

## 1. Generalities

**1.1** These General Terms & Conditions (hereinafter: “GTC”) shall apply to all contracts concluded between eShot and its respective contract partner (hereinafter: “Customer”) with traders in terms of sect. 14 BGB (German Civil Code), with traders being any natural or legal persons who acquire the good or performance for commercial or professional use, as well as any legal persons under public law or special funds under public law. They shall also apply to information and advice.

**1.2** Any reference to “written form” in the contract and these GTC shall exclusively mean the form in terms of sect. 126(1) BGB. To the extent that the contract and these GTC contain any reference to “text form”, admissible meanings shall be both the written form and the form described in sect. 126b BGB, including, in particular, telefax or e-mail.

**1.3** Any reference to “workdays” in the contract and these GTC shall mean the days from Monday to Saturday, except for the respective public holidays at the eShot companies’ location.

**1.4** These GTC shall apply exclusively; eShot does not acknowledge any terms of the Customer that conflict with or differ from these GTC, unless eShot has given its explicit written consent to their application. These GTC shall apply even if eShot renders the performances without reservation despite being aware of any terms that conflict with or differ from its GTC.

**1.5** The Customer and eShot (hereinafter also: “the Party”; or both also: “the Parties”) shall work together in a spirit of trust and shall notify each other without delay in case of any deviations from the agreed action or any doubts about the well-founded nature of the other Party’s course of action.

**1.6** If the Customer recognises that any own specifications and requirements are incorrect, incomplete, inconclusive or impracticable, the Customer has to notify eShot about that and the consequences noticeable for the Customer.

**1.7** The Customer shall provide eShot with the names of a competent point of contact and a deputy point of contact.

**1.8** The Parties have to give each other notice of any changes in the designated persons without delay. Pending receipt of any such notice, the previously named points of contact and/or their deputies shall be deemed entitled to make and receive statements under their hitherto existing power of representation.

**1.9** The points of contact shall agree on any advances and obstacles in the performance of the contract at regular intervals in order to control and intervene in the performance of the contract, if need be.

## 2. Recording Operations

**2.1** Unless otherwise agreed in writing, the Customer has to deliver to eShot, at the Customer’s risk and expense, any and all items to be represented by eShot on photos or videos (hereinafter: “Items”). A delivery note including Items list needs to be enclosed with each delivery. The form of the Items list shall be defined by eShot.

**2.2** Der Kunde darf eShot für die Aufnahmearbeiten nur solche Artikel überlassen, zu deren Verwendung er berechtigt ist und die frei von Rechten Dritter sind. Der Kunde stellt eShot von Ansprüchen Dritter frei, die aus der Verletzung dieser Pflichten resultieren – einschließlich der Prozesskosten und sonstigen Aufwendungen.

**2.3** eShot shall be liable for any damage to or loss of the surrendered Items only in accordance with clause 7 of these GTC. It shall be incumbent upon the Customer to arrange for the Items to be insured

**2.4** Unless otherwise agreed in text form, the Customer has to collect the Items from eShot at the Customer’s risk and expense after termination of the recording operations. If the Customer fails to comply with any request to collect the Items within a deadline of two weeks, eShot may send the Items to the Customer at the Customer’s risk and expense. The Customer has to reimburse eShot for any costs of storage incurred as a result. The risk shall pass to the Customer once eShot has handed the Items over to the haulier or, alternatively, a person assigned to perform the shipment.

## 3. Performance Time and Default

**3.1** If eShot is in default, its liability for making good the damage caused by delay in case of ordinary negligence shall be limited to 5% of the contract price, which shall be calculated in proportion to the performance eShot defaults on. Any further claims of the Customer shall remain unaffected.

**3.2** In case of operational failures, such as strike or lockout, as well as in all other cases of force majeure (especially war, natural phenomena, regulatory orders, fire, pandemic, shortage of energy and technical failures, e.g. downtime of the server environment), the agreed delivery deadlines shall be extended by the duration of such failure. Such operational failures shall also include bad weather days during scheduled outdoor shootings as well as unforeseeable no-show of booked models due to circumstances not attributable to eShot.

**3.3** No notice of termination of the order delayed on account of operational failures (3.2) may be given until the Parties can no longer be reasonably expected to continue to wait. Notice of termination may be given at the earliest, however, four weeks after the operational failure described above occurred. The Parties’ liability in the event of the operational failure referred to above shall be excluded.

