

GENERAL TERMS AND CONDITIONS



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LM-Design GmbH

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1. APPLICABILITY, CONCLUSION OF CONTRACTS

- 1.1 LM-Design GmbH (hereinafter referred to as "Agency") renders its services exclusively on the basis of the following General Terms and Conditions (GTC). These apply to all legal relations between Agency and its Customers, even if no express reference is made to them.
- 1.2 The version of GTC that is valid at the time of conclusion of the contract shall apply. Any divergences from this version, as well as any other additional agreements with Customer, shall only be effective, if Agency has confirmed them in writing.
- 1.3 Any terms and conditions that Customer may wish to apply, even if they are known, shall not be accepted, unless it is otherwise agreed explicitly and in writing in each individual case. Agency explicitly rejects Customer's terms and conditions. No further rejection of Customer's terms and conditions by Agency shall be required.
- 1.4 Any alterations to GTC shall be made known to Customer and shall be deemed agreed, provided Customer does not object to the altered GTC in writing within a period of 14 days; the significance of not objecting shall explicitly be made known to Customer in the relevant communication.
- 1.5 Should individual provisions of these General Terms and Conditions cease to be effective, this shall not affect the validity of the remaining provisions and any contracts concluded on the basis of them. A provision that has ceased to be effective shall be replaced by a provision that is effective and that comes closest, in terms of meaning and purpose.
- 1.6 Agency's range of offers is non-binding and subject to change.

2. SOCIAL MEDIA CHANNELS

- 2.1 Agency shall explicitly advise Customers, in advance of any placement of orders, that, as part of their Conditions of Use, the Suppliers of "Social Media Channels" (e.g. Facebook; in the following abbreviated to "Suppliers") reserve their right to reject or remove any advertisements and advertising images for any reason whatsoever. Suppliers are not therefore under any obligation to forward content or information to users. This means that there is a risk that advertisements and advertising images may be removed with no reasons given, and that Agency is not in a position to calculate this risk. Should another user complain, Suppliers do provide the opportunity to make counter-representations, but even in this case the content is immediately removed. Restoring the original, rightful state of affairs may require some time in such cases. Agency's work is based on Suppliers' Conditions of Use, over which it exercises no control, and it also lays down these Conditions as the basis of Customer's order. When placing an order, Customer explicitly acknowledges that these Conditions of Use shall be part of, and shall determine, the rights and obligations arising from an eventual contractual relationship. Agency's intention is to execute Customer's order in good faith and to comply with the regulations of the "Social Media Channels". In light of the currently applicable Conditions of Use and of the ease with which any user can claim violation of rights and so succeed in having content removed, Agency cannot be held responsible for the fact that a campaign that has been ordered may be withdrawn at any time.

3. PROTECTION OF CONCEPTS AND IDEAS

Where a potential Customer has already invited Agency to prepare a concept and where Agency has accepted this invitation, the following regulations shall apply prior to the conclusion of the principal contract:

- 3.1 By the very facts of the invitation having made and of this invitation having been accepted by Agency, the potential Customer and Agency shall have entered into a contractual relationship ("pitching contract"). The GTC will also be the basis for this contractual relationship.
- 3.2 The potential Customer acknowledges that, by preparing a concept, Agency already renders cost-intensive preliminary services, even though the potential Customer has not yet accepted any formal contractual obligations.
- 3.3 The concept's text and graphic elements (in so far as these qualify) are covered by copyright protection. The potential Customer, simply on the basis of copyright law, shall not be entitled to use or process these elements without Agency's consent.
- 3.4 Furthermore, concepts also include advertising-related ideas that do not reach any qualifying threshold and therefore do not benefit from protection under copyright law. These ideas are the starting point for every creative process, serving as an initial spark for everything that comes later, and as such they may be defined as the first beginnings of a marketing strategy. Therefore all of those elements of the concept are protected that are distinctive and that give the marketing strategy its individual character. For the purpose of this agreement, the term 'idea' especially refers to advertising slogans, advertising texts, graphics and illustrations, advertisements etc., even if they do not reach the copyright threshold.

