

1. SCOPE OF VITALITY

1.1. The company moodley group GmbH referred to hereinafter as group, 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 group 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 group and the customer's order, in which the scope of services and the remuneration are specified. Quotations from the group 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 group. The contract shall come in to existence through the group's accepting the order. Acceptance must take place in writing (e.g. by means of an order confirmation) unless the group 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 group 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. The client will immediately provide the group with all the information and documents which are necessary for providing the service. He/she will inform the group 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 group with information which is incorrect, incomplete or subsequently changes and as a result work has to be repeated or delayed by the group, the client shall bear any costs which arise.

3.4. 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 group shall not be liable for any breach of such rights. If any claim is made against the group on account of any such breach of rights, then the client shall indemnify the group and hold it harmless; he/she must compensate the group for all disadvantages arising from any claim by a third party.

4. EXTERNAL SERVICES / INSTRUCTING THIRD PARTIES

4.1. The group 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 group 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 group 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 group 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 group an appropriate period of grace, which shall be at least 14 days. This period shall start when a reminder letter is received by the group.

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 group.

5.3. Unavoidable or unforeseeable events – in particular delays by the group’s subcontractors – shall in any case release the group 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 group 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 group before the group provides its services.

7. FEE

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

7.2. Unless otherwise agreed, the group 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.

8. PAYMENT

8.1. Invoices from the group 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 group 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 group 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 group against his/her own claims unless the client's claim has been acknowledged in writing by the group or established by law. Any right of retention by the client is excluded.

9. LIABILITY

13.1. The group 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 group 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 group has complied with its obligation to inform; in particular the group 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.

10. GUARANTEE AND COMPENSATION

10.1. The client must assert and justify all complaints immediately in writing, and in any event within three days of the performance by the group. 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.

10.2. 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 group to carry out all steps necessary to investigate and rectify the defect. The group 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 group.

10.3. The shifting of the burden of proof at the expense of the group 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.

10.4. 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 group. No claims for lost profit and/or contribution margin may be asserted.

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

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

11. APPLICABLE LAW

Solely Austrian law shall apply to the legal relations between the client and the group, 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.

12. PLACE OF FULFILMENT AND PLACE OF JURISDICTION

12.1. The place of fulfilment is the group's head office.

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

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