

Special conditions for the KEENFINITY Group for the awarding of photographic / artwork / film contracts

Supplementing the general terms and conditions of purchase of KEENFINITY

1 General, scope of application

- 1.1 These special conditions for the awarding of photographic / artwork / film contracts (“special conditions”) and the terms and conditions of purchase of KEENFINITY GmbH (<https://www.keenfinity-group.com/xc/en/support/information-for-business-partners/>) apply to all business relationships with the contractor.
- 1.2 The special conditions apply to contracts for photos, artwork, and/or films, regardless of whether the contractor creates the productions itself, and to all future contracts of a similar nature, without the client having to refer to them again in each individual case.
- 1.3 These special terms and the client’s general terms and conditions of purchase apply exclusively. Deviating, conflicting, or supplementary general terms and conditions of trade of the contractor will only become an integral part of the contract if and to the extent that the client has expressly accepted them in writing. Such acceptance is required in every case, for example even if the client accepts deliveries from the contractor in full knowledge of the latter’s general terms and conditions of trade.
- 1.4 Individual agreements made with the contractor in individual cases (including side agreements, supplements, and amendments) always take precedence over these special conditions. A written contract or the written confirmation of the contractor is – in the absence of evidence to the contrary – authoritative in respect of the content of agreements of this type.
- 1.5 Legally relevant declarations and notifications that must be submitted to the client by the contractor after the conclusion of the contract (e.g. the setting of deadlines, warning notices, or declarations of rescission) will only be valid if made in writing.
- 1.6 References to the applicability of statutory regulations are given for clarification purposes only. The statutory regulations therefore apply without any such clarification, unless they are directly changed or are explicitly excluded in these special conditions.

2 Conclusion of a contract

- 2.1 Prior to the conclusion of any contract, the contractor is obliged to prepare a separate cost estimate, which must be expressly approved in writing by the client. The cost estimate must contain at least the following information:
 - a) Mention of and reference to the framework contract (if such framework contract exists) and to the briefing by the client (version, date)
 - b) Separate details of the regional usage cluster and deadlines for options and the expiration of rights
 - c) Option matrix for additional clusters and for extensions
 - d) The cost estimate must show the information referred to in 2.1 b) and c) as follows, excluding TV/ movie theater rights, which must be offered separately:

Region	Initial	Initial	Phase 1	Phase 2
	Unlimited	3 years	1 option after 3 years: extension of the initial term by a further 3 years	Subsequent option after the expiration of Phase 1: Costs for unlimited term
Germany, Austria, Switzerland				
European Union				
USA/CANADA				
ASIA/AUSTRALIA				
Worldwide				

- e) List of right holders (e.g. agencies, performers, etc.)
- f) Breakdown of costs according to the following scheme:
 - Agency costs (services performed directly via the contractor) and number of man days costed
 - Third-party costs
 - > Location, equipment, post-production, etc.
 - > Buyout costs, fees, licenses, etc.
 - > Any costs incurred with respect to collecting societies, e.g. GEMA (“Gesellschaft für musikalische Aufführungs- und mechanische Vervielfältigungsrechte”: Society for musical performing and mechanical reproduction rights), etc.
 - > Any costs incurred with respect to KSK (“Künstlersozialversicherung”: German social insurance scheme for artists)
- g) Competitive bids for third-party costs: Above a threshold amount for third-party costs of €25,000, quotations must be requested from three equivalent suppliers and an itemized price comparison list presented, so that the client’s purchasing department can negotiate directly with the suppliers, if desired.
- h) The cost estimate is not permitted to contain any information contradicting the special conditions.
- 2.2 The following attachments must be supplied with the cost estimate:
 - The briefing prepared by the client as a PDF document
 - The quotation comparisons for any third-party costs (see 2.1. f/g)
- 2.3 The client’s purchase order will be deemed to be binding upon its written submission or confirmation, at the earliest. The contractor must point out any obvious errors (e.g. spelling or arithmetic errors) or omissions, including in the order documents, to the client prior to acceptance so that these can be corrected and any omissions rectified; otherwise the contract will not be deemed concluded.
- 2.4 The nature and scope of the services to be performed and the rights to be granted are specified in the contract. In the event of contractual inconsistencies, the following order of precedence applies
 - Client’s purchase order
 - Client’s briefing
 - Any framework agreements concluded between the contractor and the client
 - These special conditions
 - Client’s terms and conditions of purchase

3 Remuneration

As compensation for all services and transfers of rights owed by the contractor in accordance with the contract, the client will pay the contractually agreed remuneration after the contractor has delivered the materials as per the contract and these have been accepted in writing, and an invoice has been submitted in due form.