- 3.5 The potential Customer shall undertake to refrain from utilising, or from allowing others to utilise, or to avail himself of, or to allow others to avail themselves of to his economic advantage any creative advertising ideas presented by Agency within the concept, except where this undertaking is amended by a subsequently concluded formal contract.
- 3.6 Should the potential Customer be of the opinion that ideas have been presented to him that he had already thought of before Agency's presentation of them, Customer shall be obliged to make this known to Agency by e-mail, within 14 days after the day of the presentation, giving evidence that will allow a time-frame to be judged.
- 3.7 Should this condition not be met, the contractual partners shall assume that Agency presented to the potential Customer an idea that was new to him. If Customer makes use of this idea, it shall be presumed that Agency provided it as a service.
- 3.8 The potential Customer can exempt himself from his liabilities arising from this provision, by paying reasonable compensation plus 20% VAT. This exemption shall only come into effect after compensation has been paid to Agency in full.

4. SCOPE OF SERVICES, ORDER-PROCESSING AND CUSTOMER'S DUTY OF COOPERATION

- 4.1 The scope of the services to be rendered is defined by the service-description in Agency Contract, or in any order confirmation from Agency, and any briefing report ("offer documents"). Any subsequent changes to the content of the scope of services require written confirmation from Agency. Within frameworks specified by Customer, Agency shall have freedom of design when fulfilling the order.
- 4.2 All services rendered by Agency (especially all preliminary drafts, sketches, final drawings, proofs, blueprints, copies, colour proofs and electronic data) are to be checked by Customer and approved by him within three working days after receipt by Customer. If approval is not received in due time, these services shall be deemed to be approved by Customer.
- 4.3 Customer shall, in due time and in full, provide Agency with all information and documentation required for the rendering of services. He shall inform Agency of any circumstances with significant bearing on implementation of the order, even if these only become known during the process of implementing the order. Customer shall bear expenses arising from the Agency having to repeat work, or being delayed, because of Customer's incorrect, incomplete or subsequently changed specifications.
- 4.4 Customer shall also be obliged to check all documents provided for implementation of the order (photos, logos, &c), for any copyrights, brand and trademark rights or any other rights held by third parties (clearing of rights), and he shall guarantee that all documents are free of third-party rights, so that they may be used for their proposed purpose. In cases of violation of third-party rights over documents made available to it, Agency's liability shall be limited to minor negligence, or after fulfilling its cautionary duties - in any case in its internal relationship with Customer - it shall not be liable. Should a claim of violation of rights be made against Agency by a third party, Customer shall indemnify Agency against loss and damage; Customer shall compensate all losses Agency may suffer from a third-party claim, especially any legal fees. Customer shall undertake to support Agency in defending any third-party claims. For this Customer shall make all documentation available to Agency unsolicited.

5. EXTERNAL SERVICES / COMMISSIONING OF THIRD PARTIES

- 5.1 At its own discretion Agency shall be entitled to perform services itself, to make use of professional third parties for rendering of contractual services as proxies and/or to contract out these kinds of services ("External Services").
- 5.2 In the context of external services, third parties are commissioned in Agency's own name or in Customer's name. Agency shall carefully select these third parties and exercise due care in ensuring they have the required professional qualifications.
- 5.3 Insofar as Agency contracts out necessary or agreed external services, the contractors in question shall not be the Agency's proxies.
- 5.4 Customer shall vouch for any obligations in respect of third parties when the contractual period is exceeded. This applies explicitly even in cases where the Agency Contract is terminated for significant reasons.

