

## 1. SCOPE OF VITALITY

1.1. The agency moodley graz gmbh referred to hereinafter as Agency shall provide its services exclusively on the basis of the present General Terms and Conditions of Business. This shall also apply to all future business relations, even if mention is not expressly made of this.

1.2. Subsidiary agreements, caveats, amendments or additions to these General Terms and Conditions of Business must be made in writing in order to be valid; this also applies to the decision to dispense with the requirement for the written form.

1.3. Any terms and conditions of the contractual partner which contradict or differ from these terms and conditions of business, even if we are aware of them, must be expressly recognised in writing by the Agency in order to become effective.

1.4. If individual provisions within these General Terms and Conditions of Business should be ineffective, this will not affect the binding nature of the remaining terms and conditions or of contracts concluded on the basis of them. The ineffective provision is to be replaced by an effective provision which comes as close as possible to its meaning and purpose.

## 2. CONCLUSION OF CONTRACT

2.1. The basis for concluding a contract shall be the respective quotation from the Agency and the customer's order, in which the scope of services and the remuneration are specified. Quotations from the Agency remain subject to change and non-binding.

2.2. If the client issues an order, then he shall be bound by this two weeks after it is received by the Agency. The contract shall come in to existence through the Agency's accepting the order. Acceptance must take place in writing (e.g. by means of an order confirmation) unless the Agency makes it known unequivocally that it accepts the order (e.g. by undertaking activities on the basis of the order).

## 3. SCOPE OF SERVICES, ORDER PROCESSING AND THE CLIENT'S DUTIES OF PARTICIPATION

3.1. The scope of the services to be provided shall derive from the client's order and the specification of services, or from the details in the contract. Subsequent amendments to the contents of the services must be made in writing

3.2. All services by the Agency (in particular preliminary drafts, sketches, final artwork, proofs, blueprints and colour prints) must be checked by the client and released within three days. If not released in time, they will be assumed to have been approved by the client.

3.3. Errors in the client's manuscript and/or documents will be corrected to the best of our ability, although the Agency shall assume no liability whatsoever for this service. Corrected proofs will be checked by the client and returned with the annotation of consent. Following the expiration of a specific deadline, the corrected proof will be automatically considered as having been approved. Any changes submitted verbally or by telephone will require repetition in writing. The Agency shall not be responsible for any deficiencies caused by too short delivery times requested by the client.

3.4. The client will immediately provide the Agency with all the information and documents which are necessary for providing the service. He/she will inform the Agency of all events which are of significance for carrying out the order, even if these circumstances only become known when the order is already being carried out. If the client supplies the Agency with information which is incorrect, incomplete or subsequently changes and as a result work has to be repeated or delayed

by the Agency, the client shall bear any costs which arise.

3.5. The client is further obliged to check all documents made available for undertaking the order (photos, logos etc.) for any existing copyright, trademark rights or any other third party rights. The Agency shall not be liable for any breach of such rights. If any claim is made against the Agency on account of any such breach of rights, then the client shall indemnify the Agency and hold it harmless; he/she must compensate the Agency for all disadvantages arising from any claim by a third party.

#### 4. EXTERNAL SERVICES / INSTRUCTING THIRD PARTIES

4.1. The Agency has full discretion to decide whether to carry out the service itself, to make use of the services of third parties in providing the contractual services and/or to substitute such services (“auxiliary support”).

4.2. The commissioning of such auxiliaries may take place either in its own name or in the name of the client, but in any event at the expense of the client. The General Terms and Conditions of Business of the commissioned supplier shall apply – even if the processing work is to be invoiced on via the Agency to the client. The full invoice amount shall be paid on the due date. No reduction in the invoice amount will be permitted until a credit note from the supplier has been received on our premises; should the invoice already have been transferred, we will reimburse the difference.

4.3. The Agency will select such auxiliaries with care and ensure that they have the necessary professional qualifications.

#### 5. DEADLINES

5.1. All agreements on deadlines and time limits are to be recorded and confirmed in writing. The Agency will make every effort to meet deadlines. However, if a deadline is not met, this shall only entitle the client to enforce his/her statutory rights if he grants the Agency an appropriate period of grace, which shall be at least 14 days. This period shall start when a reminder letter is received by the Agency.

5.2. If the period of grace expires unproductively, the client may withdraw from the contract. An obligation to provide compensation by reason of the contract shall exist only in the event of intent or gross negligence by the Agency.

5.3. Unavoidable or unforeseeable events – in particular delays by the Agency’s subcontractors – shall in any case release the Agency from complying with the agreed delivery deadline. The same shall apply if the client is late in meeting his/her obligations which are necessary for carrying out the order (e.g. providing documents or information). In this case the agreed deadline shall be put off at least for the extent of the delay.