4 Invoicing by the contractor

- 4.1 Invoices submitted by the contractor must contain the following items:
 - Incorporation of the special conditions as follows: “We are rendering account pursuant to the special conditions as at <date>”
 - Start date and end date of the granting of usage rights
 - Reference to deadlines for extension of usage rights, particularly 2.1 d)
- 4.2 The following attachments must accompany the invoice:
 - Briefing prepared by the client
 - Cost estimate approved by the client
 - Signed declaration of consent for each performer / model and the declarations of assignment of other holders of rights, e.g. music, narrator, text, etc. in alignment with applicable laws, including yet not limited to applicable intellectual property rights- and data protection laws
 - Photo / artwork / film index with unambiguous reference numbers for the subjects

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5 Models/props

Unless otherwise agreed, the necessary models and props will be procured by the contractor. The incidental costs calculated by the contractor in this respect are binding. Additional costs will only be borne by the client if they have been expressly agreed in writing or were a result of the client's written change requests. Any cost reductions resulting from a revised setup or other circumstances must be credited to the client.

6 Declaration of consent by the persons depicted/featured

- 6.1 The contractor is obliged to obtain a legally binding, written declaration from each person depicted or featured, stating that the person concerned agrees to the use of their image in the original or in an edited, non-degrading or distorting form within the scope of the rights granted pursuant to Item 13, transferring all necessary rights in this respect to the client, and confirming that the person concerned waives any remuneration or has received reasonable remuneration for this.
- 6.2 Ownership of any props purchased for the order must be assigned to the client and such items delivered to the client on request. The client's consent is required before they are scrapped. The contractor will see to it that they are properly destroyed at its own expense.

7 Approvals

If official permits or third-party releases/consents are required for the production and/or use of photographs/artwork/films, these will be procured by the contractor and delivered to the client with the invoice at the latest.

8 Production realization

- 8.1 In the interests of optimum fulfilment of the order, the client is entitled to give creative and technical specifications in the photography / recording session.
- 8.2 The client reserves the right to exercise a decisive influence over the production at each stage of its realization, particularly with regard to its form and content. Should a measure specified by the client lead to additional costs, the client will bear the costs of the measure, provided that the contractor pointed these costs out in writing in advance. Reductions in costs will be credited to the client.
- 8.3 The contractor will assume responsibility for the organizational, artistic, and practical realization of the production. This includes, inter alia, creating the recording schedule, booking all those involved in the production, procuring all the items of equipment required for the production (e.g. props, etc.), and performing administrative tasks such as bookkeeping, payment of taxes in due form, reporting on the course of production, etc.
- 8.4 The contractor will keep the client informed, without being prompted to do so, of the course of the preparations and the status of the production.

9 Acceptance

- 9.1 The production must be formally accepted in writing by the client. No partial acceptances are given. The contractor will check the final version of the production for technical defects and shortcomings in the content.
- 9.2 The acceptance does not constitute approval of the production from a legal standpoint. The contractor will be liable, even after the acceptance, for all rights infringements, including but not limited to the infringement of personality rights resulting from creation and use of the production. This also applies to violations of the advertising and fair trading rules.

- 9.3 The client is not obliged to use or exploit the production even after having formally accepted it.

10 Transfer of ownership

The ownership of all materials that come into being over the course of the production will pass to the client and be transferred to the client to the extent desired by the client. At the request of the client, the contractor will destroy all of the above-mentioned materials or parts thereof. The contractor will not retain any original materials, duplicates, copies, or the like. Materials will remain in the possession or ownership of the contractor only to the extent that this has been expressly agreed in writing on a case-by-case basis. Should it be agreed, subject to the above-mentioned conditions, that the contractor will retain ownership of certain original materials, the client will be entitled to request copies of these from the contractor in any form and quantity whatsoever, within the scope of the latter's technical capacities, in return for a fee. Where materials are retained by the contractor, the use of these by the contractor for its own purposes or by third parties will be permitted only after the client has given its prior, express consent in writing.

