

# GENERAL TERMS AND CONDITIONS (GTC)

FACTORY-C Agentur für Messen und Kommunikation GmbH

An der Spreeschanze 10, Haus 1, 13599 Berlin, Germany

## TABLE OF CONTENTS

<b>Preamble</b> .....	<b>2</b>
<b>1 Contractual partner and scope of application</b> .....	<b>2</b>
<b>2 Subject matter of the services</b> .....	<b>2</b>
2.1 Services .....	2
2.2 Rights of use.....	2
2.3 Proofreading; production monitoring; specimens.....	3
2.4 Retention of title.....	3
2.5 Cooperation on the customer's part.....	3
2.6 Services rendered by external service providers.....	4
<b>3 Remuneration</b> .....	<b>4</b>
3.1 Fees.....	4
3.2 Additional efforts .....	4
3.3 Services rendered by external service providers.....	4
3.4 Travel expenses .....	5
3.5 Other expenses .....	5
3.6 Hourly-rate remuneration .....	5
3.7 Acceptance procedure.....	5
3.8 Maturity; payment .....	5
3.9 VAT .....	6
3.10 Set-off; retention .....	6
<b>4 Confidentiality</b> .....	<b>6</b>
<b>5 Liability / performance failure / force majeure</b> .....	<b>7</b>
<b>6 Final provisions</b> .....	<b>8</b>
6.1 Formal requirement.....	8
6.2 Severability clause.....	8
6.3 Place of performance; venue; applicable law.....	8

# General Terms and Conditions

FACTORY-C Agentur für Messen und Kommunikation GmbH

## Preamble

FACTORY-C Agentur für Messen und Kommunikation GmbH (hereinafter: "Agency") is a communication management agency. Its customers are companies commissioning the Agency to realize projects in the fields of project and event management, promotion and the marketing of products and companies.

## 1. Contractual partner and scope of application

- (1) The contractual partner shall be FACTORY-C Agentur für Messen und Kommunikation GmbH, An der Spreeschanze 10, 13599 Berlin, Germany.
- (2) These General Terms and Conditions (hereinafter "GTC") shall apply to all contracts concluded by and between the Agency and its customers unless the parties agree otherwise in text form (in analogous application of section 126 b German Civil Code (*Bürgerliches Gesetzbuch*; BGB)). The application of any conflicting or supplementary terms and conditions of the customer shall be excluded, even if the Agency does not expressly object to these terms and conditions.
- (3) Offers submitted by the Agency shall be non-binding. The contract between the customer and the Agency shall only become effective once the Agency has submitted its confirmation of the respective order in text form (in analogous application of section 126 b BGB).
- (4) The customer's order shall also be deemed accepted if the Agency commences its work on the respective assignment within the acceptance period (section 147 BGB). In this case, the Agency shall confirm the respective order without undue delay.

## 2. Subject matter of the services

### 2.1 Services

- (1) The Agency shall render services to the customer in accordance with the contract concluded in the respective case.
- (2) Within the scope of the assignment, the Agency shall be granted a discretionary communicative freedom that reflects its individual creative character and communicative mode of expression.
- (3) The Agency undertakes to provide comprehensive advice to the customer in terms of how the assignment can be performed from a communicative and from a technical perspective. In advising the customer, the Agency shall take into account the target groups to be addressed and the overall aims pursued by the customer. The Agency shall not be expected to have any industry-specific knowledge.

### 2.2 Rights of use

- (1) The following provisions shall apply between the parties irrespective of whether the work / product owed by the Agency under the contract is subject to any special statutory rights, in particular copyrights. Apart from the rights granted herein, the customer shall in no case use the work / product without the Agency's prior written consent.
- (2) The Agency shall grant to the customer for the duration of the statutory copyright the exclusive right to use the contractually agreed work / product without any restrictions as to territory and time.
- (3) Should any third-party rights in the work / product result from the Agency's commissioning of subcontractors, the Agency shall also grant to the customer the rights to exclusively use these rights within the scope defined above. The Agency shall make sure in its relationship

2/8

# General Terms and Conditions

FACTORY-C Agentur für Messen und Kommunikation GmbH

with third parties that it has the power to grant the respective rights.

