

GENERAL TERMS AND CONDITIONS OF BUSINESS FOR DELIVERY AND SERVICE TO THIRD PARTIES. (AGENCY AS THE CONTRACTOR)

1 Scope.

The Agency develops and creates communication and PR campaigns and other PR and communication measures on behalf of its customers. The following General Terms and Conditions of Business ("T&C") shall apply for all deliveries and services provided by the Agency ("Contractor") on behalf of a third party ("Client"). These T&C shall form an essential component of the order/signed agreement with the Client. These T&C shall also apply for all future Client's orders to the Contractor following the first integration of these T&C, even if the applicability of these T&C is not expressly referred to once again in these subsequent orders. The Clients deviating terms and conditions of business as well as changes and supplements to these T&C shall only be valid if they have been recognized in writing by the Contractor. This shall also apply in the event of the Client's terms and conditions of business or delivery even if the Contractor has not expressly objected to them.

2 Order scope.

- 2.1 The specific scope of an order that the Contractor executes for the Client shall be specified in individual orders (e.g. via a confirmed cost estimate).
- 2.2 These T&C shall apply supplemental to such orders. In the event of differences between these T&C and an order, the content of the respective order shall apply.
- 2.3 The volume ordered in the order shall be binding; however excess quantities shall be remunerated by the Client if they are due to reasons of technical production.

3 General collaboration (briefing, contact reports, safekeeping, commissioning third parties).

- 3.1 The Contractor shall render its services in the framework of a specific order on the basis of briefings, which the Client shall provide and explain to the Contractor. The briefing shall represent the binding basis for the Contractor's work. If the briefing is made orally the corresponding contact report shall become the binding basis for the work.
- 3.2 The Contractor shall deliver contact reports within three workdays following each discussion with the Client. These contact reports shall be binding for the continued processing of the projects if they are not objected to in writing within a time limit of another three workdays. A shorter time limit can be agreed in urgent cases.
- 3.3 The Contractor shall hold in safekeeping all of the Client's documents for the term of two years following completion of each project and make them subsequently available at the Client's request. If the Client does not express the desire in writing to have the documents handed over prior to expiration of the two-year time limit, the Contractor shall be entitled to destroy the documents. If costs arise in association therewith, these shall be borne by the Client.
- 3.4 If orders for the development and preparation of advertising materials exceed an order volume of €5,000 the Contractor shall provide the Client with a cost estimate. The Contractor shall not begin to render its service until the cost estimate has been approved by the Client. Delays and additional costs resulting from delayed approvals shall be borne by the Client.

4 The Client's collaborative services.

- 4.1 The Client shall make available to the Contractor all necessary market, production and sales figures, product information as well as other information necessary for the Contractor's services. The Contractor may rely on the accuracy of this information.
- 4.2 Insofar as germane for the Contractor's responsibilities, the Client shall promptly inform the Contractor in the form of briefings regarding planned measures and available budget as well as changes in the marketing calendar.
- 4.3 Instructions to the Contractor shall be issued in writing. The Client shall grant its approvals and authorizations in such good time that the Contractor's workflow is not impaired and the Contractor is in a position to be able to provide subsequent work punctually and without additional expenses and reductions in quality. Additional expenses and postponements resulting from delayed approvals and authorizations shall be borne by the Client.

5 Delivery time, place of fulfillment.

- 5.1 The Client shall be notified regarding any exceeding of the delivery schedule and deadlines, indicating the reasons and presumed duration. Compensation for damages and withdrawal shall always require the unsuccessful expiration of a previously set, appropriate period of grace.
- 5.2 The progress of such deadlines shall be suspended if, after placing the order, the Client's requested changes cause a significant restructuring of the schedule. The Contractor shall report this to the Client and coordinate a new delivery date with the Client.
- 5.3 Insofar as not otherwise expressly agreed in writing, the place of fulfillment shall be the Contractor's place of business. The Contractor shall effect the delivery at the Client's expense and risk.

6 Acceptance, notification of defects.

- 6.1 Acceptance shall be governed by statutory regulations. Public operation, use and rendering of the corresponding payment by the Client shall be in each case deemed as acceptance. It shall moreover be equivalent to acceptance if the Client does not accept the work ready for acceptance within a time limit of ten workdays, insofar as a deviating time limit has not been set or agreed to in the individual case.
- 6.2 Defective shall only be grossly inappropriately or carelessly executed deliveries and services, as well as those whereby the assigned tasks and desired design have been completely disregarded or grossly deviate from the instructions or do not correspond to state-of-the-art technology.
- 6.3 Production-related shortages shall not represent a defect.

