



GENERAL TERMS AND CONDITIONS

Status as of 02/2024 – ddp: Deutsche Digital & Performance, Owner: Arne Ahlreip, Gottfried-August Bürger-Str. 7, D-06343 Molmerswende

CONTRACTING PARTIES

The following general terms and conditions apply to all legal transactions of:
ddp : Deutsche Digital & Performance; represented by the owner Arne Ahlreip, hereinafter referred to as the Agency. Conditions of the customer deviating from these terms and conditions will only be accepted by the Agency after separate and written acknowledgment.

1. APPLICABILITY OF THE TERMS AND CONDITIONS

1.1 Validity and Changes:

The version of these terms and conditions valid at the time of contract conclusion shall prevail. Deviations and additional agreements are only effective if confirmed in writing by the Agency.

1.2 Rejection of Customer's Terms and Conditions:

Any terms and conditions of the customer will not be accepted, even if known, unless expressly agreed otherwise in writing. The Agency explicitly rejects the customer's terms and conditions without further notice.

1.3 Changes and Objection:

Changes to these terms and conditions will be communicated to the customer and deemed accepted if the customer does not object in writing within 14 days. The customer is expressly notified of the significance of their silence.

1.4 Invalid Provisions:

If individual provisions of these terms and conditions are invalid, the binding nature of the remaining provisions and contracts shall remain unaffected. Invalid provisions shall be replaced by valid ones that come closest to the meaning and purpose.

1.5 Non-binding Offers:

The offers of the Agency are non-binding.

1.6 Social Media Risk:

Before issuing an order, the Agency hereby informs the customer that social media channels have the right to reject or remove advertisements for any reason. The Agency operates to the best of its knowledge but cannot guarantee the campaign's availability at all times due to current terms of use and the possibility of user complaints. In the event of such a scenario or similar circumstances, the customer releases the Agency from any claims for damages. The services provided are to be remunerated accordingly.

1.7 Search Engine Risk:

The Agency hereby informs the customer, before accepting an order, about the risks associated with search engines, which have the right to reject or remove advertisements and search engine results for any reason. The Agency intends to execute the order to the best of its knowledge but cannot guarantee the continuous availability of the campaign due to current terms of use and the possibility of user complaints. The Agency does not guarantee that search engine results for the customer's web offerings will reach the first place or similar desired positions. There is also no guarantee that ad positions will not be displayed more frequently or prominently due to higher bids from a competitor of the customer. In the event of such a scenario or similar circumstances, the customer releases the Agency from any claims for damages. The services provided are to be remunerated accordingly.

2. SCOPE OF SERVICES, ORDER PROCESSING, AND CUSTOMER'S OBLIGATIONS

2. Scope:

The scope of services is defined in the service description of the agency contract or any order confirmation by the agency, along with the possibly provided briefing protocol ("Offer Documents"). Any subsequent changes to the scope of services require written confirmation from the agency. Within the framework set by the customer, the agency has creative freedom in fulfilling the order.

2.2 Approval Deadlines:

All agency services, especially drafts, sketches, final drawings, and electronic files, must be reviewed by the customer and approved within three working days of receipt. Failure to approve on time will result in the services being deemed accepted by the customer.

2.3 Customer's Obligations:

The customer must provide the agency with all necessary information and materials in a timely and complete manner for service delivery. The customer is to inform the agency of any circumstances relevant to the order, even if they become known during the order execution. The customer bears the cost if work needs to be repeated or delayed due to incorrect, incomplete, or subsequently changed information.

2.4 Third-Party Copyrights:

The customer also agrees to check the materials provided for the order (photos, logos, etc.) for possible third-party copyrights, trademarks, or other rights (Rights Clearing). The customer

guarantees that these materials are free from third-party rights and can be used for the intended purpose. In case of slight negligence or after fulfilling its duty to warn, the agency is not liable – subject to the internal relationship with the customer – for violations of such third-party rights through the provided materials. If the agency is held liable by third parties due to such infringement, the customer indemnifies and holds the agency harmless. The customer reimburses the agency for all disadvantages incurred, especially the costs of appropriate legal representation. The customer agrees to support the agency in defending against potential claims by third parties and provides all necessary documents without request.

3. CONCEPT AND IDEA PROTECTION:

3.1 Invitation and Acceptance:

If the potential customer invites the agency to create a concept before entering into a contract, a contractual relationship ("Pitching Contract") arises between the potential customer and the agency. This contract is based on the following General Terms and Conditions (GTC). The potential customer acknowledges that the agency incurs cost-intensive preliminary services in developing the concept, even if no performance obligations have been assumed.

