



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

### **1 Scope**

The Agency develops and creates advertising and other 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. The Client'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 Contractor. This shall also apply if the Contractor has not expressly objected to the Client's business and/or delivery terms.

### **2 Order scope**

- 2.1** The specific scope of an order that the Contractor executes for the Client shall be called up in individual orders (e.g. confirmed cost estimate). These T&C shall apply supplementary to this order. In the event of differences between these T&C and an individual order, the content of the respective individual order shall apply.
- 2.2** 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 a binding work document.
- 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 projects, insofar as 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 all of the Client's documents in safekeeping 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 or in text form to have the documents handed over prior to expiration of the two-year time limit, the Contractor shall be entitled to destroy the documents.
- 3.4** The Contractor shall submit a cost estimate for orders placed to third parties to develop and prepare advertising materials in excess of € 3,000. The Contractor shall not begin with the commissioning until the Client has approved the cost estimate. Delays and 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 all other information necessary for the Contractor's service. The Contractor may rely on the accuracy of this information.
- 4.2** The Client shall promptly inform the Contractor in the form of briefings regarding planned measures and the available budget as well as changes in the marketing calendar. Instructions to the Contractor shall be issued via letter, fax, email, briefing or contact report.
- 4.3** The Client shall grant its approvals 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 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 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 both shall jointly coordinate a new date.
- 5.3 Insofar as not otherwise expressly agreed in writing the place of performance shall be the Contractor's headquarters. 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 use and/or rendering of the Client's corresponding payment shall be 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 in the individual case.
- 6.2 Defective shall only be grossly inappropriate or carelessly executed deliveries and services, as well as those whereby the assigned tasks and desired design have been completely disregarded and/or grossly deviated from 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 shall 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 subsequently levied.
- 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.

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

- 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 to the Client by the Contractor – independent from their legal protectability – 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 In the case of individual programming, any source files originating from the Contractor shall only be encompassed by the granting of rights of use if this was explicitly briefed and/or agreed on a case-by-case basis in advance.
- 8.3 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.



- 8.4** Rights of use shall not fully pass to the Client until the settlement of all of the Client's financial obligations vis-à-vis the Contractor for the respective service.
- 8.5** The further transfer or sublicensing of the rights of use transferred to the Client by the Client to third parties shall require the Contractor's prior written consent to be effective; excluded from this shall be the assignment or licensing to subsidiary companies or associated companies in terms of §§ 15 ff. of the German Companies Act [AktG] within a corporation as well as distribution partners.
- 8.6** Copyright exploitation rights and ancillary copyrights to external services (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 noticeable, prior to the use of the relevant materials and obtain an authorization and/or act in accordance with the Client's instruction.
- 8.7** 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 conclude an agreement with the Contractor for a separate buyout fee for this. If this agreement does not come about then a buyout fee in the amount of 5% of the placement costs or the usage value of the advertising materials shall apply as agreed. The Client shall substantiate the scope of use in this regard to the Contractor upon request.
- 8.8** The Contractor shall retain the right to be named as the author. It shall be permitted to use its work results or excerpts thereof for the purpose of promoting itself and participating in competitions in the advertising branch without restriction with respect to territory and time and free of charge, insofar as the Client's confidentiality interests are not thereby affected.
- 9 Confidentiality**
- 9.1** The Contractor shall treat with the utmost secrecy the working documents and the work as well as all information regarding the respective other party becoming accessible in connection with the order - also following the termination of the order. The confidentiality obligation shall end at the latest 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 generally known at no fault of the other party or is or was lawfully acquired by a third party or was already in the other party's possession.
- 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 ("cardinal duties", meaning such obligations, the fulfillment of which even make it possible in the first place to duly execute the agreement and adherence to which the other party may normally rely on) as well as the injury to health, body 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.
- 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 shall be responsible that the advertising materials and measures it has produced do not infringe upon third party rights, insofar as not otherwise notice



is given pursuant Paragraph 10.5. Otherwise, however, the Client shall be liable under competition law for legal permissibility.

- 10.4** The Contractor shall not be liable for the Client's advertising claims with respect to any product properties. The Contractor shall moreover not be liable for the permissibility of a use of its work results outside of the respective order territory or for purposes other than as agreed. It shall likewise not be liable for the protectability by way of patents, copyrights, brands, industrial designs or other protective measures 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 this itself.
- 10.5** The Contractor shall notify the Client in good time regarding legal risks recognizable for a competent advertising specialist. If the Contractor deems it necessary to have a competition law examination performed or measures carried out 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.
- 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 of the ability to advertise brands, products and/or services, as well as material statements regarding the Client's products and services, to the extent these came from it.
- 10.8** 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 they had been commissioned by the Contractor upon the Client's instructions.
- 10.9** A release shall in each case also include the costs for a necessary and appropriate legal defense of the respective party.
- 10.10** The Contractor shall be fully liable for its representatives and vicarious agents pursuant § 278 of the German Civil Code [*BGB*].
- 10.11** The Contractor shall assume no liability for the due fulfillment of orders to 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 Withdrawal, termination for an important reason, execution**

- 11.1** 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.
- 11.2** The statutory rights to withdraw and extraordinary termination shall remain unaffected by the above Paragraph 11.1. If §§ 633 ff. of the German Civil Code [*BGB*] are 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.

- 11.3** Termination must always be in writing.
- 11.4** In the event of the termination 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.
- 11.5** In the event of a termination, the parties shall coordinate conduct vis-à-vis the press and PR strategies, in order to avoid communications injurious to the business – also by third parties.
- 12 Statute of limitations, off-setting, assignment, rights of retention**
- 12.1** The Client's claims against the Contractor shall be subject to a statute of limitation of twelve months.
- 12.2** The Client off-setting against the Contractor's claims shall only be permissible if the Client's claims are undisputed or established as final by a court.
- 12.3** The Client's rights under or associated with the order may not be assigned without the Contractor's written consent.
- 12.4** 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 by the Contractor 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 Contractor, the Client waives interim legal protection measures.
- 13 Orders by proxy**
- 13.1** 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 and/or services ordered 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 be liable for neither the creditworthiness of the Client nor the third party, which it did not examine.
- 13.2** 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. Internally the Contractor shall act in the name of and for the account of the Client, even if it outwardly acts in its own name.
- 14 Final provisions**
- 14.1** 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.
- 14.2** 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.
- 14.3** Jurisdiction and place of fulfillment is the Contractor'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.
- 14.4** 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 14.1, which shall always be made pursuant the written form requirement, corresponding to § 126 Section 2 of the German Civil Code [BGB].