

### **Section 1 Validity, relevant conditions**

- (1) These terms and conditions regulate the contractual relationships between Brandung GmbH & Co. KG ("agency") and the clients ("customer").
- (2) These terms and conditions apply to the exclusion of all others, unless they are amended by an express written agreement between the parties.
- (3) They also apply for future contracts, even if they are not mentioned for subsequent contracts.
- (4) Alternative provisions and terms and conditions do not apply, unless they have been individually agreed between the agency and the customer.

### **Section 2 Offer, acceptance and scope**

- (1) The agency's offers are essentially non-binding. The same applies for cost estimates, budget plans and concepts.
- (2) Solely the agency's written order confirmation - in accordance with the terms and conditions of the framework contract - is applicable for the content and scope.
- (3) A contract between the agency and the customer is only established once the order confirmation is received by the customer or the service commences. Offers sent to the agency may be accepted by them within 14 days.

### **Section 3 Delivery, approval, defect notification, termination and payment**

- (1) The agency shall handle the customer's requested deadlines with goodwill and the greatest possible care. However, such schedule arrangements only give rise to a default situation if the agency has provided a written and binding confirmation to the customer.

(2) The completion date is not binding for the agency, if it cannot be met for reasons for which the customer is solely or predominantly responsible. This particularly applies in the event of a breach of the customer's obligations stipulated in Section 8 of these terms and conditions.

(3) After the completion of the agreed service and its transfer to the customer's control, the customer is obliged to submit a written approval within 10 working days (acceptance). Defects, if identifiable, must immediately be reported to the agency in writing. If the customer is a merchant and fails to report defects on time or correctly, the service is considered to have been approved despite these defects (notional acceptance). Defects, which cannot be identified despite a careful check, must be reported in writing immediately after they are detected. The customer is not entitled to refuse the service based on minor defects. If the customer allows an appropriate deadline for approval set by the agency to lapse, the service is considered to be free of defects. If the customer uses the services, approval is deemed to have been provided, unless the customer objects to the approval within 7 working days and provides written notification of the defects (tacit acceptance).

(4) The agency is entitled to submit parts of the agreed service to the customer for early approval at any time, which the customer must grant if the part is able to be assessed in this form. Once parts have been approved, they can only be rejected or a change requested in accordance with Section 4 (4) of these terms and conditions. The scope and time of the payment obligation remain unaffected by an approval.

- (5) After the overall approval, the entire remuneration, minus any instalments already paid, will be invoiced to the customer in the form of a final invoice. The outstanding amount is payable within 10 working days of receipt of the invoice. The customer therefore defaults on payment after the expiration of the deadline, even without a written warning.
- (6) If the customer defaults on payment, default interest of 5 percentage points above the base rate pursuant to Section 247 BGB (German Civil Code) is payable. If the customer is a merchant, the interest rate is 8 percentage points above the base rate. The agency's right to assert additional claims from the default remains unaffected.
- (7) Agency services, especially concept, consulting and development activities, are essentially provided in return for payment.
- (8) If no remuneration has been agreed between the agency and the customer, including for ancillary services and non-contractual services, the customer is required to pay the standard hourly rates for this service. In case of doubt, the agency's remuneration rates are considered standard. This also applies if the agency makes changes to the service following a (partial) approval.
- (9) The customer can only offset undisputed or legally binding counterclaims against the agency's claims.
- (10) If third-party services are invoiced separately to the customer, the agency may charge a processing fee of 10% of the invoice amount.
- (11) The ordinary termination of continuing obligations is essentially precluded; the provisions in the framework contract apply. A merchant termination in accordance with Section 649 BGB is regularly precluded.