3.2 Copyright Protection:

The created concept, to the extent it reaches the level of a work, is subject to the protection of copyright law in its linguistic and graphic parts. Any use and modification of these parts without the consent of the agency is prohibited to the potential customer under copyright law.

3.3 Idea Protection:

The concept also includes ideas that do not reach the level of a work and thus are not subject to the protection of copyright law. These ideas form the beginning of the creative process and can be defined as the origin of growth or marketing strategies. Elements of the concept that are peculiar and give the growth or marketing strategy its characteristic imprint are protected. This includes, in particular, keywords, analyses, texts, recommendations, graphics, illustrations, and advertising materials, even if they do not reach the level of a work.

3.4 Economic Exploitation:

The potential customer undertakes to refrain from economically exploiting, permitting, or using the ideas presented by the agency within the framework of the concept outside of a subsequent main contract.

3.5 Notification of Existing Ideas:

If the potential customer believes that familiar ideas have been presented, he must inform the agency within 14 days after the presentation by email, providing evidence that allows for a temporal assignment.

3.6 Acceptance of New Ideas:

Conversely, the parties assume that the agency has presented a new idea to the potential customer. The use of this idea by the customer is considered meritorious for the agency.

3.7 Release from Obligations:

The potential customer can exempt himself from obligations under this section by paying appropriate compensation plus 20% value-added tax. The exemption takes effect only upon the full receipt of the compensation by the agency.

4. ENGAGEMENT OF THIRD PARTIES

4.1 Engagement of Third Parties:

The agency is authorized, at its discretion, to execute the services itself, enlist qualified third parties as agents for the performance of contractual services, and/or substitute such services ("outsourcing"). The agency is not obligated to disclose the names and addresses of the agents.

4.2 Production Orders:

The agency has the right to place orders for the production of advertising materials, in which the agency has cooperated in accordance with the contract, on behalf and at the expense of the client. The agency is not obliged to disclose the names and addresses of the production companies.

4.3 Agents:

In cases where the agency commissions necessary or agreed third-party services, the respective contractors are not considered agents of the agency.

4.4 Contract Durations:

The client is obliged to fulfill commitments to third parties that extend beyond the contract duration explicitly, even in the event of termination of the agency contract for cause.

4.5 Liability:

The agency disclaims any liability for legal claims by authors for subsequent increases in remuneration; the client indemnifies the agency upon first request from such claims.

5. DELIVERY OR PERFORMANCE DEADLINES

5.1 Delivery or Performance Deadlines:

Stated delivery or performance deadlines are considered approximate and non-binding unless explicitly agreed upon as binding. Binding deadline arrangements must be documented in writing or confirmed in writing by the Agency.

5.2 Delays Due to Force Majeure:

If the delivery/performance of the Agency is delayed due to reasons beyond its control, such as events of force majeure and other unforeseeable events that cannot be reasonably avoided with reasonable means, the performance obligations are suspended for the duration and extent of the obstacle, and the deadlines are extended accordingly. If such delays persist for more than two months, both the client and the agency are entitled to withdraw from the contract.

5.3 Delays Caused by the Agency:

If the Agency is in default, the client can only withdraw from the contract after having set a written reasonable grace period of at least 14 days to the Agency, and this period has lapsed without result. Claims for damages by the client due to non-performance or delay are excluded, except in case of proven intent or gross negligence.

5.4 Delays Caused by the Client:

If the client has failed to provide the Agency with information, approvals, and documents that would have been necessary for the approximately timely provision of the service, the client acknowledges that the Agency is released from any responsibility for delays. In such cases, the client has no claims for damages against the Agency.

The client is aware that delays due to outstanding information or approvals from the client can impact the original project timeline. In cases where the project timeline has been significantly exceeded, leading to overlaps with other projects, the Agency reserves the right to allow reasonable waiting times to ensure the smooth processing of other client projects. The Agency will make every effort to ensure fair prioritization and coordination between projects.

6. COMPENSATION FOR AGENCY SERVICES

6.1 Compensation on an Hourly Fee Basis:

Unless otherwise agreed in the individual order, services provided by the Agency will be invoiced based on the agreed hourly fee, calculated according to the time spent and the current hourly rates of those involved. Technical costs will be invoiced based on the current rates of the Agency for technical costs. The compensation for usage rights is regulated in the following sections 6.6 to 6.8.

6.2 Advance Payments:

If not otherwise agreed, the Agency is entitled to request an advance payment of 50% of the total amount upon order placement. The remaining amount is to be settled upon completion of the scope of services. The fee is understood as a net fee plus the statutory value-added tax.

