

general terms and conditions

1. application, conclusion of the contract

1.1 visual agitation e.U. (hereinafter "agency") provides services exclusively on the basis of the following general terms and conditions (gtc). these apply to all legal relationships between the agency and the client, even if no express reference is made to them. the gtc apply exclusively to legal relationships with contractors, ie b2b.

1.2 the version valid at the time of conclusion of the contract shall apply in each case. deviations from these as well as other supplementary agreements with the customer shall only be effective if they are confirmed in writing by the agency.

1.3 any terms and conditions of the customer shall not be accepted, even if the customer is aware of them, unless expressly agreed otherwise in writing in individual cases. the agency expressly objects to the customer's terms and conditions. no further objection to the customer's terms and conditions by the agency is required.

1.4 the client will be notified of amendments to the general terms and conditions and they will be deemed to have been agreed if the client does not object to the amended general terms and conditions in writing within 14 days; the significance of the silence and the specifically amended clauses will be expressly pointed out to the client in the notification. this fiction of consent does not apply to the amendment of essential service contents and fees.

1.5 should individual provisions of these general terms and conditions of business be invalid, this shall not affect the binding nature of the remaining provisions and the contracts concluded on the basis thereof. the invalid provision shall be replaced by a valid provision which comes as close as possible to the meaning and purpose.

1.6 the agency's offers are subject to change and non-binding.

2. social media platforms

before placing an order, the agency expressly points out to the client that the providers of "social media channels" (eg facebook, instagram, etc, hereinafter referred to as "providers") reserve the right in their terms of use to reject or remove advertisements and appearances for any reason. the providers are therefore not obliged to forward content and information to the users. there is therefore a risk, which cannot be calculated by the agency, that advertisements and presentations may be removed without cause. in the event of a complaint by another user, the providers will grant the possibility of a counter-representation, but in this case the content will also be removed immediately. in this case,

it may take some time to regain the original, lawful status. the agency works on the basis of these terms of use of the providers, over which it has no influence, and also bases the customer's order on these. by placing the order, the customer expressly acknowledges that these terms of use (also) determine the rights and obligations of any contractual relationship. the agency intends to execute the client's order to the best of its knowledge and belief and to comply with the guidelines of "social media channels". however, due to the currently valid terms of use and the simple possibility for any user to claim infringements of the law and thus achieve the removal of the content, the agency cannot guarantee that the commissioned campaign will also be accessible at all times.

3. concept and idea protection

if the potential client has already invited the agency to prepare a concept in advance and the agency complies with this invitation before the main contract is concluded, the following rule shall apply:

3.1 the potential client and the agency already enter into a contractual relationship ("pitching contract") through the invitation and the acceptance of the invitation by the agency. this contract is also based on the general terms and conditions.

3.2 the potential client acknowledges that the agency is already providing cost-intensive preliminary services with the concept development, although he has not yet assumed any service obligations himself.

3.3 the concept is protected by copyright law in its linguistic and graphic parts, insofar as these reach the level of a work. the potential client is not permitted to use or edit these parts without the consent of the agency, if only on the basis of copyright law.

3.4 the concept also contains ideas relevant to advertising that do not reach the level of a work and thus do not enjoy the protection of copyright law. these ideas are at the beginning of every creative process and can be defined as the igniting spark of everything that is produced later and thus as the origin of marketing strategy. therefore, those elements of the concept are protected which are peculiar and give the marketing strategy its characteristic character. in particular, advertising slogans, advertising texts, graphics and illustrations, advertising media, etc. are considered as ideas in the sense of this agreement, even if they do not reach the level of a work.

3.5 the potential client undertakes to refrain from commercially exploiting or having exploited or using these creative advertising ideas presented by the agency within the framework of the concept outside the corrective of a main contract to be concluded at a later date.

3.6 if the potential client is of the opinion that ideas were presented to him by the agency which he had already come up with before the presentation, he must notify the agency of this by e-mail within 14 days of the day of the presentation, citing evidence which allows a chronological allocation.

3.7 in the opposite case, the contracting parties shall assume that the agency has presented the potential client with an idea that is new to him. if the idea is used by the client, it shall be assumed that the agency became meritorious in the process.

3.8 the potential client may release itself from its obligations under this clause by paying reasonable compensation plus 20 % vat. the release will not take effect until the compensation has been received in full by the agency.

