

## **General Terms and Conditions of Business (GTC) of Balloonart Veranstaltungen GmbH (hereafter: Balloonart)**

### **1. General**

- 1.1 These General Terms and Conditions of Sale and Delivery (GTC) of Balloonart apply to all contracts of sale and hire contracts and other legal transactions with Balloonart's customers, even if they are not explicitly referred to in oral or telephone negotiations. By issuing an order, the customer confirms, in any case, that he is familiar with the GTC. Any provisions diverging from Balloonart's GTC will only apply if acknowledged in writing by Balloonart.
- 1.2 All general terms and conditions of business, and references to orders, order slips etc. of Balloonart's customers are expressly rejected.
- 1.3 A contract is only binding upon Balloonart when concluded in writing (by letter, e-mail or fax). Balloonart will prepare a written quotation at the customer's request. If the customer accepts the quotation, in writing, within a reasonable period, and the details of the order have been fully clarified (as per point 1.4), the order is definite. Any oral agreement to set aside the requirement for the written form is excluded and invalid.
- 1.4 The details of the order will be deemed to have been fully clarified when a written order has been issued, the customer has accepted these GTC, the content and scope of the order, especially as regards design, colour definitions, shape, graphics, printing process and delivery deadline have been specified by mutual agreement and the customer has made a down payment as per 3.2, if required. Balloonart will notify the data formats which it accepts when issuing the order confirmation. Any computerised processing or conversion required will be invoiced by Balloonart at cost at an hourly rate of € 110.
- 1.5 Insofar as agreements diverging from these GTC are mandatorily required by the provisions of the Austrian Consumer Protection Act (Federal Law Gazette No. 140/1979, current version), for instance for contracts concluded in connection with distance selling, the statutory provisions apply.

### **2. Conclusion of the contract and prices**

- 2.1 Quotations prepared by Balloonart are non-binding and subject to confirmation, with regard to quantity, quality, prices, delivery period and capacity to deliver, unless it is expressly agreed in writing that they are firm and binding.
- 2.2 Prices are ex works in Vienna, in the currency specified, excluding VAT and other taxes and dues, for the goods to be collected by the customer.
- 2.3 Prices, especially hire prices, are subject to indexation in accordance with the Consumer Prices Index (2000 = 100), with the index published for the month in which the order is issued taken as the basis for calculation. Index fluctuations will be taken into account where they exceed 5%; if the threshold value is exceeded, the change in the consumer price index is to be taken into account in its entirety. The new index value thus calculated will be the starting-point for the calculation of the next index adjustment. If the index ceases to be published, it will be replaced by the index which succeeds it. If no such successor index is published, the inflation allowance is to be calculated in such a way that it corresponds to the reduction in purchasing power.
- 2.4 Payments received will be applied to the earliest claim, initially to costs, then to simple and compound interest and lastly to capital. Counterclaims, of whatever kind, may not be offset against Balloonart's claims. The customer is not entitled to assign claims against Balloonart to third parties.

### **3. Payment**

- 3.1 The place of payment is Vienna.
- 3.2 Invoices up to EUR 500 are payable immediately, without deductions. Invoices over EUR 500 are payable net, without deductions, 14 days after the invoice date. For invoices over EUR 500 a down payment of 50% must be paid when the order is issued; otherwise, Balloonart will not be bound by the order.
- 3.3 In the event of arrears in payment (even if the customer is not at fault), Balloonart will be entitled to charge default interest at an annual rate 8% above the Austrian National Bank base rate. Balloonart will charge reminder fees of €25, starting with the first reminder, and, if the arrears persist, the cost of a collection agency or legal expenses.