6.3 Surcharges:

For services provided by third parties, which the Agency legitimately engages to fulfill the contract/order, the Agency charges a surcharge of 15 percent of the net amount of the third party's invoice.

6.4 Internal Costs:

Internal costs incurred by the Agency for the execution of the contractual service (e.g., communication costs, shipping and reproduction costs, as well as travel costs) are invoiced to the client at cost price.

6.5 Default of Payment:

6.5.1 If the client is in default of payment, the Agency may demand advance payments for future services.

6.5.2 In case of default of payment by the client, the statutory default interest rates apply at the level applicable to business transactions. In case of default of payment, the client undertakes to reimburse the Agency for the incurred reminder and collection expenses, to the extent necessary for appropriate legal pursuit. This includes the costs of two reminders at the market customary rate, currently at least €20.00 per reminder, as well as a reminder from a lawyer commissioned with collection. The assertion of further rights and claims remains unaffected.

6.5.3 In case of the client's default of payment, the Agency may declare all services and partial services provided within the framework of other contracts concluded with the client immediately due and payable.

6.5.4 Furthermore, the Agency is not obliged to provide further services until the outstanding amount is settled (right of retention). The obligation to pay the fee remains unaffected.

6.5.5 If payment by installments has been agreed upon, the Agency reserves the right to demand immediate payment of the entire outstanding debt in case of non-timely payment of installments or ancillary claims (loss of installment).

6.5.6 The client is not entitled to offset its own claims against claims of the Agency, unless the client's claim has been acknowledged in writing by the Agency or has been legally established.

6.5.7 The Agency is entitled to assign claims to a third party. For this purpose, the Agency is allowed to disclose the customer data necessary for further debt collection to third parties.

6.6 Usage Fees:

The usage rights mentioned in sections 6.1 and 6.2 are covered by the payment of the agreed fee in the order. If the use extends beyond the specified end of the advertising campaign, the contractual territory is expanded, or the use takes place in media/ advertising media other than those specified in the order, a usage fee is due to the Agency for a maximum of three years. This fee amounts to:

For the 1st year: 50 percent
For the 2nd year: 30 percent
For the 3rd year: 10 percent

of the respective net fee. By paying this fee, the consent of the Agency according to section 6.1, last sentence, is considered granted.

If the rights of third parties used for the contract fulfillment are impaired by the extension of use, the regulation in section 6.2 applies accordingly.

6.7 Buy-Outs:

For the negotiation of buy-outs for the use of work results from third parties, a fee of 15 percent of the net usage fee of the respective third party is to be paid.

6.8 Compensation for Unrealized Work:

For all work of the Agency that, for any reason, is not implemented by the client, the agreed fee is due. By paying the fee, the client does not acquire any usage rights to already completed work; concepts, drafts, and other documents not executed must be promptly returned to the Agency.

7. OWNERSHIP AND COPYRIGHT

7.1 Retention of Ownership and Usage Rights:

All services provided by the agency, including those from presentations (e.g., suggestions, ideas, sketches, preliminary designs, scribbles, finished drawings, concepts, negatives, slides), as well as individual parts thereof, remain the property of the agency, and can be reclaimed by the agency at any time – especially upon termination of the contractual relationship. The client acquires the right of use for the agreed purpose by paying the fee. In the absence of any different agreement, the client may only use the agency's services in Austria. The acquisition of usage and exploitation rights for services provided by the agency always requires the complete payment of the fees invoiced by the agency. If the client uses the agency's services before this point, this usage is based on a revocable loan relationship.

7.2 Changes and Modifications:

Changes or modifications to the agency's services, especially their further development by the client or third parties acting on behalf of the client, are only permissible with the explicit consent of the agency and – if the services are protected by copyright – the author.

7.3 Extended Usage:

For the usage of agency services that goes beyond the originally agreed purpose and scope, the consent of the agency is required – regardless of whether these services are protected by copyright. The agency and the author are entitled to a separate, appropriate remuneration for this.

7.4 Post-contractual Approval:

For the usage of agency services or advertising materials for which the agency has developed conceptual or design templates after the expiration of the agency contract – regardless of whether these services are protected by copyright or not – the approval of the agency is also necessary.

7.5 Compensation after Contract End:

The agency is entitled to compensation according to Section 6.6 for uses as per Section 7.4.

7.6 Liability for Unlawful Use:

The client is liable to the agency for any unlawful use in double the amount of the reasonable fee for such usage.

