

Conditions of participation

Organizer: the working smarter group GmbH
Auguststr. 62
10117 Berlin
represented by managing director Dr. Wolfram Völcker
- below called "**organizer**" –

I. Fair

1.

The organizer arranges the "BERLINER LISTE – fair for contemporary art" (below called „fair“). The "BERLINER LISTE" is a fair for contemporary photography and art since 1960. Its purpose is to offer a platform to galleries and artists in order to generate interaction between collectors, museums and the general public and to show the current trends in contemporary art on a high level.

2.

The fair will be held in Berlin from October 7 to October 10, 2010. The director of the fair is Dr. Wolfram Völcker.

II. Application

1.

You declare your intention to participate by returning the application form, completed in full and bearing your legally binding signature. With signing and sending back the application form you accept the conditions of participation. The information on this form are stored by us considering the regulations of the federal data protection act of the Federal Republic of Germany in an automated procedure and are transmitted to others within the scope of the fulfilment of the contractual tasks. The application is binding regardless of our final acceptance, it cannot be provided with conditions and reservations.

2.

With the application you have to state explicitly the names of the artists whose works you would like to present on the fair (exhibition objects).

III. Admission

1.

The organizer is not obliged to admit every applicant (potential participant) to the fair, i.e. a selection procedure takes place. The organizer decides on your participation in accordance with the regulations counting for all participants (admission). A legal entitlement to admission does not exist. If the organizer gets more applications which correspond to the requirement profile as exhibition space exists, a jury decides on the admission according to the major goals of the fair. The application deadline is the first of May 2009.

2.

Please note that regarding the decision on your admission the jury takes only the artists into account that are given with your application (see above No. II. 2.). If you are admitted, the jury is entitled to select all or single artists of your application. This means that you are admitted only in connection with certain artists, i.e. you are obliged to present only those artists which you have given with your application and which were selected by the jury. The exhibition of other artists

than those which were given with your application and/or were not selected by the jury is expressly not allowed.

3.

The organizer is not liable for damages or other costs which arise you as an applicant (potential participant) from your application and a later non-admission to the fair.

4.

At the latest with the written admission the contract gets formally binding in accordance with these conditions of participation. You will be informed about your admission a few day after your application. The contract ends with the ending of the dismanteling and cleansing, at the latest however on October 11, 2010 at 12 a.m.

5.

As far as you have not accomplished your financial obligations once or not on time towards the organizer, you can be excluded from the admission.

6.

If the contents of the admission deviate from the contents of your application, the contract gets binding in accordance with the admission, if you do not contradict within 2 weeks after access in writing. The same arrangement is valid in case of time displacement or change of the location of the fair, provided the change is reasonable for you; besides, the new announcement takes the place of the admission.

7.

The admission is valid for the fair as given in No. 1.

IV. Surrender of the exhibition space

1.

The organizer makes available an exhibition space from 30 square metres to max. 100 square metres to you during the fair. The exhibition space that is given to you and that is relevant for the calculation of the rent, may be fell short below the realizable booth size by 15% and may be exceeded indefinitely. Before the opening of the fair you will receive a plan of the fair in good time on which the exhibition spaces are marked. Columns, projections and other installations are part of the exhibition space and do not entitle to decrease the participation fee according to No. VII.

2.

The allocation of an exhibition space will be accomplished by the organizer on the basis of the affiliation of the exhibition objects announced by you to an exhibition subject within the event. A claim to allocation an exhibition space in a certain hall, in a certain area of a hall or to certain rooms does not exist. In the isolated case of an important reason the organizer is entitled to allocate to you afterwards an exhibition space deviating from the admission, to change size and mass of your exhibition space, to move entrances and exits or to close and to carry out architectural changes in the rooms without the possibility to derive legal claims from that. In case of the reduction of the room size the difference amount of the participation fee is refunded to you. It is not permitted to install your own movable walls and your own spots or lights. The expenses for the installation of an additional daylight neon tube is 75.00 EUR plus 19% sales tax.

3.

If the exhibition space is not available for reasons which are not attributable to the organizers fault, you are immediately informed. In this case you have the claim to restitution of the participation fee.

