

General Terms and Conditions (GTC) / Essential Advertising GmbH

01: Scope of application

A) Unless otherwise expressly agreed, these "General Terms and Conditions" (GTC) shall apply to all services (conception and design of marketing measures, organization, planning and implementation of marketing concepts, support and consultation of clients and procurement of services of third parties for the implementation of marketing measures) between the client and the advertising agency: Essential Advertising GmbH, (hereinafter referred to as the agency).

B) 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 their basis. The invalid provision shall be replaced by a valid provision that comes closest to its meaning and purpose.

C) Conflicting terms and conditions of the Client shall only be effective if they are expressly acknowledged by the Agency in writing.

02: Offers and conclusion of contract

A) The basis for the conclusion of the contract is the respective written offer of the Agency, in which the services and the fee are specified. The Agency's offers are subject to change and non-binding and represent an invitation to the Client to commission the Agency to perform services.

B) The contract is concluded by the written declaration of acceptance of the offer (cost estimate) submitted in detail by the Agency, including a description of services and, if applicable, a time schedule. The acceptance (placing of order) can be declared by the client within 14 days after receipt of the offer. Thereafter, the Agency shall no longer be bound by the offer.

C) Additional agreements or amendments that change the scope of the contractual service must be made in writing.

D) Changes or deviations of individual services from the agreed content of the contract, which become necessary after the conclusion of the contract, the Agency shall inform the Client immediately. Insofar as the agreed content of the contract is not or only insignificantly affected by the changes, the Client shall not be entitled to terminate the contract due to these deviations. The Agency shall be entitled to change parts of the marketing concept in deviation from the service description in consultation with the Client.

E) Insofar as the Agency concludes contracts for the execution or implementation of agreed marketing measures with third parties, such contracts shall be concluded in the name of and with the authority of the Principal. This concerns in particular the renting of rooms, the conclusion of contracts in the catering and service sector, as well as the conclusion of contracts with graphic artists and artists.

03: Duties of the Client, Cooperation

A) The Client shall provide the Agency with all information necessary for the execution of the order without delay. Delays resulting from a lack of cooperation on the part of the Client shall not be borne by the Agency.

B) The Client assures that the data provided is correct and complete. The Client must inform the Agency immediately in writing of any changes in personal data or essential contractual information.

04: Payment, Default

- A) The remuneration agreed in the contract or offer shall apply. Unless otherwise contractually agreed, payments are due immediately upon receipt of the invoice and are to be made within 14 days without deduction. If the client is in arrears with a payment, the agency may charge a reminder fee of 10 € per reminder stage of an invoice in addition to the statutory interest on arrears. The right to claim further damages remains unaffected by this regulation.
- B) The Agency shall be entitled to demand advances in a reasonable amount to cover its expenses.
- C) If the Client is in default of payment, the Agency shall be entitled to refuse its performance.
- D) The Client shall only have the right to set-off if his counterclaims are undisputed by us or have been legally established. The client is only entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.
- E) In the event of cancellation, termination or delay of an order by the Client during a project for reasons for which the Client is responsible, the Client shall be obligated to pay for the services rendered by the Agency to date, but at least 25% of the agreed total remuneration. The client reserves the right to provide evidence of actually lower services or higher expenses. A basic claim for completion of the works and work after order cancellation, termination or delay on the part of the client is not applicable.
- F) All prices quoted in offers and orders and the resulting amounts to be paid are exclusive of the respective legally valid value added tax.

05: Cancellation of Appointment/Failure Fee

Cancellation of an appointment or postponement of an appointment by the client is possible up to 2 working days before the appointment at the latest and is free of charge until then. After that, the fee for the agreed time will be charged at 50%. In case of cancellation or postponement on the day of the appointment as well as in case of no-show, the full fee will be charged as cancellation fee.