6. DEADLINES

- 6.1 Specified deadlines for delivery and performance of service are approximate and non-binding, unless they are explicitly agreed as binding. Agreed binding deadlines shall be specified in writing and/or are to be confirmed in writing by Agency.
- 6.2 Should Agency's delivery/performance be delayed for reasons for which it is not responsible, such as force majeure events or other unforeseeable events that cannot be prevented by reasonable means, contractual obligations shall lapse for the duration of the impediment and within the scope of its effects and deadlines shall be extended accordingly. If such delays last longer than two months, both Customer and Agency are entitled to withdraw from the contract.
- 6.3 If Agency is behind schedule, Customer shall only be able to withdraw from a contract, after having granted Agency in writing a reasonable period of grace of at least 14 days, and after this period has elapsed fruitlessly. Any compensation claims by Customer on account of non-fulfilment or delay shall be excluded, unless there is evidence of malicious intent, or gross negligence.

7. PREMATURE CANCELLATION

- 7.1 Agency shall be entitled to cancel the contract with immediate effect, where there are serious grounds for doing so. The following in particular shall be deemed serious grounds:

- a) performance of services is rendered impossible, or is delayed despite a period of grace of 14 days, on grounds for which Customer is responsible;
 - b) despite a written reminder and a period of grace of 14 days, Customer continually breaches significant obligations relating to this contract, such as non-payment of sums due or breach of duty to cooperate;
 - c) there are justified concerns as to Customer's creditworthiness and, when requested by Agency, Customer fails to make advance payment, or provides no appropriate security prior to the Agency's rendering of services;
- 7.2 Customer shall be entitled to cancel the contract without specifying a period of grace, where there are serious grounds for doing so. A particularly important ground is if, Agency continually breaches significant obligations relating to this contract, despite a written reminder and an appropriate period of grace of at least 14 days for remedy of the contract-related breaches.

8. FEES

- 8.1 Unless agreed otherwise, Agency's claim of fees for each individual service shall come into effect as soon as the service has been rendered. Agency is entitled to demand advance payment to cover expenses. For volumes of orders with a budget of € 30,000 or more, or for those covering a longer period of time, Agency shall be entitled to request payment of interim invoices and/or advance payments, or down payments.
- 8.2 The fee represents a net-fee plus the VAT rate specified by law. In the absence of agreement in individual cases, Agency shall be entitled to the standard market fees, for services rendered and for the transfer of copyrights and trademark usage rights.
- 8.3 Any Agency services that are not explicitly included in the agreed fee shall be separately invoiced. Customer shall reimburse Agency for all cash payments on his behalf.
- 8.4 Any Agency estimates of costs are non-binding. If actual costs are expected to exceed those given by Agency in its written estimate by more than 15%, Agency shall advise Customer of the higher costs. A cost overrun shall be deemed approved by Customer, if he does not reject it in writing within three working days after receiving this information and if at the same time he does not make cheaper alternatives known. For a cost overrun of up to 15%, a separate communication is not mandatory. Such a cost overrun, as against the estimate, shall be deemed approved by Customer, as a matter of course.
- 8.5 Agency shall be entitled to an agreed fee for any work it does that, for whatever reason, is not taken up by Customer. Rules regarding offsetting, stipulated in § 1168 of ABGB (Austrian civil code), shall be excluded. Payment of the fee shall not entitle Customer to any usage rights for work already done; on the contrary, any unimplemented concepts, and any drafts and other documentation shall be returned to Agency, with immediate effect.