4. scope of services, order processing and the client's duty to cooperate

4.1 the scope of the services to be provided results from the description of services in the agency contract or any order confirmation by the agency, as well as any briefing protocol ("offer documents"). subsequent changes to the content of the services require written confirmation by the agency. within the framework specified by the client, the agency is free to design the fulfilment of the order.

4.2 all services provided by the agency (in particular all preliminary drafts, sketches, final artwork, brush prints, blueprints, copies, colour prints and electronic files) must be checked by the client and approved by him within three working days of receipt by the client. if this deadline expires without any response from the client, they are deemed to have been approved by the client.

4.3 the client shall make available to the agency, in a timely and complete manner, all information and documents required for the performance of the service. the client shall inform the agency of all circumstances that are of significance for the performance of the order, even if these only become known during the performance of the order. the client shall bear the expenses that arise from the fact that work must be repeated or is delayed by the agency as a result of incorrect, incomplete or subsequently changed information provided by the client.

4.4 the client is furthermore obliged to check the documents provided for the execution of the order (photos, logos, etc.) for any copyrights, trademark rights or other rights of third parties (rights clearing) and guarantees that the documents are free of third-party rights and can therefore be used for the intended purpose. the agency shall not be liable in the case of only slight negligence or after fulfilling its duty to warn – in any case in the internal relationship with the

customer – due to an infringement of such third party rights by documents made available. if a claim is made against the agency by a third party on account of such an infringement of rights, the customer shall indemnify and hold the agency harmless; he shall compensate the agency for all disadvantages incurred by the agency as a result of a claim made by a third party, in particular the costs of appropriate legal representation. the customer undertakes to support the agency in the defence against any claims made by third parties. the customer shall provide the agency with all documents for this purpose without being requested to do so.

5. external services/commissioning of third parties

5.1 the agency shall be entitled, at its own discretion, to perform the service itself, to make use of expert third parties as vicarious agents in the performance of services that are the subject matter of the contract and/or to substitute such services ("external service").

5.2 the commissioning of third parties within the framework of an external service is carried out either in the agency's own name or in the name of the client, the latter after informing the client in advance. the agency will select this third party carefully and ensure that it has the necessary professional qualifications.

5.3 the client shall enter into obligations towards third parties who have been named to the client and which extend beyond the term of the contract. this shall also expressly apply in the event of termination of the agency contract for good cause.

6. appointments

6.1 unless expressly agreed as binding, delivery or performance deadlines stated are only approximate and non-binding. binding deadline agreements must be recorded in writing or confirmed by the agency in writing.

6.2 if the delivery/service of the agency is delayed for reasons for which it is not responsible, such as events of force majeure and other unforeseeable events that cannot be averted by reasonable means, the service obligations shall be suspended for the duration and to the extent of the hindrance and the deadlines shall be extended accordingly. if such delays last more than two months, the customer and the agency shall be entitled to withdraw from the contract.

6.3 if the agency is in default, the customer may only withdraw from the contract after he has set the agency a reasonable period of grace of at least 14 days in writing and this period has elapsed fruitlessly. claims for damages by the customer due to non-fulfilment or default are excluded, except in the case of proof of intent or gross negligence.

7. premature dissolution

7.1 the agency shall be entitled to terminate the contract with immediate effect for good cause. good cause shall be deemed to exist in particular if

- a)** the performance of the service becomes impossible for reasons for which the customer is responsible or is further delayed despite a grace period of 14 days;
- b)** the client continues to breach material obligations under this contract, such as payment of an amount due or duties to cooperate, despite a written warning with a grace period of 14 days.
- c)** there are justified concerns regarding the customer's credit-worthiness and the customer does not make advance payments at the agency's request or provide suitable security prior to the agency's performance;

7.2 the client shall be entitled to terminate the contract for good cause without granting a grace period. good cause shall be deemed to exist in particular if the agency continues to violate essential provisions of this contract despite a written warning with a reasonable grace period of at least 14 days to remedy the violation of the contract.

7.3 if the agency has used external services – prior to termination – claims for fees or costs incurred as a result are to be borne by the client.

8. fee

8.1 unless otherwise agreed, the agency's fee claim arises for each individual service as soon as it has been rendered. the agency is entitled to demand advance payments to cover its expenses. in the case of orders that extend over a longer period of time, the agency is entitled to issue interim or advance invoices or to demand payments on account.

