



www.ppe.live
www.performance-picture.at

General terms and conditions of business (June 2023)

1 GENERAL

1.1

The General Terms and Conditions of Performance Picture Entertainment OG (hereinafter referred to as PPE) are basically designed for legal transactions between companies and are - unless expressly agreed otherwise in writing - part of every offer or contract of the client.

1.2

If, exceptionally, legal transactions with consumers within the meaning of the Consumer Protection Act, Federal Law No. 140/1979 in the currently valid version, are used as a basis, these General Terms and Conditions only apply insofar as they do not contradict the provisions of the first main part of this law.

1.3

PPE is only legally bound if the corresponding offer/contract has been signed by the company (confirmation by sending a copy of the signed offer/contract by fax or e-mail is permissible).

1.4.

Prices are in EURO plus the applicable statutory VAT. In the case of delivery transactions, they apply ex works. Packaging, loading and freight costs will be charged separately.

1.5.

Unless otherwise agreed, PPE charges the customer for costs incurred for services provided by third parties with an administration cost surcharge of 15%.

2. COSTS, PAYMENT TERMS, PROHIBITION OF OFFSET

2.1

Unless expressly agreed otherwise, the following terms of payment apply:

- 50 % of the agreed fee, when the order is placed
- 50% upon acceptance/completion of the order within 10 working days after invoicing, by bank transfer, free of expenses and deductions, to the account specified by PPE.

2.2

In the event of a delay in payment, PPE is entitled to charge a fee of EUR 25.00, for writing reminder letters. The statutory interest on late payments applies.

2.3

The smallest billable unit is always one hour. Services shown with daily rates include the use of equipment, premises and/or personnel for a maximum of 10 consecutive hours per day. The use of such services beyond the consecutive 10 hours daily requires a separate agreement.

2.4

The customer is not entitled to offset against counterclaims unless the counterclaims are undisputed or have been legally established.

2.5

If, after conclusion of the contract, there is a significant deterioration in the customer's financial situation or if PPE becomes aware of circumstances jeopardizing the right to payment, or if the customer defaults on agreed partial payments despite a reminder, PPE is entitled to refuse to fulfill its own performance obligations from the contract, until the customer has fulfilled his obligations under this contract or has provided security for them. In this case, PPE can determine a reasonable period of time in which the customer must fulfill his performance obligation under the contract or provide security. If the deadline has expired unsuccessfully, PPE can withdraw from the contract

2.6

The client bears the costs for technical advice he has arranged.

3. CUSTOMER OBLIGATIONS

3.1

The customer guarantees that he is entitled to make all the necessary disposals and to carry out legal transactions to fulfill the order. He assures that there are no legal obstacles to the placing of the order.

3.2

If the customer requests the conclusion of a specific insurance policy, he must inform PPE of this at the latest when the contract is signed and bear the arising costs.

3.3.

The customer is obliged to provide the required reports to the collecting societies within the framework of the statutory provisions and/or the contractual agreements. PPE is entitled, but not obliged, to make such reports to the collecting societies in the name and on behalf of the customer.

3.4

The customer declares that he will indemnify and hold PPE free of harm, from infringements of rights for which he is responsible, in particular for copyright infringements.

3.5

The customer is obliged to ensure full insurance cover for the items handed over to or stored for him by PPE, to have available a suitable security or secondary material or sample to replace the original material, to notify PPE immediately of any changes to the address, the company and the to notify rights holders, to inform any third party rights holders of these GTC and to ensure their written consent, to accept the services in a timely manner and to respond to inquiries and statements from PPE within a reasonable period of time.

4. WITHDRAWAL FROM THE CONTRACT BY THE CUSTOMER

4.1

If the customer withdraws from the contract up to 11 days before the start of the work, in the case of film works before the start of shooting, or before a comparable status, PPE is entitled to charge two thirds of the agreed fee.

4.2

If the customer withdraws from the contract after or up to 3 days before the start of the work, in the case of film works before the start of shooting, or before a comparable event, PPE is entitled to invoice the entire agreed fee.

5. LIABILITY

5.1

PPE is only liable for intent and gross negligence. Unless there are deviating limitations of liability in the following provisions, PPE is only liable for slight negligence - except in the case of injury to life, limb or health - if essential contractual obligations are violated and limited to the contractually typical and foreseeable damage.

