

GENERAL TERMS AND CONDITIONS OF BUSINESS FOR COMMISSIONING INDEPENDENT CONTRACTORS. (AGENCY AS THE CLIENT)

- 1 Scope.**
The Agency develops and creates advertising campaigns and measures on behalf of its customers, including advertising spots, print and music productions, online advertising, merchandise etc., which are to be extensively exploited - not limited to advertising purposes. The following General Terms and Conditions of Business ("T&C") shall apply for all commissioning of services from an independent contractor ("Contractor") occasioned by the Agency ("Client"). These T&C shall form an essential component of the order/signed agreement with the Contractor. These T&C shall also apply to all future orders by the Client to the Contractor following first incorporation of these T&C, even if in such subsequent orders no express allusion is made again to the validity of these T&C. The Contractor's 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 Client. This shall also apply if the Client has not expressly objected to the Contractor's business and/or delivery terms.
- 2 Order placement.**
Orders shall only be binding if they have been placed in writing.
- 3 Order scope.**
3.1 For each individual order (hereinafter also referred to as "Order" or "Project") the Contractor shall render services to be separately defined. The Contractor shall be bound to no fixed work hours and shall be free to choose its place of work unless the particulars of the order require its presence with a Client's customer or the Client itself.
3.2 The Client shall specify the requirements necessary to render the service. The project content shall be specified by the Client, whereby the project scope and service modalities of the duties assigned shall in each case be mutually agreed. In the execution of the tasks the Contractor shall not be subject to the Client's instructions.
3.3 The Contractor guarantees the due execution of the order in accordance with the respective state-of-the-art of technology and science, whereby it shall take into consideration and maintain the Client's and/or its customer's company-specific or, if applicable, project-specific quality standards.
3.4 The Contractor shall be obligated to execute the orders assigned to it itself. It may however enlist the services of qualified skilled personnel ("vicarious agents") at its own expense with the Client's agreement. Should the Contractor avail himself of vicarious agents, he shall guarantee that the Client suffer no detriment through their commissioning, and in particular that the said vicarious agents be bound to all obligations under these T&C, and that he be liable for their successful performance.
3.5 The Contractor shall be obligated to render the commissioned service within the deadlines/time periods set by the Client. Agreed dates shall be applicable as fixed dates (fixed date transactions pursuant §§ 323 Section 2 No. 2 of the German Civil Code [BGB], 376 of the German Commercial Code [HGB]).
- 4 Reciprocal exchange of information.**
4.1 The Contractor shall inform the Client regularly – and particularly, should the Client so require, without delay and in full – of the ongoing state of the project, the project development resulting therefrom, and any necessary project decisions which make notification to or collaboration by the Client necessary. This shall particularly relate to an overview of changes in the status of performance, scheduling and costs, including the anticipated development and proposals regarding measures to be taken to resume the on-schedule project progress if delays have been recognized.
4.2 The Contractor shall acquire the relevant documents and document the know-how so that any of the third party experts can familiarize themselves with the respective project at any time without difficulties. The Contractor shall inform the Client regarding project-specific experiences and know-how.
- 5 Illness, hindrance, vacation.**
5.1 The Contractor shall not be entitled to claim for remuneration if it is prevented from providing its services due to illness or other hindrance. The Client must be notified immediately of any such hindrance. At the latter's wish a replacement must be provided without culpable delay.
5.2 The Contractor shall have no entitlement to a vacation.
- 6 Protection against competition, conflict of interest.**
6.1 The Contractor shall be obligated to inform the Client regarding any possible conflict of interest, which can impact the Client's interests, as a result of the Contractor's existing or pending other activities. The same shall apply in the event the interests of a Client's customer, for whom the Contractor's performance is intended, result in a possible conflict of interest, insofar as this is apparent to the Contractor.
6.2 For the event of an actual or possible conflict of interest the Client may terminate the contractual relationship with immediate effect.
6.3 If in the framework of its activities the Contractor becomes aware or is made aware of the Client's customers, for which the Client is working, the Contractor shall grant the Client customer protection (hereinafter also: "Protected Customers") independent of whether it is working for these customers in the framework of the activities for the Client. The Contractor shall be obligated not to come into direct or indirect contact with the Protected Customers and/or not to work for Protected Customers either in its own name and/or for its own account, nor for third parties and/or for third party account without the Client's written consent. Excluded from this shall only be such contacts that are required within the framework of the activities for the Client.
6.4 The Contractor shall be obligated to notify the Client in writing regarding any contact and any attempt to make contact between itself and Protected Customers, even if the initiative stemmed from the Protected Customers. In this event the Contractor shall at the same time inform the Client on
- contractual relationships that already exist with the Protected Customers by producing the corresponding evidence within one week. The Contractor shall have a duty to prove that the contractual relations existing between him and the protected customer existed prior to the commissioning by the Client.
6.5 In case of a breach of the obligations under Sections 6.3 or 6.4 the Contractor shall pay the Client for every case of infringement a contractual fine, the level of which shall be determined at the Client's proper discretion, which however in case of dispute about its appropriacy may be reviewed by the competent court. § 348 of the German Commercial Code [HGB] is hereby waived. Claims for damages shall not be affected by a contractual fine.
6.6 In the event of an infringement against the obligations under Sections 6.3 and 6.4 the Contractor shall be obligated at first request to provide the Client with information about the scope and content of the activity developing in breach of this clause(s) and on request affirm in lieu of oath regarding the completeness and accuracy of the information.
6.7 Apart from the above the Contractor shall be free to accept third party orders.
6.8 The Contractor hereby agrees, following the end of collaboration, to desist for a period of six months from recruiting or headhunting any employee working for the Client, or from attempting to recruit or headhunt such a person, whether himself or via third parties.
- 7 Fee, invoicing, payment.**
7.1 For each individual order the Contractor shall receive a fee to be separately specified. If an hourly fee has been agreed a maximum of eight hours per workday shall be remunerated.
