

# GENERAL TERMS AND CONDITIONS OF BUSINESS

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## 1 VALIDITY, CONCLUSION OF CONTRACT

Miwa Meusbürger (hereinafter referred to as „Contractor“) provides its services exclusively on the basis of the following General Terms and Conditions (GTC). These apply to all legal relationships between the Contractor and the Client, even if no express reference is made to them. The GTC shall apply exclusively to legal relationships with entrepreneurs, i.e. B2B. The version valid at the time of the conclusion of the contract shall be authoritative in each case. The current version will be provided in an offer or on request as a pdf. Deviations from these as well as other supplementary agreements with the Customer shall only be effective if they are confirmed in writing by the Contractor. Any terms and conditions of the Customer shall not be accepted, even if known, unless expressly agreed otherwise in writing in individual cases. A further objection to the customer's GTC by the contractor is not required. Amendments to the General Terms and Conditions shall be notified to the Customer and shall be deemed to have been agreed if the Customer does not object to the amended General Terms and Conditions in writing within 14 days; the Customer shall be expressly informed of the significance of silence in the notification. Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the binding nature of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid provision that comes as close as possible to the meaning and purpose of the invalid provision. The offers of the contractor are subject to change and non-binding.

## 2. SOCIAL MEDIA CHANNELS

Before placing an order, the Contractor expressly points out to the Customer that the providers of „social media channels“ (e.g. facebook, hereinafter referred to as „Providers“) reserve the right in their terms of use to reject or remove advertisements and appearances for any reason. Accordingly, the Providers are not obliged to forward content and information to the Users. There is therefore a risk, which cannot be calculated by the contractor, that advertisements and appearances may be removed without cause. In the event of a complaint by another user, the providers are granted the opportunity to make a counterstatement, but in this case, too, the content is removed immediately. In this case, the restoration of the original, lawful state may take some time. The contractor works on the basis of these terms of use of the providers, over which it has no influence, and also bases the customer's order on them. By placing the order, the Customer expressly acknowledges that these Terms of Use (co-)determine the rights and obligations of any contractual relationship. The Contractor intends to execute the Customer's order to the best of its knowledge and to comply with the guidelines of „Social Media Channels“. However, due to the currently valid terms of use and the simple possibility of each user to claim infringements of rights and thus achieve a removal of the content, the contractor cannot guarantee that the commissioned campaign is also retrievable at all times.

## 3. CONCEPT AND IDEA PROTECTION

If the potential Customer has already invited the Contractor in advance to prepare a concept and if the Contractor complies with this invitation before the main contract is concluded, the following provision shall apply: The potential Customer and the Contractor shall enter into a contractual relationship („pitching contract“) already by the invitation and the acceptance of the invitation by the Contractor. This contract is also based on the GTC.

- The potential customer acknowledges that the contractor already provides cost-intensive preliminary services with the concept development, although he has not yet assumed any service obligations himself.
- The concept is subject to the protection of the copyright law in its linguistic and graphic parts, as far as these reach work height. The potential customer is not permitted to use or edit these parts without the consent of the contractor, if only on the basis of copyright law.

- The concept also contains ideas relevant to advertising, which do not reach the level of a work and therefore do not enjoy the protection of the Copyright Act. These ideas are at the beginning of every creative process and can be defined as the igniting spark of everything that is later produced and thus as the origin of marketing strategy. Therefore, those elements of the concept are protected which are peculiar and give the marketing strategy its characteristic imprint. In particular, advertising slogans, advertising texts, graphics and illustrations, advertising materials, etc. are considered to be an idea in the sense of this agreement, even if they do not reach the level of a work.
- The potential customer undertakes to refrain from commercially exploiting or having exploited or using or having used these creative advertising ideas presented by the contractor within the framework of the concept outside the corrective of a main contract to be concluded at a later date.
- If the potential customer is of the opinion that ideas were presented to him by the contractor that he had already come up with before the presentation, he shall notify the contractor of this within 14 days of the day of the presentation by e-mail, citing evidence that allows a temporal allocation.
- In the contrary case, the contracting parties shall assume that the Contractor has presented the potential Customer with an idea that is new to him. If the idea is used by the customer, it shall be assumed that the contractor became meritorious in the process.
- The potential customer may release itself from its obligations under this item by paying reasonable compensation plus 4.75 % sales tax. The release shall only come into effect after full receipt of payment of the compensation by the Contractor.

