

# General terms and conditions of business for purchase of goods and order of services

## I. Terminology, scope, issue of order

- The terms 'Order', 'Contractor' and 'Client' shall be understood in their commercial sense. 'Order' shall signify the contractual relationship, irrespective of the type of contract in question, i.e. irrespective of whether it is a contract of purchase, work, service, or any other type; 'Contractor' shall signify the contracting partner liable for the primary obligation; and 'Client' shall signify the advertising agency Jung von Matt/NECKAR GmbH and/or its staff members, as the contractual partner to whom the primary obligation is owed and who in turn is liable for payment thereof.
- These terms and conditions shall apply irrespective of whether the Client concludes the contract in its own name for its own account, in its own name for the account of another, or in the name of another for the account of another. The Order must be executed via the Client even if the Order has been placed in the name of another (i.e. a Client's customer). In such case, the Client shall be liable neither for its customer's fulfilment of contract nor for its customer's credit standing, which it does not verify.
- Orders or amendments thereto shall only be binding when placed and agreed to in writing.
- These terms and conditions shall apply exclusively. In the event that the Contractor's own general terms and conditions differ or contradict these terms and conditions or contain supplementary provisions, they shall apply only if and insofar as the Client has expressly accepted them in writing. The unreserved acceptance of goods or services by the Client shall not constitute an implied acceptance of general terms and conditions used by the Contractor even where these have been known to the Client.
- Orders must be confirmed to the Client immediately, in writing.
- The term 'IT Services' shall refer to services by the Contractor that include but are not limited to front-end (e.g. HTML5, JavaScript, CCS) and back-end development, and other client server programming services.

## II. Deadlines, delivery dates, fixed-date delivery, place of fulfilment

- Deadlines and delivery dates, once agreed, shall be binding. Orders involving the design, production or purchase of advertising material, goods, IT Services as well as the implementation of event concepts shall be transactions for delivery by a fixed date (sections 281 and 323 of the German Civil Code, section 376 of the German Commercial Code).
- The Contractor must immediately notify the Client whenever any delay in delivery is feared or expected, stating at the same time the causes for the delay and its anticipated duration.
- The Contractor must ship the delivery, at its own cost and risk, to the delivery address given, which shall be the place of fulfilment. In the case of IT Services the Client will determine the mode of delivery and performance of the work concerned. The delivery of completed work will be made free of charge in a format to be specified by the Client.

## III. Scope and performance of order

- The quantity of supplies and services stated in the written Order shall be binding. No payment will be made for excess quantities, even if they are due to technical reasons of production. Drafts leading up to the completed work form part of the scope of delivery and shall be owned by the Client.
- In the case of IT Services, the Contractor shall supply and perform all agreed services as finished works and shall owe to the Client the delivery of the contractual work result.
- The Contractor shall have a duty to document, in writing and free of charge, all work results which it has supplied and to deliver this documentation to the Client together with the results of said work and services. To coordinate the development work to be undertaken by the Contractor, each of the Parties shall appoint a project manager in charge. The project managers shall arrange project manager meetings, at which they shall consult and agree on any questions arising. Should differences of opinion emerge, instructions given by the Client's project manager shall be followed. All decisions by the project managers shall be binding for both Parties and must be recorded in written minutes.
- The Contractor is further obliged to ensure that the Contractor's duties to provide information and documentation are performed in a manner which allows the Client to take due notice in time. Where the Contractor has or gains knowledge of the fact that its contact person is on leave or otherwise unavailable, notifications must additionally be sent to the deputy in charge.

## IV. Statutory guarantee, supplementary performance

- Goods deliveries, work performances and IT Services must successfully execute the task required, must correspond to all templates and instructions issued, must fulfil the Order in quantity and content, and reflect the latest state of technology; and they must be of the same technical, promotional and artistic level as the work samples which the Contractor submitted prior to issue of order.
- The Contractor warrants and guarantees that the contractual use of results of the works and services provided, or the goods delivered in compliance with the Order, shall not infringe any third-party rights, in particular copyrights, trademark rights and moral rights, and that they do not violate current competition laws. To this extent the Contractor shall release the Client and hold it free and harmless from all claims by third parties.
- Where the Client requests supplementary performance or rectification of defective works, services or goods, the cure period in which to remedy such defects shall be set by the Client in a manner which allows it to place the Order with another

supplier and enables it to meet subsequent deadlines as made known to the Contractor should such supplementary performance or rectification fail.

