

## General Terms and Conditions

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#### § 1 General - Scope of Application

- (1) The General Terms and Conditions (GTC) of the Contractor are an integral part of the contract and apply exclusively. Deliveries, services and offers shall be made exclusively on the basis of these terms and conditions. The Contractor shall not recognise any terms and conditions of the Customer that conflict with or deviate from the Contractor's General Terms and Conditions, unless the Contractor has explicitly agreed to their validity. The Contractor shall also not recognise deviating terms and conditions if the Contractor executes the order without reservation in the knowledge of conflicting or deviating terms and conditions of the Customer.
- (2) The contractor's GTC apply only to entrepreneurs.
- (3) All agreements arising from the contract must be recorded in text form. Verbal agreements are only binding if the contractor has confirmed them in text form.
- (4) Austrian law shall apply exclusively.

#### § 2 Offer - Content of Service - Conclusion of Contract

- (1) The offers of the contractor are subject to confirmation, unless otherwise agreed.
- (2) If the customer places orders with the contractor verbally, these are binding. The Contractor shall be entitled to demand that the Customer confirms verbally placed orders in text form without delay. An order shall be deemed to have been placed if the Contractor, with the knowledge of the Customer, commences part of the execution of the order before all points of the order have been agreed, without the Customer objecting. An order can also be accepted by the contractor by carrying out the activity if clarity has already been reached on all points of an order.
- (3) The object of the contractor's activity is always the agreed service and not the achievement of a certain economic success.
- (4) All services are provided exclusively on the basis of the individually agreed prices, the service description and these General Terms and Conditions.
- (5) The order can be placed verbally, in writing, by telephone, via the contact form or by e-mail. The contract is concluded with the acceptance of the order by the contractor, for which no special form is required. The contractor informs the customer of the conclusion of the contract with the order confirmation. This may be in written or oral form.

### § 3 Prices, terms of payment, offsetting, retention

- (1) All prices vis-à-vis entrepreneurs are net prices plus the statutory value-added tax applicable at the time, insofar as this is incurred and nothing to the contrary has been agreed. In case of a longer duration of the contract (more than 6 months) the contractor has the right to claim an adjustment of the remuneration, the customer is obliged to enter into negotiations with the contractor about this.
- (2) Unless otherwise agreed, the Contractor's services shall be invoiced on a time basis. The hourly wage of the contractor results from the order and is to be paid plus expenses and disbursements in the proven and necessary amount.
- (3) If a package or lump sum price has been agreed, this shall apply insofar as the contractor's obligation to perform is defined in the agreement or the circumstances. Services which are not included in the respective package or lump sum shall be additionally remunerated by the customer according to the contractually agreed hourly rates plus necessary expenses and disbursements.
- (4) Payment by the customer is due within 14 days of receipt of the invoice without deductions. The client is advised that he will be in default at the latest 30 days after receipt of the invoice. If the customer is in default of payment, he shall be obliged to reimburse a flat rate of € 2.00 for expenses for each additional reminder.
- (5) The customer expressly agrees to the sending of invoices, payment reminders and dunning letters in electronic form (e-mail). At the explicit request of the customer, the customer will also receive invoices by post. However, the electronic delivery remains decisive for the receipt as well as the expiry of the deadline.
- (6) The customer may only offset if his counterclaims are legally established, undisputed, or recognised by the contractor or if the right of offset is based on the customer's rights due to incomplete or defective performance from the same contractual relationship.
- (7) The Contractor shall be entitled to exercise a right of retention in respect of all claims arising from the business relationship with the Customer.
- (8) Customers domiciled outside of Austria are responsible for the correct payment of the applicable value added tax to the tax authorities of their country. The Contractor shall invoice entrepreneurial customers outside Austria within the meaning of the reverse charge procedure exclusively net, without value added tax.

#### **§ 4 Performance of services, time of performance, delay, force majeure**

- (1) The Contractor shall provide services to its customers virtually and in person on site. Exceptions shall be decided jointly. After acceptance of the contract, the customer has the option of assigning one-off or recurring activities to the contractor. The corresponding scope of services shall be jointly defined and confirmed by the contractor.
- (2) The contractor is entitled to engage subcontractors and to subcontract the order in whole or in part to third parties. The Client may, however, object to subcontracting if his interests worthy of protection are impaired thereby.
- (3) The beginning of a possibly stated performance time presupposes the clarification of all technical, legal and design issues and the timely and proper fulfilment of the Client's obligations. The defence of non-performance of the contract for the contractor remains reserved..
- (4) Delivery and performance times as well as their changes are only binding if they have been agreed in the contract.
- (5) Insofar as the Contractor is dependent on the services of one or more upstream suppliers for the provision of its services, agreed performance deadlines shall apply subject to timely self-delivery by the Contractor's upstream suppliers. The reservation does not apply to delays for which the contractor is responsible.
- (6) Force majeure or operational disruptions occurring at the Contractor or the Contractor's subcontractors, e.g. due to riots, strikes or lockouts, which temporarily prevent the Contractor, through no fault of its own, from delivering the performance on a possibly agreed date or within a possibly agreed period, shall change the performance periods by the duration of the disruption of performance caused by the circumstances. If a corresponding disruption leads to a postponement of performance of more than two weeks or if the customer's interest in the performance of the contract objectively ceases even before this, the customer shall be entitled to withdraw from the contract.