7.2 Billing shall be on a monthly basis against proper invoicing. Transparent records regarding services rendered shall be attached to the invoice. Any advance payments shall be credited against the fee. All invoices must meet the requirements of § 14 of the German Value Added Tax Act ("UStG").
7.3 All ordinary invoices shall be payable within 30 days from receipt of the invoice. § 641, Section 2 of the German Civil Code [BGB] shall not be affected hereby.
7.4 All of the Contractor's expenses and expenditures associated with the project execution shall be deemed satisfied by the fee, unless the parties expressly conclude a deviating provision. This shall also apply if the Contractor for its part enlists the services of vicarious agents to satisfy its obligations.
7.5 The Contractor itself shall ensure the correct taxation of its fee, insurance policies and commercial licenses. It shall be obligated to safeguard itself at its own expense in sufficient scope against the financial risk of illness and manage its retirement plan. Should the Client so require, the Contractor must submit a declaration certifying his self-employment.
7.6 Payment shall be made via bank transfer. All payments shall be under reserve of a future reexamination and potential assertion of reclamations in addition to interest claims. The Contractor may consequently not invoke any claim for a lapse of enrichment (§ 818 of the German Civil Code [BGB]).
- 8 Rights of use, performance and protective rights.**
8.1 The Contractor hereby grants the Client the exclusive rights of use related to copyrights and ancillary copyrights, as well as other protective rights, not limited to advertising purposes and unrestricted with respect to time, territory and content, to all Work (incl. all developmental stages), which has been or will be created in the course of its activities to fulfill this agreement (the Work). This shall include the Client's right to exploit the production made using the Contractor's Work through unlimited use in all media, technologies and systems and all forms of ancillary rights exploitation. The Client shall be entitled to transfer the rights granted in this agreement in whole or in part to third parties, grant third parties simple or exclusive rights of use or concede certain uses for exploitation and to permit third parties to further transfer rights. Insofar as the Works are transferable as such and not merely as rights of use, both they and the title thereto shall accrue to the Client. This shall particularly include the rights to inventions and software patents, as well as the economic rights, pursuant § 69b of the German Copyright Act [UrhG] in the form of exclusive rights of use. In particular – however not limited to – the Contractor grants the Client the following specified rights to the Work in the form of exclusive rights of use for all known types of use, unlimited with respect to territory, time and content:
8.1.1 Right of reproduction and distribution, particularly the right to reproduce and distribute the Work in the framework of the types of use listed in the individual order as desired – also on data storage made other than originally used – on image/sound/data storage media and other storage media (for example CD Video, CD-ROM, CD-I, Digital Versatile Disc (DVD), HD-DVD, Blu-Ray-Disc, magnetic tapes or cassettes, chips, memory cards and sticks, computer drives or similar systems), to archive it, input it into databases and make it accessible to the public in a material or immaterial form. Included shall be the right to reproduction and distribution in the form of individual images.
8.1.2 The editing right, in particular the right to abridge, split up, rearrange and supplement the Work, adapt plot sequences ensuring the moral rights of the author for all exploitations in the framework of the rights transferred, to combine the Work with other work and/or image/sound materials or to integrate them therein. This shall also include the right to insert advertising/sponsoring, even in an interruptive form, to make the Work perceivable simultaneously with advertising (e.g. via split screens), undertake format adjustments, superimpose symbols or messages, insert interactive elements and substitute the music. Also included shall be the right to re-title or otherwise edit the title in another manner and/or to (re-)design the opening and final credits in consideration of any crediting obligations corresponding to the usages existing for this. Also included shall be the right to personally or using third parties synchronize and subtitle the Work, which has been or is being produced, into any desired language as often as desired and to produce voice-over versions. The Work thus edited or synchronized may be exploited in the same scope as the Work, which is the object of the agreement.
8.1.3 The broadcasting right (television right), in particular the right to make the Work accessible via radio communication and/or other technical means (e.g. electronic or visual signals) to the public and/or a limited number of recipients.

- This shall apply for as many transmissions as desired and all possible broadcasting processes (e.g. terrestrial broadcasters, cable systems, including cable retransmission, satellite systems, TCP/IP and internet-based transmission systems, mobile telephony, including all mobile telephony standards [particularly GSM, GPRS, HSCSD, EDGE, UMTS and LTE] or a combination of such technologies), in each case independent from frequency ranges, bandwidths and resolution, compression and transmission standards or the type of receiving equipment (particularly including mobile receivers, e.g. smart phones etc.). The right shall include encrypted and unencrypted broadcasts, analogue and digital processes and shall be independent of the legal form of the broadcasting organization (regulated by public law or private television), the television organization's manner of financing (commercial or non-commercial television) or type and manner of telecast (e.g. Near-video-on-demand TV, web TV, multiplexing) or the form of legal relationship between the broadcaster and recipient (Free TV, pay TV, e.g. Pay-Per-View, Pay-Per-Channel etc.). The right to the public playback of radio broadcasts is also hereby transferred.
- 8.1.4** The presentation right (theater/cinema right), meaning in particular the right to make the Work publicly perceivable as often as desired in public performances in movie theaters and other locations suitable for this purpose (e.g. restaurants, discotheques, ships, airplanes, hospitals, etc.). The performance may use all suitable processes and technologies (analogue and digital systems, including remote transmission of the program-carrying signal) against payment or free of charge, commercial or noncommercial, and in all formats and on all types of image and/or sound media. This shall include the right to make the Work publicly perceivable at festivals, trade fairs, sales exhibitions and similar events, as well as the right to make the Work perceivable to a limited group of recipients (closed circuits), e.g. in schools, hotels, hospitals, airplanes, ships etc. To avoid misunderstandings broadcasts in closed circuits in airplanes and ships should be subject with respect to territory to the "ship's flag principle".
