

# GENERAL TERMS AND CONDITIONS of KG Media GmbH and K. G. Media d.o.o.

status September the 1st 2019

## 1. Scope of application

- 1.1. KG Media GmbH, as well as K.G. Media d.o.o. - hereinafter referred to as the Agency - provides its services solely on the basis of its written offers, price lists and the present General Terms and Conditions. The service descriptions, price lists and General Terms and Conditions apply, unless they are only relevant to a particular project, to all legal relationships between the Agency and the Client from the first conclusion of contract, and therefore automatically underlie all further contract conclusions in the currently valid version, even if no specific reference is made hereto.
- 1.2. Collateral agreements, reservations, changes or additions to the present description of the services, price lists and general terms and conditions are communicated to the Client in writing and are deemed agreed upon if the Client does not object in writing within 2 weeks. Additional agreements must be in writing; this also applies to any deviation from the written form requirement.
- 1.3. Conflicting conditions or conditions which deviate from the present terms and conditions will only become effective if they are acknowledged by the Agency explicitly and in writing. General terms and conditions of the Client are hereby excluded.
- 1.4. In the event of contradictions between the offer, the description of services, the price lists, and the general terms and conditions of the Agency, they shall apply in the order stated here. The individual components therefore automatically change the general components of the contract.
- 1.5. Should individual provisions of the contract or these General Terms and Conditions be invalid, this shall not affect the liability of the remaining provisions or any contracts concluded on their basis. The ineffective provision is to be replaced by an effective one that comes closest to its purpose.

## 2. Contract conclusion and term

- 2.1. The respective offer by the Agency to the Client or an order to the Agency in which the scope of services and the remuneration are specified, shall form the basis of contract conclusion. Offers of the Agency are subject to alteration and are non-binding.
- 2.2. The contract is concluded upon the acceptance of the order by the Agency. The acceptance must be expressed in writing (e.g. by order confirmation), unless the Agency unambiguously communicates (e.g. by commencement of work for the specific order) that the order is accepted.
- 2.3. If the Client wishes to place an order, previously arranged directly with a publisher, via Agency and if no agency commission is granted by the publisher, a service fee will be charged by the Agency.
- 2.4. Contracts for an indefinite period can be terminated in accordance to any minimum term agreed and with a notice period of three months prior to the end of calendar year.

## 3. Scope of services, order processing and cooperation duties of the Client

- 3.1. The scope of the services that are to be provided ensues from the contract components (offer, the Client's order, or the service description). Information not included in the offer and coming from other sources (such as websites, presentation materials...) do not constitute the service description. The Client is obliged to inspect the service description for conformity with their requirements and for thoroughness. After placing the order, changes to the service description are only possible through mutual agreement and may lead to changes in deadlines, dates and prices.
- 3.2. Prepared drafts, printing material or other content intended for publication by the Agency are to be reviewed by the Client and released latest upon the given material closing date. If not released in time, Agency consider it as approved by the Client.
- 3.3. The Client will provide the Agency with all the information and documents necessary for the provision of the service, in good time. The Client will inform the Agency about all the processes significant for the execution of the order, even if these circumstances only become known during the execution of the order. If the work is to be repeated or delayed by the Agency as a result of incorrect, incomplete or subsequently changed input on the part of the Client, the Client bears the additional costs.
- 3.4. Material for additional (free) editorials or advertorials must be submitted to the Agency unsolicited at the latest 14 days after placing the order. If the documents are not received in time, the Agency reserves the right to use replacement material.
- 3.5. The Client is obliged to inspect the material provided for the execution of the order (e.g. texts, photos...) for any existing copyrights, trademark rights or other third party rights. The Agency is not liable for any violation of such rights. If the Agency is claimed to have committed such an infringement, the Client shall indemnify and hold the Agency not responsible; the Client must compensate the Agency for all disadvantages caused by third-party claims.
- 3.6. The Client alone is responsible for the content and legal admissibility of the text and image documents which will be used for publication, as well as other delivered advertising material. The Agency cannot be held liable for incorrect information or missing mandatory information in the advertising material.
- 3.7. If the Client intervenes in an unauthorized or unconfirmed manner into the services of the Agency and as the case may be make any changes, the Client is liable for the resulting additional expenses.
- 3.8. Unless the written service description says otherwise, the Agency is obliged to perform a professional task execution in accordance with the generally accepted technical rules, whereby the Agency has the freedom of design during execution, provided that several professional options are available. If this is in accordance with the objectives of the order, the Agency is entitled to deviate from the service description and replace the specified services with other equivalent services.
- 3.9. SPECIAL services: If the services of the Agency include procedures in the field of search engine optimization (SEO), the Agency is obliged to achieve a performance appropriate for the stipulated objectives professionally, but is not liable for the achievement of specific objectives. If the Agency's services involve the use of third-party platforms, the Agency's only obligation is the proper execution appropriate to achieve the agreed-upon objectives but is not liable for the achievement of specific objectives.