#### 6. WITHDRAWAL FROM THE CONTRACT

The Agency is entitled to withdraw from the contract in particular if – it is impossible to carry out the service for reasons for which the client is responsible or if it is further delayed despite a period of grace being set; – justified concerns exist as to the client’s creditworthiness and the latter provides neither payment in advance nor a valid security at the request of the Agency before the Agency provides its services.

Die Agentur ist insbesondere zum Rücktritt vom Vertrag berechtigt, wenn – die Ausführung der Leistung aus Gründen, die der Kunde zu vertreten hat, unmöglich ist oder trotz Setzung einer Nachfrist weiter verzögert wird; – berechtigte Bedenken hinsichtlich der Bonität des Kunden bestehen und dieser auf Begehren der Agentur weder Vorauszahlungen leistet noch vor Leistung der Agentur eine taugliche Sicherheit leistet.

#### 7. FEE

7.1. Unless otherwise agreed the Agency shall have the right to claim its fee for an individual service as soon as this has been provided. The Agency is entitled to request advance payments to cover its costs.

7.2. Unless otherwise agreed, the Agency shall receive a fee for the services provided and payment for the rights of use in respect of copyright and trademark rights. This fee does not include the statutory vat.

7.3. All services by the Agency which are not expressly compensated by the agreed fee are to be paid for separately. All cash expenditure incurred by the Agency is to be reimbursed by the client.

7.4. Estimates of costs by the Agency are strictly non-binding. If it can be seen in advance that the actual costs will exceed those estimated in writing by the Agency by more than 20 %, the Agency will advise the client of the higher costs. The increased costs will be taken to have been approved by the client unless the Client expressly objects in writing within three days and at the same time advises of more cost-effective alternatives.

7.5. The Agency must be appropriately reimbursed for all works by the Agency which for whatever reason are not implemented by the client. The client shall not acquire any rights of any kind to these works by making such a payment; in addition, all concepts, designs and other documents which are not implemented must immediately be returned to the Agency.

## 8. PAYMENT

8.1. Invoices from the Agency are due for payment from the date of invoicing net cash without any deductions and unless otherwise agreed are to be paid within ten calendar days from receipt of invoice. In the event of late payments, interest on late payments at a rate of 10 % per annum shall be taken as agreed. Goods supplied remain in the ownership of the Agency until full payment has been made.

8.2. The client undertakes to bear all costs and expenses associated with recovering the debt, such as in particular collection expenses or other necessary costs for adequate legal prosecution.

8.3. In the event of late payment by the client, the Agency may make all other services and partial performances provided in the context of other contracts concluded with the client immediately due for payment.

8.4. The client is not entitled to offset any claims by the Agency against his/her own claims unless the client's claim has been acknowledged in writing by the Agency or established by law. Any right of retention by the client is excluded.

## 9. PRESENTATION

9.1. The Agency shall be entitled to an appropriate fee for taking part in presentations, and in the absence of any agreement this shall at least cover the full costs of staff and materials incurred by the Agency for the presentations together with the costs of any external services.

9.2. If after the presentation the Agency does not receive an order, then all the Agency's services and in particular the presentation and its contents shall remain the property of the Agency; the client shall not be entitled to use this further in any form whatsoever; and in addition the documents must be returned to the Agency immediately. It is not permitted to pass the presentation documents on to third parties, not to publish, reproduce, distribute or otherwise exploit them without the express authorization of the Agency.

9.3. Similarly the client is forbidden to further use the ideas and concepts put forward during the presentation, irrespective of whether the ideas and concepts are subject to copyright protection. By paying the presentation fee the client shall not acquire any rights to exploit or use the services presented.

9.4. If the ideas and concepts put forward during a presentation are not used in advertising materials created by the Agency to solve communication tasks, then the Agency is entitled to use the ideas and concepts it has presented elsewhere.

## 10. RIGHT OF OWNERSHIP AND COPYRIGHT

10.1. All services by the Agency including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final artwork, concepts, negatives, slides) and also individual parts of these shall remain in the ownership of the Agency as shall the individual pieces of work and original sketches, and may be requested back by the Agency at any time and in particular if the contractual relationship is ended. By paying the fee the client acquires only the right of use (including reproduction) for the agreed purpose and in the agreed scope of use. Without a mutual agreement with the Agency the client may only use the Agency's performances him/herself, solely in Austria and only for the duration of the Agency contract. In any event the acquisition of rights of ownership and use of performances by the Agency presupposes that the fees invoiced by the Agency in this respect have been paid in full.