### **4. Delivery**

- 4.1 Goods will be dispatched carriage unpaid, at the customer's risk and expense. The consignee must submit a claim to the carrier in respect of any damage sustained in transport, loss or other damage. Delivery by Balloonart will be invoiced separately, unless agreed otherwise.
- 4.2 If the customer refuses to accept goods, he will be required to bear all transport and storage costs, without prejudice to his payment obligations.
- 4.3 Delivery times are non-binding. Balloonart will however effect delivery, insofar as its manufacturing, performance and development capacities permit, within four to six weeks of the details of the order being fully clarified. Shorter delivery times must be agreed in writing and will entitle Balloonart to apply a 10% surcharge to the net invoice amount.
- 4.4 If required, Balloonart will provide packaging suitable for transport. The packaging will remain the property of Balloonart, except in the case of contracts of sale and without prejudice to point 6.

### **5. Scope of supply and services**

- 5.1 Balloonart provides its customers with the following services, in particular:
- Sale and hire of advertising surfaces and media, in particular inflatable media;
  - Arrangement of advertising and marketing events;
  - Development of game and experience concepts in the advertising and marketing field;
  - Production and development of, and trade in, inflatable and flying advertising media, balloons, flags and balloon gas.
- 5.2 The customer is responsible, in principle, for the design, content and scope of the advertising and for ensuring that it does not infringe statutory or official regulations or encroach on the rights of third parties. Balloonart can provide no guarantee, or liability in respect of, achieving any specific advertising outcome.
- 5.3 For orders to manufacture printed and sewn articles, and in particular for inflatable advertising media and air balloons, it is agreed that a tolerance of +/- 5% will apply with regard to colour, shape, size and weight. Balloonart is also entitled to make changes to the advertising media's design, colour, shape, graphics, printing processes and accessories, if this is necessary for technical or financial reasons and does not adversely affect the use intended by the customer, without notifying the customer of such changes. Such changes will not constitute a breach of contract.

### **6. Reservation of title**

- 6.1 Until all Balloonart's claims against the customer have been satisfied, the goods will remain the property of Balloonart. In the case of a running account, the reservation of title will serve to secure the balance due to Balloonart.
- 6.2 The customer is not entitled to resell goods subject to Balloonart's reservation of title, to transfer them by way of security or to use them as collateral. If a third party distrains, or otherwise encroaches upon, goods subject to Balloonart's reservation of title, the customer must notify Balloonart immediately and reimburse Balloonart for any costs incurred in the process of asserting its claims.
- 6.3 Balloonart's reservation of title will not be affected if the goods supplied are resold, processed or transformed; in this case it is agreed that Balloonart will retain proportional ownership of the articles produced as a result of processing or transformation.

### **7. Guarantee**

- 7.1 For brand new goods in their original packaging, Balloonart guarantees that the goods are fit for purpose and exhibit the usual characteristics; liability is only assumed for special characteristics if this has been consented to in writing. Commitments in sales catalogues, prospectuses and advertising materials, and on Balloonart's websites, are non-binding. The customer will always be required to prove that the defects existed at the time of handover.
- 7.2 The guarantee period is 6 months from receipt of the supply or services. The entitlement to legal recourse in accordance with Art. 933b of the Austrian Civil Code expires 6 months after receipt of the supply or services.
- 7.3 The customer is obliged to inspect the goods as soon as they are received and immediately notify Balloonart in writing of any defects discovered, indicating the nature and extent of the defect. Concealed defects must be

reported in writing as soon as they are discovered. The written notification must be received by Balloonart within 10 days of receipt of the goods or discovery of the defect, failing which any guarantee claim will be forfeited. If the defect is not notified in due form within this time-limit, the goods will be deemed to have been approved. In these cases, no guarantee or compensation claims may be brought nor may any errors be contested in respect of defects.

- 7.4 Guarantee claims may not be brought if the goods have been stored or handled improperly.
- 7.5 Balloonart will be at liberty to remedy defects, or have them remedied, to exchange goods, supply what is lacking, reduce the price issuing a credit note, or take the goods back, refunding the invoice amount paid and withdraw from the contract.
- 7.6 Once notified of a complaint in respect of goods, Balloonart will arrange for them to be collected. Goods subject to a complaint may only be returned with the express permission of Balloonart. Balloonart will not meet any costs involved in express transport of such goods, in either direction.
- 7.7 Balloonart guarantees the erection and maintenance of open-air advertising media up to a maximum wind speed of 40 km/h. If it proves, or becomes, impossible to carry out advertising owing to unfavourable weather conditions or force majeure, the customer will be required to reimburse Balloonart for costs already incurred; however, if it becomes impossible to carry out advertising after it has begun, compensation for costs will be due equivalent to at least 70% of the contractually stipulated price. If Balloonart carries out advertising for half or more of the agreed advertising period, the customer will be required to pay the contractually stipulated price in full.