- 8.1.5** The rental and loan right, also in particular the right to rent or loan the Work or adaptations of the Work or its reproductions.
- 8.1.6** The film production right, meaning in particular the right to use the unedited or edited Work as a template in the manufacture of a movie and/or TV production in all known technological processes (e.g. film, television, video, photographic, sound recordings etc., in digital and non-digital form, including a 3D version) and in all language versions; this shall include the right to edit the Work as desired with respect to all elements (e.g. characters, ideas, formats, plot elements, dialogues, scenes, drawings, figures, graphic representations, sounds and noises), to remove parts of the Work or add other parts, to change or redesign plot elements and sequences, figures or their characteristic features, scenes, dialogues or other components and elements of the Work and have the edited or unedited Work translated into all languages, commission screenplay authors or other third parties to adapt as well as use the Work as often as desired in edited or unedited form in whole or in part as a template, including the right to use it in documentaries about the Work (e.g. the "Making of") and for use in the framework of bonus materials or in the exploitation of surplus materials or in producing a different cut.
- 8.1.7** The right to digitalization, hence in particular the right to digitally capture the Work or adaptations of the Work, to digitalize non-digital content, multimedia applications and accompanying materials, in particular documentaries, associated with the Work, or to combine the Work with other digitalized works.
- 8.1.8** The printing right, meaning the right to manufacture, reproduce, distribute, public playback and/or otherwise exploit illustrated and unillustrated products of any kind (books, booklets, comic strips, also in electronic form, e.g. e-books), which are derived from the Work via playback, re-narration, restructuring, summarizing or otherwise adapting the content (e.g. film novels, the book of the film, etc.) also in a modified form or via photographic, drawn or painted illustrations or the like, and to exploit these in a similar form as the Work itself as well as the right to promote such products using the Contractor's titles, names and illustrations and/or to promote elements from the Work in all forms and media and/or use these for the purpose of advertising and public relations in the press, radio, Internet, etc.
- 8.1.9** Image and sound media right (videogram right), meaning in particular the rights to partial or full reproduction and distribution of the Work (e.g. through sale, rental, loan, also e-commerce) on image-sound storage media of all types for the purpose of non-public playback in a given or individually designed sequence (particularly including interactive use). This right shall include all audiovisual systems independent from their respective specific, technical configuration (particularly including all resolution and/or compression standards), such as cine film cassettes, videocassettes and videotapes, video discs of all types, CD video, CD ROM, CD-I, digital versatile disc (DVD), HD DVD, Blu-ray disc, magnetic tapes or cassettes, chips, memory cards and sticks, computer drives or similar systems, independent of the type of use. The right to (public) play-back (§ 21 of the German Copyright Act [*UrhG*]) is hereby included.
- 8.1.10** Database right, thus in particular the right to capture the Work in a machine-readable format and electronically store it in an in-house database, also insofar as this is not for the database operator's own use according to § 53 of the German Copyright Act [*UrhG*], or to develop "abstracts" of the Work (summaries of important content from individual Work), to capture it in a machine-readable format and store it electronically in an in-house database.
- 8.1.11** The right of making the Work publicly available (retrieval/online right), meaning in particular the right to make the Work available in whole or in part, such that the Work is available to the public and/or a limited group of recipients for each individual retrieval from locations and at times of their choosing (video-on-demand), independent from whether this occurs without storing (streaming), with intermediate storage or with permanent storage ("download to own"). This shall include all possible storage and transmission systems (terrestrial, cable, satellite, including distribution via direct satellite, encrypted or unencrypted), including in particular those over the Internet (e.g. TCP/IP) and mobile telephony, including all mobile telephony standards (particularly GSM, GPRS, HSCSD, EDGE, UMTS and LTE), and shall apply independent from the type of receiving equipment (including mobile terminal equipment, such as iPads, Tablet PCs, smart phones, mobile telephones, etc.) and type of use (including interactive use). The right shall also include all forms of push and/or pull services as well as paid services (Pay VOD, e.g. transactional VOD/TVOD, subscription VOD/SVOD (e.g. podcasts), electronic-sell-through/EST) as well as non-paid services (Free VOD/FVOD), including further making it publicly available, re-transmission and/or interactive use. Included shall also be the right to public play it back from publicly provided content.
- 8.1.12** The right of exploitation in interactive forms, meaning in particular the right to manufacture versions of the Work, reproduce it, distribute it on image/sound media of all types or make its access on demand available in terms of the above Paragraph 8.1.11, which are made exclusively or primarily available for individual adaptation of the Work and/or its individual sound or image components, in particular by way of abridging, distorting, restructuring, combining it with other work or other change (e.g. in the form of video games, computer games and online games) and to make available and perceivable the corresponding interactive versions of the Work, insofar as the Contractor's moral rights are preserved.
- 8.1.13** Right to use the Works in multimedia applications and on the internet, including social-media websites and/or applications ("apps"). Social-media websites and/or apps shall comprise every website, app or other platform whose primary focus is on the provision of social interaction between its users and which enables its users, in connection with social interaction, to generate, share, exchange and/or edit contents.
- 8.1.14** The sound storage media right, meaning in particular the right to reproduce and/or distribute the soundtrack and/or music soundtrack of the Work as well as re-narrations, restructurings or other adaptations of the Work (e.g. in the form of audio dramas) in whole and/or in parts (as applicable also by adding other sound and/or music elements) on sound storage media of any kind (electronic, magnetic, optical or other storage media) and/or to exploit it in another manner in the same scope as the Work itself, as well as the right to furnish such products with the Contractor's name and/or image and/or elements from the Work and to advertise it in all forms and media.