4.

In this case an additional claim of compensation does not exist. If you have objections you must allege them immediately in writing, in any case during the term of the fair; later objections the organizer cannot take into consideration any more.

V. Commitment to the contract

1.

The organizer is entitled to withdraw from the contract in case of an important reason. Such an important reason is given in particular if - an allowed motion for opening the insolvency proceedings about your property is filed or such a motion has been rejected because of the absence of valuable property;

- the organizer does not receive the necessary public law approvals for the fair, provided he is not responsible for that;
- the realisation of the fair becomes impossible for reasons that are not attributable to the organizers fault;
- you repeatedly and in spite of a warning do not follow the organizer's instructions during the fair and the time of construction and dismantling respectively
- you repeatedly and in spite of a warning present artist which are not permitted by the jury based on your application related to the admission.

2.

If there is filed a motion for opening the insolvency proceedings about your property or such a motion has been rejected because of the absence of valuable property you have to inform the organizer immediately.

3.

After legally binding application and admission a dismissal from the contractual relationship is not possible any more. The organizer can exceptionally agree to the wish for dismissal from the contractual relationship if the exhibition space that is assigned to you can be otherwise rented. In this case the organizer is entitled to demand an all-inclusive compensation of the caused costs in the amount of 25% of the participation fee without proof. It is allowed to you to give proof that a damage has not originated or in substantially lower range. A liability for the media costs according to No. VII. 4. and other costs which have originated in particular from the use of services of others remain unaffected from this. The allocation of the nascent exhibition space with an participant that is already admitted and placed on the fair by changing the exhibition space is no case of renting exhibition otherwise.

4.

If you do not take over the exhibition space assigned to you at the beginning of the construction time, the organizer will request you to takeover the exhibition space under settlement of an

adequate term. If this term passes by unsuccessfully, the organizer is entitled to withdraw the contract and to claim compensation because of non-fulfilment of the contract. You bear the risks for this:

- a) The products intended for the presentation cannot be imported because of the statutory regulations valid in the venue or for other reasons, or
- b) Products do not arrive on time, not intact or not at all in the venue, e.g. by loss, transport delay or duty delay or
- c) the journey for you, your employees or your booth or construction staff is delayed or becomes impossible. In these cases you remain obliged to pay prices and fees as contracted.

VI. Construction and design of the booth / Dismantling

1.

The construction by the participants has to take place exclusively on October 4 and 5, 2010 from 10 a.m. - 8 p.m. and on October 6, 2010 from 10 a.m. – 12 p.m. The dismantling by the participants takes place exclusively after the end of the fair. That is on the October, 2010 from 7 p.m. – 12 a.m. at the earliest.

2.

The fair halls or rooms have a height of approx. 3 metres. A basic light sufficient for the rooms exists. Special exhibition lights like spotlights can be provided against surcharge. All additional technical installations you probably need, especially installations for electric power (AC 230 V), waters and protection elements, acquisition of local assistants can be provided exclusively by the organizer against surcharge. This requires a duty filled order form that has to be given to the organizer 4 weeks before the fair starts. The costs for an extra bus bar are EUR 130 plus 19% sales tax.

3.

Booth construction and design must correspond to the legal requirements and these conditions of participation. Booth building contractors need a special admission of the organizer to carry out the construction of the booths.

4.

During the fair the booths have to be staffed and equipped with the announced and admitted exhibition objects (works of the announced and from the jury chosen artists). The organizer can require from you the removal of exhibition objects which could cause a serious disturbance of the fair or a safety risk for exhibitors and visitors by smell, noises or other emissions or by his appearance. The organizer can require also the removal of exhibition objects of you, if you present works of artists who were not given with your application and/or were not admitted by the jury.

5.

Apart from that you are responsible for observing all legal requirements of the host country. If this is not the case the organizer has a claim to correction or forbearance. If you do not follow the requirements immediately, the organizer is entitled to let remove the complained exhibition objects at your expense and at your danger and to close your booth without the possibility of deriving claims against the organizer out of this.

6.