- (4) The granting of rights of use shall, however, only become effective once the customer has made full payment of the remuneration owed to the Agency (section 158(1) BGB). All rights of use shall remain with the owner of the respective right until the remuneration owed has been paid.
- (5) The Agency is entitled to mark the contractual work / product so as to reflect copyright ownership. The customer is not entitled to remove any such mark without the Agency's consent. The customer shall have no remuneration claim in this respect.
- (6) Neither the respective original version nor any reproduction of the Agency's drafts and final artwork may be modified without the Agency's explicit written consent. Any imitation in full or in part shall be prohibited and violates copyright law.
- (7) Replications (e.g. reprints) or the repeated use (e.g. for other products) of the contractual work / product shall be subject to a fee; they shall also require the Agency's prior written consent.
- (8) The Agency shall have a right to be informed by the customer of the extent of use of the contractual work / product.
- (9) The Agency is entitled to use the contractual work / product, including the respective preparatory work, for its own marketing purposes, and to particularly present parts or extracts as reference on its website, print them in its company brochure or use them in corporate videos.
- (10) Any transfer of the rights of use from the customer to a third party shall require the Agency's prior written consent.

## 2.3 Proofreading; production monitoring; specimens

- (1) Prior to a potential reproduction, the Agency shall provide the customer with a proof. The customer's approval of the respective proof shall not be required for reproduction to commence.
- (2) The Agency shall only monitor production where this has been specifically agreed in writing. If such an agreement has been made, the Agency is entitled to make the decisions, and give the instructions, required to ensure a proper production process.
- (3) The customer shall provide the Agency with at least three (3) gratuitous specimens of any reproduced work that are free of any defects.

## 2.4 Retention of title

- (1) Any items supplied to the customer by the Agency shall remain the property of the Agency until all claims from the parties' business relationship have been fully settled.
- (2) The Agency is obliged to – also partly – release any security it is entitled to insofar as its total value exceeds the total amount of all unsettled claims of the customer from the business relationship by more than 10%.

## 2.5 Cooperation on the customer's part

- (1) Within the scope of what is reasonable, the customer is obliged to appropriately cooperate with the Agency in the Agency's performance of the contractual assignment without any remuneration being payable to the customer.
- (2) In the case of large assignments, the customer undertakes to provide the Agency with a

# General Terms and Conditions

FACTORY-C Agentur für Messen und Kommunikation GmbH

requirements profile pertaining to the respective assignment. The requirements profile shall become an integral part of the contract once it has been signed by both parties.

- (3) Unless otherwise agreed, the customer shall provide the Agency with the content to be used for the implementation of the assignment (e.g. logos, texts for a presentation) in good time. The customer shall assure in this regard that there are no third-party rights in the content to be used (e.g. copyrights, rights to images, trademark rights) and indemnify the Agency against any third-party claims that may arise from a potential violation of such rights. The Agency is not obliged to review the content provided by the customer. Where a defect is obvious, the Agency may notify the customer of the respective defective content.

## 2.6 Services rendered by external service providers

The Agency may only outsource creative services (e.g. photographs, text creation, hostesses) or other services (e.g. logistics, exhibition stand construction, hiring of furniture, event equipment, printing) to external service providers based on an agreement made to such effect with the customer.

## 3. Remuneration

### 3.1 Fees

- (1) Fees shall be calculated as agreed in the respective contract.
- (2) With the remuneration, the granting of rights as set forth in Section 2.2 shall be deemed finally compensated. This shall apply notwithstanding the Agency's right to claim an adjustment of its remuneration under the specific circumstances specified in section 32a German Copyright Act (*Urheberrechtsgesetz*; UrhG).

### 3.2 Additional efforts

- (1) The parties shall agree an hourly-rate remuneration for any additional efforts beyond the services owed by the Agency. This shall be based on the Agency's price list as applicable at the date of the conclusion of the contract.
- (2) Additional efforts shall mean all services of the Agency that are based on the customer's subsequent requests for alterations and/or amendments. This shall especially be the case if, following the acceptance of specifications, concepts, basic versions or finished products, the Agency makes alterations or amendments, upon the customer's request, that relate to services that have already been accepted. This shall also apply if the acceptance procedure has not been completed although the requirements for acceptance are already met.
- (3) The Agency is not obliged to implement the customer's requests for alterations and amendments that relate to services that have already been accepted. This shall also apply if the requirements for acceptance are met but the customer has not accepted the services yet.

### 3.3 Services rendered by external service providers

- (1) Any outsourcing of services to external service providers shall be made by the Agency in the name and for the account of the customer. The Agency is entitled to commission services rendered by external service providers in the capacity of the customer's agent. In the event that the external service providers request submission of a power of attorney issued by the customer, the customer shall provide the Agency with such a written power of attorney.
- (2) To the extent that the Agency commissions services rendered by external service providers in its own name and for its own account, the Agency is entitled to charge the customer with

# General Terms and Conditions

FACTORY-C Agentur für Messen und Kommunikation GmbH

the resulting costs insofar as such services are not included in the agreed services.