- 8.1.15** The archiving right, meaning in particular the right to archive the Work or parts thereof (including abstracts or other content information) in any form and particularly also to capture it in a digitalized form and enter it in electronic databases and data networks, on all storage media, also together with other work or parts of work and to make it accessible to third parties against payment or free of charge. Included shall be the right to use the Work in the framework of its own or third party Electronic Program Guides (EPGs).
- 8.1.16** The right of merchandising, i.e. the right to commercial exploitation of the Works through the manufacture and sale of goods or the marketing of services of all kinds which contain edited or unedited excerpts from the works or events, names, titles, figures, images or other interrelations from the same or are related in any other way to the Works, and the right, by using such elements or through edited or unedited excerpts from the Works, to advertise goods and services of every kind (tie-in advertising).
- 8.2** The Client shall additionally receive the right with respect to unknown types of use, meaning the rights to all types of use as yet unknown at the point in time of the conclusion of the agreement, insofar as the rights thereto have not already been granted on the basis of the above provisions. The Client shall notify the Contractor in advance in writing of its intended use of such rights and shall come to an understanding with the Contractor regarding an appropriate share in the commercial use of this right. If and insofar as the right of revocation with respect to granting rights for unknown types of use or the obligation hereto is not excluded pursuant §§ 88 Section 1 Clause 2, 89 Section 1 Clause 2 of the German Copyright Act [*UrhG*], the following shall apply in addition to the statutory provisions:
A Client notification to the Contractor regarding the intended integration of the exploitation of the Work into the new type of use pursuant § 31a Section 1 Clause 3 of the German Copyright Act [*UrhG*] ("Notification") shall be made exclusively to the Contractor's address specified in the order heading, if the Contractor has not expressly notified the Client and in writing expressly citing the relevant order and the contribution, which is the object of the agreement, that the Notification is to be sent to a different address in future.
- 8.3** Beyond the rights and authorizations specified in the preceding Paragraphs 8.1 and 8.2 the Work shall be understood as commissioned Work with effect for all copyright systems that recognize a corresponding concept. The Contractor hereby transfers the copyright to the Work to the Client with effect for all foreign legal systems, which permit a transfer of the copyright. The Work and the Contractor's activities, as applicable, shall be deemed "work made for hire" in terms of US copyright law. The Client shall be entitled to have this transfer registered with the entities applicable for this purpose (e.g. United States Copyright Office). If this is possible pursuant the respective legal system, the Contractor moreover declares a waiver of the assertion of moral rights ("waiver of moral rights"). Moreover the granting of the rights shall apply with effect for all legal systems, which permit granting rights also for unknown types of use, also for types of use that first become known in the future. To the extent these legal systems provide that the Client as a license holder is to grant the Contractor the corresponding interests herein the Client shall be obligated to make these payments to the Contractor at the point in time of the use of the Work in these as yet currently unknown types of use.
- 8.4** Prior to accepting the order the Contractor shall inform the Client regarding if and – as applicable – which of its transferred rights of use had been transferred to collecting societies (e.g. GEMA) pursuant this Paragraph 8.
- 8.5** In the case of notifications to collecting societies, the Client's customer for whose use the Works are intended must be stated as the exploiting party of the Works, and not the Client. The notification may only be made following authorization by the Client.
- 8.6** The Contractor shall, in consideration of the Work, exercise any rights to which it is entitled pursuant § 41 of the German Copyright Act [*UrhG*] at the earliest following expiration of five years since the creation of the Work and

- not assert any potential personality rights entitlements to the Work pursuant §§ 12, 25 and 39 of the German Copyright Act [*UrhG*]. The Client shall be entitled to exercise the moral rights to the Work. The Client shall take the Contractor's moral rights into account, insofar as this is technically and economically reasonable. The Contractor shall waive its right to be named as the author under § 13 of the German Copyright Act [*UrhG*], it may however be mentioned with its real name or a fictitious name.
- 8.7** Insofar as the Contractor enlists third parties for the execution of the order, it shall ensure that their rights are also transferred to the Client unrestricted in the scope specified above. The Contractor shall have a duty to obtain from any third parties and to document a suitable declaration regarding the complete transfer of the rights and, upon demand, to submit this to the Client. The Contractor shall release the Client from any claims by its employees or other third parties, which the Contractor enlists for the execution of the order. The Contractor shall guarantee that all performing and portrayed artists and models shall also waive their right to a credit, however may be mentioned (real name or fictitious name).
- 8.8** The Client shall be entitled to exploit the rights listed in the above paragraphs and the rights of use granted itself or through third parties, to which it may transfer the rights in whole or in part, individually or in any desired combination.
- 8.9** Insofar as it is possible for him, the Contractor shall transfer to the Client, irrevocably and for exclusive, transferable use, unrestricted as to place and time, all trademark rights, title rights and other rights of commercial designation connected with the Works which are required for exploitation of the Works.
- 8.10** The granting/transfer of rights pursuant this Paragraph 8 is remunerated by the agreed fee. The Contractor shall release the Client from claims pursuant §§ 32 ff. of the German Copyright Act [*UrhG*] by its employees or other third parties the Contractor enlists to carry out the order.
- 8.11** Any terminations of this order by one of the two parties shall not affect the rights acquired by the Client up until that point in time or the effectiveness of rights granted and/or transferred by third parties.
- 9 The Client's documents and property, programming services.**
- 9.1** All working documents made available, such as final artwork, reproductions, stamps, image templates, drafts, samples or other documents, shall remain the Client's property. The working documents provided shall be handled with care and immediately returned following completion of the order as well as upon first request. At the Client's request the Contractor shall archive the working documents for a period of two years. The Contractor shall not be entitled to a right of retention to the working documents.
- 9.2** All working documents and work products (the Work) may only be used for the execution of the order placed.
- 9.3** Any work materials provided by the Client to the Contractor, such as in particular computer hardware and software, shall remain the Client's property. It shall be handled with care and immediately returned and/or deleted following completion of the order or at any time on first request. The deletion of computer software shall be confirmed and may be inspected by the Client's IT department at any time.