## 4. External services / Commissioning of third parties

- 4.1. The Agency is entitled, at its discretion, to perform the service on its own, to employ third parties to deliver the service agreed upon in the contract, and/or to substitute such services ("Assistance Agent").
- 4.2. The Agency will choose assistants carefully and make sure they possess the required professional qualifications.
- 4.3. The Client is aware that, to some extent, third-party services can only be utilized for standardized and uncontrollable conditions, and may be subject to unforeseeable and unavoidable changes. The Agency can therefore only inspect the service specifications for suitability.

## 5. Deadlines

- 5.1. Deadlines and appointments must be recorded or confirmed in writing. The dates and deadlines provided by the Agency are non-binding unless they are explicitly marked as binding. Failure to meet the deadlines shall only entitle the Client to assert their (Client's) legal rights if they have granted the Agency a reasonable grace period of at least 30 days.
- 5.2. If the grace period expires without results, the Client can withdraw from the contract. The Agency is only obliged to pay damages resulting from the delay if it was the result of a deliberate act or gross negligence on the part of the Agency.
- 5.3. Unavoidable or unforeseeable events - in particular, delays on the part of the contractors of the Agency - exonerate the Agency from the observance of the agreed delivery date, in all cases. The same applies if the Client is delayed regarding the actions they obliged to (e.g., the provision of information), which are necessary to carry out the order. In this case, the agreed date will be postponed at least to the extent of the delay or set to the next possible date.
- 5.4. Operational disruptions - both in the operation of the Agency and external companies (such as publishers) - such as strikes, lockouts, power failures, Internet failures and all other cases of force majeure, only justify contract termination if the Client cannot be expected to wait any longer. However, termination is possible four weeks after the occurrence of the above-described malfunction, at the earliest. A liability of the Agency is excluded in these cases.

## 6. Withdrawal from the contract

The Agency is entitled to withdraw from the contract, particularly if: the execution of the service is impossible due to reasons for which the Client is responsible or the execution is delayed further despite the granting of the grace period; there are legitimate concerns regarding the solvency of the Client, and the Client is neither making advance payments at the request of the Agency, nor providing adequate security before the Agency has provided its services. If the Client terminates the contract without a good cause, they shall pay the Agency an appropriate remuneration for the services and expenses provided until then.

## 7. Remuneration and payment

- 7.1. All prices are quoted from the registered office of the Agency in euros (in Croatian kuna for K. G. Media d.o.o., if applicable), with added VAT at the statutory rate.
- 7.2. Price quotations on the part of the Agency are not binding. If, after the cost estimate is generated, it becomes apparent that the indicated prices will be exceeded, the Agency must inform the Client about this immediately. If the Client does not object within one week of this notice, the higher price shall be deemed accepted by the Client, provided that the excess exceeds a maximum of 5% of the offered price.
- 7.3. The Agency is entitled to charge partial services. Ideally, this is agreed upon separately when the order is placed.
- 7.4. In the case of contracts with an indefinite period of validity or contracts that are automatically renewed, the Agency is entitled to make a reasonable price adjustment. Price adjustments may also be necessary in the case of strong currency fluctuations or if orders are made prior to the supplier's price list. In this case, the Agency must inform the Client about the price adjustment in good time so that a change to the order is still possible.
- 7.5. The invoices of the Agency are due without deduction at the invoice date, and are, unless otherwise agreed, payable within 7 (seven) calendar days from the receipt of the invoice. In case of late payment, the default interest of 9% p.a. applies, as agreed. Delivered goods / services remain the property of the Agency until full payment is realized.
- 7.6. The Client is obliged to bear all costs and expenses associated with the enforcement of the claim, like collection charges or additional costs necessary for an appropriate legal prosecution.
- 7.7. In the event of late payment, the Agency may immediately make due all rendered services and partial services, including also other contracts concluded with the Client.
- 7.8. The Client is not entitled to offset their own claims against the claims of the Agency, unless the Client's claim has been recognized by the Agency in writing or judicially determined. A right of retention on the part of the Client is excluded.

## 8. Ownership rights and copyright

- 8.1. By paying the fees, the Client acquires only the right of use as defined in the order. Unless otherwise agreed upon with the Agency, the Client may use the services of the Agency only on their own and for a limited duration. In any case, the acquisition of the rights of use for Agency services requires the full payment of the fees charged by the Agency.
- 8.2. Changes of services of the Agency, in particular their further development by the Client or third parties working for the latter, are only permitted with the explicit consent of the Agency and - in case the services are protected by copyright - of the author.
- 8.3. To use the services of the Agency beyond the originally agreed upon purpose and scope of use, regardless of whether this service is protected by copyright, the consent of the Agency is required. In these cases, the Agency and the author are entitled to an appropriate compensation.
- 8.4. Offers created by the Agency are to be treated as strictly confidential in terms of content and price. The transfer to third parties is prohibited. If the offers are forwarded to third parties, the Agency reserves the right to claim damages.