06: Rights of use and copyright protection

- A) If the Agency does not receive an order after participation in a presentation or after creation of a concept, all services of the Agency, in particular their content, remain the property of the Agency. The client is not entitled to use them further - in any form whatsoever.
- B) All services of the Agency (e.g. marketing concepts, idea sketches, etc.) as well as individual parts thereof, shall remain the property of the Agency. By paying the fee, the client acquires only the right of use for the agreed purpose. Unless otherwise agreed with the Agency, the Client may use the Agency's services only for himself and only for the duration of the contract. Additions or changes to the Agency's services by the Client are only permitted with the express consent of the Agency and - insofar as the services are protected by copyright - of the copyright holder. The agency grants the client for the contractually agreed purposes and to the contractually agreed extent the simple right of use of the delivered works for all types of use known at the time of the conclusion of the contract. The transfer of the rights of use shall apply to the territory of the Federal Republic of Germany. Uses that go beyond this territory require a separate written agreement. All transfers of rights of use are subject to the condition precedent of full payment of the contractually agreed remuneration to the Agency.
- C) For the use of services of the Agency, which goes beyond the originally agreed purpose and scope of use, the consent of the Agency is required - regardless of whether this service is protected by copyright. The Agency and the author shall be entitled to a separate appropriate remuneration for this.

D) Repeat uses (e.g. subsequent editions) or multiple uses of marketing concepts shall be subject to a fee; they shall require the consent of the Agency. The transfer of granted rights of use to third parties shall require the consent of the Agency. The Agency shall be entitled to information about the scope of use.

E) The templates provided to the Agency by the Client (e.g. texts, photos, samples, etc.) shall be used on the condition that the Client is entitled to use them. The Agency shall not check whether the Client is entitled to use the copyrights and trademark rights required for the services to be provided. Liability towards third parties with regard to copyright and/or trademark claims is therefore excluded for the commissioned services.

F) The works developed within the scope of a project by the Agency or its third-party service providers are protected as personal intellectual creations by the Copyright Act. This provision shall be deemed to have been agreed even if the level of creation required under the Copyright Act is not reached in an individual case.

G) In the case of Internet services and multimedia productions, the surrender of source codes and open files is not part of the simple right of use. In principle, the release of data in the form of the agreed service to the client or third parties commissioned by the client shall only take place in closed, non-editable files. Should the client wish open files to be released, this shall require an agreement and a separate remuneration arrangement. Changes to open or editable data by the client or third parties commissioned by him require the written consent of the agency.

H) Insofar as works are created by third parties (in particular photographers, illustrators, photo models, web designers and other creative persons), the Agency shall ensure that the agreed rights of use and exploitation of the third party are obtained and transferred to the Client.

I) The Agency may sign the advertising materials developed by it appropriately and in accordance with industry standards, publish the order placed for its own advertising, provided that this does not disclose any information of the Client that is to be treated confidentially. This signing and advertising use can be excluded by a corresponding separate agreement between the Agency and the Client.

J) The services and works of the Agency may not be changed or passed on to third parties by the Client or third parties commissioned by the Client, neither in the original nor in the reproduction. Any imitation, even of parts of the work, is not permitted. The transfer of granted rights of use to third parties and/or multiple uses are, unless regulated in the initial order, subject to a fee and require the consent of the Agency.

K) For each case of culpable infringement of one of the above provisions, a contractual penalty shall become due, which the Agency shall determine at its reasonable discretion and which, in the event of a dispute, may be reviewed by the competent regional court with regard to its fairness. The agency is entitled to information about the extent of the use.

07: Termination

A) The Client is entitled to terminate the contractual relationship with the Agency at any time.

B) However, the premature termination of the contractual relationship obligates the Client to pay an appropriate fee, which compensates for the preliminary services rendered.

C) The right to extraordinary termination for both contracting parties remains unaffected.

08: Warranty and compensation

A) The Agency undertakes to conscientiously prepare and carefully select and supervise the service providers in accordance with the duties of care of a prudent businessman.

B) The Agency shall be liable for defects in the services and works supplied in accordance with the statutory provisions. A warranty period of one year shall apply to the warranty, including contractual claims for damages, if the Client is an entrepreneur. If the client is a consumer, a warranty period of two years applies. If the transaction is a commercial transaction for both parties, the commercial obligation to give notice of defects of § 377 HGB (German Commercial Code) shall apply. Accordingly, any complaints must be made no later than five working days after receipt of the relevant services.

C) Within the scope of each order there is a freedom of artistic design. Complaints regarding the artistic design are excluded. If the client wishes to make changes during or after production, he must bear the additional costs incurred as a result.