- 9.4** If the Contractor is commissioned with programming, program and data orders ("Software"), the following rules shall additionally apply:
- 9.4.1** If the Contractor's service consists of the creation or adaptation of a software, the program shall be delivered on a suitable data storage media in a machine-readable form together with the source code.
- 9.4.2** The Contractor warrants that the Software contains no open source software.
- 9.4.3** If the Software according to the work service to be rendered – pursuant the Client's prior written consent – nevertheless contains open source software deviating from Paragraph 9.4.2 above then the Contractor shall record a precise description of the open source software in the service description. The Contractor warrants that all licensing obligations that exist with respect to the open source software have been fully satisfied by the Contractor, the Contractor shall provide the Client with all relevant license texts and all necessary source codes, such as build scripts, for each version of the open source software delivered to it, in order to enable the Client to create an executable version of such open source software. In the event of a breach of the aforementioned obligations, the Contractor shall release the Client from all claims, damages, losses and costs, including the costs for a necessary and appropriate legal defense and assume the defense against all claims the Client incurs due to the breach of this obligation.
- 9.4.4** In Flash sources the Contractor's own developments can be implemented as closed files in the programming section in the source files with the Client's prior written consent; however, these sections must not significantly limit the possibility of adaptation (language version adaptation, modularity of the web special, if specified etc.).
- 9.4.5** If the Contractor's service consists of creating or adapting a software, the created and adapted programs shall be delivered to the Client in testable form after a program test has been performed at the contractor's premises. After the Contractor's declaration of readiness for acceptance is on hand and the delivery of all documents belonging to the order has been made, the Client shall effect acceptance within four weeks. If the review of the Contractor's services require a putting into operation or service for testing purposes then the acceptance shall not follow until the successful conclusion of the tests. The acceptance will be effected when all services and criteria set forth in the service description have been satisfied and the Work is free from errors.
- 9.4.6** A formal acceptance protocol shall be created regarding the acceptance. The formal acceptance shall be withheld, however, until the Contractor remedies any defects determined. The defects shall be remedied immediately, at the latest within a period specified by the Client.
- 9.4.7** Customary documentation shall be submitted for acceptance of the Software at the latest and is hence a prerequisite for the acceptance.
- 9.5** All source files, HTML data and implementations, Photoshop files, flash sources and other files, image or sound storage media and data storage media associated with the order as well as all props, furnishings, decorations, etc. acquired for the Works, shall be deemed the sole property of the Client from the point in time of their creation or acquisition onwards, insofar as not expressly otherwise agreed in individual agreements. The handover to the Client shall be substituted by the Contractor safeguarding these objects for the Client free of charge. Image/sound negatives, data storage media as well as magnetic tapes shall be stored by the Contractor at its own expense in a replicator facility or video/sound studio in the name of the Client for a minimum period of three years from final acceptance. The Contractor shall notify the Client of the name and address of the storage facility in writing. The Contractor shall inform the Client at least six months prior to expiration of the aforementioned three-year period regarding the expiration of the period in writing, in order to give it opportunity to decide on a possible extension of the storage period. If the aforementioned information is not provided by the Contractor on time it shall be obligated to provide indefinite further storage at its own expense.
- 9.6** Should the Client so require, the Contractor shall immediately surrender to the Client all the foregoing items at any time, even prior to completion of the Works if necessary.
- 9.7** The Contractor must ensure that he transmits no viruses or similar entities into the Client's IT infrastructure through the computer hardware and software which he uses.
- 10 Confidentiality, sampling, data protection.**
- 10.1** Working documents, works and all information about the Client or the Client's customers of which the Contractor becomes aware in connection with the order must be treated in strict confidence by the Contractor even after the ending of the order. It shall impart this confidentiality obligation to its salaried employees and staff as well as other third parties, which it enlists to execute the order. The Client's customers shall be expressly included in the scope of protection of this confidentiality agreement.
- 10.2** Any drafts, drawings, printing plates, templates, patterns or other documents and information (hereinafter called "Information") which the Contractor receives shall remain the property of the Client or his customers, may be used, reproduced, published or supplied to third parties only for the purpose of handling the order or enquiry, and must be stored carefully by the Contractor and returned upon first demand. The Contractor shall further return immediately to the Client all Information so supplied as soon as he no longer needs it for the purpose designated, but upon the ending of their collaboration at latest. Insofar as the Client agrees thereto, the Contractor shall be entitled to destroy the Information. In this case the Client shall receive without solicitation a written confirmation of its complete destruction. The Contractor shall have no right to retention of the Information.
- 10.3** The duties of confidentiality set out under Sections 10.1 and 10.2 above shall only cease to apply if and insofar as the Information concerned is proven to be generally known, or becomes generally known without any culpability on the Contractor's part, or is or has been obtained legally from a third party, is already in the Contractor's legal possession, or has been developed by the Contractor independently and by himself. The Contractor shall bear the burden of proof in certifying prior knowledge. Should the Contractor have a duty under a statutory provision, an order by a competent court of law, an official body or similar order by government authority to disclose the said Information, he shall – as far as the law allows – inform the Client immediately and in advance thereof, in order that the latter may take legal measures to prevent the said disclosure. Should the Client so require, the Contractor shall retain the documents until any decision is made. In every case the Contractor must take all reasonable steps to the greatest possible extent in order to prevent or restrict the disclosure of the said Information.
- 10.4** Imprimaturs and samplings shall be prohibited. The Contractor may not manufacture copies, parts or excerpts of the Work (also materials produced but not however used in the final version) without the express and written consent of the Client, neither audio nor visual, for its own or third party purposes, nor distribute, show or provide it to third parties.