## 4. Remuneration

**4.1** The remuneration shall be due upon acceptance of the recording operations, seven days after the Customer received the invoice at the latest.

**4.2** If the recording operations need to be accepted in parts and remunerations have been agreed for the individual parts, the remuneration for each part shall be due upon its acceptance. In case the operations extend over a longer period of time (from two months onwards) and/or require any high financial advances by eShot (€ 5,000.00 or more), eShot may demand reasonable progress payments from the Customer. Progress payments shall be deemed reasonable if they amount to the value of the respective proven performances as per contract in a given month.

**4.3** eShot may account for any changes to the order on an hourly basis pursuant to the price list valid at the time of such changes.

**4.4** Remunerations shall be net amounts, which need to be paid in addition to the statutory VAT.

**4.5** If the Customer defaults on payment, eShot may demand default interest in a minimum amount of 9% above the respective current basic rate of interest stipulated by the European Central Bank, unless the Customer proves that eShot incurred substantially lower damage. Asserting any further claims shall remain reserved.

**4.6** Upon presentation of proof, the Customer shall bear any and all expenses, including travel and accommodation costs, out-of-pocket expenses and any pay claimed by and incurred to third parties as part of the contract performance.

**4.7** If the Parties failed to make any agreement on the remuneration for any performance by eShot the provision of which the Customer could reasonably expect only against remuneration according to circumstances, the Customer has to pay the remuneration customary for such performance. In doubt, the remuneration rates claimed by eShot for its performances shall be deemed to be customary.

## 5. Rights of Use

**5.1** Unless otherwise agreed in text form, the Customer shall be granted the non-exclusive (simple) right of use to works, including, in particular, photos or videos, and, for model recordings, the right to one’s own picture, for use for the contractually agreed purpose and scope. Any granting of rights of use not subject to limitations in terms of space, time or content as well as of holdback periods must be agreed in text form.

**5.2** Any rights of use with moral rights, as well as any photos or videos on which persons can be recognised, shall be governed by the buy-outs specified regarding time, space and content of the respective model agency. Unless otherwise agreed, the rights of use shall be as follows: 6 months online (Internet).

**5.3** The photos or videos are basically to be used unedited and in their entirety. Unless otherwise agreed in text form, any adaptation, for instance by post-photographing or post-filming using mechanical or electronic means, shall not be admissible.

**5.4** The Customer shall be granted the rights of use only after the remuneration has been paid in full. If eShot is entitled to any further claims against the Customer, the Customer shall not be granted the rights of use until any and all claims against the Customer have lapsed.

**5.5** eShot shall grant the rights of use without any exemption from all conceivable rights of third parties. The Customer has hence to pay regard to any third-party rights to the surrendered works.

## 6. Rescission

**6.1** The Customer may rescind on account of any breach of duty that is not a defect in the item of purchase or the work only if eShot is responsible for this breach of duty.

## 7. Liability of eShot; Customer's Obligations

**7.1** Any claims of the Customer for damages and reimbursement of expenses for any legal ground whatsoever shall be excluded.

**7.2** This exclusion of liability shall not apply

- a) to any damage caused by wilful intent or gross negligence;
- b) to any slightly negligent breach of essential contractual duties, with eShot's liability in this case being limited to the damage foreseeable upon conclusion of the contract and typical for the contract and essential contractual duties being any duties that serve to protect any contract-essential legal positions of the Customer that must be granted to the Customer under the contract precisely on account of its content and purpose, and any obligations whose fulfilment allows for the proper implementation of the contract in the first place and on compliance with which the Customer has regularly relied and may regularly rely;
- c) in any case of culpable injury to the Customer's life, limb or health;
- d) to any maliciously concealed defects in and any guarantee provided for the quality of the good;
- e) to any claims from the German Product Liability Act.

**7.3** In the event that any provisions or stipulations by the Customer result in any rights of third parties being infringed and eShot being laid claim to that, the Customer shall indemnify eShot from the third parties' claims (incl. the legal and defence costs). Where any rights or stipulations of third parties are violated as a result of the Customer adapting the works or using them in any manner contrary to contract, it shall be incumbent upon the Customer to conduct the resulting disputes. If this is not possible for compelling reasons, the Customer shall indemnify eShot from the third parties' claims (incl. the legal and defence costs).

