

GENERAL TERMS AND CONDITIONS

of 3st kommunikation GmbH (in the following referred to as "the agency")

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- 1. Validity**
- 1.1 The present general terms and conditions apply in their current version to all existing and future business relations between ourselves and our customers, i.e., contractors in terms of par. 14 BGB (in the following "contractee"). Contracts with consumers in terms of par. 13 BGB are not arranged based on these terms and conditions. With issuance of the order, the contractee approves of the following terms and conditions of 3st kommunikation.
- 1.2 Deviating, opposing or supplementing general terms and conditions or conditions of purchase of the contractee do not become an object of contract, unless their validity has been explicitly agreed upon in written terms.
- 1.3 The present general terms and conditions apply to all deliveries and services of the agency, according to the contract e.g. in design, digital services, content services, film, branding or communication consulting services, also IT services such as hosting, support, creation or adjustment of software or the like. The agency reserves the right to use suitable subcontractors to fulfil the respective contract.
- 2. Estimate of cost and submission**
- 2.1 The prices given in the estimate remain valid under the condition that the job data relying on the submission remains unchanged. The estimate comprises the performance of the agency (fee) as well as, if applicable, additional costs (external services, materials).
- 2.2 The submission is conducted via written form or conclusive action (e.g., collaboration during the concept and design phase of the contractee).
- 2.3 In case an order is commissioned without an estimate having been issued, the agency is entitled to make use of the recommended fees of the Association of German Graphic Designers (BDG). This is valid as well for changes or supplements demanded by the contractee after the job submission.
- 2.4 As long as no fixed prices have been agreed upon, the offer is understood as subject to common price increases or decreases.
- 2.5 Apart from this, the agency's offerings are nonobligatory and subject to alteration, unless the offer has been explicitly referred to as binding.
- Technical alterations, especially changes of models, construction, equipment, form and/or colour as well as functioning due to technical developments remain subject to change.
- 3. Involvement of the contractee**
- 3.1 The contractee is required to supply the agency immediately after the submission with all the necessary data and information to fulfil the order in appropriate form.
- 3.2 The contractee bears responsibility for the legal permissibility of the data, materials as well as factual statements concerning products and services generated in the process of fulfilling the order. The contractee ensures that they are in possession of the rights of exploitation necessary for the service provision, especially concerning author's rights and other protective rights. The contractee clears the agency of claims by third parties that could arise due to the violation of legal requirements. This encompasses also the agency's costs of necessary legal defence.
- 3.3 In the absence of an explicit instruction in an individual case, the agency's employees can always assume that all data they come into contact with are properly secured with the contractee. The contractee bears disadvantages and additional costs in case of a breach of their duties. As long as the contractee does not fulfil the incumbent participation services at all, not in time or not properly, the agency does not fall behind with regard to rendering the services agreed upon.
- 4. Intellectual property and rights of use**
- 4.1 All rights as well as the intellectual property stay with the agency resp. the rights holder. No granting of rights is connected with conclusion of contract, unless this has been explicitly regulated in written form. Otherwise, the provisions of the copyright act apply.
- 4.2 The drafts, style sheets, templates and work drawings including the designation of authorship must not be changed without the consent of the agency, neither as original nor as reproduction. Every replication, also of parts or details, is impermissible.
- 4.3 The delivered works must only be used for the use, purpose and extent agreed upon. Every other or further use is only permitted by consent of the agency or, if applicable, after agreement on an additional usage fee.

- 4.4 Possible rights of use are granted only after full payment of the compensation agreed upon.
- 4.5 Without the existence of an explicit rule, no right to edit is granted. Without the existence of an explicit rule, the issuance of source material (e.g. source codes) is not owed.
- 5. Fees**
- 5.1 The fees agreed upon are understood as net amounts plus the respective VAT.
- 5.2 A complimentary activity, especially the creation of drafts free of charge, does not take place, unless this has been explicitly agreed upon in written form for this individual case.
- 5.3 As long as this has not been agreed upon otherwise, fees are due at delivery of the works; they are payable without deduction. If works are delivered in separate parts, the instalment is due at delivery of the respective part. If the fulfilment of the order is spanned over a longer time frame, the agency may demand instalments for the amount of work.
- 5.4 In case of delay in payment, default interest in the lawful controlled amount is due. Further claims with regard to the delay remain unaffected.
- 5.5 Offsetting of our claims is ruled out, unless the counter-claim with which should be offset has been legally binding determined and is uncontested or contested, but ready for decision; the same applies for the enforcement of a right of retention by the contractee. The contractee can only exercise a right of retention if their counter-claim is based upon the same contractual relationship.
- 6. Additional services and associated costs**
- 6.1 The alteration of drafts, the generation and issuing of further drafts, the alteration of work drawings as well as other additional services are charged separately according to expenditure of time.
- 6.2 Associated costs in connection with the generation of drafts or the execution of drafts (e.g., for print, dummies, illustrations, photography, typesetting) have to be reimbursed.
- 6.3 For travels that are (after agreement with the contractee) necessary for the execution or the use of the order, the emerging costs and expenses are refunded.
- 7. Amendment and production**
- 7.1 Before beginning of the production, samples have to be presented to the agency.
- 7.2 The production is only supervised by the agency according to a particular agreement. If such an agreement exists, the agency is authorised to make necessary decisions and issue instructions.
- 8. Delivery**
- 8.1 The agency sends its works to the contractee on request. When shipping the risk of handover to the carrier is moved to the contractee. The transport is conducted at cost of the contractee.
- 8.2 Delivery dates and other periods of service are only binding if they have been explicitly agreed upon in text form. We are only in default with our delivery/service if a grace period, that is appropriate under the circumstances (but at least two weeks) and has been set in text form by the contractee, passed fruitlessly. We can only appeal to the mentioned circumstances if we informed the contractee about the arising delivery/service impediments. Furthermore, the adherence of the delivery and service obligations requires the timely and proper fulfilment of necessary duties to cooperate of the contractee.
- 8.3 Compensation for damages due to default can only be claimed up to the contract value (personal contribution excluding expenses for technical additional costs). The limitation of damages due to default does not apply for grossly negligent damages due to default or such damages that affect life, body or health.
- 8.4 If a contractee delays the agreed provision of information, materials or releases, the agreed delivery dates are postponed respectively.
- 9. Support, Service Level Agreements**
- 9.1 If there has been no agreement on explicit service times as part of the Service Level Agreements (SLA) with the client, the period of Monday to Friday 9 a.m. to 5 p.m. applies (with the exception of the legal holidays at the place of execution). The tangible Service Levels are agreed upon individually with the client in text form.
- 9.2 If no response times have been explicitly agreed upon, care services have to be started immediately after receipt of the respective announcement or occurrence of the stipulated incident within the agreed service times. If no recovery times have been agreed upon, care services have to be completed within a reasonable period.
- 9.3 In case of care services in the framework of a service contract, a recovery declaration is sufficient for keeping of a term in case of successful and on-time completion, for instance in case of elimination of a disruption the declaration of operational readiness.