- 10.5** Otherwise the rules of the German Protection of Business Secrets Act [*GeschGehG*] shall apply by way of supplement in favor of the Client
- 10.6** The Contractor may only use the Work for self-advertising purposes or refer to the existing business relationship with the Client's written consent.
- 10.7** Without the Client's consent the Contractor shall be prohibited during any ongoing collaboration from making any direct contact with the Client's customer(s) for whom the Contractor's performances are intended, particularly from making any attempts to suborn the account in question managed by the Client. Should any contact be made by a customer of the Client for whom the Contractor's performances are intended, he shall refer him to the Client as personal contact. A contractual fine must be paid for every case of infringement, the level of which shall be at the Client's proper discretion and in case of dispute may be reviewed by a competent court of law.
- 10.8** Without the Client's prior express written consent the Contractor may neither issue press releases about the order or Work nor arrange press interviews. The same shall apply to press photos or other communications about the order or the Works.
- 10.9** The Contractor and the Contractor's personnel engaged in data processing are hereby prohibited from collecting, processing or using personal data without authorization (data secrecy). Such personnel, insofar as they are employed in non-public posts, must be bound to an obligation of data secrecy prior to commencement of their work. This data secrecy shall continue even after the ending of their work. The Contractor shall have a duty to follow the rules of the German Data Protection Act [*BDSG*] and the General Data Protection Regulation [GDPR] in their version as amended from time to time. Insofar as necessary, he shall conclude with the Client a separate agreement pursuant to § 62 of the (new) German Data Protection Act and/or Article 28 of the GDPR.
- 10.10** In case of a breach of the obligations under this Section 10 the Contractor shall pay the Client for every case of infringement a contractual fine, the level of which shall be determined at the Client's proper discretion, which however

- in case of dispute about its appropriacy may be reviewed by the competent court. § 348 of the German Commercial Code [*HGB*] is hereby waived. Claims for damages shall not be affected by a contractual fine.
- 10.11** The Contractor hereby grants the Client's audit department, the audit department of the customer concerned for whom the performance is intended to use, and any third party bound to confidentiality and commissioned by the Client or the customer (auditor, legal counsel or tax accountant) the right at any time, following prior agreement, to inspect and scrutinize all transaction data and documents subsisting between the Contractor and the Client and pertaining to the order or contract. This right of supervision shall also comprise permission to check compliance with the regulations of this Section 10 *in situ* on the Contractor's premises. The Contractor shall be entitled, should such a scrutiny be undertaken, to call in an employee from his own audit department, or a third party bound to professional confidentiality, to attend the said scrutiny at his own expense (audit right). Should in the course of the audit discrepancies of accounting be identified to the Client's detriment, the Contractor must reimburse the same to the Client, together with statutory interest, within 14 days. Should the accounting discrepancy to the Client's detriment amount to more than 1.5%, the Contractor shall reimburse the reasonable costs of the audit to the Client.
- 10.12** The Contractor hereby agrees with the Client to adopt into his contracts with subcontractors a right of supervision to the same effect in favor of the Client's audit department and that of the customer in question.
- 10.13** In the case of audits by government authorities (e.g. tax audits) the auditors must be allowed access to the accounting documents at any time in accordance with statutory provisions. The original documents or readable copies thereof (hard copies) must be supplied in reasonable time upon demand.
- 11 The Client's liability.**
- 11.1** Liability on the part of the Client, his representatives and vicarious agents is hereby excluded, except for loss or damage caused by gross negligence or deliberate intention, breach of essential contractual duties (so-called cardinal duties, i.e. duties without whose fulfillment the due and proper execution of the contract is not possible at all and upon compliance wherewith the other party may normally rely), damage to life, limb or health, and claims for the statutory minimum wage. The Client's liability and that of his representatives and vicarious agents shall be restricted to compensation for the contractually typical, direct damage foreseeable in accordance with the type of performance. In particular he shall not be liable for loss of profit.
- 11.2** The Contractor's liability shall be governed by law.
- 12 The Contractor's guarantees.**
- 12.1** The Contractor has all of the necessary copyright-related exploitation rights, in particular the reproduction, distribution, broadcasting, presentation, adaptation and ancillary copyrights required to fulfill the agreement.
- 12.2** The Contractor guarantees the rights to be transferred under Paragraph 8 and affirms that these rights have not already been transferred to third parties (e.g. banks) nor are encumbered with third party rights (e.g. lien or securities) and third parties were not instructed to exercise these rights.
- 12.3** The Contractor further affirms that in relation to the performance of this agreement no other obligations exist that could prevent the services from being rendered.
- 12.4** The Contractor affirms that it is currently not working for any client that is in competition with the Client's customers, for which the Work is recognizably intended. The Contractor shall notify the Client thereof if such a conflict should be evident here. The Contractor may withdraw from the order free of charge in the event of such a conflict and/or terminate it at any time.
- 12.5** The Contractor shall be responsible that all people it arranges to be involved in the manufacturing and editing of the production, which is the object of the agreement, and who are entitled to copyright, ancillary copyrights, property rights or other rights, have submitted all necessary declarations of consent for the Work to be able to be exploited in the agreed scope.
- 12.6** Should the Client so wish, the Contractor shall facilitate a subsequent acquisition of extended rights, particularly for use beyond the agreed period of use or use in further media.
- 12.7** The Contractor guarantees that due tax and social security payments are made for all people it involves in participating in the manufacturing and adaptation of the work product, which is the object of the present agreement.
- 12.8** The Contractor hereby guarantees to comply with the regulations of the German General Minimum Wage Act [*MiLoG*] in its version as amended from time to time. In particular he hereby guarantees to pay his employees at least the minimum wage due under § 1 of the German Minimum Wage Act [*MiLoG*] as of the legally due date prescribed in § 2 of the German Minimum Wage Act [*MiLoG*] and that the subcontractors employed by him and further subcontractors which the latter may employ shall likewise comply with the regulations of the German Minimum Wage Act [*MiLoG*] in its version as amended from time to time. The Contractor shall have a duty upon demand to submit monthly certifications showing the timely payment of the minimum wage by himself and, as far as applicable, by his subcontractors (e.g. records of hours worked and wages paid in return). The Client shall in addition have a right of inspection of the Contractor's (anonymized) wage and salary lists. The Contractor must ensure that the Client also enjoys such a right of inspection with regard to the Contractor's subcontractors.