## 3.4 Travel expenses

The Agency will charge travel expenses in the amount of reasonable and appropriately substantiated costs of the journey and accommodation. Where passenger cars are used, the resulting costs shall be charged on the basis of the commuting allowance provided for in the relevant tax laws as applicable upon issuance of the respective invoice. A claim to a compensation of travel expenses shall only exist if the distance between the provider's registered office and the target location is 50 km or more.

## 3.5 Other expenses

Any extra costs that may be incurred in connection with the conceptual design work or with design realization work on presentations or concepts (e.g. for models, intermediate products, typesetting, courier services, shipping costs, translations) shall be refunded.

## 3.6 Hourly-rate remuneration

The hourly-rate remuneration agreed hereunder shall be billed in units of time of 0.1 hours (6 minutes) or part thereof that has elapsed. The Agency is obliged to record time in a timely and well-arranged manner.

## 3.7 Acceptance procedure

- (1) To the extent that the Agency has produced a work pursuant to sections 631 et seqq. BGB, the customer shall subject the produced work to an acceptance procedure after such work has been completed. The Agency shall make a corresponding written request vis-à-vis the customer, setting a reasonable time limit of at least 14 days.
- (2) The customer must not deny acceptance of the work on communications- or design-related grounds.

## 3.8 Maturity; payment

- (1) Upon completion of the assignment (or upon completion of the acceptance procedure pursuant to Section 3.7, to the extent that the Agency has produced a work pursuant to section 631 et seqq. BGB), the Agency shall invoice the customer for the agreed remuneration (final invoice).
- (2) The Agency is entitled to invoice the customer for installment payments at reasonable intervals. The amount of the installment payments shall be determined on the basis of the value of the Agency's services already rendered (and, to the extent that the Agency has to produce a work pursuant to sections 631 et seqq. BGB, accepted).
- (3) The Agency may request a reasonable advance payment from the customer as a compensation for the fees and expenses incurred and expected to be incurred.
- (4) The Agency may invoice costs related to services rendered by external service providers within the meaning of Section 3.3 subsection 2 and travel expenses within the meaning of Section 3.4 immediately after they have been incurred.
- (5) Final invoices and invoices covering installment payments, advance payments, costs related to services rendered by external service providers within the meaning of Section 3.3 subsection 2 and/or travel expenses within the meaning of Section 3.4 shall become due for payment within fourteen business days after having been received by the customer.

# General Terms and Conditions

FACTORY-C Agentur für Messen und Kommunikation GmbH

## 3.9 VAT

All remuneration amounts are net amounts that must be paid plus VAT at the statutory rate applicable on the invoice date.

## 3.10 Set-off; retention

- (1) The customer shall only have a set-off right if its counterclaim is uncontested, ready for decision or has been finally adjudicated or has been recognized by the Agency.
- (2) The customer is only entitled to exercise a right of retention (*Zurückbehaltungsrecht*) to the extent that its counterclaim is based on the same contractual relationship and is uncontested, ready for decision or has been finally adjudicated.

## 4. Confidentiality

- (1) The Agency undertakes to treat the information relating to product design or advertising concepts it has been entrusted with by the customer strictly confidential; this obligation shall survive the termination of the contract.
- (2) The customer undertakes to treat the proofs, templates, drafts and the like it has been entrusted with by the Agency as well as any other information on business transactions of the Agency it has become aware of strictly confidential; this obligation shall survive the termination of the contract.
- (3) The commitment to confidentiality pursuant to this Section 4 shall not apply to the extent that
  - a) the confidential information concerned had already entered the public domain at the time of its provision by the disclosing party for a reason other than a breach of this contract;
  - b) the confidential information concerned becomes accessible to the receiving party from a source other than the disclosing party, provided that the receiving party has no reason to assume that such source is prevented from disclosing the confidential information itself within the scope of a statutory or contractual obligation;
  - c) the disclosing party has permitted the receiving party to disclose certain confidential information to a third party by giving its prior written consent;
  - d) the confidential information had already been in the rightful possession of the receiving party before its disclosure by the disclosing party; or
  - e) the receiving party is obliged to disclose confidential information under a decree or an order issued by a court of competent jurisdiction or a competent government authority or under a mandatory stock exchange law provision.

