



## GENERAL TERMS AND CONDITIONS

marketing deluxe GmbH (hereinafter referred to as the 'Agency') provides its services to the contractual partner (hereinafter referred to as the 'Client') exclusively on the basis of the concluded contract in question and the following General Terms and Conditions (T&Cs).

### 1. Validity, Contract Conclusion

- 1.1. These T&Cs shall apply to all business transactions between the Client and the Agency. This shall also apply in the event that the validity of the T&Cs has not been expressly agreed. The version of the T&Cs valid at the time the contract is concluded shall prevail. The Client's own terms and conditions, where these exist, shall not be valid.
- 1.2. Offers made by the Agency shall remain subject to change.
- 1.3. The basis of each business relationship is the Agency's respective offer. This offer shall specify the scope of the services to be provided and their remuneration. Subsequent changes to services shall require the Agency's written consent. The Agency shall only be deemed to have entered into a binding agreement if the Agency's offer has been countersigned by the Client or if the Agency commences the provision of services following appropriate notification by the Client that they accept the Agency's offer. This shall not affect the provisions on the protection of concepts and ideas (Item 10).



### 2. Order Processing

- 2.1. The Client undertakes to provide the Agency with all the necessary information and content for processing the order in a timely and thorough manner and to communicate to the Agency all information and circumstances that are deemed necessary or useful for processing the order without delay. This shall also apply to information that only becomes known while the services are being rendered. Any expenses incurred as a result of incorrect, incomplete or subsequently changed information shall be borne by the Client.
- 2.2. The Agency's services, in particular advertisements, preliminary drafts, sketches, final artwork, brush prints, blueprints, copies, colour prints and electronic files, shall be forwarded to the Client for review and approval. If the Client does not provide any feedback within three working days, approval shall be deemed to have been granted.
- 2.3. The Client shall ensure that the documentation provided, such as photos or logos in particular, does not infringe the copyright, trademark, labelling or other rights of any third party and may thus be used for the contractually agreed purpose. The Agency shall have no obligation to perform any checks in this regard. If claims are made against the Agency by third parties as a result of such an infringement of rights, the Client shall indemnify the Agency and exempt it from any and all claims. This also includes the costs of legal representation.
- 2.4. The Agency shall not perform any legal review of the marketing measures including their implementation. This also applies to documentation or instructions provided by the Client. If a claim is made against the Agency due to a legal infringement in this regard, the Client shall indemnify the Agency and exempt it from any and all claims.
- 2.5. The Client authorises and empowers the Agency to make use of translations, specialist texts, photos, sound recordings, programming, illustrations, graphics or other external services directly from the relevant service providers and on behalf of the Client. In this respect, it shall be at the Agency's discretion whether to perform the contractually owed service itself, to make use of competent third parties as vicarious agents to do so and/or to substitute the service. When selecting third parties, the Agency shall exercise the necessary due diligence, in particular with regard to the professional suitability of the third party.
- 2.6. Should the Client be of the opinion that they were already aware of ideas and other content provided to them by the Agency, they must notify the Agency of this within 14 days of becoming aware of this circumstance. If they do not, the Agency shall justifiably assume the opposite.
- 2.7. Any exclusivity requires express written agreement.



### **3. Deadlines**

- 3.1. Agreements on dates and deadlines between the Agency and the Client shall be made exclusively in writing. Even if the Agency endeavours to comply with the agreed deadlines, these shall not be binding unless expressly agreed otherwise in writing.



### **4. Remuneration, Retention of Title and Cost Estimates**

- 4.1. Unless otherwise agreed, the Agency is entitled to remuneration for each individual service as soon as it has been rendered. The Agency shall be likewise entitled to demand advance payments to cover the corresponding expenses.
- 4.2. The remuneration is a net fee plus value added tax (VAT). In the absence of a specific agreement, remuneration shall be payable for the services rendered to the current market-based amount and the transfer of the rights of use under copyright and trademark law necessary for the services due.
- 4.3. The Agency's cost estimates are always non-binding.



### **5. Payment Default or Delay, Interest on Arrears and Right of Retention**

- 5.1. In the event of default or delay in payment, interest on the amount due shall be payable at the statutory rate. Furthermore, the Client undertakes to reimburse the Agency for any reminder and collection costs arising from their default or delay, insofar as these serve the purpose of appropriate legal prosecution. In the event that the Client is in default of payment, the Agency shall also be entitled to demand immediate payment for all services and partial services still to be rendered by the Client.
- 5.2. Until such times as the outstanding amount has been settled, the Agency shall not be obliged to provide any further services.



