Any travel expenses or costs of board and lodging are borne by the contractor. Any additional costs that may be incurred must be approved by Jazzunique in writing. The contractor is not entitled to payment if no such approval is given.

3.3
Invoices must be issued promptly following the shipment of the goods or service provision. Please send

the invoice, stating the project number and designated contact at Jazzunique, to:

Jazzunique GmbH
Leipziger Straße 59b
60487 Frankfurt
Germany

3.4
The contractor may offset only with receivables that are uncontested and recognised as legally binding.

4. Transfer of risk, place of performance, goods-in-transit insurance, retention of title

4.1
The risk of conveyance and of accidental destruction is borne in all cases by the contractor until the receipt of the goods at the agreed place of performance. The transfer of risk to Jazzunique occurs without exception on handover of the consignment to the point of receipt designated by Jazzunique or the person authorised by Jazzunique to take receipt. If formal acceptance has been agreed, this is authoritative for the transfer of risk. The provisions of the law on a contract to produce a work also apply accordingly to all other aspects of acceptance. Late acceptance on the part of Jazzunique is deemed equivalent to acceptance and transfer.

4.2
The place of performance is stated in each case on the respective order form.

4.3
In the event of the delivery of dangerous or fragile goods, the supplier shall select an appropriate means of delivery and take out goods-in-transit insurance where required, supplying proof of the same to Jazzunique if required to do so.

4.4

Ownership passes directly to Jazzunique on handover of the consignment to Jazzunique. Handover of the consignment to Jazzunique must take place unconditionally and without consideration of payment of the price. If a contractor offer of transfer of ownership as being conditional on purchase price payment is accepted in an individual case, however, then title passes from contractor to Jazzunique no later than the payment of the purchase price for the thing and service delivered. Even before payment of the purchase price, Jazzunique remains entitled to resell or distribute the thing delivered and to make use of the service in the ordinary course of business, always assuming prior assignment of the resulting receivable (provisional application of simple retention of title extended to resale). All other forms of retention of title are hereby excluded, however, including but not limited to the extended and transferred retention of title, and the retention of title extended to further processing.

5. Partial deliveries, short/excess deliveries

Partial or short deliveries do not constitute performance except if Jazzunique has approved these in writing; a simple email is sufficient to give such approval. However: the acceptance of a partial or short delivery does not constitute such an approval. Jazzunique reserves the right to return excess deliveries at the contractor's expense.

6. Delivery date, delayed deliveries

6.1

The lead times and delivery dates stated in the order form from Jazzunique are binding and are understood to mean delivery to the place of performance. Jazzunique is entitled to refuse any acceptance of goods and services that have not been supplied by the agreed date, and to return the same or store the same at a third party at the contractor's risk and expense.

6.2

As soon as the contractor becomes aware of the possibility of a delay, they shall notify Jazzunique promptly, stating the reasons for the missed deadline and the probable duration of the delay. If the agreed delivery dates are not upheld by the contractor – regardless of the reason for the delay – Jazzunique may, subject to the assertion of further legal claims, choose to rescind the contract and procure a substitute performance from a third party at the contractor's expense and/or seek compensation for losses on grounds of non-performance. The contractor shall reimburse Jazzunique for all additional costs incurred by delayed delivery or performance.

6.3

If the contractor is in default, Jazzunique may – in addition to pursuing other legal claims – demand liquidated damages for losses due to this default, amounting to 1 percent of the net price per full calendar week but not more than 5 percent of the net price of the goods and service supplied late. Jazzunique reserves the right to submit proof of suffering a greater loss. The contractor is granted the right to submit proof that no loss whatsoever or a significantly smaller loss was in fact suffered.

7. Liability, warranty

7.1

The contractor's warranty obligations are based on statutory provisions unless other obligations result from the following terms and conditions.

7.2

In the event of the contractor breaching an obligation as specified by the present contractual relationship, the contractor is liable to Jazzunique for all losses and disadvantages thereby suffered by Jazzunique.