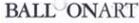
## 8. Compensation

- 8.1 No compensation claims may be brought in cases of minor negligence; this does not apply to personal injury. The party adversely affected will be required to prove gross negligence. Balloonart will only be liable for lost profits, especially where due to delayed delivery or non-delivery, in the event of blatant gross negligence or malice aforesaid, which the customer will be required to prove.
- 8.2 Balloonart can accept no liability for restrictions due to environmental causes (e.g. weather conditions, etc.) for restrictions on, interference with or interruptions of the use or operation of advertising media or equipment which are only of a temporary nature or due to force majeure, or for infringements or accidents due to the improper storage or handling of Balloonart's goods. The customer declares that he is aware of the particular risks associated with balloon gas and pressurised balloon gas containers.

## 9. Product liability

In the event of third-party claims against the customer based on the Austrian Product Liability Act, the customer is obliged to notify Balloonart immediately and hand over all information on the claim asserted. In the event that the customer does not fulfil his/its obligation vis-à-vis his/its customer to name Balloonart as the upstream supplier within the statutory time-period stipulated in the Product Liability Act, and is consequently held liable, the customer shall have no legal recourse against Balloonart.

## 10. Balloonart's copyright and other property rights

- 10.1 Balloonart reserves all rights to its supply and services, in particular designs, quotations, projects, drawings, presentation documents, layout presentations, images, photographs and graphics produced by Balloonart and to the finished goods. This also applies to parts of the supply and services and to all contents of the website [www.balloonart.at](http://www.balloonart.at); and, in particular, to all Web addresses belonging to Balloonart directly linked to this site which lead directly to [www.balloonart.at](http://www.balloonart.at) such as [www.balloonart.ch](http://www.balloonart.ch), or [www.leuchtballone.at](http://www.leuchtballone.at) (texts, images, graphics, sound, animation and video files, as well as all other content and data made available by Balloonart on its websites, hereafter: "contents of the website".) Supply and services and contents of the website, or parts thereof, may not be used in a way which extends beyond the contractual purpose. In particular, they may not be reproduced or made available to third parties.
- 10.2 By producing presentations, layouts and/or designs, Balloonart does not grant the customer any rights of use or licence, even if a fee has been paid for them. The customer is not permitted to pass on the presentation document to third parties, or to publish, reproduce, copy or otherwise exploit the ideas and solutions presented, either in part or as a whole, without Balloonart's prior written consent. If the ideas and solutions presented by Balloonart are not used by the customer, Balloonart is entitled to make alternative use of them. The presentation document and the layout presentation and other documentation must be returned to Balloonart, on request, after the end of the presentation.
- 10.3 The customer is aware that Balloonart's advertising media are protected, nationally and internationally, by Balloonart's intellectual property rights. The customer recognises Balloonart's national and international property rights, in particular patents and utility patents or property rights or patent applications in other countries which are equivalent to these.
- 10.4 The customer recognises Balloonart's national, international and Community trademark rights, and trademarks to which Balloonart is entitled, in particular:
- the word trademark  ("Balloonart Vienna – Die Kunst sich abzuheben")
  - the word trademarks "Jack in the Box" and "Jack", and
  - the word and image trademark .
- 10.5 The customer irrevocably undertakes
- not to infringe Balloonart's copyright;
  - not to encroach on Balloonart's property rights, whether directly or indirectly, him/itself or via third parties;
  - to refrain from registering, having third parties register, or asserting any property rights, in particular trademarks, patents or utility patents, anywhere in the world, which infringe Balloonart's property rights or are wholly or partially identical with them or are similar or equivalent to them to the extent that they appear virtually identical, and
  - not to imitate Balloonart's products, or have them copied or imitated by third parties.
- 10.6 The customer is obliged to indemnify Balloonart in respect of all claims brought by third parties against Balloonart on the grounds of infringements of copyright and/or performance rights, trademark, design, patent and utility patent rights or other industrial property rights.
- 10.7 If, in Balloonart's opinion, the customer's order infringes a third party's copyright, other property rights or industrial property rights, Balloonart must advise the customer of the fact. If the customer insists on the order being executed, Balloonart will not be liable for any adverse legal consequences. In this case, the customer also undertakes to indemnify Balloonart, in accordance with point 10.8, in respect of all third-party claims.
- 10.8 For each infringement of any of the obligations laid down in points 10.1 to 10.7, the customer irrevocably undertakes to pay Balloonart a contractual penalty of EUR 25,000 (in words: twenty-five thousand euros), irrespective of fault and not conditional on any loss being sustained. This penalty may not be reduced by any court and is without prejudice to any claims of Balloonart in excess of this amount, in particular compensation claims, actions for accounting, claims for reasonable remuneration or actions for injunctive relief.