5.2

Insofar as it is not possible to restore material handed over to PPE on the basis of negatives, copies or other source material from the customer, the contractually typical and foreseeable damage is to be understood as the replacement of the material value of the carrier material of the same type and length.

5.3

Liability for indirect and unforeseeable damage as well as consequential damage and loss of profit is excluded in the case of slight negligence - except in the case of a breach of essential contractual obligations.

5.4

Any further liability for damages than provided for in these general terms and conditions is excluded - regardless of the legal nature of the asserted claim.

5.5

Insofar as PPE's liability is excluded or limited, this also applies to the personal liability of PPE's employees, staff, representatives and vicarious agents.

6. DATA PROTECTION

6.1

PPE collects, processes and uses personal data only with the consent of the customer for the purposes agreed with him or if there is another legal basis in accordance with the GDPR; this in compliance with data protection and civil law provisions. Only such personal data are collected that are necessary for the implementation and processing of the agreed services or that were voluntarily provided by the customer. Personal data is all data that contains individual information about personal or factual circumstances, such as name, address, email address, telephone number, date of birth, age, gender, social security number, video recordings, photos, voice recordings of people.

6.2

The customer has the right at any time to information about stored, personal data, their origin and recipient and the purpose of data processing as well as a right to correction, data transfer, objection, restriction of processing, as well as blocking or deletion of incorrect or impermissibly processed data. The customer has the right to revoke any consent given to the use of his personal data at any time.

6.3

Personal data is protected by appropriate organizational and technical precautions. These precautions relate in particular to protection against unauthorized, illegal or accidental access, processing, loss, use and manipulation. Notwithstanding the efforts to comply with a consistently high level of care requirements, it cannot be ruled out that information that the customer discloses via the Internet will be viewed and used by other people. PPE therefore assumes no liability whatsoever for the disclosure of information due to errors in data transmission not caused by PPE and/or unauthorized access by third parties (e.g. hack attack on e-mail account or telephone, interception of faxes).

6.4

PPE will not process the data provided for purposes other than those covered by the underlying contract or by the customer's consent or otherwise by a provision in accordance with the GDPR.

An exception to this is use for statistical purposes, provided the data provided has been made anonymous.

6.5

In order to fulfill the order, it may also be necessary to forward data to third parties (e.g. subcontractors, etc.) or authorities. The data is forwarded exclusively on the basis of the GDPR, in particular to fulfill the order or based on prior consent.

7. OTHER PROVISIONS

7.1

Changes to the contract and/or these General Terms and Conditions must be made in writing. This also applies to deviating from the written form requirement.

7.2

Should individual provisions of these General Terms and Conditions or of a contract concluded between the client and PPE be or become wholly or partially invalid, this shall not affect the validity of the remaining provisions. The contractual partners will work together in partnership to find a regulation that comes as close as possible to the invalid provisions; the same applies to any gaps.

7.3

The place of fulfillment is the registered office of PPE.

7.4

The legal validity, interpretation and fulfillment of a contract concluded between the client and PPE is subject to Austrian law with the exception of the conflict of law rules and the provisions of the UN Sales Convention.

7.5

The place of jurisdiction for all disputes arising from or in connection with a contract concluded between the client and PPE is Vienna, Austria.

7.6

If several clients place the order with PPE, it must be stated in writing prior to the conclusion of the contract which customer is entitled to make declarations to PPE on behalf of the other customers. This applies in particular to naming the person responsible for accepting the work.

8. TERM FOR FILM PRODUCTION

8.1 Manufacturing costs

8.1.1

The production of the film work - regardless of the medium, analog or digital - is based on the script approved by the customer or provided by him under the conditions laid down in writing in the offer or production contract.

8.1.2

The agreed price includes all production costs, including a first copy suitable for broadcasting or screening, as well as the granting of rights to the film work to the extent specified in point 8.4.

8.1.3

Weather-related shifts in shooting (weather risk) are not included in the calculated production costs. Additional costs arising from this title will be invoiced according to proven expenditure plus an overhead surcharge of 15%.