9. PAYMENT, RESERVATION OF TITLE

- 9.1 The fee shall be payable immediately on receipt of invoice and without deductions, unless other conditions of payment have been agreed in writing for individual cases. This shall also apply to the settlement of all cash expenses and other expenses. The goods supplied by Agency shall remain Agency's property until they have been paid for in full, including any associated costs.
- 9.2 In a case where Customer defaults on payment, statutory default interest at the current rate for companies and businesses shall apply. Furthermore, in the case of Customer defaulting, he shall be obliged to reimburse Agency for any expenses arising for reminders and collection costs, in so far as they become necessary for any appropriate legal proceedings. In any case this shall include the costs for two reminders, at the current market rate of at least € 20 each, as well as a reminder from the lawyer who is tasked with debt collection. The exercise of any further rights and claims shall remain unaffected by this.
- 9.3 In the case where Customer defaults on payment, Agency shall be entitled to demand immediate payment for all other contracts concluded with Customer, both for services rendered and for partial services.
- 9.4 Furthermore, Agency shall not be obliged to render further services until the outstanding sum has been paid (right of retention). The obligation to pay the fee remains unaffected by this.
- 9.5 In cases where payment by instalments has been agreed, Agency shall reserve the right to demand full repayment of outstanding debts, should an instalment payment not be made or any accessory claims not met in due time (missed appointment).
- 9.6 Customer shall not be entitled to offset his own claims against Agency's, unless Agency has acknowledged the Customer's claims in writing, or unless they have been legally determined.

10. PROPERTY RIGHT AND COPYRIGHT

- 10.1 All services rendered by Agency, including items relating to presentations (e.g. suggestions, ideas, sketches, preliminary drafts, doodles, final drawings, concepts, negatives, slides) and also parts of them remain Agency's property, as do individual components and original designs. Agency can reclaim these at any time – particularly when a contractual relationship is terminated. On payment of the fee, Customer acquires right of usage for the agreed purpose. Unless otherwise agreed, Customer shall only be entitled to make use of the Agency's services in Austria. Payment in full of the relevant Agency fees, as invoiced, is in all cases a precondition of acquisition of the rights of use and exploitation of Agency's services. Should Customer already have made use of the Agency's services prior to payment of fees, this usage shall be based on a lease agreement that may be revoked at any time.
- 10.2 Any changes to and/or processing of Agency's services, especially their further development by Customer or third parties acting on his behalf, are only permitted with Agency's explicit consent – and, in so far as the services are protected by copyright, with the

permission of the copyright holder.

- 10.3 Agency's approval is required for any use of its services that goes beyond the scope of their originally agreed purpose and usage – regardless of whether or not those services are protected by copyright. Agency and any copyright holder shall be entitled to reasonable, separate compensation for granting this approval.
- 10.4 The use of Agency's services, or advertising materials that are based on conceptual or design drafts prepared by Agency, requires the Agency's consent even after the Agency Contract has expired - whether or not these services are protected by copyright.
- 10.5 In the 1st year after the end of the contract, for usage in accordance with 10.4 above, Agency shall be entitled to full amount of Agency-compensation as agreed in the expired contract. In the 2nd and 3rd years after the end of the contract, Agency shall only be entitled to 50% and 25% respectively of the compensation agreed in the contract. From the 4th year after the end of the contract, no further Agency-compensation is to be paid.
- 10.6 For any non-authorised usage, Customer shall be liable to Agency for a sum equivalent to double the appropriate usage fee.

11. CREDITS/REFERENCES

- 11.1 In all advertising materials and promotional activities, Agency is entitled to receive a credit for itself and, where applicable, for the copyright holder. Customer shall not be entitled to remuneration for this.
- 11.2 Subject to Customer's written countermand, which can be submitted at any time, Agency shall be entitled to refer to its own promotional items, especially on its Internet website, citing the name and company logo for Customers with whom it has an existing or past business relationship (reference citation).