## 4. SCOPE OF SERVICES, ORDER PROCESSING AND DUTIES TO COOPERATE OF THE CUSTOMER

The scope of the services to be rendered results from the service description in the offer of the Contractor or a possible order confirmation by the Customer, as well as the possible briefing protocol („offer documents“). Subsequent changes to the service content require written confirmation by the Contractor. Within the framework specified by the Customer, the Contractor shall be free to design the fulfillment of the order. All services provided by the Contractor (in particular all preliminary drafts, sketches, final drawings, brush prints, blueprints, copies, color prints and electronic files) must be reviewed by the Customer and approved by him within three working days of receipt by the Customer. After expiry of this period without feedback from the Customer, they shall be deemed to have been approved by the Customer. The Customer shall make available to the Contractor in a timely manner and in full all information and documents required for the performance of the service. He will inform them of all circumstances that are of importance for the execution of the order, even if these only become known during the execution of the order. The Customer shall bear the expenses incurred by the fact that work has to be repeated or delayed by the Contractor as a result of its incorrect, incomplete or subsequently changed information. The Customer shall furthermore be obliged to check the documents (photos, logos, etc.) provided for the execution of the order for any copyrights, trademark rights or other rights of third parties (rights clearing) and shall guarantee that the documents are free of third-party rights and can therefore be used for the intended purpose. The Contractor shall not be liable in the event of merely slight negligence or after fulfilling its duty to warn - in any case in the internal relationship with Customers - due to an infringement of such third-party rights by Documents made available. If a claim is made against the Contractor by a third party due to such an infringement of rights, the Customer shall indemnify and hold the Contractor harmless; the Customer shall compensate the Contractor for all disadvantages incurred by the Contractor as a result of a claim made by a third party, in particular the costs of appropriate legal representation. The Customer undertakes to support the Contractor in the defense against any claims of third parties.

The Customer shall provide the Contractor with all documents for this purpose without being requested to do so.

## **5 EXTERNAL SERVICES/COMMISSIONING OF THIRD PARTIES**

The Contractor shall be entitled, at its own discretion, to perform the service itself, to make use of competent third parties as vicarious agents for the performance of contractual services and/or to substitute such services („Third Party Services“). The commissioning of third parties within the scope of an External Service shall be carried out either in the Contractor's own name or in the name of the Customer. The Contractor shall carefully select such third party and ensure that such third party has the required professional qualifications. The Customer shall enter into obligations towards third parties that extend beyond the term of the contract. This shall expressly also apply in the event of termination of the contract for good cause.

## **6. DEADLINE**

Unless expressly agreed as binding, specified delivery or performance deadlines shall be deemed to be only approximate and non-binding. Binding agreements on deadlines shall be recorded in writing or confirmed in writing by the Contractor. If the Contractor's delivery/service is delayed for reasons for which it is not responsible, such as events of force majeure and other unforeseeable events that cannot be averted by reasonable means, the performance obligations shall be suspended for the duration and to the extent of the impediment and the deadlines shall be extended accordingly. If such delays last more than two months, the Customer and the Contractor shall be entitled to withdraw from the contract. If the Contractor is in default, the Customer may only withdraw from the contract after having granted the Contractor a reasonable grace period of at least 14 days in writing and such grace period has expired fruitlessly. Claims for damages by the Customer due to non-fulfillment or delay are excluded, except in the case of evidence of intent or gross negligence.