8.2 the fee is to be understood as a net fee plus value added tax at the statutory rate. in the absence of an agreement in individual cases, the agency is entitled to a fee for the services rendered and the transfer of the copyright and trademark rights of use in the amount customary in the market.

8.3 all services provided by the agency that are not expressly covered by the agreed fee shall be remunerated separately. all cash expenses incurred by the agency shall be reimbursed by the client.

8.4 the agency's cost estimates are non-binding. if it is foreseeable that the actual costs will exceed those estimated in writing by the

agency by more than 10 %, the agency shall inform the customer of the higher costs. the cost overrun shall be deemed to have been approved by the customer if the customer does not object in writing within three working days of this notification and at the same time informs the agency of more cost-effective alternatives. if the cost overrun is up to 10 %, a separate notification shall not be required. this cost overrun shall be deemed to have been approved by the client from the outset.

8.5 if the client unilaterally changes or discontinues work commissioned without the involvement of the agency – irrespective of the other ongoing support provided by the agency – the client shall compensate the agency for the services provided up to that point in accordance with the fee agreement and reimburse all costs incurred. unless the termination is due to gross negligence or intentional breach of duty on the part of the agency, the client shall also reimburse the agency for the entire fee agreed for this order (commission), whereby the imputation remuneration of § 1168 of the austrian civil code is excluded. furthermore, the agency shall be indemnified and held harmless in respect of any claims by third parties, in particular by the agency's contractors. on payment of the fee, the client shall not acquire any rights of use to work already performed; rather, concepts, designs and other documents that have not been executed shall be returned to the agency without delay.

9. payment, reservation of ownership

9.1 the fee is due for payment 10 days from the date of invoice and without deduction, unless special terms of payment have been agreed in writing in individual cases. this also applies to the charging of all cash expenses and other expenses. the goods delivered by the agency remain the property of the agency until full payment of the fee, including all ancillary liabilities.

9.2 in the event of default in payment on the part of the customer, the statutory interest on arrears shall apply at the rate applicable to business transactions. furthermore, in the event of default in payment, the customer undertakes to reimburse the agency for the reminder and collection expenses incurred, insofar as they are necessary for appropriate legal action. this shall in any case include the costs of two reminders in the customary amount of currently at least € 20 per reminder as well as a reminder letter from a lawyer commissioned with the collection. the assertion of further rights and claims shall remain unaffected by this.

9.3 in the event of default in payment on the part of the customer, the agency may demand immediate payment for all services and partial services rendered under other contracts concluded with the customer.

9.4 furthermore, the agency is not obliged to provide further

services until the outstanding amount has been paid (right of retention). the obligation to pay the fee remains unaffected by this.

9.5 the customer shall not be entitled to set off his own claims against claims of the agency unless the customer's claim has been recognised by the agency in writing or has been established by a court of law.

10. property law and copyright

10.1 all of the agency's services, including those from presentations (eg suggestions, ideas, sketches, preliminary drafts, scribbles, final drawings, concepts, negatives, slides), including individual parts thereof, remain the property of the agency, as do the individual workpieces and design originals, and may be reclaimed by the agency at any time – in particular upon termination of the contractual relationship. by paying the fee, the client acquires the right of use for the agreed purpose. in the absence of any agreement to the contrary, however, the customer may only use the agency's services in austria. the acquisition of rights of use and exploitation of the agency's services shall in any case be subject to full payment of the fees invoiced by the agency for them. if the customer already uses the agency's services before this point in time, this use shall be based on a loan relationship which may be revoked at any time.

10.2 changes or processing of the agency's services, such as in particular their further development by the client or by third parties working for the client, are only permissible with the express consent of the agency and – insofar as the services are protected by copyright – of the copyright holder. the surrender of all so-called "open files" thus expressly does not become part of the contract. the agency is not obliged to surrender them. ie without contractual assignment of the rights of use also for "electronic works", the client has no legal claim to them.

10.3 the agency's consent is required for the use of the agency's services that goes beyond the originally agreed purpose and scope of use, irrespective of whether this service is protected by copyright. the agency and the copyright holder shall be entitled to separate appropriate remuneration for this.