D) In the case of color reproductions in all production processes, minor deviations from the original cannot be objected to, provided they are within the usual tolerances according to the state of the art. The same shall apply to the comparison between press proofs and production print as well as the comparison between other originals (e.g. digital proofs, press proofs) and the final product. Excess or short deliveries of printed products up to 10% of the ordered print run cannot be objected to. The quantity delivered shall be invoiced.

E) The Agency shall only be liable for deviations in the quality of the material used up to the amount of its own claims against the respective supplier. In such a case, the Agency shall be released from its liability if the Agency assigns its claims against the supplier to the Client.

09: Exclusion of liability

A) The Agency shall be liable without limitation for damages resulting from injury to life, body or health caused by intentional or negligent breach of duty and for other damages caused by intentional or grossly negligent breach of duty and fraudulent intent. Furthermore, the Agency shall be liable without limitation for damages covered by liability under mandatory statutory provisions, such as the Product Liability Act.

B) In the event of slight negligence, the Agency shall only be liable in the event of a breach of material contractual obligations (cardinal obligations). Otherwise, the pre-contractual, contractual and non-contractual liability of the Agency shall be limited to intent and gross negligence, whereby the limitation of liability shall also apply in the event of fault on the part of a vicarious agent of the Agency.

C) The Agency shall not be liable to the Client for orders placed with third parties on behalf of and for the account of the Client. In these cases, the Agency acts only as an intermediary.

D) The risk of the legal admissibility of the measures developed and implemented by the Agency shall be borne by the Client. This applies in particular in the event that the actions and measures violate the provisions of competition law, copyright law and special advertising laws. However, the Agency is obligated to point out legal risks if it becomes aware of them during its activities. The Client shall indemnify the Agency against claims by third parties if the Agency has acted at the express request of the Client. The agency is not responsible for content provided by the client. In particular, the Agency is not obligated to check the content for possible violations of the law.

E) The Agency is not liable for design, copyright and trademark protection of the ideas, suggestions, proposals, concepts and drafts provided within the scope of the order.

10: Data protection

A) The Client is aware of and consents to the fact that the personal data required for the processing of the contractual relationship will be stored by the Agency on data carriers and, if necessary, passed on to affiliated companies within the framework of the processing of the order. The Client expressly consents to the collection, processing and use of his personal data.

B) The stored personal data will be treated confidentially by the Agency. This data may be transmitted by the Agency to agents and, in accordance with § 11 BDSG, to carefully selected business partners, for example for the purpose of credit checks.

C) The collection, processing and use of personal data is in compliance with the Federal Data Protection Act (BDSG) and the Telemedia Act (TMG).

D) The client has the right to revoke his consent at any time with effect for the future. In this case, the agency is obligated to immediately delete the client's personal data. In the case of ongoing user relationships, deletion shall take place after termination of the contract.

11: Confidentiality

Both parties mutually undertake, including all employees and other third parties involved in the project who have access to information of the other party and/or the contractual services, to maintain absolute confidentiality with regard to such information vis-à-vis non-involved third parties and to protect this confidentiality without reservation. Should data and information be subject to strict confidentiality due to their nature, they shall be marked as such by the Customer. Confidentiality shall not apply to information that is generally accessible, is published by the other contracting party itself or has become known from a third party. The burden of proof for such an exception shall be borne by the party invoking the exception.

12: Applicable Law and Place of Jurisdiction

A) The law of the Federal Republic of Germany shall apply exclusively, to the exclusion of the UN Convention on Contracts for the International Sale of Goods. If the Customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, Frankfurt/Main is agreed as the place of jurisdiction for all disputes arising from or in connection with this contract.

B) All agreements that contain an amendment, supplement or concretization of these contractual conditions, as well as special assurances and agreements that are subject to the written form are fulfilled by the text form according to § 126 b BGB. The place of performance for all rights and obligations arising from this contract is Frankfurt/Main, unless the parties have agreed otherwise in individual cases.

C) The Client is not entitled to assign claims arising from the contract to third parties. Offsetting with counterclaims is only permitted with undisputed or legally established counterclaims. The client may only assert a right of retention if it arises from the same contractual relationship.

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