In all other respects, section 5 German Trade Secret Act (*Gesetz zum Schutz von Geschäftsgeheimnissen*; *GeschGehG*) shall remain unaffected by this Section 4.

- (4) To the extent that the receiving party is obliged to disclose confidential information of the disclosing party pursuant to subsection (3) (e) of this Section 4, it shall notify the disclosing party in writing of the required disclosure without undue delay after receipt of the decree or order, abstain from making any (further) disclosure to the extent legally permissible and reasonably support the disclosing party in protecting the confidential information or obtaining protection for the confidential information from a competent court to the extent that this is possible.

# General Terms and Conditions

FACTORY-C Agentur für Messen und Kommunikation GmbH

## 5. Liability / performance failure / force majeure

- (1) The Agency shall not be responsible for any content provided by the customer. The Agency is, in particular, not obliged to review the content for potential violations of law.
- (2) The customer undertakes to make sure that it is authorized to use the templates and content provided to the Agency (e.g. concepts, texts, photographs, samples, logos, etc.).
- (3) In the event of any claims being filed by third parties against the Agency on grounds of potential violations of law resulting from the customer's content and information, the customer undertakes to indemnify the Agency against any liability and to compensate the Agency for any costs incurred as a result of the potential violation of law.
- (4) The Agency's obligation to pay damages shall be limited as follows:
  - a) For damages caused by a breach of a material contractual obligation, the Agency shall only be liable up to the amount of the damage typically foreseeable at the time of entering into the contract. The Agency shall not be liable for any damage caused by a breach of a non-material contractual obligation.
  - b) The limitation of liability as set out above shall not apply to damages caused intentionally or by gross negligence, culpably caused personal injuries and shall likewise not apply to any liability under the German Product Liability Act (*Produkthaftungsgesetz*) or in case of any further mandatory liability. Furthermore, it shall not apply if and to the extent that the Agency has assumed a guarantee.
- (5) The customer is obliged to take reasonable measures to avert and mitigate any damage.
- (6) To the extent that the Agency has to produce a work pursuant to section 631 et seqq. BGB, it shall owe a production of the work that is without any defects. Any rights the customer may have in case of defects shall be subject to a limitation period of one year commencing upon acceptance of the respective work by the customer.
- (7) To the extent that the Agency commissions services rendered by external service providers in the name and for the account of the customer at the instigation of the customer or an agent of the customer, the Agency shall not be liable for the services rendered by the commissioned service providers.
- (8) Any approval in terms of production or publication shall be the customer's responsibility. If the customer delegates such approval to the Agency in whole or in part in exceptional cases, it shall indemnify the Agency against any liability in this regard.
- (9) Work products, print products or data storage media shall be shipped and returned at the customer's risk.
- (10) If the Agency is unable to perform the services in whole or in part as a result of an unforeseeable, unavoidable event outside the Agency's sphere of influence and beyond the Agency's control, such as force majeure, war, riots, acts of terrorism, restrictions under the German Act on Protection against Infection (*Infektionsschutzgesetz*) (e.g. quarantining), general orders issued by a federal, district or local authority, pandemics, epidemics, contagious diseases or natural disasters, the Agency shall in this regard be released from its obligation to provide timely performance, and any performance periods or dates agreed shall be extended by the duration of such disturbance or rescheduled accordingly; the customer shall be notified of the occurrence of such disturbance in an appropriate manner. If the end of such disturbance is not foreseeable or should it continue for more than two (2) months, either party may rescind the contract.



# General Terms and Conditions

FACTORY-C Agentur für Messen und Kommunikation GmbH

## 6. Final provisions

### 6.1 Formal requirement

All agreements comprising a change, an amendment or a specification of the contract or of these GTCs, as well as specific representations and arrangements, shall require written form in analogous application of section 126 b BGB or text form in analogous application of section 126 b BGB. The same shall apply to any amendment of this form requirement.

### 6.2 Severability clause

Should individual provisions of the contract or of these GTCs be invalid or be rendered invalid as a result of an event occurring at a later point in time, this shall not affect the validity of the remaining provisions of the contract. The invalid provision(s) shall be replaced by a provision that comes closest to what the parties intended had they considered the relevant aspect. The same shall apply to any gaps or omissions in the contract.

### 6.3 Place of performance; venue; applicable law

- (1) Place of performance shall be Berlin, Germany.
- (2) The exclusive venue for any and all disputes arising from or in connection with the contract shall be Berlin, Germany.
- (3) The laws of the Federal Republic of Germany shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- (4) The German version of these General Terms and Conditions shall prevail.