## **7. PREMATURE TERMINATION**

The Contractor shall be entitled to terminate the contract with immediate effect for good cause. An important reason exists in particular if:

- The performance of the service becomes impossible for reasons for which the Customer is responsible or is further delayed despite a grace period of 14 days being set;
- The customer continues, despite a written warning with a grace period of 14 days, to violate essential obligations under this contract, such as payment of a due amount or obligations to cooperate.
- There are justified doubts regarding the creditworthiness of the customer and the customer does not make advance payments at the request of the contractor or does not provide suitable security prior to the contractor's performance;
- The Customer shall be entitled to terminate the contract for good cause without granting a grace period. In particular, good cause shall be deemed to exist if the Contractor continues to violate material provisions of this contract despite a written warning with a reasonable grace period of at least 14 days to remedy the violation of the contract.

## **9 PAYMENT, RETENTION OF TITLE**

The fee is due for payment within 30 days of receipt of the invoice and without deductions (unless otherwise agreed in writing). This also applies to the charging of all cash expenses and other expenditures. The goods and services delivered by the Contractor shall remain the property of the Contractor until full payment of the remuneration, including all ancillary liabilities. In the event of default of payment by the Customer, the statutory default interest shall apply at the rate applicable to business transactions. Furthermore, in the event of default in payment, the Customer undertakes to reimburse the Contractor for the reminder and collection expenses incurred, insofar as they are necessary for appropriate legal prosecution. This shall in any case include the costs of two reminders in the customary amount of currently at least € 20.00 per reminder as well as a reminder letter from a lawyer commissioned with the collection. The assertion of further rights and claims shall remain unaffected. In the event of the Customer's default in payment, the Contractor may declare all services and

partial services rendered under other contracts concluded with the Customer immediately due and payable. Furthermore, the Contractor shall not be obliged to provide further services until the outstanding amount has been settled (right of retention). The obligation to pay the remuneration shall remain unaffected. If payment in installments has been agreed upon, the Contractor reserves the right to demand immediate payment of the entire outstanding debt in the event that partial amounts or ancillary claims are not paid on time (loss of time). The Customer shall not be entitled to set off its own claims against claims of the Contractor, unless the Customer's claim has been acknowledged by the Contractor in writing or has been established by a court.

## **10. PROPERTY RIGHTS AND COPYRIGHT**

All services of the Contractor, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final drawings, concepts), including individual parts thereof, shall remain the property of the Contractor, as shall the individual workpieces and design originals, and may be reclaimed by the Contractor at any time - in particular upon termination of the contractual relationship. By paying the fee, the customer acquires the right of use for the agreed purpose. In the absence of any agreement to the contrary, however, the Customer may use the Contractor's services exclusively in Austria. The acquisition of rights of use and exploitation of the Contractor's services shall in any case require the full payment of the fees invoiced by the Contractor for such services. If the Customer already uses the Contractor's services before this point in time, this use shall be based on a loan relationship that can be revoked at any time. Modifications or adaptations of the Contractor's services, in particular their further development by the Customer or by third parties acting on the Customer's behalf, shall only be permitted with the express consent of the Contractor and - insofar as the services are protected by copyright - of the author. For the use of the Contractor's services which goes beyond the originally agreed purpose and scope of use, the consent of the Contractor shall be required - irrespective of whether this service is protected by copyright. In the event of premature termination of the contractual relationship, the rights of use may be reclaimed by the Contractor. A fee customary in the industry shall be charged for additional rights of use. All preliminary services rendered by the Contractor for the creation of the final product (e.g. drafts, sketches, presentations, concepts) shall remain the property of the Contractor. The drafts, final artwork and created layouts may not be changed or passed on to third parties, neither in the original nor in reproduction, without the express consent of the Contractor. The Contractor's written consent is required for any use of the Contractor's performance other than for the intended purpose. The Contractor reserves the right to charge separately for extraordinary use. The Customer shall be liable to the Contractor for any unlawful use in the double amount of the fee appropriate for such use.

## **11. LABELING**

The Contractor shall be entitled to indicate the Contractor and, if applicable, the originator on all advertising media and in all advertising measures, without the Customer being entitled to any remuneration for this. Subject to the Customer's written revocation, which is possible at any time, the Contractor shall be entitled to refer to the existing or former business relationship with the Customer on its own advertising media and in particular on its Internet website by name and company logo (reference).