10. Reclamations and liability

10.1 The contractee has in any case to check the products delivered by the agency or third parties (e.g., proofs, data storage devices, printouts) as well as the pre- or intermediate results sent for correction. Mistakes that may have arisen have to be indicated to the agency immediately after receipt. If this is not done, the delivered products respectively the pre- or intermediate results sent for correction are deemed as accepted and the risk of further mistakes in further processing is moved to the contractee.

10.2 In case of uncontrolled release, transfer or processing of the templates, the agency is not liable for damages that occur in further processing, unless the mistakes could not have been spotted during a proper examination of the pre- and intermediate results by the contractee.

10.3 When using coloured reproductions, in all manufacturing processes slight deviations from the original cannot be queried. The same applies to differences between other templates (e.g., digital proofs, proofs) and the final product.

10.4 In case of contractual or non-contractual liability, we only pay damages or compensate futile efforts (a) in case of wilful intent the full amount; in case of gross negligence and in case of lack of a nature for which we explicitly assumed the guarantee only to the amount of the contractually usually foreseeable damage which should have been avoided by means of the violated obligation or the guarantee, (b) in other cases only through violation of an essential contractual obligation if this jeopardises the purpose of the contract (so-called cardinal duty). The liability in the (b) cases is limited to the double amount of the respective contract value or in case of continuing obligations to the double amount of the annual compensation. For all claims of the contractee against us on recovery of damages or compensation of futile efforts, a limitation period of one year applies. The limitation period begins with the point in time set in par. 199 sec. 1 BGB. The mentioned limitations of liability do not affect claims for compensation due to damages to a person, malice or the lack of a guaranteed nature as well as claims according to the product liability act.

10.5 The agency does not bear responsibility or guarantee for orders that have been placed on the contractee's behalf and account to third parties.

10.6 In case that the contract includes a storage or retention of data or information of the contractee for retrieval by the contractee (e.g. hosting) it is pointed out that an availability of

data or information at any time cannot be guaranteed, unless this has been explicitly agreed upon in written form. Insofar as law of tenancy applies to the contract, liability without fault for initial defects according to par. 536a sec. 1 p. 1 var. 1 BGB is excluded.

11. Specimen copies

The contractee agrees to cede of all reproduced works at least 10 specimen copies free of charge that also may be used for self-promotion.

12. Duties of loyalty and confidentiality, data protection

The agency commits itself towards the contractee to an objective, solely aimed at the goals of the contractee method of operation. All business secrets the agency obtained in connection with the cooperation with the contractee are retained by the agency with the attention of a diligent businessman and all connected information and documents are treated confidential. The due diligence and duty of confidentiality apply beyond the end of contract and also apply if no cooperation is materialised. The contracting parties commit themselves to obey the data protection regulations, including the regulation of the Federal Data Protection Act (BDSG) as well as the EU General Data Protection Regulation (GDPR). Insofar as an order processing by one of the contracting parties relating to the contract occurs, the contracting parties will negotiate an agreement according to the regulations of art. 28 GDPR.

13. Additional provisions

13.1 Place of fulfilment and legal domicile of all claims and legal disputes arising from the contractual relationship is the registered office of the agency.

13.2 It applies only the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

13.3 In case one of the aforementioned provisions should be or become void, the validity of the other provisions remains unaffected.

13.4 Additional oral agreements do not become integral part of the contract unless the contracting parties have in written form mutually renounced the requirement of written form. Changes and amendments always require the written form in order to be valid. This explicitly also applies for a repeal of the requirement of written form itself. Proof of a complementary or changing additional agreement remains admissible.