### **6. Warranty**

- 6.1. The Client shall report any defects in writing within three working days of delivery, failure to do so shall result in the forfeiture of rights. The defect must be described in such a way that it can be easily understood by the Agency. After this deadline has expired, a defect-free delivery shall be deemed to have been performed.
- 6.2. If parts of the service are considered unsatisfactory, the entire service shall not be considered as such. Mere typing errors or computer misprints shall under no circumstances constitute defects.
- 6.3. The Client is required to allow the Agency to take the necessary steps to investigate and remedy any defects found.
- 6.4. If the rectification of defects proves impossible or would involve a disproportionately high level of effort on the part of the Agency, the Agency may refuse to provide improvements to the service. In such a case, the Client shall be reminded of their statutory price reduction and conversion rights.



### **7. Liability**

- 7.1. Liability for pecuniary losses caused by slight negligence on the part of the Agency is excluded. This applies to direct and indirect damages as well as to loss of profit. The burden of proof that damage was not caused by slight negligence shall lie with the Client.
- 7.2. The Agency shall not be liable for claims made by third parties based on services the Agency has rendered to the Client if the Agency has fulfilled its duty to notify or if such a duty was not recognisable.
- 7.3. Claims for damages must be asserted within six months of the damage becoming known, but in any case three years after conclusion of the contract. The amount of claims for damages shall be limited to the net order value.



## **8. Contract Period, Termination and Withdrawal from the Contract**

- 8.1. Unless otherwise agreed, the contract shall be concluded for an indefinite period and may be terminated by the Client or by the Agency by means of registered letter, subject to a notice period of three months. The date of the postmark shall determine the start date of the notice.
- 8.2. In the event of good cause, the Agency reserves the right to terminate the contract with immediate effect. In particular, the existence of good cause shall be assumed in the event that it becomes impossible to provide the service, insolvency proceedings are opened against the Client's assets or an application is rejected due to insufficient funds, payment or cooperation obligations are breached and a grace period of fourteen days has expired without result, there are significant concerns regarding the Client's credit rating or other circumstances exist/become apparent that make it unreasonable for the Agency to continue with the contract.
- 8.3. The Client waives any right of withdrawal they may be entitled to.



## **9. (Intellectual) Property**

- 9.1. Until full remuneration of the fee, including all ancillary costs, has been made, all services and deliverables as well as individual parts thereof shall remain the full property of the Agency. The acquisition of rights of use and exploitation of the Agency's services shall in any event require full settlement of the amount invoiced.
- 9.2. The Agency reserves all intellectual property rights to the services rendered. The Client may only use these for the purposes for which the Agency was commissioned and, in particular, these may not be reproduced, processed, exploited in any other way or made available to third parties.



## **10. Protection of Concepts and Ideas**

- 10.1. Presentation documents and their contents shall remain the property of the Agency and must be returned to it on request. Transfer of these documents to third parties as well as their publication, duplication, dissemination or other use by the Client shall not be permissible without the express consent of the Agency. In this respect, the Agency reserves the right to assert claims for injunctive relief and damages in court.
- 10.2. If conceptual works fall within the scope of the Copyright Act or are protected in any other way, the provisions pertaining thereto shall apply. This applies in particular to advertising slogans, advertising texts, graphics, illustrations, advertising materials and the like.
- 10.3. Notwithstanding any legal protection, the Client shall only be entitled to use ideas or other designs developed by the Agency with the latter's express permission. Any transfer to third parties or other use shall likewise require the Agency's express permission.



## **11. Data Protection, References**

- 11.1. The Agency shall not process any personal data for the Client. Should the Client provide the Agency with personal data, the Client shall be solely responsible for compliance with any obligations under data protection law and shall indemnify the Agency and exempt it from any and all claims.
- 11.2. The Client agrees to any mention of their name or company as a reference of services provided by the Agency, including in particular on the Agency's website and social media channels or in its general presentations and publications regarding its services.

### III

#### **12. Miscellaneous**

- 12.1. Agreements with the Client that deviate from these T&Cs shall only be valid in individual cases if this has been expressly agreed in writing. Any deviation from the written form requirement must also be agreed in writing in order to be valid.
- 12.2. The Agency reserves the right to make changes to the T&Cs. These changes shall be communicated to the Client and shall be deemed approved if the Client does not raise an objection to them within 14 days.
- 12.3. The Agency shall only be bound by declarations, additions and amendments to the agreements made verbally, by telephone or by telex if the Agency has confirmed these in writing.
- 12.4. Providers of social media channels or other media providers reserve the right, in their own terms of use, to remove or reject advertisements and appearances at will. Accordingly, the providers of such services are not obliged to forward content and information to users of these services. Therefore, the Agency is unable to control whether or not the commissioned campaign can be accessed at any time or that it can be published online.
- 12.5. All legal relationships arising from and in connection with these T&Cs shall be governed by Austrian law, excluding national and international conflict of law rules and to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- 12.6. In the event that individual provisions of these T&Cs are invalid or unenforceable, or that they become invalid or unenforceable once the contract has been concluded, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced by a valid and effective provision which comes closest to the parties' intention in terms of its effect and its economic objective.