

# CAPITAL CATERING



## Terms and Conditions for catering services (as of September 2009)

### § 1 Area of application

1. The present "Terms and Conditions for catering services" are also valid in their respective current version for all future contractual relations with companies, commercial agents, legal entities under public law or special funds under public law (hereinafter collectively referred to as Companies). Additional or conflicting contractual terms with our Clients only apply if Capital Catering GmbH (hereinafter also referred to as Capital Catering) explicitly consents to them in writing. Should diverging contractual terms be negotiated in the catering contract, these agreements always take precedence over the corresponding regulation contained in these Terms and Conditions.

2. If a Client applies its own Terms of Business when placing an order, this in no case sanctions the use of diverging or conflicting Terms of Business, even if Capital Catering does not particularly specify this prior to the completion of the contract.

### § 2 Offer and conclusion of contract

1. Offers by Capital Catering GmbH to provide catering services are subject to change and are not binding, even if they have been made in writing. If the Lessee (hereinafter also referred to as Client) places an order for a non-binding quotation, this solely constitutes an offer in the legal sense upon conclusion of the contract. It can take up to three weeks for Capital Catering to confirm acceptance of an offer. An offer may also be implicitly accepted by provision of the service, and not be required in written form.

2. The Client is to provide written notification of the exact number of participants attending an event no later than 10 working days prior to the event. This statement is binding and, subject to the agreement of Capital Catering, can be modified no later than five days before the event up to a maximum of 5% of the number of participants originally indicated.

3. In the interests of quality and based on the guidelines of the German Food Hygiene Regulation [Lebensmittelhygieneverordnung], the maximum display time for buffet food items may not exceed three hours. If food must be displayed for a longer period, the Client can arrange with Capital Catering to present the buffet in stages throughout the event.

### § 3 Liability for loss or damage

Capital Catering assumes no liability for loss or damages to items brought onto the premises by the Client or its guests, unless a safekeeping agreement has been made or the damage results from grossly negligent or deliberate behaviour on the part of Capital Catering GmbH or its subcontractors or vicarious agents.

### § 4 Prices and payment

1. Payment amount is based on the original or, if applicable, subsequently modified number of participants indicated by the Client, or the legally binding quantities of food ordered.

2. The cost of cold drinks is usually based on the actual consumption, unless legally binding quantities or a flat rate are explicitly agreed.

3. If the Client wishes to set a limit on the dispensing of drinks, this must be specified in writing along with the order or, at the latest, upon acceptance of the offer.

4. In principle, all prices exclude value-added tax, unless an all-inclusive price, which contains the statutory value-added tax, is explicitly agreed.

5. Unless otherwise indicated, Capital Catering will adhere to the prices contained in its offer for 14 days from the date of issue. Additional deliveries and services will be invoiced separately.

6. The invoice amount is payable net (without any deductions) no later than 14 days after receipt of the invoice. The Client is in default of payment at latest 30 days after receipt of the invoice. For commercial clients, the default interest, pursuant to § 288 II of the German Civil Code (BGB), is set at 8% above the base interest rate of the European Central Bank for main refinancing operations; for private persons, it is 5% above the base interest rate. The right to claim higher interest for any other legal reason as well as the right to claim further default damages remain unaffected.

7. Capital Catering GmbH is entitled, despite the Client having provisions to the contrary, to offset payments against older debts payable. It shall duly inform the Client of such settlements. If costs and interest have already been incurred, Capital Catering GmbH is entitled to credit payment, firstly for costs, then for interest and finally for the principal claim.

8. If the Client fails to meet the agreed terms of payment or if facts emerge that indicate a major deterioration in the Client's financial circumstances, Capital Catering GmbH is entitled to demand immediate payment of the entire residual debt and to make the supply of further services contingent upon an advance payment.

9. If the Client is not also the organiser, both parties are jointly and severally liable. If the invoice recipient is not identical with the Client, the Client is obliged to present a binding declaration from the invoice recipient that the costs will be met.

#### **§ 5 Securities**

1. Capital Catering GmbH is entitled to demand an advance payment of up to 100% of the total order value from the Client. Advance payments are due at latest 14 days prior to the event.
2. If Capital Catering GmbH demands an advance payment from the Client within a specified period of time, the acceptance of the order is subject to the condition precedent that invoices are paid in due time.
3. Instead of advance payment, the Client can, in the case of a volume of orders of up to 1,000 Euro, also provide security by arranging direct debit authorization from a nominated credit card account.

#### **§ 6 Lump-sum remuneration claim**

1. If the Client terminates the contract or if the event does not take place, Capital Catering GmbH can demand the following lump-sum compensation for expenditures and services prior to the point of termination:
  - termination up to the 15th day prior to the event: 50% of the order value
  - termination as from the 14th day prior to the event: 100% of the order value.
2. The Client has the right to prove that Capital Catering sustained no loss, or a loss to a lesser amount than that specified.

#### **§ 7 Performance and fulfilment obligations, cut-off period for notice of defects, non-assignability**

1. Capital Catering GmbH cannot be held responsible for delays in delivery and service due to "force majeure" circumstances or events that substantially impede or make delivery impossible for Capital Catering GmbH, including in particular strikes, lockouts, and official rulings, even if such occur in the domain of a contractor or subcontractor or in the case of legally binding stipulated time limits.
2. The Client must immediately notify Capital Catering verbally of any blatant defects in the service, followed by written notification within 2 weeks at the latest. Delayed notice of defects invalidates the guarantee and liability of Capital Catering.
3. Claims against Capital Catering GmbH are non-transferable, insofar as the Client is a Company.

#### **§ 8 Data collection, data processing and use**

In order to fulfil the contractually agreed business purposes, Capital Catering will collect, process and use the personal data transmitted by the Client with due consideration to data protection regulations.

#### **§ 9 Liability**

1. Capital Catering is not responsible for damages caused by simple negligence, insofar as no fundamental contractual obligations have been violated.
2. If fundamental contractual obligations are violated, Capital Catering's liability for damages in cases of simple negligence is limited to direct average damages which are foreseeable and typical for this type of contract.
3. Insofar as these provisions exclude or limit liability, they also apply to subcontractors and vicarious agents employed by Capital Catering.
4. The above liability exclusions and limitations do not apply to culpable injury to the life, body or health of persons, the warranty of properties or the legal liability according to the German Product Liability Act [Produkthaftungsgesetz].

#### **§ 10 Final provisions and place of jurisdiction**

1. The contractual relationship is subject exclusively to German law.
2. If the Client is a Company as defined in the German Commercial Code (HGB), a legal entity under public law, a special fund under public law or has no general place of jurisdiction in Germany, Berlin is the sole place of jurisdiction for all direct and indirect disputes arising from the contractual relationship. For subject matter that falls within the competence of a local court, the Amtsgericht Berlin-Charlottenburg is responsible.
3. If certain clauses of these general terms are or become invalid, the remaining provisions of the contract still apply. In this case, the invalid proviso shall be supplemented or amended so as to achieve the original intended purpose.

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September 2009, Capital Catering GmbH