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8. IDENTIFICATION

8.1 Notice of Agency and Copyright:

The agency is entitled to indicate the agency and possibly the author on all advertising materials and in all advertising measures without the customer being entitled to any compensation.

8.2 Reference Notice:

Subject to the customer's written revocation at any time, the agency is entitled to refer to the existing or former business relationship with the customer (reference notice) by name and company logo on its advertising media, especially on its website.

9. WARRANTY

9.1 Notification of Defects:

The customer must report any defects promptly, in any case within eight days after delivery/performance by the agency; hidden defects within eight days after their discovery, in writing and describing the defect. Otherwise, the service is considered approved. In this case, the assertion of warranty and compensation claims, as well as the right to contest errors due to defects, are excluded.

9.2 Right to Improvement:

In the case of justified and timely complaint of defects, the customer has the right to improvement or replacement of the delivery/service by the agency. The agency will remedy the defects within a reasonable period, with the customer enabling the agency to take all necessary measures for inspection and defect correction. The agency is entitled to refuse improvement of the service if it is impossible or associated with a disproportionately high effort for the agency. In this case, the customer is entitled to statutory rights of conversion or reduction. In the case of improvement, the customer is responsible for the transportation of the defective (physical) item at their own cost.

9.3 Examination of Legality:

It is also the customer's responsibility to examine the service for its legal, especially competition, trademark, copyright, and administrative law compliance. The agency is only obliged to a rough examination of legal admissibility. In the case of slight negligence or after fulfilling any duty to warn the customer, the agency is not liable for the legal permissibility of content if it was specified or approved by the customer.

9.4 Warranty Period:

The warranty period is six months from delivery/performance. The right to recourse against the agency expires one year after delivery/performance. The customer is not entitled to withhold payments due to complaints.

10. LIABILITY AND PRODUCT LIABILITY: RESPONSIBILITY AND LIMITATION OF LIABILITY

10.1 Liability for Slight Negligence:

In cases of slight negligence, the agency and its employees, contractors, or other agents ("persons") are not liable for material or financial damages to the customer, whether direct or indirect damages, loss of profit, consequential damages, damages due to delay, impossibility, positive breach of contract, fault in conclusion of the contract, or due to defective or incomplete performance. The injured party must prove the existence of gross negligence. To the extent that the liability of the agency is excluded or limited, this also applies to the personal liability of its personnel.

10.2 Exclusion of Liability:

Any liability of the agency for claims arising from the services provided by the agency (e.g., advertising measures) against the customer is expressly excluded if the agency has fulfilled its duty to inform or if such duty was not recognizable to them, without prejudice to slight negligence. In particular, the agency is not liable for legal costs, the customer's own attorney costs, or costs of judgment publications, as well as any claims for damages or other claims by third parties; the customer shall hold the agency harmless in this regard.

10.3 Expiry of Damage Claims:

Damage claims of the customer expire six months after knowledge of the damage, but in any case after three years from the agency's action causing the infringement. Damage claims are limited in amount to the net order value.

11. DATA PROTECTION

The customer agrees that their personal data (namely name/company, profession, date of birth, commercial register number, powers of representation, contact person, business address, and other addresses of the customer, telephone number, fax number, email address, bank details, credit card information, VAT number) will be automatically collected, stored, and processed for the purpose of contract fulfillment and customer support, as well as for the agency's own advertising purposes, such as sending offers, advertising brochures, and newsletters (in paper and electronic form). Additionally, it may be used for referencing existing or previous business relationships with the customer (reference notice). The client agrees to receive electronic mail for advertising purposes until revoked. This consent can be revoked at any time in writing by email, fax, or letter to the contact details provided at the beginning of the terms and conditions.

12. APPLICABLE LAW

The contract and all mutual rights, obligations, and claims derived from it between the agency and the customer are subject to German law, excluding its conflict of law principles and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

13. PLACE OF PERFORMANCE AND LEGAL VENUE

13.1 Place of Performance:

The place of performance is the registered office of the agency. In the case of shipping, the risk passes to the customer as soon as the agency has handed over the goods to the transport company of its choice.

13.2 Legal Venue:

As the legal venue for all legal disputes arising between the agency and the customer in connection with this contractual relationship, the court that is substantively competent for the registered office of the agency is agreed upon. Notwithstanding this, the agency is entitled to sue the customer at his general place of jurisdiction.

13.3 Gender-Neutral Wording:

Where gender-specific terms referring to natural persons are only mentioned in the masculine form in this contract, they refer to women and men in the same way. When applying the term to specific natural persons, the gender-specific form is to be used.