10.2. Changes to the performances of the Agency, such as further development by the customer or a third party, are only permissible with the explicit consent of the Agency as well as the timely payment for a TOTAL BUY OUT according to the offer – and the creator, given that the services are protected by copyright.

10.3. The Agency's authorisation must be obtained for the use of the Agency's performances beyond the originally agreed purpose and scope of use, irrespective of whether this performance is copyrightprotected. The Agency and the creator are thereby entitled to a separate appropriate remuneration. This amounts to – as long as not agreed otherwise – 50% of the original tender amount, given that the usage period exceeds 5 years and will then be extended automatically for 5 more years (except for Photography, see 10.4.)

10.4. Through payment of the fee the client acquires the right to use the photographs for the agreed purpose and within the agreed timeframe and geographical scope, as specified in the quotation. Without agreement to the contrary with the agency, the client is only permitted to use these agency products him- or herself, only in Austria and only for the duration of the agency contract. The acquisition of usages rights and of agency services in regard to photo rights requires in any case complete prior payment of the fees, as invoiced by the agency for this purpose.

10.5. The Agency's authorization is also necessary for the use of the Agency's performances and of advertising materials for which the Agency has developed design or creative artwork after the Agency contract has expired, irrespective of whether this performance is copyright-protected or not.

## 11. IDENTIFICATION

11.1. The Agency is entitled to make reference to the Agency, and if need be the copyright holder, on all advertising materials and in all advertising measures without the client being entitled to any claim for remuneration.

11.2. The agency has the right to mention the existing business relationship with the client in its advertising materials and media, especially on its internet website, including use of the name and company logo of the client.

The agency is permitted to mention its work for the client in an appropriate form in analogue and digital publications, at exhibitions and in its own printed materials. In this context the agency is permitted to show photographs and/or illustrations of the work it has designed and/or implemented and publish these as references.

## 12. GUARANTEE AND COMPENSATION

12.1. The client must assert and justify all complaints immediately in writing, and in any event within three days of the performance by the Agency. In the event of justified complaints which are made in good time the client shall only be entitled to the right to improvement or exchange of the performance. Insignificant

colour aberrations in the printouts compared to the print run result will not be recognised as grounds for complaint.

12.2. In the event of justified written notification of defects, the defects shall be rectified within an appropriate period of time, whereby the client shall make it possible for the Agency to carry out all steps necessary to investigate and rectify the defect. The Agency is entitled to refuse to improve the performance if this is impossible or if it would be associated with a disproportionately high cost for the Agency.

12.3. The shifting of the burden of proof at the expense of the Agency in accordance with § 924 of the Austrian Civil Code [ABGB] is excluded. It is up to the client to prove the existence of any defect at the time of handover, the time at which the defect was established and the fact that the defect was notified in good time in writing.

12.4. Claims by the client for compensation, in particular due to delay, the impracticality of the performance, positive violation of a contractual obligation, negligence in concluding the contract, defective or incomplete performance, consequential damages due to defects, or due to unauthorised activities are excluded unless these are based on intent or gross negligence by the Agency. No claims for lost profit and/or contribution margin may be asserted.

12.5. Any claims for compensation may only be enforced within six months of becoming aware of the damage.

12.6. Claims for compensation are limited as a maximum to the value of the order excluding vat.

### 13. LIABILITY

13.1. The Agency will carry out the works allocated to it taking account of the generally recognised legal principles and will inform the client in good time of any risks which are recognisable for it. Any liability by the Agency for claims which may be asserted against the client by reason of the advertising measures (the use of a trademark) is expressly excluded if the Agency has complied with its obligation to inform; in particular the Agency will not be liable for the costs of litigation, the client's own solicitors costs or the costs of publishing verdicts, nor for any claims for compensation or similar claims by third parties.

13.2. In the context of the statutory provisions, the Agency shall be liable for damages only to the extent that it can be proved to have acted with intent or gross negligence. Liability for minor negligence is excluded. It is up to the aggrieved party to prove that gross negligence exists.

### 14. APPLICABLE LAW

Solely Austrian law shall apply to the legal relations between the client and the Agency, with the international rules relating to the conflict of laws being precluded. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

### 15. PLACE OF FULFILMENT AND PLACE OF JURISDICTION

15.1. The place of fulfilment is the Agency's head office.

15.2. It is agreed that the place of jurisdiction for all disputes immediately arising between the Agency and the client shall be the Austrian court of law with local competence in the matter in respect of the Agency's head office.

The General Terms and Conditions in this form shall be applicable from May 1st 2019.