11 Guarantee / liability

- 11.1 The contractor guarantees that it holds all the copyrights required for the conclusion of this contract, that the client will acquire all the rights and powers transferred under this contract, particularly all those necessary for the commercial utilization or exploitation of the production, that these have not been fully or partially transferred to third parties and are not encumbered by third-party rights, and that third parties have not been entrusted with the task of administering these rights. The contractor will provide proof of this on request by presenting the contracts with its collaborators on the production. The contractor further guarantees that the creation or commercial utilization/exploitation of the production will not infringe any third-party rights that could result in claims against the client.
- 11.2 The contractor guarantees compliance with all advertising regulations, particularly those arising from the RStV ("Rundfunkstaatsvertrag": German Interstate Broadcasting Treaty), the advertising guidelines of the German state media authorities, and the UWG ("Gesetz gegen den unlauteren Wettbewerb": German Unfair Competition Act). The contractor guarantees that it will organize the production in such a way as to avoid infringing any third-party copyrights or intellectual property rights (e.g. the right to one's own image or to an established and operating business, including the right to allow/deny access to one's property, trademark rights, and/or other rights).
- 11.3 The contractor must procure and transfer to the client the third-party rights used by the contractor to realize the production, such procurement and transfer to be in equal measure to the granting of rights pursuant to Item 13.
- 11.4 The contractor indemnifies the client and the client's legal successors from all claims by third parties, particularly third-party authors or originators, that might be asserted against the client or its legal successors, and also provides full indemnification from any claims by third parties with regard to the above-mentioned assurances and guarantees, including the costs of any legal action or defense. The contractor must inform the client without undue delay of any impairments becoming known to it to the rights forming the subject matter of this contract. The client is entitled to take appropriate measures itself to defend itself from third-party claims or to pursue its rights. The contractor must coordinate with the client in advance with regard to any measures it takes itself. The indemnification also includes legal action/defense by the contractor and covers any advance payment or reimbursement of costs that the client incurs or has incurred through necessary legal action/defense, unless these are to be reimbursed by third parties. Other claims by the client arising from a breach of guarantee remain unaffected.

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12 Purpose of the contract

The purpose of this contract is the creation of visual materials by the contractor on behalf of the client and the exclusive transfer, unrestricted in terms of content, time, and geographical location, of the existing rights of usage and ownership in respect of these visual materials for the comprehensive commercial exploitation by the client of the materials created. For the purposes of this contract, "visual materials" means in particular: single or multi-dimensional representations and/or images of all kinds of concrete and/or abstract objects and/or subjects in analog and/or digital form, specifically photos, films, letterings/logos, artwork, and/or illustrations, and including all stages of development (hereinafter also referred to as "materials" and/or "production").