## 11. Affixing of names or trademarks, references

- 11.1 Balloonart is entitled, even without specific authorisation by the customer, to affix a manufacturer's mark and/or company name and/or the trademarks of Balloonart or its business partners on the supplies/services provided. The customer is obliged to leave these marks on the advertising medium, not to remove them and, if necessary, to enable Balloonart to renew them.
- 11.2 Balloonart may use the customer's name and the project produced for the customer as a reference and may present the supplies/services provided to the customer to any party, unless expressly agreed otherwise.

## 12. Term and termination, amendments to the GTC

- 12.1 Contracts with Balloonart for repeated services, especially servicing contracts, are concluded – unless agreed otherwise in writing – for an indefinite duration and may be ordinarily terminated at the end of a month, giving six months' notice.
- 12.2 Hire contracts begin on the date agreed in writing in the hire contract, at the latest on collection, and end when the products hired are satisfactorily returned. The customer must return the products hired to Balloonart without charge to the latter and undamaged. For the duration of the hire period the customer will bear all risk in respect of the products hired and must indemnify Balloonart for all loss, damage or injury sustained by the customer or third parties as a result of improper use of the hired products.

- 12.3 In the following cases, Balloonart is entitled to withdraw from the contract immediately and demand the agreed remuneration in full, without prejudice to further legal recourse:
- if it becomes apparent that the supplies and/or services to be provided by Balloonart infringe statutory and/or official regulations and/or orders;
  - if the customer is more than 14 days in arrears with a payment and a reminder has been issued by Balloonart, setting an extension period, without this resulting in payment;
  - if bankruptcy proceedings are instituted against the customer or an application for such proceedings to be instituted has been rejected because the customer's assets are not sufficient to cover the costs, or if circumstances exist which would justify the institution of such proceedings or the rejection of such an application;
  - if the customer infringes the obligations laid down in point 10, or
  - if the customer infringes any other material provision of the contract or of these GTC.

12.4 Balloonart reserves the right to amend these GTC at any time. Balloonart will notify the customer of the amended GTC in an appropriate manner. If the customer does not reject the amended GTC within 10 days, the new GTC will be deemed to have been approved.

### 13. **Miscellaneous**

13.1 The place of performance is Vienna.

13.2 It is agreed that the place of jurisdiction is the court in Vienna which has substantive jurisdiction over Balloonart.

13.3 The contractual relationship between the customer and Balloonart is governed in its entirety by Austrian law alone, to the exclusion of UN commercial law and any referrals or subsequent referrals under international private law.

### 14. **Transfer of rights and obligations**

The customer undertakes to impose the obligations which he/it has assumed on any party which the customer allows to store or use Balloonart's goods or services, on whatever legal grounds and to transfer the obligations which he/it has assumed to any legal successor.