12. WARRANTY

- 12.1 Customer shall report any defects or deficiencies promptly, but at all events within eight days of receiving supply/services from the Agency. Defects and deficiencies that are identified subsequently are to be reported in writing within eight days of being detected, to include a description of the deficiency. Otherwise services shall be deemed to have been approved. In such cases compensation in respect of warranty and replacement claims, as well as the right of appeal on grounds of defect or deficiency shall be excluded.
- 12.2 In cases of justified and timely notification of defect or deficiency, Customer shall be entitled to amelioration or replacement of the supply/services from Agency. Agency shall remedy the defect or deficiency in a reasonable period of time, on the understanding that Customer supports all measures Agency needs to take to analyse and remedy the defect or deficiency. Agency shall be entitled to refuse an amelioration of services, if this would be impossible or if it would involve a disproportionate effort on the part of Agency. In such cases, Customer shall be legally entitled to change the order or request a reduction in price. In cases of amelioration, it is for the originator of the order to dispose of any defective (material) goods at his own expense.
- 12.3 The originator of the order is also obliged to check the services in respect of their legal admissibility, especially regarding competition rights, brand rights, copyright and administrative law. Agency is only obliged to carry out a rough check of legal admissibility. In cases of minor negligence or after performing its obligation to give due warning, Agency shall not be liable to Customer for legal admissibility of content, if this has been provided or approved by Customer.
- 12.4 The warranty period shall be six months from supply/service. Right of recourse against Agency, in accordance with § 933b Abs 1 ABGB (Austrian civil code) shall expire one year after supply/service. Customer shall not be entitled to withhold payments on account of complaints. The compensation arrangement, in accordance with § 924 ABGB (Austrian civil code), shall be excluded.

13. LIABILITY AND PRODUCT LIABILITY

- 13.1 In cases of minor negligence, the liability of Agency and its employees, contractors, or proxies ("people") for any property or pecuniary damages suffered by Customer shall be excluded, regardless of whether this concerns direct or indirect damages, lost profit or consequential damages, damages due to delay, to impossibility, positive breach of obligations, negligence when the contract was concluded, or on account of faulty or incomplete services. The aggrieved party shall have to prove gross negligence. In so far as Agency's liability is excluded or limited, this shall also apply to the personal liability of its "people".
- 13.2 Any liability of Agency, for claims made against Customer on account of any services rendered by the Agency (e.g. advertising activities) shall be explicitly excluded, provided Agency has complied with its duty of notification, or that the need for notification was not identifiable, in which case minor negligence does not arise. Agency shall explicitly not be liable for legal costs, for Customer's own lawyer's fees, or for costs arising from the publication of judgement. This also applies to any claims for damages or other third-party claims; in this respect Customer shall indemnify Agency against loss and damage.
- 13.3 Customer claims for damages shall expire six months after detection of damage; however in any case three years after an infringement by the Agency. Any claims for damages shall be limited to the net value of the order.

14. DATA PROTECTION (VISUAL HIGHLIGHTING, IN LINE WITH JUDICIAL RULING)

- 14.1 Customer shall give consent that his personal data (name/company, date of birth, company registration number, power of representation, contact person, business address and other Customer addresses, telephone number, e-mail address, bank details, credit

card details, UID number) may be electronically ascertained, saved and processed, for the purposes of fulfilling the contract and of customer care. This data shall also be used for Agency's own promotional activities such as providing Customer with offers, advertising brochures and newsletters (both hard-copy and electronic), and for the purpose of making reference to the existing or former business relationship with Customer (reference citation). The originator of the order shall agree that electronic mail will be sent to him for advertising purposes, until he cancels it.

14.2 It shall be possible to revoke this consent at any time in writing, by means of e-mail, telefax or letter, using the contact details specified in the letterhead of the GTC.

15. APPLICABLE LAW

15.1 The contract and any mutual rights and obligations derived therefrom, as well as any claims between Agency and Customer, shall be governed by Austrian material law, to exclude its conflict of law rules and to exclude UN sales law.

16. PLACE OF PERFORMANCE AND COURT OF JURISDICTION

16.1 The place of performance is Agency's headquarters. For despatched goods, risk shall be transferred to Customer as soon as Agency has handed over the goods in question to the transportation company chosen by it.

16.2 The court of jurisdiction for any legal disputes between Agency and Customer arising from this contractual relationship shall be agreed to be the competent court for the Agency's headquarters. The foregoing notwithstanding, Agency shall be entitled to file suits at Customer's general place of jurisdiction.

16.3 Insofar as this contract makes reference to natural persons only in masculine terms, such reference equally applies to female and male persons. When referring to individual natural persons, the respective gender form applicable shall be used.