**7.4** To avoid any loss of data and/or programmes, the Customer shall be obliged to perform data backups and to ensure that any lost data can be recovered using reasonable efforts.

**7.5** The Customer has to tolerate any production-related damage to the good, e.g. needle punctures from styling, opening of packaging or the like.

**7.6** The regulations above shall also apply to corresponding breaches of duty by eShot's vicarious agents. To the extent that any liability towards eShot is excluded or restricted, this shall also apply with regard to the personal liability of its organs, legal representatives, employees and other vicarious agents.

## 8. Warranty

**8.1** Any warranty of eShot shall not cover any defects caused by external influences or by any non-compliance with the terms of use applicable to the performance. It shall not be applicable to the extent that the Customer changes or causes any third parties to change the performance without any consent from eShot, unless the Customer proves that the defects have not been caused by such changes and the remedy of defects is rendered unreasonably difficult by the changes.

**8.2** Once the photos or videos have been received, the Customer has to check them for completeness and absence of defects. If the Customer detects any incompleteness or any defect which can be recognised without enhanced expert knowledge or great effort, the Customer shall be obliged to give eShot written notice of the incompleteness or detected defects for evidentiary purposes within one week from receipt, following which the performance shall be deemed accepted as per contract and free of defects.

**8.3** Where any defects exist in any part of the delivered good or rendered performance, there shall be no entitlement to make the entire performance subject of complaint, unless it cannot reasonably be expected to render any partial performance for the Customer.

**8.4** In addition, any liability for defects by which the value or suitability for use is not or only marginally impaired shall be excluded..

**8.5** The period of warranty shall begin upon acceptance by the Customer and shall end after 24 months.

**8.6** If the Customer makes any productive use of the performances already rendered by eShot, the part used productively by that time shall automatically be deemed accepted.

## 9. Self-Promotion

eShot may use the rendered performances, in whole or in part, on the [www.eshot.de](http://www.eshot.de) company website or in any other online and offline media for self-promotion and may cite the Customer as reference. The right to cite the Customer as reference shall not apply if the Customer expressly objects in text form.

## 10. Contractual Penalty, Damages

For the eventuality that any photo or video is used, adapted, uploaded or shared without authorisation in any electronic, digital or analogue form and any rights are granted to third parties without authorisation, the Customer undertakes to pay a contractual penalty for any case of culpable action, with the amount of such penalty being stipulated by eShot and, in case of dispute, the penalty being reviewed by the court of competent jurisdiction. Asserting any greater damage and further claims shall remain reserved.

## 11. Non-Disclosure

**11.1** The documents handed over, knowledge and experience disclosed to the other party to the contract (information) may exclusively be used for the purposes of this contract and must not be made accessible to any third parties. In addition, the parties to the contract agree to observe confidentiality about the content of this contract and about the lessons learnt during its execution.

**11.2** The obligations under paragraph 11.1 above shall not apply to any information that

- a) has been known or generally accessible to the general public prior to its disclosure or handover by the holder or will become known or generally accessible to the general public at any later point in time without any duty of non-disclosure being breached,
- b) has demonstrably already been known to the recipient of the information prior to its disclosure by the holder and without any duty of non-disclosure being breached,
- c) has been gained by the recipient himself/herself without any confidential information of the holder being used or
- d) is handed over or made accessible to the recipient by any authorised third party without any duty of non-disclosure being breached.

Third parties shall not include the auxiliary persons involved to perform the contractual relationship, such as freelancers, subcontractors etc.

**11.3** The non-disclosure obligation shall also apply for three (3) years beyond the termination of the contractual relationship.

**11.4** If either Party so requests, the documents handed over by it, such as strategy papers, briefing documents etc., need to be surrendered to it after termination of the contractual relationship, unless the other Party is able to assert any legitimate interest in these documents.

**11.5** Any press statements, disclosures etc. in which either party to the contract refers to the other party to the contract shall be admissible only after prior consultation in text form.