7 Price, due dates, discounts.

- 7.1 The agreed price shall be binding and only include the Contractor's own services. In the event of requested changes and additions, a separate compensation for the Contractor's additional expenditures shall be paid. Reduced expenditures shall be to the Contractor's benefit and do not lead to a reduction of the agreed price. The Client shall be invoiced for ancillary expenses (e.g. freight, packaging, postage etc.) and third party services without surcharges. Travel expenses, which the Contractor incurs in the framework of the fulfillment of the order, shall be borne by the Client. Taxes, contributions to collecting societies (VG Wort, GEMA etc.), compensations related to usage rights, customs expenses as well as artists' social security contributions shall be borne by the Client, even if these are levied subsequently.
- 7.2 Insofar as not otherwise agreed in writing, for all of the Contractor's invoices there shall be a payment target of 14 days following receipt of the invoice.
- 7.3 Discounts are not granted.
- 7.4 For the event that a credit insurer of the Contractor amends or cancels insurance protection with respect to a payment default by the Client, the Contractor shall have the right to correspondingly adjust the payment terms and, if necessary, require appropriate securities from the Client or from a company associated with it. If an agreement regarding an appropriate change in the payment conditions and/or the provision of securities cannot be reached the Contractor shall be entitled pursuant Paragraph 12.2 to withdraw from all agreements concluded with this Client with immediate effect. Any costs arising shall be thereby borne by the Client if the failure to reach an agreement is due to reasons for which the Client is responsible.

8 Rights of use (the Contractor's rights, third party rights, buyouts, right to self-promotion, registration of public use).

- 8.1 If copyrights or other legal positions to services rendered in the framework of the order exist then the scope of the rights of use to the Contractor's work results to be transferred by the Contractor to the Client shall be oriented to each individual agreement on a case-by-case basis and otherwise to the specifications of § 31 Section 5 of the German Copyright Act [UrhG].
- 8.2 Independent from whether copyrights or other legal positions exist in the services rendered in the framework of the order the Contractor's work results may only be used by the Client if a separate agreement has been met in this regard and the Contractor has received an appropriate compensation for this.
- 8.3 Any source files produced by the Contractor shall only be encompassed by the granting of rights of use and must only be surrendered if this was explicitly briefed and/or agreed in writing on a case-by-case basis in advance.
- 8.4 Rights of use to drafts rejected or not approved for execution by the Client shall remain with the Contractor, which it shall then be free to dispose of.
- 8.5 Rights of use shall not pass to the Client until the settlement of all of the Client's financial obligations vis-à-vis the Contractor for the respective service. Until the settlement of the financial obligations the Contractor shall revoke permit the Client's use of the services. It shall not unreasonably revoke its permission.
- 8.6 The further transfer or sublicensing by the Client to third parties of the rights of use transferred to the Client shall require the Contractor's prior written consent to be effective; excluded from this shall be assignment or licensing to subsidiary companies or associated companies in terms of §§ 15 ff. of the German Companies Act [AktG] within a group of companies as well as affiliates and distribution partners.
- 8.7 Copyright exploitation rights and ancillary copyrights to external services (e.g. by models, photographers, directors etc.) shall be acquired in accordance with the Client's instructions, in its name and for its account. The Contractor shall notify the Client in good time in all cases, where such type of third party claim is recognizable, prior to the use of the relevant materials and obtain approval and/or act in accordance with the Client's instruction.
- 8.8 If the Client intends to use the work results provided by the Contractor outside of the agreed contractual territory, after expiration of the rights of use or for purposes other than as agreed, then it shall to this end conclude an agreement with the Contractor for a separate appropriate buyout fee for this, the amount of which is customary in the sector.
- 8.9 The Contractor shall retain the right to be named as the author. It shall be permitted to use its work results and excerpts thereof without restriction with respect to time and territory and free of charge, crediting the Client, for the purpose of promoting itself, for presentations and participating in competitions in the advertising sector, insofar as the Client's confidentiality interests are not thereby affected.
- 8.10 The Client shall register the public use of works, which contain the protected texts, images or music of commissioned third parties, as the exploiter with the respective collecting societies (VG Wort, GEMA etc.).

9 Confidentiality, data protection.

- 9.1 Working documents, works and all information regarding the respective other party becoming accessible in connection with the order shall be treated with the utmost secrecy. The confidentiality obligation shall end five years following the project's conclusion.
- 9.2 The confidentiality obligation pursuant Paragraph 9.1 above shall only not be applicable if and insofar as the relevant information is demonstrably generally known or becomes known at no fault of the other party or is or was lawfully acquired from a third party or was already lawfully in the other party's possession. The respective party shall bear the burden of proof of prior knowledge.
- 9.3 The parties shall treat all data protection relevant information corresponding to data protection law provisions. Insofar as necessary, they shall conclude a separate Data Processing Agreement (DPA) [AVV], in accordance with § 62 of the new German Federal Data Protection Act [BDSG-neu] and/or Art. 28 of the General Data Protection Regulation (GDPR) [DSGVO].