8.1.4

The production of a treatment or screenplay by PPE is to be remunerated separately. The agreed fee for this must also be paid by the customer if he does not subsequently film the treatment or screenplay or a planned performance - for whatever reason. If a screenplay or a pre-existing film work is made available by the customer, the customer must ensure that PPE is granted all the necessary rights of use for the use of this screenplay or film work free of charge. The client shall indemnify and hold harmless PPE in this connection.

8.1.5

If, for reasons that lie within the customer's sphere, additional services beyond the contract are necessary, for example because the customer expands or changes the order, an hourly rate per person of € 90 plus VAT applies as agreed. Unless otherwise agreed, overtime surcharges or other surcharges for personnel for preparations, on-site assembly or dismantling outside of the specified times are not included in the agreed price and will be charged separately by PPE. Alternatively, PPE has the right to add an overhead surcharge of 15% to the calculated net production costs in the event of additional services.

8.1.6

The customer declares that he is not subject to any restrictions on disposal with regard to the material to be processed or handed over for use and that he has the express consent of the respective entitled persons. This also applies to the rights exercised by collecting societies (e.g. GEMA, AUSTRO MECHANA, AKM, etc.). At the request of PPE, the customer undertakes to provide written explanations of the authorizations and permits granted to him.

8.2. Start of work, design, modification, acceptance, foreign language versions

8.2.1.

Preliminary work, filming and comparable work begins at the earliest after the production contract has been signed or the corresponding offer has been accepted.

8.2.2.

PPE is responsible for the artistic and technical design of the work. PPE must inform the customer about the location and planned sequence of the filming. The customer has the right to be present during the shooting and editing as long as this does not hinder the work of PPE.

8.2.3.

Acceptance by the client means in particular approval of the artistic and technical quality of the work.

8.2.4.

If the customer requests changes to the timing, the manuscript, the screenplay or the film parts that have already been produced before the film is accepted, these changes shall be at his expense and must be remunerated separately, unless justified claims are involved. PPE will inform the client about the expected costs of these changes.

8.2.5.

If the customer requests changes after acceptance of the film, he must notify PPE of the desired changes in writing. PPE alone is entitled to make changes. Such changes are at the expense of the customer and must be remunerated separately.

8.2.6

If, for artistic or technical reasons, PPE proposes changes to the already approved script that lead to additional costs compared to the agreed production price, these require the prior written consent of the customer.

8.3. Liability

8.3.1

PPE undertakes to produce a technically flawless product and expressly guarantees that the production will have flawless sound and image quality. No liability is assumed for improper further processing by third parties (e.g. MPEG coding).

8.3.2

If a circumstance occurs during the production of the film that makes it impossible or delays the contractual completion, PPE is only liable for intent or gross negligence in this regard.

8.3.3

Material defects recognized by PPE are to be remedied by PPE. If these corrections cannot be carried out without the cooperation of the customer or third parties (e.g. the customer's specialist consultants), PPE can consider the contract to be fulfilled after a reasonable period of time set for

taking the corresponding action has expired without success. PPE is entitled to refuse to remedy the defects until the payments due at the time of correction have been made.

8.3.4

PPE is only liable for infringements of rights that are caused intentionally or through gross negligence during production. The customer bears the sole risk of the content/props/equipment provided by him.

8.4. Copyright

8.4.1

The film is produced based on the script or offer accepted by the customer and PPE. The customer guarantees, in the sense of an essential contractual obligation, that the rights of use required for the contractual production of all pieces of music or other copyrighted works contained in the production have been duly acquired by him before the production begins and that personal or other rights of third parties do not conflict with the contractual use. This also applies in particular to the synchronization rights ("sync rights") to musical works and the "master use" rights to the recordings of the respective musical works. The customer is aware that the "sync rights" can be obtained directly from the relevant music publishers or authors and the "master use" rights can be obtained directly from the relevant sound carrier manufacturers/producers/record companies.

Furthermore, the customer guarantees that the musical rights required for the contractual exploitation of the production, which are managed by collecting societies, will be acquired from them (e.g. AKM and Austro Mechana in Austria) in good time.

To the extent of these guarantees, the customer shall indemnify and hold harmless PPE against claims by third parties, including the costs of legal representation.

8.4.2

In the production contract, it must be agreed which rights of use to the finished work are granted to the customer after full payment of the production costs and to what extent (spatially, temporally).