## 12. Non-Solicitation

The Customer undertakes neither to solicit, either directly or indirectly by third parties, nor to hire any employees of eShot during the course of the Parties' cooperation and for a period of one year thereafter without any consent from eShot. The Customer undertakes to pay a contractual penalty for each case of culpable contravention, with the amount of such penalty being stipulated by eShot and, in case of dispute, the penalty being reviewed by the court of competent jurisdiction.

## 13. Assignments and Objections

**13.1** The Customer may assign any claims only with prior written consent from eShot. The consent must not be unreasonably withheld. This shall not affect the regime of sect. 354a HGB (German Commercial Code).

**13.2** Any right of retention by the Customer shall be excluded, unless the Customer's counter-claim originates from the same contractual relationship and is uncontested or has been finally and bindingly established.

**13.3** Any rights of set-off shall be due to the Customer only if the Customer's counter-claims have been finally and bindingly established, are uncontested or have been acknowledged by eShot.

## 14. Involvement of Third Parties

**14.1** The Customer has to vouch for any third parties, who take action for the Customer in eShot's field of activity at the Customer's instigation, on account of the Customer's expectation or with the Customer's tolerance without maintaining any contractual relationship to eShot, as for auxiliary agents. eShot shall not be responsible towards the Customer if eShot is unable to meet its obligations towards the Customer in whole or in part or in good time due to any behaviour by one of the third parties referred to above.

**14.2** eShot shall be liable for any third party engaged or otherwise involved by eShot on the basis of any instruction by the Customer ("substitute") only for own fault in transferring, especially selecting the substitute, but not for any fault by the substitute.

**14.3** Where any auxiliary agents are engaged to execute performances, any claims from any breach of duty on account of poor performance need to be asserted primarily towards the respective auxiliary agent; any subsidiary own liability of eShot shall exist only thereafter. eShot undertakes to assign any warranty and other rights due against it as well as to surrender to the Customer all documents required to enforce claims.

## 15. Changes in Performance

**15.1** If the Customer requests to change the contractually stipulated scope of the performances to be rendered by eShot, the Customer shall give eShot notice of this change request in text form. The further procedure shall be governed by the provisions set out hereinafter. Where any change requests can be swiftly reviewed and presumably implemented within 8 working hours, eShot may desist from the procedure pursuant to paragraphs 2 to 5.

**15.2** eShot shall review the consequences the requested change will have, especially regarding remuneration, additional expenditures and dates. If eShot recognises that any execution of performances to be rendered is impossible or possible only after a delay due to the review, eShot shall give the Customer notice thereof whilst pointing out that the change request can continue to be reviewed only if the affected performances will initially be indefinitely postponed. If the Customer agrees to such postponement, eShot shall review the change request. The Customer shall be entitled to withdraw the change request at any time, following which the initiated change procedure shall end.

**15.3** After having reviewed the change request, eShot shall outline the impacts of the change request on the agreements made to the Customer. The outline shall include either a detailed suggestion for the implementation of the change request or information as to why the change request cannot be implemented.

**15.4** The parties to the contract shall coordinate with each other on the content of any suggestion for the implementation of the change request without delay and shall enclose, as supplemental agreement, the outcome of any successful coordination to the text of the agreement to which the change relates.

**15.5** The dates affected by the change procedure shall be postponed to the extent required, with due regard to the duration of the review, the duration of the coordination on the proposal for change and, where appropriate, the duration of the change requests to be executed, plus a reasonable start-up period. eShot shall give the Customer notice of the new dates.

**15.6** The Customer has to bear the expenses arising from the demand for change. These shall include, in particular, the review of the change request, the creation of a proposal for change and any downtimes. For the eventuality that the Parties entered into any agreement on daily rates, the expenses shall be accounted for according to these and, other than that, based on the usual remuneration.

## 16. Final Provisions

**16.1** All modifications and amendments to contractual agreements must be laid down in writing for the purposes of evidence. Any notices of termination need to be given in writing.

**16.2** If individual provisions of the Parties' agreements are or become ineffective in whole or in part, this shall not affect the effectiveness of the remaining provisions.

**16.4** These GTC shall be governed by the law of the Federal Republic of Germany to the exclusion of any norms referring to any other legislation.

**16.5** Place of exclusive jurisdiction for all legal disputes from or in connection with this contract shall be Berlin, provided that the Customer is a merchant, a legal person under public law or a special fund under public law.