- 10 **Liability, standard of liability, release, vicarious agents and other third parties.**
- 10.1 The liability of the Contractor, its representatives and vicarious agents for slightly negligent breaches of obligations shall be excluded with the exception of breaching essential contractual obligations (so-called cardinal duties, i.e. duties without whose fulfilment the due and proper execution of the contract is not possible at all and upon compliance wherewith the other party may normally rely) as well as injury to health, limb and life. The liability of the Contractor, its representatives and vicarious agents shall be limited to settlement of direct damages that are contractually typical and foreseeable for the type of service. It shall particularly not be liable for a loss of profit. Apart from that, its liability shall be limited to the respective project remuneration which it receives from the Client.
- 10.2 The Contractor shall be obligated to carry out the work assigned to it with professional and commercial diligence to the best of its knowledge and in consideration of generally recognized advertising principles.
- 10.3 With this duty of diligence the Contractor assures that the advertising materials and measures it has produced do not infringe third party rights, insofar as notice is not otherwise given pursuant Paragraph 10.5. Expressly excluded from the above assurance shall be third party patent rights. The Client shall otherwise bear the legal liability for legal permissibility.
- 10.4 The Contractor shall not be liable for the Client's advertising messages with respect to any product properties. The Contractor shall moreover not be liable for the permissibility of a use or its work results outside of the respective order territory, for purposes other than as agreed, or if its work results have been changed by the Client. It shall likewise not be liable for the protectability by way of patents, copyrights, brand rights, industrial design patents or other protectability with respect to the services provided by it. In the framework of the development of brands the Contractor shall perform no concluding examination, however is willing to arrange this for the Client, if it does not wish to perform such an examination itself.
- 10.5 The Contractor shall notify the Client in good time regarding legal risks recognizable for a prudent advertising specialist. If the Contractor deems it necessary for a measure to be carried out to have an examination performed by a particularly qualified person or institution then the Client shall bear the costs following a consultation, if it does not wish to perform such an examination itself.
- 10.6 The Contractor shall release the Client from a legitimate demand by third parties, the rights of which were infringed upon contrary to Paragraph 10.3. This presupposes however, that the Client makes the Contractor aware of a claim, does not conclude any settlements with the respective claimant without the Contractor's consent and surrender the legal defense to the Contractor. Insofar as necessary, the Client shall additionally assign rights to the Contractor and appropriately support said party in the legal defense.
- 10.7 The Client shall release the Contractor from its own as well as third party claims, if the Contractor had acted at the Client's express request, although it had notified the Client regarding its concerns with respect to the permissibility of the advertising measures or the possibility of the breach of third party rights. The same shall apply for the permissibility to advertise brands, products and services, as well as material statements regarding the Client's products and services, to the extent these came from it. The Client shall release the Contractor from all claims by authors and third parties entitled to rights related to copyright in accordance with §§ 32, 32 a ff. of the German Copyright Act [*UrhG*], insofar as these third parties had been commissioned by the Contractor upon the Client's instructions.
- 10.8 A release shall in each case also include the costs for a necessary and appropriate legal defense of the respective party.
- 10.9 The Contractor shall be fully liable for its representatives and vicarious agents pursuant § 278 of the German Civil Code [*BGB*]. The Contractor shall assume no liability for the due fulfillment of orders by third parties, which are not the Contractor's vicarious agents, for the provision of its service obligations pursuant the order, beyond its duty of selection and monitoring obligation. Upon request it shall, however, assign to the Client all claims for compensation to which it is entitled vis-à-vis third parties and appropriately support it in the enforcement of these claims.
- 11 **Social media services.**
- 11.1 If the Contractor provides social media services for the Client in the framework of the order it shall not be liable for malfunctions of the work results in particular if:
- 11.1.1 the storage, operation or the use of the work results is not executed corresponding to the Contractor's instructions,
- 11.1.2 the Client undertakes changes to the work results or combines these with another digital material without an agreement being reached in this regard,
- 11.1.3 the Client's hardware is damaged or
- 11.1.4 third parties have influenced (e.g. via viruses) the work results or the Client's hardware.
- 11.2 The Client is at liberty to prove that the malfunction was not caused by one of the reasons specified in Paragraph 11.1 and the work results were already defective upon transfer of risk.
- 11.3 The Contractor shall not be responsible for user-generated content on the social media platforms.
- 12 **Withdrawal, termination for an important reason, execution.**