- 12.9** In case of a breach of the obligations under Section 12.8 the Contractor shall pay the Client for every case of infringement a contractual fine, the level of which shall be determined at the Client's proper discretion, which however in case of dispute about its appropriacy may be reviewed by the competent court. § 348 of the German Commercial Code [*HGB*] is hereby waived. Claims for damages shall not be affected by a contractual fine.
- 12.10** The Contractor shall have a duty in particular to desist from all actions which may entail a breach of the German Minimum Wage Act [*MiLoG*], lead to punishability for fraud, breach of trust, criminal offences against competition, unfair advantage or bribery of persons employed by the Contractor or of third parties. In case of breach hereof or of the obligations under Section 12.8 the Client shall enjoy a right of immediate withdrawal from or termination of all agreements and legal transactions subsisting with the Contractor (including orders and offers not yet accepted) and the cessation of all negotiations. Notwithstanding the same the Contractor shall have a duty to comply with all laws and regulations affecting him and his business relations with the Client. In case of breach of the foregoing duties the Contractor shall hold the Client harmless against all claims, damage, losses and costs, including costs of a necessary and reasonable legal defense.
- 12.11** The Contractor hereby guarantees that he shall comply with the standards usual in the industry and statutory requirements governing security of information. The Client shall be entitled to verify compliance with the above regulations through suitable measures.
- 13 Withdrawal, termination for an important reason.**
- 13.1** The Client 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 Contractor has not only temporarily suspended payments, the Contractor 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.
- 13.2** The statutory rights to withdraw and extraordinary termination shall remain unaffected by the above Paragraph 13.1.
- 14 Statute of limitations, off-setting, assignment, rights of retention.**
- 14.1** The Contractor's claims against the Client shall be subject to a statute of limitation of twelve months. This shall not apply to claims arising from loss or damage caused by gross negligence or deliberate intent, the breach of essential contractual duties (do-called cardinal duties, i.e. duties without whose fulfillment the due and proper execution of the contract is not possible at all and upon compliance wherewith the other party may normally rely), damage to life, limb or health, and claims for the statutory minimum wage. In these cases the statutory periods of limitation shall apply.
- 14.2** The Contractor off-setting against the Client's claims shall only be permissible if the Contractor's claims are undisputed or established as final by a court.
- 14.3** The Contractor's rights under the order, in particular the right to remuneration may not be assigned without the Client's written consent.
- 14.4** The Contractor can only assert rights of retention, in particular with respect to a claim for return by the Client, with respect to claims that are undisputed by the Client or established as final by a court. In the event of differences of opinion by the parties regarding the interpretation and execution of the agreement, as well as the exploitation of the Work by the Client, the Contractor waives interim legal protection measures.
- 15 Orders by proxy.**
- 15.1** If the Client places an order in a third party name and for a third party account the Client shall neither be liable for the fulfillment of the third party's contractual obligations nor its creditworthiness, which he shall have no obligation to check.
- 15.2** If the Client places the order in its own name and for its own account but on behalf of a third party, which is to be expressly indicated in the order, the remuneration shall be payable by the Client if the Client was for its part furnished by the third party with the corresponding funds for the purpose of satisfying the claims. The Client shall not be obligated to the payment of amounts owed on its part if and as long as the third party has not paid these to the Client. This shall apply independent from whatever reason the payment to the Client has not been made (including the third party's insolvency). The Contractor's provisions to the contrary in invoices, commercial documents or price lists as well as all changes the Contractor makes to this form, shall be without effect.
- 16 Production of photographic and moving-image material.**
- The production of posters, advertisements etc. and of TV spots, movie theater advertising films, animated advertising films, online and viral films and other moving-image material (photographic and moving-image material jointly called "Photography") shall in addition be subject to the following regulations:
- 16.1** The Client shall decide on the design of the content, on the artistic and technical design, and on the shooting location. He shall also be responsible for the objective accuracy of the Photography insofar as his instructions have been followed.
- 16.2** The Photography shall be produced according to the script, storyboard, layout film or briefing delivered by the Client as well as the record of the results of the pre-production meeting ("PPM") and the Client's instructions. If the Contractor wishes to deviate from the script, storyboard, briefing or instructions for whatever reason may be it shall obtain the Client's prior written consent. The same shall apply if the Contractor has uncertainties regarding the appropriate implementation of the guidelines.
- 16.3** The Contractor shall itself carry out the Photography and produce and deliver it of a quality, which at least corresponds to the state-of-the-art of production technology of its company as evident in its sample roll.
- 16.4** The Contractor shall develop a precise schedule regarding the individual manufacturing phases of the Photography in agreement with the Client and inform the Client regarding the respective manufacturing status in such good time for said party to be able to influence each manufacturing phase.
- 16.5** The Client and its customer shall have the right to be present during the production of the Photography, in order to issue corresponding instructions, if need be (e.g. guidelines for models, props, technical effects etc.). The Contractor shall take the Client's requested changes into consideration. If this results in significant additional expenses (>2% of the net manufacturing price) then these shall be borne by the Client, if the Contractor had reported these additional costs and the amount thereof in good time prior to carrying out the measures and the Client has approved them in writing. If the Client's requested changes reduce the manufacturing costs then the amount saved through this shall be to the Client's benefit.