#### **§ 5 Duties of the Customer**

- (1) The Customer is obliged to inform the Contractor of all laws, standards and other regulations which the Contractor is to observe for the provision of the service before placing the order. The contractor does not provide legal advice or review. For this purpose, the customer shall engage a lawyer.
- (2) The customer is obliged to provide the contractor in good time with the information and materials required for the performance of the services (e.g. general or specific instructions for action, logos to be used, layout templates for text traffic or other agreed provisions of the customer).
- (3) The customer is obliged to provide required materials in a common, immediately usable digital format. The Customer shall ensure that the necessary rights of use are granted, in particular also reproduction, distribution and processing rights to

the extent required for the Contractor's services. The review of legal admissibility with regard to intellectual property rights and copyright can only be carried out by a lawyer and is not the subject of the order.

- (4) Insofar as the Client provides the Contractor with tangible or intangible objects, in particular image, text or sound files, which infringe the rights of third parties, the Client shall be obliged to indemnify the Contractor against any claims by third parties upon first request. This includes in particular the costs of legal action.
- (5) The customer is obliged to independently carry out any data backups required as part of his own security, in particular also before the start of the order. The Contractor shall not be liable for lost data insofar as it would still be available if the Customer had properly backed up the data.
- (6) The Customer agrees that the Contractor may name the service for the Customer with the Customer's name and logo as a reference.
- (7) The Customer shall not directly or indirectly entice away, employ, take into employment or otherwise employ any employees, subcontractors or service staff of the Contractor for a period of two years. If the customer culpably violates this obligation, he shall be obliged to pay a contractual penalty of 5,000 euros in each individual case. The contractor reserves the right to claim further damages; the contractual penalty shall be offset against the damages.

## **§ 6 Default of Acceptance and Liability of the Customer**

- (1) If the Client is in default of acceptance of the Contractor's services, he shall be obliged to continue payment of the remuneration until the termination of the contract. The Contractor shall take into account any expenses saved as well as what it acquires through the use of its labour elsewhere. It is pointed out to the customer that the contractor works on a project basis and does not carry out more than a certain number of projects at the same time.
- (2) If information, documents or templates, such as additions, layouts or instructions for action, are not available on time and in full, the Contractor shall be entitled not to commence performance in accordance with § 4. Waiting times of the Contractor or its employees for which the Client is responsible shall be remunerated in the same way as working times if it was not possible to work elsewhere.
- (3) Insofar as the customer violates his duties to inform and cooperate, the customer is obliged to bear the corresponding additional costs. The Contractor shall not be liable for damages that can be attributed to the breach of duties to cooperate or to the delivery of incorrect or incomplete information.

## § 7 Rights to the result

- (1) Insofar as rights capable of being protected arise in the course of the Contractor's performance, the Client shall receive a simple licence to use the work result for the purposes stipulated in the contract. If the customer wishes to be granted further rights, in particular the right to reproduce, make available, publicly reproduce, publish, edit or redesign or other exploitation rights, these shall be paid for separately.
- (2) Insofar as the Contractor is entitled to a copyright to the results, the Client shall be obliged to name the Contractor as the author, unless otherwise contractually agreed.

## § 8 Termination of the contract

- (1) If a fixed term is agreed in the contract, this term shall apply. In this case, termination is not possible. If no agreement on a new fixed term is reached at the end of a fixed term, the contract shall terminate.
- (2) If a fixed term has not been agreed, the contract may be terminated in writing by either party with two weeks' notice to the end of the month. The right to extraordinary termination shall not be affected by this.
- (3) If the Customer terminates the contract, the Contractor's services shall be invoiced on a pro rata basis until the termination takes effect. In addition, the Customer shall reimburse the Contractor for those costs which the Contractor demonstrably incurred on the occasion of and for the direct purpose of the performance of the terminated scope of services in compliance with commercial diligence and which were or are no longer avoidable within the scope of what is reasonable (e.g. data backups still required).