7.3

The contractor indemnifies Jazzunique against all third-party claims asserted due to defects, the infringement of third-party property rights or product damage affecting the contractor's delivery/performance, proportionate to the latter's culpability.

7.4

The contractor shall insure the risk associated with their activities appropriately and take out product liability insurance as required. The contractor shall furnish proof of the respective insurance policy at Jazzunique's request.

7.5

In the event of a defective delivery or performance, the contractor shall, at Jazzunique's behest, provide a substitute at no charge, offer a price reduction in accordance with statutory provisions concerning price reductions or remedy the defect at no charge. In urgent cases, Jazzunique is, after consulting with the contractor, entitled to remedy the defect internally or by employing a third party to do so or by otherwise procuring a substitute; all costs of such remedies are borne by the contractor. The same applies if the contractor fails to ensure the timely fulfilment of their warranty obligations.

7.6

The contractor's liability for substitute deliveries and remediation work is the same as for the deliverable, i.e. also extends to the costs of transportation, tolls or labour with no restrictions to the same.

7.7

The contractor is further liable in terms of statutory provisions on tortious acts and the German Product Liability Act. The contractor shall take out appropriate insurance versus claims asserted against them on the grounds of product liability law and furnish proof of this insurance at Jazzunique's request.

8. Buyer's duty to give notice of defects

8.1
The duty to perform inspection and report defects incumbent on Jazzunique is based on BGB section 377, with the modification that the duty of inspection is limited to such defects identifiable on receipt of the goods by an external inspection and random sampling of the deliverable.

8.2
Furthermore, the principle that each inspection of this kind must be possible and proportionate in terms of proper and correct business procedure is also applied.

8.3
In all cases, a notice of defects on the part of Jazzunique, even in the event of latent defects, is considered prompt and appropriate if received within a period of two weeks following discovery of the defect; the notice may be sent by email or fax.

8.4
The principle of cure applied here includes the removal of the defective thing and its reinstallation in cases where the thing by its nature and intended use is installed in another thing or attached to some other thing; this does not affect Jazzunique's legal right to claim for reimbursement of corresponding expenses. The expenses necessary for the purpose of inspection and cure are also borne by the contractor if it should ultimately transpire that no defect was indeed present. This does not affect Jazzunique's liability to pay compensation due to unjustified demands for the remediation of defects; accordingly, Jazzunique becomes liable only if Jazzunique acknowledged no defects were present or was grossly negligent in failing to do so.

9. Supplier recourse

9.1
Alongside claims for defects, Jazzunique is entitled to all recourse claims within a supply chain (as set out in relation to supplier recourse, BGB sections 445a, 445b and 478) as defined by law. In particular, Jazzunique is entitled to demand the exact same kind of cure (remediation or substitute delivery) from the contractor as Jazzunique owes its own customer in any specific case. This provision does not limit Jazzunique's right of choice (as defined by BGB section 439(1)).

9.2
Before Jazzunique accepts or fulfils a claim for defects asserted by one of its customers (including reimbursement of expenses pursuant to BGB sections 445a(1), 439(2) and 439(3)), Jazzunique will notify the contractor, give a brief explanation of the circumstances and request a written statement. If a substantiated statement is not provided by an appropriate deadline and if no amicable solution can be identified, then the claim for defects accepted by Jazzunique is considered to be the same as that owed to Jazzunique's customer. The seller is obliged to provide evidence to the contrary. (3) Claims due to supplier recourse on the part of Jazzunique also apply in cases where the defective goods were subsequently processed by Jazzunique or another commercial entity, e.g. by installation into another product.

10. Food deliveries, catering

10.1
If the deliverables are food products, such as requested by a catering order, for example, the contractor shall ensure that they are in full compliance with all provisions of food hygiene law. The contractor shall also take steps to ensure that the food products to be delivered are transported with due care and in accordance with regulations.

