



GENERAL TERMS AND CONDITIONS

Theaterkunst GmbH

(Rental and Other Services as well as Manufacture/Sale – as at October 2021)

1. Scope of application, general points, Renter's representatives

- 1.1 These General Terms and Conditions ("**Terms and Conditions**") of Theaterkunst GmbH ("**TK**") shall be part of the content of the rental agreement ("**Agreement**") concluded between TK and the contracting party ("**Renter**") in regard of the rental of costumes, accessories and other items ("**Rental Items**") as well as any further (associated) services (e.g. research, consultation, compilations, fittings, fit and special alterations, reservations, transport, insurance, etc. – hereinafter jointly referred to as "**Other Services**").

The Terms and Conditions shall also apply to the manufacture and sale of costumes, regardless of whether such manufacture or sale is effected in connection with a rental or on an individual basis ("**Manufacture / Sale**"). Please refer to Section 10.

General terms and conditions of the Renter that conflict with or deviate from these Terms and Conditions shall not be recognised, unless TK has expressly agreed to such terms in writing.

- 1.2 Individual contractual stipulations agreed in writing (e.g. including those stated in cost estimates) shall take precedence over these Terms and Conditions in all cases.
- 1.3 Should the Renter specify (e.g. in a cost transfer declaration, production announcement, etc.) one or several individuals (e.g. costume designers, project managers, etc.) who have been authorised to select and rent Rental Items from TK on behalf of the Renter, such individuals shall be deemed to be "**Representatives**" of the Renter. Declarations made by a Representative shall have direct effect both for and against the Renter. The Representative's power of attorney shall be unrestricted if and insofar as the Renter does not notify TK in writing of any restrictions on such power of attorney. Hence, they may conclude individual agreements with TK in the name of and with effect for the Renter, including agreements pertaining to Other Services.

2. Selection, reservation, rental, transport, risk assumption

- 2.1 The Renter shall select the Rental Items at TK's business/warehouse premises and shall ascertain the respective condition of the relevant Rental Items.
- 2.2 As long as Rental Items have been selected by the Renter but have not yet been rented, TK reserves the right to rent such items to third parties. However, TK and the Renter may agree on a reservation (preceding the rental) of the selected Rental items. TK reserves the right to charge a separate fee for such reservations and the associated additional expenses (e.g. for clearing items away), the amount of which shall be determined according to the extent (e.g. on the basis of a so-called ironing flat rate) and duration of the reservation.
- 2.3 The Renter may carry out fittings in consultation with, and with the assistance of, TK. TK reserves the right to charge a separate fee for this (depending on the extent and duration of the fitting).
- 2.4 The Renter and TK may agree on fit and special alterations of Rental Items to be carried out by TK. The cost of such alterations shall be borne by the Renter, unless otherwise agreed in writing.



- 2.5 TK shall issue a delivery note for the respective Rental Items. Upon collection of the Rental Items and/or upon receipt of the Rental Items at the place of delivery, the Renter shall verify promptly whether all Rental Items listed in the delivery note have been delivered. In the event of any discrepancies between the delivery and the delivery note, the Renter shall notify TK in writing without delay. Upon countersignature of the delivery note, or in the absence of an immediate notification of any discrepancies, it shall be irrefutably presumed that all of the Rental Items listed in the delivery note have been delivered to the Renter.
- 2.6 As a rule, TK or TK's vicarious agents (e.g. transport companies / forwarding agents selected by TK) take over the delivery of the Rental Items (packaging, transport and delivery). In this case, TK's General Terms of Transport shall apply which can be accessed and downloaded at www.theaterkunst.de/agb.
- 2.7 Where (in exceptional cases) TK is not engaged to undertake the delivery, the Renter shall be responsible for suitable transport, including appropriate packaging, of the Rental Items from TK's business/warehouse premises to the delivery location, and shall bear all costs associated therewith. The Renter shall ensure that it (or the transport company engaged by it) has taken out transport insurance for the transport which provides for a sum insured/coverage of at least 10 times the value of the rent agreed for the Rental Items to be transported.

If the packaging and/or means of transport for which the Renter is responsible are inadequate and there is thus reason to fear that the Rental Items will be subject to loss or damage during transport, TK may refuse to hand over the Rental Items ("**Refusal to Hand Over Rental Items**"). Such Refusal to Hand Over Rental Items shall not affect the commencement of the rental period. The rental period shall thus commence as contractually agreed between TK and the Renter despite the Refusal to Hand Over the Rental Items, at the latest, however, on the day of the Refusal to Hand Over the Rental Items, unless otherwise agreed.

The risk of accidental loss or deterioration shall be borne by the Renter from the time the Rental Items are handed over to the Renter or the Renter's transport agent until the time they are returned to TK's business/warehouse premises ("**Transfer of Risk**").