#### **Section 4 Change requests, additional expenses**

- (1) Additional expenses are all agency services that are based on the customer's subsequent change and/or additional requests. This particularly applies if, after an approval in accordance with Section 3 (4) and (5) of these terms and conditions, the agency makes changes or additions at the customer's request, which relate to services that have already been approved. This also applies if an approval according to Section 3 (3) and (4) of these terms and conditions has not yet taken place, even though the requirements for an approval are already in place. Additional expenses also include the adaptation of the service to browser versions, which were outdated, not yet available or not part of the contractual agreement at the time of conclusion of the contract.
- (2) The agency is not obliged to comply with the customer's change and additional requests, which relate to services that have already been approved. This also applies if the acceptance or approval requirements according to Section 3 (3) and (4) of these terms and conditions are in place, but the customer has not yet provided its approval or acceptance.
- (3) The agency will always endeavour to take account of the customer's change requests. However, any resulting additional expenses must essentially be remunerated in accordance with Section 3 (8) of these terms and conditions.
- (4) If material changes are to be made at the customer's request after the conclusion of the contract or after the approval of partial services, a new delivery date must be agreed. The agency will propose a new delivery date to the customer and inform the customer of the costs. The customer then has the option of confirming the new delivery date and the additional costs or declaring the withdrawal of the change request.

If the agency does not provide a written notification, in case of doubt, an adequate delivery date is deemed to have been agreed.

### **Section 5 Warranty and liability**

(1) The agency is only liable for defects to the service if these have been reported in writing and on time in accordance with Section 3 (3) of these terms and conditions. The agency is not liable for minor defects in the quality or if usability is only marginally impaired. The customer's warranty claims lapse if it or third parties have made changes to the service. The warranty claims also lapse if the defects are predominantly due to the customer's failure to fully comply with its duties of cooperation according to Section 8 of these terms and conditions. This particularly applies for defects that are caused by incorrect/faulty texts, graphics, photos, records or other materials, which were approved by the customer before their use by the agency.

(2) The agency shall rectify a defective service within an adequate period. Following the second failed rectification attempt, the customer may assert their additional defect rights.

(3) The agency is not responsible for contents provided by the customer. In particular, the agency is not obliged to check the contents for possible legal violations.

(4) The agency accepts no liability for incorrect presentations of website contents that are based on browser versions, which were outdated, not yet available or not part of the contractual agreement at the time of the conclusion of the contract.

(5) If third parties raise claims against the agency due to possible legal violations resulting from the contents of the website, the customer is obliged to indemnify the agency from any liability and reimburse the agency's costs resulting from the possible legal violation.

(6) In case of slight negligence, the agency is only liable in the event of a breach of material contractual obligations (cardinal obligations)

as well as in the event of personal injury and in accordance with the provisions of the Product Liability Act (ProdHaftG). In all other respects, the agency's precontractual, contractual and non-contractual liability is limited to intent and gross negligence, while the limitation of liability also applies if one of the agency's vicarious agents is at fault.

(7) A warranty period of one year after becoming aware of the circumstances justifying the claim applies for the warranty. Irrespective of awareness or negligent ignorance, the claims lapse 5 years after they arise. For customers who are consumers, a warranty period of one year applies for contractual compensation claims, while a warranty period of two years applies for all other warranty claims.

(8) In all other respects, all of the customer's claims lapse a year after the release of the service, irrespective of their legal basis.

### **Section 6 Rights of use and editing rights, copyright and source code**

(1) The agency's services are personal intellectual creations. All resulting rights are the exclusive property of the agency. In particular, the agency does not grant any rights of exploitation to the customer. Only a conditional and revocable right to use the service is transferred, unless otherwise agreed. The right to use one of the agency's personal intellectual creations only takes effect with the complete fulfilment of all remuneration claims from the business relationship (Section 158 (1) BGB).

(2) The customer is only granted the editing rights (Section 23, s. 1 UrhG (Copyright Act) and Section 69 c, no. 2 UrhG) if this has been expressly agreed. The agency's obligation to transfer the source code also requires an express agreement. If an agency obligation to transfer the source code exists, this only takes effect with the fulfilment of all remuneration claims from the business relationship (Section 158 (1) BGB).

(3) The customer is not entitled to use the website's individual design elements or the

entire website in any other form - especially in printed form.

(4) References to the agency's status as the originator may be included at appropriate points in the website. If a reference to the status as originator has been agreed, the customer is not entitled to remove the reference without the agency's consent.