10.4 after expiry of the agency contract, the agency's consent is also required for the use of the agency's services or advertising materials for which the agency has prepared conceptual or design templates, irrespective of whether this service is protected by copyright or not.

10.5 for uses in accordance with para. 4, the agency shall be entitled to the full agency fee agreed in the expired contract in the 1st year after the end of the contract. in the 2nd and 3rd year after the end of the contract, only half or one quarter of the fee agreed in the contract. from

the 4th year after the end of the contract, no agency fee shall be payable.

10.6 the client shall be liable to the agency for any unlawful use in the amount of twice the fee appropriate for such use.

11. labelling

11.1 the agency shall be entitled to refer to the agency and, if applicable, to the author on all advertising media and in all advertising measures, without the customer being entitled to any claim to remuneration for this.

11.2 subject to the customer's revocation in writing, which is possible at any time, the agency shall be entitled to refer to the existing or former business relationship with the customer by name and company logo on its own advertising media and in particular on its internet website (reference).

12. liability for defects

12.1 the customer must report any defects in writing without delay, in any case within eight days of delivery/service by the agency, hidden defects within eight days of recognizing them, describing the defect; otherwise any deviation in the service shall be deemed to have been approved. in this case, the assertion of warranty claims and claims for damages as well as the right to contest errors on the grounds of defects shall be excluded.

12.2 in the event of a justified and timely complaint, the customer shall have the right to improvement or replacement of the delivery/service by the agency. the agency shall remedy the defects within a reasonable period of time, whereby the customer shall allow the agency to take all measures necessary to investigate and remedy the defects. the agency shall be entitled to refuse to improve the service if this is impossible or involves disproportionately high expense for the agency. in this case, the customer shall be entitled to the statutory rights of conversion or reduction. in the event of improvement, it shall be the responsibility of the customer to transfer the defective (physical) item at his own expense.

12.3 it is also the responsibility of the client to check the legal admissibility of the service, in particular with regard to competition, trademark, copyright and administrative law. the agency is only obliged to carry out a rough check of legal admissibility. the agency is not liable for the legal admissibility of content in the event of slight negligence or after fulfilling any duty to warn the client, if this content was specified or approved by the client.

12.4 the warranty period is six months from the date of delivery/

service. the customer is not entitled to withhold payments due to defects. the presumption provision of § 924 austrian civil code is excluded.

13. liability and product liability

13.1 in cases of slight negligence, liability on the part of the agency and its employees, contractors or other vicarious agents ("people") for damage to the customer's property or assets shall be excluded, irrespective of whether this relates to direct or indirect damage, loss of profit or consequential damage, damage due to delay, impossibility, positive breach of claim, culpa in contrahendo, defective or incomplete performance. the injured party must prove the existence of gross negligence. insofar as the liability of the agency is excluded or limited, this shall also apply to the personal liability of its "people".

13.2 any liability on the part of the agency for claims made against the customer on the basis of the service provided by the agency (eg advertising measure) is expressly excluded if the agency has fulfilled its duty to inform or if such a duty was not apparent to it, whereby slight negligence shall not be prejudicial. in particular, the agency shall not be liable for legal costs, the customer's own lawyer's fees or the costs of publishing judgements or for any claims for damages or other claims by third parties; the customer shall indemnify and hold the agency harmless in this respect.

13.3 claims for damages by the client expire six months after knowledge of the damage; in any case, however, after three years after the agency's infringement. claims for damages are limited to the net order value.

14. applicable law

the contract and all mutual rights and obligations derived therefrom as well as claims between the agency and the client shall be governed by austrian substantive law, excluding its conflict of laws rules and excluding the UN convention on contracts for the international sale of goods.

15. place of fulfilment and jurisdiction

15.1 the place of performance is the agency's registered office. in the case of dispatch, the risk shall pass to the customer as soon as the agency has handed over the goods to the carrier selected by it.

15.2 the place of jurisdiction for all legal disputes arising between the agency and the customer in connection with this contractual relationship is agreed to be the court with subject-matter jurisdiction for the agency's registered office. notwithstanding the foregoing, the agency shall be entitled to sue the customer at his general place of

jurisdiction.

15.3 where in this agreement terms referring to natural persons are used in the masculine form only, they shall refer to women* and men* in the same way. when applying the term to specific natural persons, the respective gender-specific form shall be used.