## § 9 Liability

- (1) The Contractor shall have unlimited liability, irrespective of the legal grounds, for intentional and grossly negligent conduct and in the event of culpable injury to life, limb and health. The entrepreneurial customer must prove the existence of intent or gross negligence.
- (2) In the event of a slightly negligent breach of contract of non-substantial contractual obligations, the Contractor shall not be liable at all. In the event of a breach of non-essential contractual obligations, the Contractor's liability shall be limited to compensation for the typical damage foreseeable at the time of conclusion of the contract. Material contractual obligations are obligations which protect the legal positions of the customer which are material to the contract, i.e. which the contract must grant to the customer according to its content and

purpose, as well as obligations the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the customer may regularly rely.

- (3) In all other respects, the liability of the Contractor is excluded, irrespective of the legal grounds. The limitation of liability shall also apply in favour of the Contractor's employees and staff as well as its vicarious agents and subcontractors. A reversal of the burden of proof is not associated with the above provisions.

### **§ 10 Deterioration of the Customer's assets**

- (1) If, after the conclusion of the contract, the contractor becomes aware of facts which call into question the client's ability to pay, the contractor shall be entitled to demand full payment of the agreed remuneration or the provision of a suitable security before further execution of the order.
- (2) If the client is in default of payment of an invoice, the contractor is entitled to suspend further performance until payment of the remuneration or provision of adequate security for the remaining remuneration. If the customer does not comply with the request for payment or the provision of security within a reasonable period of time, the contractor is entitled to terminate the contract without notice for good cause. Further claims of the Contractor shall remain unaffected by this.

### **§ 11 Confidentiality**

- (1) Only information, data, plans or other documents of the customer which the customer has expressly marked as secret are subject to a confidentiality obligation of the contractor.
- (2) The obligation to maintain secrecy shall not apply if the information is or becomes generally known through no fault of the contractor, if the information requiring secrecy has been acquired independently and without the use of the client's information or if the law or an authority requires disclosure on the basis of a statutory provision.

### **§ 12 Mediation**

- (1) In the event of disputes arising from the business relationship between the contractor and the customer, the parties are obliged to seek an amicable solution. If an agreement cannot be reached, they undertake to settle their differences in mediation before resorting to legal action. The possibility of summary proceedings by way of interim relief shall remain unaffected.

- (2) If one party requests mediation from the other party, both parties are obliged to agree on a mediator within eight days. If this agreement is not reached within the time limit, a lawyer mediator - primarily those mediators who offer online mediation shall be chosen - shall be appointed bindingly for the parties at the request of one of the parties by the President of the Bar Association or a representative at the seat of the contractor. This shall also be the place of mediation, unless the Presidium of the Bar makes a proposal for online mediation. The language of mediation shall be German, unless all parties agree on another language.
- (3) Legal recourse (or alternatively agreed arbitration, if applicable) is only admissible if the mediation has failed because (a) the parties mutually declare the mediation terminated, (b) after the first mediation session further negotiations are refused by one party, (c) the mediator declares the mediation failed or (d) an agreement is not reached within 3 months after the beginning of the first mediation session, unless the parties mutually extend the time limit.
- (4) The costs of an unsuccessful mediation shall be borne internally in equal parts by the parties vis-à-vis the mediator. Notwithstanding this provision in relation to the mediator, the parties are at liberty to claim these costs and those of any accompanying legal advice as legal costs in any subsequent proceedings, in which case the respective dispute resolution shall apply. If an agreement is reached, the agreed cost regulation shall apply.

### **§ 13 Data protection**

- (1) As the body responsible under the provisions of data protection law, the Contractor assures that the collection, storage, modification, transmission, blocking, deletion and use of the Customer's personal data at the Contractor shall always be carried out in accordance with the applicable data protection provisions and other statutory regulations in order to protect the Customer's personal data. The Client's personal data shall be passed on to third parties only to the service partners involved in the processing of the contract, such as subcontractors, hosters and other third parties. In cases where the customer's personal data is passed on to third parties, the scope of the transmitted data is limited to the minimum required. By concluding the contract, the customer agrees to the collection, processing and use of his personal data in accordance with the aforementioned instructions.
- (2) The customer has the right to receive information free of charge about the personal data stored about him. Furthermore, the customer has the right to revoke his consent to the storage of his personal data at any time with effect for the future. In the event of a corresponding notification, the personal data stored about the customer will be deleted, unless the data in question is still required for the fulfilment of the obligations of the contractual relationship concluded or statutory regulations prevent deletion. In this case, the deletion shall be replaced by a blocking of the personal data concerned.



- (3) The customer agrees that the following personal data may be stored and processed: Company name, first name, last name, telephone number(s), e-mail address(es), postal address, VAT number and payment data for the purpose of order processing and personalisation of online offers of the Contractor.

#### **§ 14 Place of jurisdiction, place of performance**

- (1) If the customer is a merchant, the contractor's place of business is the place of jurisdiction, but the contractor is also entitled to sue the customer at his place of residence or place of business.
- (2) Unless otherwise stated in the order confirmation or the contract, the contractor's place of business shall be the place of performance.

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