- The Client shall notify the Contractor of any discrepancies discovered upon inspection between delivered works and the contractually agreed specifications. The Contractor shall then rectify these notified discrepancies without delay and free of charge, and shall submit the corrected version of the work results to the Client once again for acceptance. Such acceptance shall be governed mutatis mutandis by the regulations in sections IV and V.
- Should work results supplied by the Contractor following an attempt of rectification or supplementary performance fail to satisfy contractually agreed specifications, the supplementary performance and rectification shall be regarded as having failed.

## V. Acceptance, notice of defects

- Unless rejected within 15 days following its supply or delivery, the work result delivered shall be deemed as having been accepted.
- Notice of defects shall in any event be deemed to have been made in due time if they are raised and notified to the Contractor within five working days following discovery of defect in the normal course of the Client's business. Payment shall not constitute a waiver of the Client's right to complain (*Rügerecht*).
- Where the inspection of the work results delivered or performed by the Contractor proves satisfactory, the Client shall inform the Contractor of its acceptance in writing.
- Full payment of an invoice issued by the Contractor upon delivery of a work result shall not constitute acceptance of the respective work result.

## VI. Invoices, prices, payment, packaging, counterclaims

- Immediately upon acceptance or delivery of the goods, works or services, the invoice must be sent to the Client, addressed for the attention of the Client's contact person in charge of the matter.
- The agreed price must not be exceeded. In the event that the Client, after having placed an order or awarded a contract, requires supplementary work – e.g. changes or additions – which will lead to additional costs on the part of the Contractor, the Contractor shall be entitled to an additional compensation only insofar as the Contractor has notified the Client of such increased costs immediately and in writing or, where the increase exceeds 5% of the agreed price, the Contractor has submitted a written cost estimate/quote for the Client's approval.
- In the absence of an individual agreement on payment terms, payment shall be within 14 days following receipt of invoice at 2% early-payment discount, or within 30 days without deduction.
- Costs of packaging as well as carrier costs, storage costs and import duties shall not be reimbursed.
- All agreed prices shall be net, i.e. plus VAT at the statutory rate. Delivery shall be made franco domicile to the reception point stipulated by the Client and the premium for freight insurance cover shall be borne by the Contractor.
- The Client shall have the right to set off or withhold payments or performance due to the Contractor against counterclaims, as well as the right to withhold payments for reason of non-performance (*Einrede des nicht erfüllten Vertrages*) in accordance with the applicable statutory provisions. In particular, the Client is entitled to withhold payments as long as the Client has claims against the Contractor resulting from incomplete or defective deliveries or performances.
- The Contractor shall have the right to set off or withhold payments or performance due to the Client against counterclaims only if and insofar as such counterclaims are either undisputed by the Client or have been established and awarded by final court ruling without possible recourse.

## VII. Special terms and conditions for photographers and for manufacturers of videos and films

- Unless agreed otherwise in writing, the Contractor shall obtain all models and props on its own account and at its own risk.
- If filming or photography is impossible because a model, booked by the Contractor in good time, fails to appear at the film or photography session, the Contractor shall pay all additional costs for model fees, props and ancillary expenses.
- The agreed fee shall be deemed to cover all the Contractor's performances, including – unless agreed otherwise in writing – all costs of models, props and materials, laboratory costs, travel expenses, and similar expenditure. Insofar as the Client is required to reimburse the Contractor's external costs as agreed, their amount must be approved by the Client before they are incurred, such approval to be based on a complete and detailed prior cost estimate prepared by the Contractor.
- The Contractor waives any rights to sign such films or photographs and any right it may have to an authorship credit, however the Client being entitled but not obliged to name and identify the Contractor at the Client's discretion.
- Upon payment of agreed fee, the Client shall acquire ownership of all photographic material (negatives, slides, films, intermediate negatives, prints, digital raw data, files in open formats, e.g. PSD, etc.). Such photographic material must be handed over to the Client along with the invoice, if this has not been done earlier, or, should the Client so wish, must be stored free of charge on behalf and for the sole benefit of the Client as from the time when the invoice is issued.
- The Contractor shall have a duty to ensure that all third parties engaged in the production, and others possessing rights in the result of the production, shall in each instance and without fail sign a declaration on transfer of rights of use, as set out in section IV 2, and to submit without request or delay these declarations to the Client.
- Film material shall be handed over in a format specified by the Client.