## **12 WARRANTY**

The Customer shall notify the Contractor in writing of any defects without delay, in any case within eight days of delivery/service by the Contractor, and of hidden defects within eight days of their discovery, describing the defect; otherwise the service shall be deemed to have been approved. In this case, the assertion of warranty claims and claims for damages as well as the right to contest errors due to defects shall be excluded. In case of justified and timely notice of defects, the Customer shall have the right to improvement or replacement of the delivery/service by the Contractor. The Contractor shall remedy the defects within a reasonable period of time, whereby the Customer shall enable the Contractor to take all measures necessary to examine and remedy the de-

fects. The Contractor shall be entitled to refuse to improve the performance if this is impossible or involves a disproportionately high effort for the Contractor. In this case, the Customer shall be entitled to the statutory conversion or reduction rights. In the event of improvement, it shall be incumbent upon the Customer to carry out the transfer of the defective (physical) item at its own expense. It is also incumbent upon the Customer to carry out the .berprüfung of the performance with regard to its legal admissibility, in particular with regard to competition, trademark, copyright and administrative law. The Contractor shall only be obliged to carry out a rough check of the legal admissibility. The Contractor shall not be liable for the legal admissibility of content in the event of slight negligence or after fulfilling any duty to warn the Customer if the content was specified or approved by the Customer. The warranty period is six months from delivery/service.

### **13 Liability and product liability**

In cases of slight negligence, liability of the contractor or other vicarious agents for property damage or financial loss of the customer is excluded, regardless of whether it concerns direct or indirect damage, loss of profit or consequential damage, damage due to delay, impossibility, positive breach of contract, culpa in contrahendo, defective or incomplete performance. The existence of gross negligence must be proven by the injured party. Insofar as the Contractor's liability is excluded or limited, this shall also apply to the personal liability of its other vicarious agents. Any liability of the Contractor for claims made against the Customer on the basis of the service rendered by the Contractor (e.g. advertising measure) shall be expressly excluded if the Contractor has complied with his duty to inform or if such a duty was not apparent to him, whereby slight negligence shall not be prejudicial. In particular, the Contractor shall not be liable for legal costs, the Customer's own attorney's fees or costs of judgment publications as well as for any claims for damages or other claims of third parties; the Customer shall indemnify and hold the Contractor harmless in

this respect. Claims for damages of the Customer shall expire six months after knowledge of the damage; in any case, however, after three years after the infringing act of the Contractor. The amount of claims for damages shall be limited to the net order value.

### **14 Data Protection**

The customer agrees that his personal data, namely name/company, profession, date of birth, company register number, powers of representation, contact person, business address and other addresses of the customer, telephone number, fax number, e-mail address, bank details, credit card data, VAT number) may be used for the purpose of fulfilling the contract and supporting the customer as well as for own advertising purposes, for example for sending offers, advertising brochures and newsletters (in paper and electronic form), as well as for the purpose of referring to the existing or former business relationship with the customer (reference). The customer agrees that electronic mail may be sent to him for advertising purposes until revoked. This consent can be revoked at any time in writing by e-mail, fax or letter to the contact details listed at the top of the GTC.

### **15 Place of Performance and Jurisdiction**

Place of performance is the registered office of the contractor. In case of shipment, the risk shall pass to the Customer as soon as the Contractor has handed over the goods to the carrier chosen by the Customer. The place of jurisdiction for all legal disputes arising between the Design Studio and the customer in connection with this contractual relationship shall be the court having subject-matter jurisdiction for the registered office of the Design Studio. Notwithstanding the foregoing, the contractor shall be entitled to sue the customer at the customer's general place of jurisdiction. Insofar as in this contract designations referring to natural persons are only stated in the masculine form, they refer to women and men in the same way. When applying the designation to specific natural persons, the respective gender-specific form shall be used.