13 Granting of rights

- 13.1 The contractor grants to the client an exclusive right, unrestricted with regard to time, content, or geographical location within the framework of the statutory term of protection, to the use of the materials and/or the production in material or non-material form. Creative specifications given by the client and/or its employees that are implemented by the contractor in the creation of the materials and/or production will establish shared copyright by the client. The use of the items forming the subject of this contract in the same or only slightly altered form for other clients is prohibited, unless the client has given its written approval for this. The contractor will transfer to the client, at the time they come into existence, all rights of use, as defined by Section 31 et seq. UrhG ("Urhebergesetz": German Copyright Act), and/or related rights, as defined by Section 72 et seq. UrhG, to the materials and/or production that arise in connection with the production, including all legal positions regarding ideas, drafts, and designs, and related rights of the film producer, as defined by Sections 94 and 95 UrhG, to the materials and/or production, for every kind of commercial and non-commercial use, solely and exclusively, and unlimited with regard to time, content, or geographical location. The right to exercise ancillary rights and the droit de suite is also transferred. The parties assume, in this respect, that the client intends to commercially use or exploit the materials and/or production as extensively as possible. This commercial use or exploitation is intended particularly to be in printed form (e.g. in catalogs, advertising brochures, posters, other documentation, etc.) but also in the form of data carriers (e.g. USB storage devices, etc.) and in other new media as well as over the internet (e.g. websites, digital image archive, mobile media, social networks, etc.). It is also intended, for example, that the materials and/or production will be stored in digital databases for internal and external use (e.g. by means of on-demand offers). Should new technical possibilities for making commercial use of the materials and/or production become known, the client wishes to have the opportunity to make use of these. The materials and/or production will be commercially used/exploited free of charge, in exchange for a fee, and in some cases also by third parties.
- 13.2 The granting of usage rights covers the right of reproduction, the right of distribution and the right of exhibition (right of exploitation in material form), the rights of recitation, performance, and presentation, the right to make the materials and/or production available to the public (particularly on the internet), the right of broadcasting, the right of communication by video or audio recordings, and the right of communication of broadcasts and of works made available to the public (rights of exploitation in non-material form), as well as unknown types of use, and the right to commercially use or exploit the materials in a form other than the form delivered. The client may, while safeguarding any moral rights of the rightholder, process or arrange to have processed all or part of the materials forming the subject of this contract, for example through photo-technical manipulation, montages, or by scanning them into a computer and then performing computerized technical manipulations, etc. It can also change (e.g. colour, revert to black and white, airbrush, etc.), imitate or commercially exploit said materials in sections or also together with other works, and freely distribute them in processed form.
- 13.3 Rights are also granted for new forms of use only becoming known in the future.
- 13.4 The client has the right to commercially use or exploit the rights granted under this contract free of charge or in exchange for a fee.
- 13.5 The client can partially or fully assign to third parties the rights granted under this contract or can grant third parties usage rights to these; the contractor's consent will not be required for this.
- 13.6 The usage rights will be granted to the client at the time they come into existence, at the latest. No further consent is required from the contractor for the client to exercise its usage rights.
- 13.7 The contractor will provide the client with advance, written notice of any restrictions to the copyright exploitation rights. The contractor will inform the client as to existing rights of GEMA or such rights of other collecting societies.
- 13.8 The termination of this contract will have no effect upon the granting of rights under this contract.

14 Credits for photographs and artwork

The contractor waives its right to be credited if the client's photographs and artwork are used solely within the company or for press images. For the rest, the author/originator will be credited to the extent usual in the industry.

15 Credits for film production

The contractor is entitled to attach to the end of the film destined for screening or broadcasting a reference to its capacity as contract partner in a way that is appropriate and does not disrupt the exploitation of the film. The reference must be designed in such a way as to ensure that the entire film material can be broadcast without the reference.

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16 Data Protection

The contractor will comply with all applicable data protection regulations, in particular those of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data - also referred to as General Data Protection Regulation ('GDPR') - as well as the California Consumer Privacy Act ('CCPA').

The contractor guarantees that in the course of fulfilling these special conditions and the contractual relationships between the contractor and the client (See 1 and 12) he will obtain any necessary written consent in accordance with Art. 6 (1) a), Art. 7 GDPR from each person depicted or featured (See 6.1).

The contractor acts as data processor in accordance with Art. 28 GDPR. Therefore, the contractor will sign the attached Data Processing Agreement in accordance with Art. 28 (3), (4) and (7) GDPR ([Annex 1](#)). Additionally, the contractor guarantees that he will imply appropriate technical and organisational measures in accordance with Art. 32 GDPR.

17 Place of performance

The place of performance is the place where the services are to be performed in accordance with the order.

18 Final provisions

- 18.1 Should any provisions within these special conditions be or become wholly or partially invalid, this will not affect the validity of the remaining provisions. The statutory provisions will take the place of any general terms and conditions of business that have not become part of the contract or are invalid (see Section 306, Sentence 2 BGB ["Bürgerliches Gesetzbuch": German Civil Code]).
- 18.2 These special conditions and the contractual relationships between the contractor and the client are governed by the laws of the Federal Republic of Germany, without giving effect to conflict of laws provisions and international uniform law, particularly the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 18.3 The place of jurisdiction for all disputes arising directly or indirectly from contractual relationships subject to these special conditions is Munich, Germany. Munich Local Court is the competent court for proceedings before the local courts. The client is additionally entitled, at the client's option, to bring an action against the contractor at the court of the contractor's registered office or branch office or at the court of the place of performance.