If this is not the case, the following applies:

- The customer is granted the broadcasting/performance rights to the work produced by PPE for the territory of the Republic of Austria, ORF, TV, cable companies and/or cinemas for a period of one year from completion/first use. A separate agreement must be concluded with PPE to extend or expand the broadcasting/performance rights. In case of doubt, these agreements are to be based on the documents and guideline values published by the Association of the Austrian Film and Music Industry on compensation for copyright and ancillary copyrights, particularly for actors, speakers, music, archive materials, etc. The settlement of these costs incurred is carried out by PPE in accordance with these General Terms and Conditions. This also applies to a broadcast via satellite that goes beyond the broadcasting country, insofar as this affects the rights of PPE or copyrights and ancillary copyrights, in particular for the area of actors, speakers, music, archive materials. The compensation for buy-outs is to be regulated by a separate contract.
- The use of the work on the Internet or for similar analog or digital platforms (so-called new types of exploitation; e.g. for use on handheld computers, mobile phones) is not covered in the absence of an express agreement.
- The rights to duplication, processing, modification, additions, synchronization, packshots, title changes and the use of excerpts in image and/or sound are not included in the absence of an express agreement.
- PPE retains exclusive rights of use with regard to all treatments, screenplays, drawings, plans and similar documents that it has generated itself or has been prepared by third parties on behalf of PPE.

8.4.3

The customer is obliged to report any use of the film outside of the areas of use specified in the production contract, in particular countries and periods of time, to PPE immediately.

8.4.4

To secure the copyright exploitation rights, the source material (image and sound), in particular negatives, master tapes and the rest of the material remains with PPE.

8.4.5

With the delivery of the broadcastable copy, the risk of the copy documents passes to the customer, even if the film is stored at PPE, a commissioned copying company or commissioned archive.

8.5. Other Provisions

PPE is entitled to show the company name and logo as a copyright notice. PPE also has the right to show the film work or have it shown at competitions and festivals. PPE is also entitled to show the film work or have it shown for the purpose of self-promotion; this also applies to publications on the Internet, on the PPE website or other corresponding analogue or digital platforms (so-called new types of exploitation; e.g. for use on handheld computers, mobile phones) - both the complete version and excerpts and/or parts.

9. EVENT MANAGEMENT AND ORGANIZATION PROVISIONS

9.1 Scheduling, shifts, overtime, other services

9.1.1.

The event is planned and implemented on the basis of the program/specifications approved by the customer. All costs associated with the services shown in the specifications are covered in the agreed price.

9.1.2.

Unless otherwise agreed, the customer determines the venue and ensures its availability. Deficiencies within the scope of the operator of the event location, such as insufficient or defective equipment, insufficient accessibility or usability of the event rooms, etc. fall within the sphere of the customer. PPE is entitled to charge the customer separately for the costs incurred as a result on the basis of points 9.1.3 and 9.1.4.

9.1.3.

Time shifts, relocations of the location are not included in the calculated costs. The resulting additional costs will be invoiced based on documented expenditure plus an overhead surcharge of 15%. An hourly rate per person of €90 plus VAT will be charged for PPE personnel services. Otherwise, the prices for the provision of equipment and personnel are calculated in accordance with the currently valid price list.

9.1.4 Unless otherwise agreed, overtime surcharges or other surcharges for personnel for preparations, on-site assembly or dismantling outside of the specified times are not included in the agreed price and will be charged separately by PPE.

9.1.5

Unless expressly agreed otherwise, costs for the coordination of the trades, event management, costs for briefings, additional discussions or meetings and consumables are not included in the agreed price and will be charged separately by PPE.

9.1.6

Unless expressly agreed otherwise, the import or provision of graphics, images, sounds, costumes or artefacts, the inclusion of other helpers not defined in the contract or licenses used are not included in the agreed price and will be charged separately by PPE.

9.1.7

The production of a programme/event sequence, the creation of the stage design or a separate sound and/or light design by PPE is to be remunerated separately. The fee agreed for this must also be paid by the client if - for whatever reason - the event subsequently does not take place. If content, in particular images, films, sounds and music, stage design, etc. is made available by the

customer, the customer must ensure that PPE is granted all the necessary rights of use for the use of this content free of charge. In this context, the customer shall indemnify and hold PPE harmless.