## **VIII. Rights of use under copyright, including ancillary copyrights**

1. In granting the rights of use pursuant to this section, it is the intention on the part of the Contractor and Client to provide the Client and its customers, to the largest extent possible, with the unlimited, unrestricted and unencumbered rights of use of the contractual work results. The Contractor shall therefore transfer to the Client, at the moment of their creation, all transferable rights to its contractual work, such transfer to be worldwide, exclusive, perpetual and unrestricted as substance, covering all types and manners of use. The Client shall in particular, without limitation, be entitled – at its sole and free discretion – to exploit the Contractor's contractual work in all media, wholly or in part, modified or unmodified, in digital or analogue form, to make them available to third parties and the public, to publish, duplicate, distribute, broadcast or perform the contractual works, and to transfer or license these rights of use to third parties, wholly or in part. Such transfer of rights shall include in particular, but without limitation, the right of duplication, the right of distribution, rights of exhibition, recital, performance and presentation, the rights of communication to the public and of making available to the public, the broadcasting rights (including satellite broadcasts and cable retransmission), the reproduction rights (including reproduction via sound and image carriers) and the right to make modifications and adaptations, provided that the artistic character of the work is maintained.
2. The above grant of rights shall include the Client's right to grant exclusive or non-exclusive rights of use of the work results to third parties, and/or to transfer rights of use to third parties without the requirement for permission from the Contractor.
3. The transfer of rights pursuant to clauses 1 and 2 above of this section VIII shall expressly extend to and include the use and exploitation of the contractual work results also in media, ways or manners as yet unknown.
4. Where the Contractor employs staff and/or subcontractors for the performance of the contractual duties and obligations, it shall have a duty to acquire in written form and compensate at least adequately (including claims for compensation under sections 32 and 32a of the German Copyright Act) the rights of use of the contributions and works obtained from staff and/or subcontractors to the same extent as described in clauses 1 to 3 of this section VIII and to transfer such rights of use to the Client. At the Client's request, the Contractor shall provide the Client with proof that such staff or subcontractors have granted said rights by making the original deeds and documentation of transfer available to the Client. The Contractor shall have a duty to ensure that third parties employed for the performance of the contractual duties and obligations waive any right of authorship credit (e.g. section 13 clause 2 of the German Copyright Act).
5. In cases of IT Services, the Contractor shall anytime at the Client's request, following the completion and delivery of the work, surrender to the Client all software codes, (open) files, materials, documentation or other documents produced in connection with such IT Services. This shall apply in particular to all source and object codes created in connection with the developed work. The Contractor shall not be entitled to refuse or withhold surrender by asserting alleged or factual claims against the Client arising from other commissions. The implementation or inclusion of third-party software (e.g. open-source software) into the source and object codes created by the Contractor requires the Client's prior consent. In cases of such an implementation or inclusion, the Contractor will supply the Client with a detailed documentation and description of such third-party software (including its version, identification of license, etc.) and surrender this documentation to the Client together with the other documents pursuant to section IX.
6. The adequate compensation for the transfer of rights of use and for production of detailed documentation is included in the agreed remuneration. In the event that protected works are exploited in media, ways or manners as yet unknown, the adequate compensation shall be determined separately in application of section 32 of the German Copyright Act.
7. Should new types of use emerge subsequent to transfer of rights, and should the above transfer of rights not cover these new types of use, the Client shall have the option to acquire the rights for said types of use for an adequate additional fee. The Contractor shall only be entitled to make these rights available to third parties after the Client has declined in writing an offer to acquire these rights.

## **IX. Client's documents**

All drafts, artwork, drawings, printing plates, templates, samples, (open) files or other documents, tools or aids which the Contractor receives shall remain the sole and exclusive property of the Client, may only be used for the performance of the contract, must be stored carefully by the Contractor, and must be returned upon first demand but in any event immediately upon completion or termination of the contract. The Contractor shall have no right to retain or withhold these documents.