As an exhibitor you are obliged to arrange your design measures with the organizer in advance. A booth design which does not correspond to the legal requirements of the fair area or the construction guidelines of the renter of the fair area can be removed from the organizer at your expense or be changed.

7.

It is not allowed to install so-called „Petersburger Hängungen“ (Installation of a number of works in a block). The organizer is entitled to require from you the removal of exhibition objects that are presented in the manner of a “Petersburger Hängung“. “Petersburger Hängung” means an especially narrow array of works. Therefore you are obliged to keep a least a distance of 50 cm between the works that hanging side by side. It is not allowed to hang works one about another. Such works are excluded from this which show a coherent series of works of an artist and which are offered only all together to the sales. It is not allowed to present paintings, photos etc. on the the ground, on heaters or similar things.

8.

After the construction (No. 1.) and before the opening of the fair the organizer and the jury will inspect the exhibition space. On the occasion of this inspection the organizer reserves himself the right to require removals or changes from you, especially regarding the hanging and the installation of the exhibition objects in accordance with the conditions of No. VI.

9.

You are obliged to leave the exhibition space after dismantling in the same condition as it was before construction und to hand it over to the organizer. If this does not happen, the costs for construction, repair and garbage disposal are charged to you.

VII. Participation fee and other costs / Conditions of payment

1.

Your participation fee is

in section "contemporary art and photography "		95 EUR /qm
in section "art since 1960"		115 EUR / qm
in section single artist	all-in	855 EUR

per square-metre of the exhibition space which is allocated to you plus 19% sales tax. The participation fee includes:

- the surrender of the exhibition space for the time of construction, the fair and dismantling
- the running costs (light, water, garbage disposal, cleansing) for the fair area;
- the provision of security guards.

2.

The exact amount of your participation fee you get with your admission and is based on the desired booth size, provisory of the settlement in No. IV. 1. of these conditions of participation. The prospective amount of your participation fee was already communicated to you with the electronic acknowledgement of receipt of your application.

3.

100% of the participation fee plus 19% of sales tax are to be paid on the account of the organizer within the terms given in the invoice after access of the admission. For keeping the term of payment the day of the in-payment on the account of the organizer is crucial. The amount is charged to you under disclosure of the sales tax.

4.

The calculation of the assigned exhibition space is made without taking into consideration protrusions, columns, connections for installations and other permanent installations. Protrusions, columns, connections for installations and other permanent installations which exist on the rented exhibition space do not entitle to claim a decrease of the participation fee or other costs.

5.

The prices settled with the admission are net fixed prices plus probably occurring sales tax and comparable taxes at the venue. The organizer is entitled to raise the prices if his own costs are increasing, in particular as a result of risen production costs, relation costs and labour costs as well as fees, taxes and other public charges at the venue.

6.

The on-time payment of all liabilities is a condition for the possibility of using the exhibition space. On default you have to pay interest in the amount of 8% over the base rate interest according to §1 of Diskontsatz-Überleitungs-Gesetzes – DÜG - (bankrate transfer law). If higher damage arises to the organizer, he is entitled to claim this. The liability of damages is cancelled or decreases if you prove that the organizer has no or a lower damage as a result of the default.

7.

If the payment is not on time according to No. 3 the organizer is entitled to terminate the contract. In this case the organizer is entitled to claim 25% of the whole participation fee, even if the exhibition space can be rented otherwise.

8.

For his claims of the renting the exhibition space the organizer gets a lien on all objects you put in your exhibition space.

9.

The achievements produced by us are invoiced in EURO. You are obliged to pay the amount evident from the invoice in the currency evident from the invoice ("account currency"). Provided that we accept payment in a different currency as a gesture of goodwill and without being obliged than the official and valid prime cost of the account currency is to be laid to the payment. Any disagio in proportion to the account currency after the due date of the invoice is borne by you.

10.

Please raise objections regarding the invoice immediately in writing, at the latest within 2 weeks after access; later objections we cannot take into consideration.

11.

The unexpurgated amounts are due to the organizer also even when you do not fulfil your obligations from the contractual relationship. A claim of compensation is not affected by this. Further claims are excluded according to No. XII.

12.