- 2.8 The Rental Items shall remain the property of TK at all times.

3. Return

- 3.1 After appropriate, careful and responsible use ("**Contractual Use**"), the Rental Items shall be returned to TK in their original state on delivery.
- 3.2 Prior to the return, any alterations made by the Renter with TK's consent shall be duly undone without leaving any trace, unless otherwise agreed.
- 3.3 Upon return, the Renter shall notify TK of any known damage to the Rental Items or any other deviations from their state on delivery.
- 3.4 In the event that TK discovers any damage to the returned Rental Items, TK shall notify the Renter of such discovery in writing within ten (10) working days.

4. Further obligations of the Renter

- 4.1 The Renter is obliged to use the Rental Items exclusively as stipulated in the Agreement. The Renter shall treat the Rental Items with care and consideration.
- 4.2 The Renter is obliged to refrain from making any unauthorised alterations to the rental costumes. By way of exception, TK may expressly permit the Renter to make alterations in writing.
- 4.3 The Renter is prohibited from sub-renting the Rental Items to third parties unless TK has given its respective consent in writing.



5. Renter's liability

- 5.1 The Renter shall be liable for all alterations made to the Rental Items without the consent of TK, as well as for any damage and other deterioration of the Rental Items. During the rental period, the Renter shall also bear all risk of damage within its area of risk.
- 5.2 In the event that Rental Items become completely unserviceable during the rental period, or are not returned to TK after the rental period, the Renter shall pay compensation in monetary form. The amount of the compensation depends on the sum TK is required to spend in order to procure an equivalent replacement. In the case of Rental Items that cannot be purchased, the sum required for the manufacture of a comparable item (replacement value) shall be reimbursed. However, in the event of damage, the Renter may provide evidence that no damage or reduction in value has occurred, or that the damage or reduction in value is significantly lower than the replacement values described above. TK reserves the right to assert claims for further damages.
- 5.3 In the event of soiling of the Rental Items beyond the Contractual Use, TK reserves the right to charge special cleaning costs.

6. Liability on the part of TK

- 6.1 TK shall be liable for damages – irrespective of the legal grounds – in case of intent and gross negligence. In cases of minor negligence, TK is exclusively liable for
 - a) damage arising from injury to life, limb and health;
 - b) damage arising from breach of material contractual obligations, i.e. obligations that must be fulfilled before the Agreement can be duly performed and on the fulfilment of which the Renter generally relies and may rely on. However, in this case, the contractor's liability shall be limited to compensation of the foreseeable typical damage.
- 6.2 TK shall not be responsible for any disadvantages arising to the Renter if individual Rental Items listed on the delivery note were not included in the delivery.
- 6.3 TK shall not be responsible for the correct fit and size of the Rental Items, unless TK has made an expressly agreed alteration to a Rental Item according to specified measurements and has carried out at least one fitting of the altered Rental Item.
- 6.4 TK shall not be liable for ensuring that Rental Items correspond to the historical or contemporary examples requested by the Renter.
- 6.5 In the absence of an express written agreement (e.g. in the case of a commissioned work), TK shall not be responsible for ensuring that the use of the Rental Items as planned by the Renter is in compliance with third parties' intellectual property rights (including related rights under competition law). Insofar as the intended use (e.g. public reproduction in the context of a film) might affect third parties' intellectual property rights (including related rights under competition law) (for example those held by designers of the Rental Items), the Renter shall investigate the legal situation independently and obtain any user rights that may be required.
- 6.6 Liability on the part of TK for any initial defects shall be excluded regardless of fault.
- 6.7 TK shall accept no liability for items left in the Rental Items on return.
- 6.8 TK shall not grant any exclusivity. Rental Items may thus also be rented and used at any time by other renters for purposes that are identical and/or similar to those planned and envisaged by the Renter.



7. Rental period, extension of rental period in case of non-return, (exception: Option Right)

- 7.1 TK and the Renter shall agree on a rental period, usually comprising 7 (seven), 28 (twenty-eight) or 91 (ninety-one) calendar days, and determine the rent for such period of time. In the absence of any agreement between TK and the Renter pertaining to the rental period, such period shall amount to 7 (seven) calendar days. An early return of the Rental Items shall not affect the amount of rent owed for the rental period, unless the return is made in the context of an Option Right pursuant to para. 7.5.
- 7.2 Unless otherwise agreed, the rental period shall commence at the time at which the Rental Items leave TK's business/warehouse premises and shall end with their return to these premises.
- 7.3 Should the Renter fail to return the Rental Items to TK by the end of the agreed rental period (which may also be the Renter's intention), the rental period shall be extended without any further express agreement by a further period of time (so-called „2nd rental period“) that corresponds to the originally agreed period of time. In this event, the Renter shall owe further rent for the rental period thus extended, which shall correspond in amount to the originally agreed rent. The preceding provision shall apply mutatis mutandis if the Rental Items are not returned at the end of such extended rental period. In the event of an extended rental period, the early return of the Rental Items shall likewise leave the amount of rent payable for the extended rental period unaffected.
- 7.4 Where the rental period pursuant to para. 7.3 has been extended more than twice, TK is entitled to terminate the Agreement at any time with immediate effect and to demand the immediate surrender of the Rental Items.
- 7.5 TK and the Renter may agree on a so-called “**Option Right**” in respect to individual Rental Items, according to which the Renter is entitled to return such Rental Items to TK within the option period, provided they have not been used in the context of the Renter's project (e.g. filming, photo shoot, theatre) before being returned to TK. In this case, the parties may agree on a reduced rent plus any cleaning and preparation costs should the Rental Items not be in the condition they were in at the time of the transfer of risk (e.g. if they need to be ironed or cleaned).