## **X. Illustrations, drafts, reproduction materials, photographic materials**

1. The Client shall acquire ownership of illustrations upon payment of the agreed fee.
2. The Contractor must carefully store all drafts which remain in the Contractor's possession and all reproduction materials which it has created or acquired in connection with the performance of the contract (e.g. printing components such as printing plates, photographs, matrixes, lithographs, films, tools as well as digital raw data and files in open formats) for a period of not less than six months following acceptance; the Contractor must surrender these to the Client upon request and, following expiry of the storage period, notify the Client in advance in writing and seek his instructions prior to any destruction of such materials.

## **XI. Confidentiality**

1. All information and all documents becoming known to the Contractor in connection with the Contract which are not already in the public domain or known by the general public must be treated with strictest confidence, even after the Contract has been fulfilled or otherwise terminated. The Contractor will not derive any rights in relation to application for IP rights or IP protection (e.g. claims of or objections based on prior use) from its knowledge of confidential information that is disclosed to it.
2. The Contractor may use any work results from the contractual performance in whole or in part for its own promotional purposes only after having obtained the Client's prior written consent.
3. The Contractor must impose this duty of confidentiality upon all its staff, subcontractors, models, etc. involved in the performance of the Contract to the extent necessary to guarantee confidentiality.

## **XII. Assignment, subcontracting, minimum wages**

1. The Contractor's rights and obligations arising from the Contract, particularly claims to payment, may not be assigned to third parties without the Client's prior written consent.
2. The involvement of third parties as subcontractors by the Contractor requires the Client's prior written approval. Any such approval will not exonerate the Contractor in any way from its obligations resulting from the Contract(s). The Contractor will remain responsible in every respect also for the contractual performance of third parties involved by it. This applies in particular in respect of all warranties and representations, as well as all claims for damages and/or compensation.
3. The Contractor undertakes to observe and fulfil all applicable statutory obligations resulting from the legislation on minimum wages (such as the German Minimum Wage Act – MiLoG). The Contractor further undertakes to provide the Client with adequate proof that these statutory obligations have been met. Where the Contractor involves subcontractors, such involvement always being subject to the Client's prior written authorisation in each individual case, the Contractor undertakes and ensures to also impose the obligations set forth in this clause 3 on such subcontractors. In the event of any culpable breach of any obligation and undertaking set forth in this clause 3, the subcontractor shall be liable for all damages resulting from such breach and to hold the Client free and harmless from all third-party claims resulting therefrom. Where such breach is the result of gross negligence or intent on the part of the Contractor, the Client is also entitled to terminate the Order(s) with immediate effect without prior notice. The Client shall in all cases of a culpable breach of these obligations and undertakings be entitled to a contractual penalty, the adequate amount of which shall be determined equitably by the Client and which, in the event of dispute, shall be subject to judicial review of its adequateness by the competent court.

## **XIII. Limitation of liability**

The Client's liability for slight negligence shall be excluded, unless claims for damages or compensation result from the injury of life, limb or health, the breach of contractual representations and guarantees, or from statutes on product liability (Produkthaftungsgesetz). Further, the limitation does not apply in the event of breaches of contractual obligations that form the essence of the contract and which are indispensable to enable its proper performance so that the Contractor can reasonably rely on their fulfilment. These provisions shall also apply to acts or omissions committed by the Client's vicarious agents.

## **XIV. Insurance**

The Contractor undertakes to maintain for the duration of the entire contractual relationship a customary company and professional liability insurance policy with an adequate cover. Independently from any further request, the Contractor will provide the Client with a confirmation from its insurer on the insurance cover.

## **XV. Miscellaneous**

1. Should any provisions of these terms and conditions be invalid, the validity of the remainder shall not be affected. Should any individual clauses be invalid, the Parties shall make every effort to replace the invalid clause by a valid clause which attains the purpose and intention of the invalid clause to the closest extent.
2. Unless otherwise agreed individually in a contract, the transmission of statements and declarations by email shall suffice to meet the requirements of the written form.
3. The place of jurisdiction for all disputes between the Client and a Contractor, as far as permitted by law, shall exclusively be Hamburg.
4. The law of the Federal Republic of Germany shall apply with the exception of the UN laws on the International Sale of Goods and the provisions of German private international law on conflict of law rules.