With counterclaims against the claims arising from the contractual relationship you can count up only so far as your claims have been ascertained indisputable or legally valid. The same is valid with respect to the right of retention.

13.

In the transmission of an invoice to a third party by request of the exhibitor lies no relinquishment of the claim against the exhibitor. You remain obliged up to compensate the entire claim.

VIII. Media services / Fair catalogue / Promotion

1.

The organizer provides different media services. These contain an Internet platform on the website of the organizer under www.berliner-liste.org on which the exhibitors can publish pictures and texts and a fair catalogue.

2.

You get provided a leaf (two pages) in the fair catalogue on which one picture can be printed. For this you provide on time the picture in a suitable print format (digitally, provided over an online platform) and the texts that are to be printed (likewise digitally). If this does not happen by the settled date which you get told on time by us, we will fill in the catalogue the information you provided with the application.

3.

Herewith you transfer the unlimited servitudes of the prementioned pictures and texts to the organizer for the purposes of publication in the fair catalogue and the public relations of the organizer. You guarantee that you own the necessary servitudes towards the originator. Servitudes, ancillary copyright, naming rights, trademark rights, title rights and marking rights belong to it, etc. Furthermore you guarantee that the prementioned pictures do not infringe someone personal rights or other rights (third-party rights). Should somebody raise claims against the organizer because of an infringement of the prementioned rights, you release the organizer from these claims - incl. all lawyer's costs and court fees.

4.

For media services provided by the organizer you are obliged to pay an amount of 350.00 EUR (as single artist 175,00 EUR) plus 19% sales tax.

5.

The organizer provides different advertising services. These contain ad placement, public relations, advertising posters, flyer, etc...

6.

For promotion services provided by the organizer you are obliged to pay an amount of 950,00 EUR (as single artist 320,00 EUR) plus 19% sales tax.

IX. Co-exhibitors/ Other represented companies/ Group-booths and collective booths

1.

Exhibition space will be released always as a whole and only to a contractual partner.

2.

If you want to release your booth to another company that provides his own products and staff (co-exhibitors), you need a special permission by the organizer. This is also valid for companies which are representing own products, but not with own staff (other represented companies). Affiliates and subsidiary companies are considered as co-exhibitors. The organizer is entitled to charge a participation fee and other costs for the admission of co-exhibitor which are to be paid by you as an exhibitor.

3.

Regarding the admission of co-exhibitors and other represented companies No. III. to VI. are also valid; these conditions of participation are valid for these companies. If you involve an co-exhibitor or another represented company without explicit permission by the organizer, the organizer is entitled to terminate the contract without notice and to clear the exhibition space at your expense and at your risk. After the admission contractual relations exist only between the organizer and the exhibitor who is liable for faults of his co-exhibitors/other represented company as for actual faults.

4.

If several companies want to participate jointly on a single exhibition space on the fair, the present conditions of participation are valid for every single company. In addition to that you are obliged to name a common representative as a contact in your application. No. VII is valid analogously. In the case of an allowed common participation on the fair all companies are liable for the payment of the participation fee and other costs and the fulfilment of all other obligations as codebtor.

X. Householder's rights

Within the exhibition area the organizer holds the householder's rights. He is entitled to let remove exhibition objects from the booth, if their exhibition injures valid rights, offends common decency or the exhibition program or contradicts the goals of the fair declared in No. I. 1. The advertisement for political and ideological purposes is not permitted. By serious violations against the present conditions of participation the organizer is entitled to let remove your booth or to let clear it.

XI. Warranty

Warranty claims does not exist, if the damage is based on normal wear, force majeure, wrong or negligent treatment, excessive demand, non-observance of legal rights or operating instructions.

XII. Liability/Insurance

1.

The organizer has no duty of proper care for brought in exhibition objects, for booth equipment and for objects which belong to the persons working on the booth.

2.

Any liability for property tort is excluded, provided that the risks can be insured. Independently exists the liability of intentional or negligent misconduct. This legal disclaimer remains unaffected by the made measures of security. Within the scope of the liability the legal burden of proof rules remain unaffected; they are not changed by this stipulation. Hence you are obliged to insure your exhibition objects and other brought in objects against all possible dangers (theft, robbery, fire, water etc.) for the time of the fair.