- 12.1 The Contractor can in particular withdraw from or terminate the order with immediate effect if the due execution of the order is thereby called into question that the Client has not only temporarily suspended payments, the Client has ceased its business operations or a significant part of its business operations or compulsory execution measures to collect payment obligations under this agreement have remained unsuccessful. The same shall apply if an application for opening insolvency proceedings is filed for the Client's assets.
- 12.2 The Contractor can immediately withdraw from the order if a payment default by the Client cannot or can no longer be insured on the side of the Contractor and the Client does not make advance payment within 21 days following the Contractor's written request or offer appropriate securities. During these 21 days all of the Contractor's obligations to commission third parties in its own name and for its own account shall be suspended if they are not associated with entirely insignificant expenses on the part of the Contractor.
- 12.3 The statutory rights to withdraw and extraordinary termination shall remain unaffected by the above Paragraphs 12.1 and 12.2. If §§ 633 ff. of the German Civil Code [*BGB*] should be applicable to parts of the order or agreement the right of termination under § 649 of the German Civil Code [*BGB*] shall be limited to the existence of an important reason.
- 12.4 Termination must always be in writing.
- 12.5 In the event of an ending of the agreement, all agreements concluded with the Client's consent shall be duly executed and invoiced by the Contractor and remunerated by the Client. In the event of termination of the agreement by the Client due to the existence of an important reason, the above shall only apply if the Client has urged the Contractor to continue providing its services.
- 12.6 In the event of a termination, the parties shall coordinate conduct vis-à-vis the press and the PR strategies, in order to avoid communications injurious to the business - also by third parties.
- 12.7 The effectiveness of the confidentiality obligation agreed in Paragraph 9 shall remain unaffected by a withdrawal or termination; this shall also apply with respect to any confidentiality agreements concluded outside of the order/agreement concluded with the Client.
- 13 **Statute of limitations, off-setting, assignment, rights of retention.**
- 13.1 The Client's claims against the Contractor shall be subject to a statute of limitation of twelve months. Excluded from this shall be claims for grossly negligent or willfully caused damages, as well as claims for breaching essential contractual obligations ("cardinal obligations", i.e. duties without whose fulfilment the due and proper execution of the contract is not possible at all and upon compliance wherewith the other party may normally rely) and claims for injury to health, limb and life; the statutory statute of limitations shall insofar apply.
- 13.2 Offsetting by the Client against the Contractor's claims shall only be permissible if the Client's claims are undisputed or established as final by a court.
- 13.3 The Client's rights under or associated with the order may not be assigned without the Contractor's written consent.
- 13.4 The Client can only assert rights of retention, in particular with respect to a claim for return by the Contractor, with respect to claims that are undisputed or established as final by a court. In the event of differences of opinion between the parties regarding the interpretation and execution of the agreement as well as the exploitation of the work by the Contractor, the Client waives interim legal protection measures.
- 14 **Orders by proxy.**
- 14.1 If the Contractor places orders to third parties in the framework of the provision of service this shall be on behalf of and in the name of the Client and for the Client's account. In this event the Contractor shall neither be liable for the payment of the goods ordered or services nor for the fulfillment of other contractual obligations of the Client or the third party. The third party payment shall be made directly by the Client and not by the Contractor. The Contractor shall not be liable for neither the creditworthiness of the Client nor the third party, which it is also not obligated to examine.
- 14.2 If the commissioning is carried out by way of exception in the name of the Contractor, said party shall be entitled at any time to demand an appropriate payment on account/prepayment. In this case, the Contractor shall act internally in the name of and for the account of the Client, even if it outwardly acts in its own name.
- 15 **Final provisions.**
- 15.1 There are no verbal ancillary agreements. Deviating or supplemental individual contractual provisions to these T&C or the placed order must be in written form to be effective and shall exclusively apply for each order. This shall also apply for a waiver of the written form clause.
- 15.2 If one of the terms of these T&C or the order is or becomes ineffective this shall not affect the effectiveness of the rest of the T&C or the order. An effective and practicable term shall replace the ineffective or impracticable term, the effects of which come as close as possible to the commercial aim the contractual parties had pursued with the ineffective or impracticable term. The same shall apply in the event of a loophole.
- 15.3 Jurisdiction and place of fulfillment is the Contractor's place of business, unless another location is compulsory as prescribed by law. German Law shall apply excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 15.4 If there is a written form clause in these T&C this shall also be satisfied via email or fax, however excluding terminations as well as changes or supplements to these T&C pursuant Paragraph 15.1, which shall always be made pursuant the written form requirement, corresponding to § 126 Section 2 of the German Civil Code [*BGB*].