9.1.8

If additional services beyond the contract are necessary for reasons within the customer's control, for example because the customer expands or changes the order, PPE is entitled to charge the customer separately for the costs incurred on the basis of points 9.1.3 and 9.1.4 to be charged.

9.2 Customer Obligations

9.2.1

The customer guarantees the presence of a local contact and coordinator authorized to make decisions. He ensures free access by PPE and their crew to the necessary event locations in order to inspect, deliver, install, test, operate, dismantle and transport them. The customer guarantees sufficient stability of the parking space, free construction options and free access, if necessary elevators and industrial trucks (forklifts, cranes) as well as the necessary substructures and platforms. He ensures sufficient power supply and bears the costs of electricity consumption. WLAN and Internet access are to be provided by the customer.

9.2.2

The customer ensures there to be sufficient parking space for vehicles to deliver equipment, as well as for people who work for PPE at the event and for transport. The customer also provides entry and exit tickets for the production vehicles.

9.2.3

The customer has to provide event/access passes for all areas, for PPE, including all crew members.

9.2.4

For the personnel listed by PPE, suitable, adequate and nearby accommodation as well as hot/cold meals including drinks must be provided by the customer free of charge for the duration of the production. If, for whatever reason, this does not happen, PPE is entitled to charge for the additional costs incurred as a result, based on documented expenditure plus an overhead surcharge of 15%.

9.2.5

The customer ensures there to be sufficient tables and chairs are provided for all members of the PPE crew (FoH and backstage).

9.2.6

The customer guarantees the surveillance and locking of the equipment delivered by PPE.

9.2.7

The customer ensures adequate liability insurance and location insurance. Likewise, the customer bears sole responsibility for obtaining the official or private-law permits required for the event.

9.3 Start of service, design and changes

9.3.1.

Preparations and comparable work begin at the earliest after the contract has been signed or the corresponding offer has been accepted.

9.3.2.

PPE is responsible for the artistic and technical design of the event, unless otherwise expressly agreed in the specifications

9.3.3. If the customer requests changes, these changes are at his expense and must be remunerated separately, insofar as the assertion of justified defects is not involved. PPE will advise the customer of the estimated cost of these changes.

9.4 Liabilities

9.4.1

PPE ensures to provide technically flawless services. No liability is assumed for improper services provided by third parties or technical defects at the event locations.

9.4.2

If a circumstance occurs during the implementation of the event that makes it impossible or delays the contractual execution, PPE is only liable for intent or gross negligence in this regard.

9.4.3

Material defects recognized by PPE are to be remedied by PPE itself. If these corrections cannot be carried out without the cooperation of the client or third parties (e.g. the client's specialist consultants), PPE can consider the contract to be fulfilled after the fruitless expiry of a period set for carrying out the corresponding action. PPE is entitled to refuse to remedy defects until the payments due at the time of correction have been made.

9.4.4.

PPE is only liable for violations of rights caused intentionally or through gross negligence by PPE during production. The customer bears the sole risk of the content provided by him.

9.5 Copyright

9.5.1

Stage construction, light, process, etc. are created based on the concept created by the customer and PPE. In the sense of an essential contractual obligation, the customer guarantees that the rights of use to all pieces of music, images, films or other copyrighted works required for the contractual creation of the event have been duly acquired by him and that personal or other rights of third parties do not conflict with the contractual use .

Furthermore, the customer guarantees to acquire the musical rights required for the contractual use, which are managed by collecting societies, from the collecting societies (e.g. in Austria AKM and Austro Mechana) in good time.

To the extent of these guarantees, the customer shall indemnify and hold harmless PPE against claims by third parties, including the costs of legal defense.

9.5.2

Insofar as copyright usage permits are provided by PPE or its subcontractors as part of the order, these permits are limited exclusively to the appropriate use within the framework of the agreed event. Uses that go beyond this, in particular the production of recordings, publication by radio or television stations, making them available on the Internet, or public presentations require a separate granting of rights.

9.6 Other Provisions

PPE is entitled to show the company name and logo as a copyright notice. PPE is also entitled to refer to the event and the organizer for the purpose of self-promotion.