3.

As an exhibitor you are liable for every damage towards the organizer which is culpably caused by you, your staff, your employees or from you commissioned third parties or other third parties which you engage.

4.

Regarding claims of compensation for the injury of life, body and health the organizer is liable for intentional or negligent misconduct within the scope of the legal obligations. Other contractual and/or legal claims of compensation of any kind including for consequential damages are excluded, provided that the damage was not caused by the organizer by intentional or negligent misconduct.

5.

The present limitation of liability is fully valid for legal entities, employees, legal representatives, and vicarious agents which the organizer engages in order to fulfil the contract.

6.

Nevertheless all claims of compensation are limited to the substitute of the typical predictable damage. In addition the organizer is liable for every culpable violation of an essential contractual commitment. Essential contractual commitments are only those whose recognition is indispensable to the realisation of the contract. This applies to all claims which could arise in connection with this contract.

7.

If the organizer is forced as a result of force majeure or other reasons not caused by him to clear the exhibition area or parts of it temporarily or durably, to shift the fair date, to shorten or to extend the venue, you cannot derive claims from that, in particular no claims of compensation against the organizer.

8.

In any case the organizer is liable- regardless of the restrictions of liability based on these conditions of participation - for culpable behaviour. Regarding contracts which obtain to the acquisition of certain items the organizer does not take on the exercise, provided there is no other contractual commitment.

XIII. Measures of security

The organizer is responsible for the observance of the statutory provisions of fire prevention. During the fair as well as during construction and there is an absolute smoke and fire ban on the whole fair area. Only the catering area is excluded from it.

XIV. Statute of limitation

Your claims against the organizer arising out of the contractual relationship and all claims that are connected with it lapse within one year, unless there is a shorter legal statute of limitation or the liability of the organizer results from intentional behaviour. The longer legal limitation claims for tort claims, guile and culpable impossibility remain unaffected. The statute of limitation starts with end of the month in which the final day of the fair lies.

XV. Place of fulfilment/ Legal venue

1.

The place of fulfilment is the location of the organizer.

2.

Legal venue, also in the documents process, change process and cheque process is, as far as it concerns you as a businessman, an entity of public-law or a fund assets regulated by public law, is Berlin. The organizer is also entitled to make his claims at the court of your location. For all legal relations between you and the organizer German right and the German text of these conditions of participation is crucial; part of the contract are the rules of the house. The diction of the contractual relation is German.

XVI. Clauses / Final clauses

1.

As an exhibitor you are also responsible for the observance of all laws valid in the host country, guidelines and other regulations if the conditions of participation of the organizer deviate from such regulation. You are obliged to inform yourself of the legal regulations in the venue on time and profound. The organizer is not liable for damages and other disadvantages which could arise for you as an exhibitor.

2.

The organizer is entitled to shift the fair date, to shorten, to extend or cancel the venue and to close it temporarily or finally or in single parts or at all in case of unforeseen events like force majeure, natural disasters, war, strikes, failure or obstruction of transport links and/or communication. In cases of time displacement, shortening, extension or closing you get no claim to substitute the damages arising from this. In these cases you are entitled to withdraw from the contract. The resignation has to be explained immediately after knowledge of the change in writing. In the case of a refusal of the venue the organizer is not liable for damages and/or other disadvantages which arise you from this. By request of the organizer you are obliged to bear an adequate amount of the costs which arise from the preparation of the fair. The height of the rate to be paid by every exhibitor is settled after hearing of the affected economic organisations by the organizer. The height of the rate to be paid by every exhibitor is settled after hearing of the affected economic organisations by the organizer.

3.

With your signature on the application form you accept the conditions of participation of the organizer as well as all other regulations concerning the contractual relationship as obliging.

4.

If these conditions of participation are partly void or incomplete, the validity of the remaining regulations as well as the contract remain unaffected by this. In this case the contracting parties are obliged to replace the void regulation or to fill the gap with such a regulation that is accords to the economic purpose of the parties .

5.

All changes of the contract have to be done in written. This also valid for the change of the clause of written from.