10.2
In the interests of quality and in consideration of the provisions of the German Food Hygiene Ordinance, a buffet must be prepared no earlier than 3 hours in advance. The contractor shall ensure that all buffet goods requiring refrigeration are stored on ice or cold packs during this time. If the buffet order is required for a contiguous period exceeding 3 hours, then the parties agree that staggered deliveries will be made at separate points in time.

10.3
The contractor shall ensure that the premises utilised for the catering service are handed over again in perfect condition following the event.

11. Usage rights, third-party property rights

11.1
Unless otherwise agreed on a case-by-case basis, the contractor's delivery of a work protected by copyright to Jazzunique also includes a free, non-exclusive and transferable usage right to the work that is valid for all types of usage.

11.2
The contractor shall take steps to ensure that there is no impediment to the intended use of the goods supplied or service provided from third-party rights and that property rights in particular are not infringed. If claims are nonetheless asserted against Jazzunique due to a potential infringement of third-party rights, such as copyright, patents or other property rights, the contractor shall indemnify Jazzunique against all such claims and any other performance related to the same.

12. Force majeure, rescission

Jazzunique is entitled to rescind the contract in the event of strikes, lockouts, service disruptions, regulatory orders, pandemics and other circumstances for which Jazzunique is not answerable and as a consequence of which Jazzunique has a reduced need or no need at all for the ordered goods/services. The contractor is not entitled to claim for compensation in such cases.

13. Non-disclosure and non-compete obligations

13.1

All documents and materials provided to the contractor by Jazzunique in the context of fulfilling the order, including drawings, sketches, conceptual work and samples, remain the sole property of Jazzunique. The contractor shall refrain from sharing such documents with third parties and shall use the documents solely for the purpose of order fulfilment. The same applies to technical data and personal data. Following the completion of the order, the documents must be returned to Jazzunique and confidentiality must be maintained concerning the order placement.

13.2

The contractor is prohibited from seeking to establish business relations with a customer of Jazzunique and attempting to acquire this customer for themselves.

13.3

The contractor may use the company logo of Jazzunique or Jazzunique's customers only after obtaining written permission from Jazzunique to do so. Permission is likewise to be obtained before using any work – e.g. photos, film clips, sketches, etc. – arising from the contractor's business relationship with Jazzunique, even if only for the contractor's own marketing or other internal purposes.

14. Social responsibility

Jazzunique expects the contractor to uphold basic rights and human rights, and to ensure that the contractor's own business partners likewise uphold basic rights and human rights. Jazzunique further expects the contractor to observe and uphold all applicable national and international laws, regulations and standards. Jazzunique expects the contractor to ensure fair working conditions, and to respect the rights of their employees, especially in terms of occupational safety, working hour arrangements and health, and to ensure the absence of discrimination on account of skin colour, race, nationality, social background, any degree of disability, sexual orientation, political or religious convictions, gender or age. Jazzunique considers compliance with the above mentioned standards to be a fundamental contractual obligation on the part of the contractor.

15. Contract language, applicable law, place of jurisdiction

15.1

The contract language is German. The contract is subject to the law of the Federal Republic of Germany with the exclusion of UN CISG.

15.2

The place of jurisdiction for all disputes arising from the present contractual relationship is Frankfurt am Main, Germany, insofar as the parties are merchants or legal entities under public law. Jazzunique also reserves the right to sue the contractor at the latter's place of residence or registered place of business.

16. Written form requirement, severability clause

16.1

Changes and amendments to these provisions must be made in writing. This also applies to changes to the written form requirement itself.

16.2

Should one of the above agreed clauses prove to be invalid, whether in whole or in part, this does not affect the validity of the remaining provisions of these T&Cs. The parties agree that an invalid clause of this kind is to be replaced by a valid clause that most nearly approximates the sense and purpose of the invalid clause.

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