- 16.6** The Contractor shall rent premises and other locations necessary for the production of the Photography and shall commission third parties, such as models, directors, singers etc. in his own name and on his own account. He shall assume the liability of performance for them. Should the third parties commissioned by the Contractor fail to appear for production, or fail to appear in good time, the Contractor shall bear the additional costs incurred and shall reimburse the loss caused thereby.
- 16.7** The equipment, working and other materials required for the production of the Photography which the Contractor has acquired in his own name and on his own account shall be provided by him at his own cost and risk.
- 16.8** Cinema films shall be filmed in consideration of normal/wide screen and/or 16:9 or other European or international standards pursuant to the Client's instruction as well as the FSK guidelines and TV spots in consideration of the television cache. Television copies shall meet the ARD specification standards.
- 16.9** The products to be advertised and portrayed in the Photography shall be supplied by the Client without charge in the form of originals or dummies. They must be returned immediately once production has ended. Should the originals or dummies not be suitable for realization in photography or film, the Contractor shall notify the Client thereof immediately and give him an opportunity to prepare suitably for production. The Contractor shall not be entitled to replace the original products with which he has been supplied by other products.
- 16.10** In the case of film photography the Contractor shall guarantee that the right to film the script/storyboard, should this not have been supplied by the Client, and the right to its design in image, word and sound is enjoyed by the Client. This shall also apply to all rights of the script's author, of the film makers, and of the practicing and performing artists and models (e.g. actors, cameramen, cartoonists, directors, set designers, composers, musicians, speakers, etc.).
- 16.11** The Client shall be entitled to have still photographs made during shooting by a photographer of his choice and to use these to the extent to which rights are granted under these T&C.
- 16.12** The agreed length of films shall be precisely adhered to. The film lengths endorsed by the Freiwillige Selbstkontrolle der Filmwirtschaft GmbH ("FSK") shall apply for movie theater films. If the Client so desires and insofar as not otherwise agreed in an individual agreement, the Contractor shall submit the film at its expense to the umbrella organization of the FSK. There shall always be a submission for films, which are to be shown in movie theaters. If the FSK or the television advertising company objects to the work result due to elements, which are attributable to an express wish of the Client then necessary changes shall be borne by the Client, otherwise by the Contractor. This provision shall correspondingly apply for the Freiwillige Selbstkontrolle Fernsehen e.V. ("FSF"), the Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V. ("FSM") as well as for other similar organizations.
- 16.13** The Contractor shall not superimpose his name, or that of his company, or that of third parties, or any other designation of his business in the Photography, or make the same visible or audible in any other way, or supply the photography with a digital watermark.
- 16.14** Should a shooting of Photography be cancelled – including cancellation at short notice – the Client shall not be liable to pay a cancellation fee, unless he has caused the said cancellation through gross negligence or by deliberate intent.
- 17 Tax deduction for persons with limited tax liability (§ 50a of the German Income Tax Act [EStG]).**
The following shall apply provided the Contractor is subject to limited tax liability (§ 49 of the German Income Tax Act [EStG]):
- 17.1** The remuneration agreed between the Client and Contractor shall be subject to tax deduction for the following income:
- 17.1.1** Income generated by creative, athletic, artistic, entertainment or similar performances, which are carried out domestically. Excluded from these shall be remunerations for not self-employed work, which are subject to tax deduction from wages pursuant § 38 Section 1 No. 1 of the German Income Tax Act [EStG].
- 17.1.2** Income, which is derived from the domestic exploitation of performances according to Paragraph 9 in terms of 16.1.1,
- 17.1.3** Income, which is the result of remunerations for granting the use or the right to use rights pursuant Paragraph 8.
- 17.2** The Client shall be obligated to withhold income tax by means of the tax deduction to secure the tax liability (§ 50a Section 7 of the German Income Tax Act [EStG]). The tax shall be deducted from a remuneration of € 250.00 and above. The tax deduction shall amount to 25% of all income.
- 17.3** In addition to remuneration, all income also means the Client's assumed and reimbursed travel and accommodation expenses, insofar as they exceed the actual costs, and the costs of meals if they exceed the flat fee amounts for room and board expenses. The sales tax owed by the Client shall not be part of the assessment basis.
- 17.4** At the point in time when the Contractor is paid the remuneration, the Client shall already withhold the income taxes for the Contractor's invoice in the course of the tax deduction and pay it to the competent tax office.
- 17.5** The Client is obligated under § 50a Section 5 of the German Income Tax Act [EStG] to evidence the Contractor upon request the tax deduction using the officially mandated form.
- 17.6** The Contractor shall further have the option to apply for the granting of a certificate of exemption at the Federal Tax Office. Further information and the required forms are available at www.bzst.de.
- 18. Insurances.**
The Contractor shall be obligated to appropriately insure its activities and deliver copies of the corresponding insurance policies to the Client at its request.
- 19 Term, termination.**
19.1 The order shall be concluded for an indefinite period and shall automatically end upon the complete provision of the agreed service.
- 19.2** The Client can terminate the order by adhering to the termination provisions agreed in the order. Additionally, § 621 and § 648 of the German Civil Code [BGB] shall apply to the benefit of the Client. The Client can always terminate the order if its customer changes, withdraws from or terminates the corresponding order for the project, for which the Contractor was engaged.
- 19.3** The right to extraordinary termination for an important reason shall remain unaffected. One such important reason shall in particular be assumed if the Contractor is unable to pay or an application to open insolvency proceedings was filed for its assets. The same shall apply for the event that the Contractor's claim against the Client for payment of the fee is seized and the Contractor does not bring about a cancellation of the judicial enforcement actions within a period set by the Client.
- 19.4** A termination must always be in writing.
- 20 Final provisions.**
20.1 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.
- 20.2** 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.
- 20.3** Place of jurisdiction and place of fulfillment is the Client's headquarters 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.
- 20.4** 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 20.1, which shall always be made pursuant the written form requirement corresponding to § 126 Section 2 of the German Civil Code [BGB].