## 9. Labelling

- 9.1. The Agency is entitled to make a reference to the Agency and the author, if applicable, on all advertising means and in any advertising and promotion measures, without the Client being entitled to any payment in this respect.
- 9.2. The Agency is entitled to point out the business relationship existing with the Client on its own advertising media and in particular on its internet website with its name and company logo. This entitlement is subject to the written revocation on the part of the Client, which is possible at any time.

## 10. Warranty and damage compensation

- 10.1. The Client shall notify any complaints immediately and in any case within seven days of delivery/provision of the service or final reporting by the Agency in writing including a description of the defect; otherwise the service shall be deemed accepted. In the case of justified and timely complaints, the Client is entitled only to the right to improve or replace the service and, in the case of non-essential defects, to the Agency's price reduction.
- 10.2. In the case of a justified notice of defect, the defects shall be remedied within a reasonable period of time, whereby the Client shall allow the Agency to take all measures necessary for the investigation and correction of the defect. The Agency is entitled to refuse performance improvement if it is impossible or associated with a disproportionate effort for the Agency.
- 10.3. The reversal of the burden of proof at the expense of the Agency, according to Austrian ABGB, § 924, is excluded. The existence of the defect at the time of delivery, the time of the discovery of the defect, and the timeliness of the complaint are to be proved by the Client.

- 10.4. Compensation claims of the Client, in particular due to delay, impossibility of finalizing the service, positive breach of contract, negligence in regard to contract settlement, defective or incomplete performance, consequential damage or tort are excluded unless they have resulted from intent or gross negligence on the part of the Agency.
- 10.5. Any claim for damages can only be asserted within three months after the damage has become apparent.
- 10.6. Claims for damages are limited in amount to the level of the contract (order) value, excluding taxes.

#### **11. Data protection, secrecy and poaching**

- 11.1. The Client agrees that his personal data, namely name, occupation, date of birth, Business Register Number, powers to represent the company, contact person, business address and other addresses of the Client, phone number, fax number, e-mail address, bank details, credit card details, VAT number) may be collected, stored and processed electronically for the purpose of performance of the contract and support of the Client and for the Agency's own advertising and promotion purposes, for example by sending him offers, advertising brochures or newsletters (in hard copy or electronic form) and for the purpose of making reference to the current of former business relationship with the Client.
- 11.2. The Client agrees to be sent electronic mail for advertising purposes until further notice. Such consent may be revoked in writing via e-mail, fax or letter to the contact details stated in the header of these GTC at any time.
- 11.3. The Agency and the Client, or their affected employees, have the right to access, rectify and delete their personal data, the right to restrict data processing, the right to data portability and the right to complain to the relevant data protection authority.
- 11.4. Secrecy: The Client must keep all confidential information about the Agency, its projects, and other Clients known to it secret and may not exploit this information for their own purposes. This agreement shall remain in effect regardless of any contract termination. In the event of a breach of this obligation, a penalty of EUR 30,000.00 per offense must be paid.
- 11.5. Non-solicitation: The Client may not solicit other Clients or employees of the Agency. This agreement shall remain in effect for two years beyond any contract termination. In the event of a breach of this obligation, a penalty of EUR 30,000.00 per offense must be paid.

#### **12. Liability**

- 12.1. The Agency will carry out the work entrusted to it in accordance with the generally accepted legal principles, and will inform the Client of any recognized risks in due time. Any liability of the Agency for claims made against the Client as a result of advertising measures (the use of a label) shall be explicitly excluded if the Agency has fulfilled its obligation to inform; In particular, the Agency shall not be liable for legal costs, the Client's own legal fees, or the costs of publication of court decisions, as well as any claims for damages or similar claims of third parties.
- 12.2. The Agency is liable within the scope of the statutory provisions only for damages, provided that intent or gross negligence can be proven. Liability for mild negligence is excluded. The injured party has to prove the existence of gross negligence.

#### **13. Applicable law**

- 13.1. The legal relationship between the Client and the Agency shall be governed exclusively by the law of the Agency's office, excluding the international reference standards. The provisions of the UN Sales Convention do not apply.

#### **14. Place of performance and court of jurisdiction**

- 14.1. Place of performance is the registered office of the Agency.
- 14.2. The place of jurisdiction for all legal disputes arising between the Agency and the Client in connection with this contractual relationship shall be the court, having jurisdiction over the Agency's registered office. Notwithstanding the Agency is also entitled to sue the Client at his general place of jurisdiction.