8. Rent, costs of Other Services, costs of transport and packaging

- 8.1 Unless otherwise stipulated, the rent agreed between TK and Renter for the rental period shall also include the final cleaning of the Rental Items to remove any ordinary soiling that has arisen during normal use.
- 8.2 Unless TK and the Renter have come to an individual agreement pertaining to Other Services, such services shall be subject to TK's current prices according to the price list valid at the time of the conclusion of the Agreement.
- 8.3 Unless otherwise agreed, the Renter shall be responsible for all costs associated with the appropriate packaging and transport of the Rental Items from TK's business/warehouse premises to the delivery location. This specifically includes any customs duties, fees, taxes and other public charges.
- 8.4 All agreed prices are exclusive of statutory VAT.

9. Terms of payment, advances, deposits, default, special right of termination, set-off

- 9.1 Unless otherwise stipulated, the Renter shall pay the agreed rent at the start of the rental period.
- 9.2 TK may request special advances and/or a security (e.g. deposit, guarantee) from the Renter and shall agree this with the Renter in the respective individual case.
- 9.3 Should the Renter fall into arrears with payments, the Renter shall owe TK interest on arrears at a rate of 9 (nine) percentage points above the base rate applicable at the time, provided the Renter is an entrepreneur as defined by Section 14 BGB (German Civil Code).



- 9.4 If there are any indications during the term of the Agreement that the Renter's ability to pay outstanding rent on time and/or in full is at risk, for example on the basis of previous delays in rent payments and/or respective information provided by generally recognised credit agencies (e.g. SCHUFA, BÜRGEL or Creditreform), TK shall be entitled to request an (if relevant, additional) appropriate security (e.g. deposit, guarantee). If such security is not provided, TK is entitled to terminate the Agreement without notice. In this case, TK is entitled to collect the Rental Items at the Renter's expense and claim compensation. As a general rule, such compensation shall amount to the outstanding rent due until the end of the originally agreed rental period. However, each party is entitled to provide evidence that the actual damage is lower or higher.
- 9.5 The Renter's right to offset or retain payments shall apply exclusively to claims that are legally established, acknowledged or undisputed.

10. Exception: Manufacture / Sale

The following shall apply to Manufacture / Sale, regardless of whether such Manufacture / Sale is effected in connection with a rental or on an individual basis:

Para. 6.3 shall apply mutatis mutandis: In the event of a Manufacture / Sale, TK shall not be responsible for the correct fit and size of the Rental Items, unless TK has made an expressly agreed alteration to a Rental Item according to specified measurements and has carried out at least one fitting of the altered Rental Item.

TK shall not be liable for the quality of the outer material or the fabrics (etc.). The fabrics shall be selected by the customer and checked for their suitability for the intended use at the customer's own responsibility.

TK and the customer shall agree on the purchase price and the due date. As a rule, a deposit is payable before the work begins. A separate fee may be agreed for samples, sketches, drafts, etc. commissioned by the customer, in particular for the purpose of covering the event that the order for manufacture is subsequently not placed. Ownership of the manufactured items shall not be transferred until all fees have been paid in full.

11. References

- 11.1 TK is entitled to publicly refer, in appropriate form (e.g. via its website or a newsletter), to the fact that TK has provided Rental Items to the Renter, in particular as a reference. Such reference may name the specific production of the Renter or the Renter's principal as well as the name of the Renter and/or the Renter's principal.
- 11.2 In the context of its work or the work of its principal, the Renter may and, where possible, should also publicly refer, in a suitable form (e.g. in the credits), to the fact that it has rented the Rental Items from TK.

12. Applicable law, place of jurisdiction

- 12.1 The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between TK and the Renter.
- 12.2 Where the Renter is a trader, Berlin shall be the sole place of jurisdiction, including international jurisdiction, for all disputes arising from the contractual relationship, including these Terms and Conditions (and the place of jurisdiction itself).