(5) If software or other third-party intellectual property is provided to the customer, the agency transfers a non-exclusive right of use to the customer for the duration of the term of the contract or until it is withdrawn by the agency. Apart from this, the relevant software manufacturer's licensing provisions apply.

### **Section 7 Confidentiality, privacy**

(1) The parties must ensure the confidential treatment of all of the other party's business matters if these matters are neither public knowledge or publicly accessible. This obligation already exists during the contract negotiation and its initiation.

(2) The agency retains ownership and copyrights to all documents provided, such as drafts, concepts, calculations and graphic illustrations. These may only be passed on to third parties with the agency's consent.

(3) If the customer breaches these obligations, it forfeits a contractual penalty to the agency, unless it proves that it is not at fault. The contractual penalty amounts to 10% of the total net remuneration, but a maximum of EUR 20,000.00.

(4) The agency's privacy liability within the scope of the technical, social and legal conditions ends after the service has been transferred to the customer or uploaded to its server space.

### **Section 8 Customer duties of cooperation**

(1) The customer is obliged to ensure adequate cooperation, to the extent reasonable, during the development, establishment and maintenance of the contractual service. In

particular, the customer is also obliged to provide the information and documents required for the development, establishment and maintenance of the service. The customer is exclusively responsible for checking the materials, information, etc., provided under the conflict of law rules and, where applicable, acquiring the rights from third parties.

(2) The agency is not obliged to examine the contents for possible errors. In particular, the agency is not obliged to proofread texts. Moreover, the agency is not obliged to notify the customer of errors or other shortcomings in the contents.

(3) If test runs or acceptance tests, presentations or other meetings become necessary or prudent, the customer shall assign competent staff to participate in the meetings, who are authorised to make all the necessary or relevant decisions.

(4) If the agency submits proposals, drafts, test versions or the like for the customer, the customer shall make all reasonable efforts to perform a fast and thorough review. The customer shall immediately inform the provider of complaints and change requests.

(5) The customer is independently responsible for launching the website on the world wide web and for the accessibility of the website on the internet. The agency is not obliged to provide memory for the website (hosting) or to procure an internet domain. The agency's service obligations also do not include the provision of access to the internet (access providing). If the aforementioned services are agreed, the agency shall regularly act as the customer's representative. The agency shall not become a contract partner. The third party's conditions apply.

## Section 9 Agency services

(1) The agency shall ensure a high-quality design of the service and, in doing so, take account of the current findings on habits, trends and developments in the field of web design as well as in the area of general commercial graphics within the scope of the customer's specifications.

(2) The agency does not promise any industry-specific knowledge. In particular, the agency is not obliged to obtain specific findings on the habits and the user behaviour of persons that belong to the website's target group based on surveys, studies or other methods of market research.

(3) The agency shall program software that implements the specifically agreed functionalities as well as the graphic design arranged with the customer. The agency shall use programming languages that reflect the current state of the art.

(4) The agency is entitled to employ appropriate subcontractors to meet its contractual obligations. The costs shall be invoiced to the customer, unless they are included in a framework contract. Section 3 (10) of these terms and conditions applies accordingly.

(5) If the agency offers free services, any customer performance entitlements are excluded.

## Section 10 Final provisions

(1) These general terms and conditions as well as the framework contract are exclusively subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(2) 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, Cologne is agreed as the place of jurisdiction for all disputes arising from or in connection with these terms and conditions. The place of fulfilment for the agency's services is also Cologne.

(3) All agreements, which involve an amendment, addition or specification to/of these terms and conditions, as well as specific assurances and arrangements, must be made in writing in accordance with Section 126 b BGB.

(4) If individual provisions of these terms and conditions are invalid or become invalid as a result of a subsequent circumstance, this shall have no effect on the overall validity of these terms and conditions. The invalid provisions shall be replaced by a regulation that most closely resembles what the contracting parties would have wanted if they had considered the relevant point. The same applies for loopholes in this contract.