

General Terms and Conditions of agentur mediadrei gmbh

1. General

1.1
These General Terms and Conditions apply exclusively to all transactions between the customer and the agency.

1.2
Any conflicting terms and conditions of the customer shall only be effective if they are expressly accepted by the agency in writing. Any agreements deviating from or supplementing these General Terms and Conditions must be made in writing.

1.3
Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the validity of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid provision that comes closest to its meaning and purpose.

2. Conclusion of contract

2.1
The agency's offers are subject to change. Submitted offers remain valid for 6 weeks from the date of issue. All costs stated in cost estimates are exclusive of VAT and calculated with an accuracy of +/- 5%. The customer is bound to their order for two weeks from the date of receipt by the agency. Orders from the customer are only considered accepted once the agency has confirmed the order in writing, unless the agency indicates that it accepts the order, for example by taking action on the basis of the order.

2.2
The version of the General Terms and Conditions valid at the time of conclusion of the contract shall apply. Deviations from these terms and conditions and other supplementary agreements with the customer shall only be effective if they are confirmed in writing by the Agency.

2.3
Any terms and conditions of the customer shall not be accepted, even if they are known, unless expressly agreed otherwise in writing in individual cases. The agency expressly rejects any terms and conditions of the customer. No further objection to the customer's terms and conditions by the agency is required.

2.4
Changes to the General Terms and Conditions shall be communicated to the customer and shall be deemed to have been agreed if the customer does not object to the amended General Terms and Conditions in writing within fourteen (14) days; the customer shall be expressly informed of the significance of silence and of the specific clauses that have been amended in the notification. This deemed consent shall not apply to changes to essential service content and fees.

3. Service, payment, and retention of ownership

3.1
The Agency's invoices are due within 10 days of the invoice date without any deductions, unless otherwise agreed. In the event of late payment, default interest at the current rate of 13.08% p.a. shall be deemed agreed. Delivered goods remain the property of the Agency until full payment has been received. In the event of late payment, default interest at the current rate of 13.08% p.a. shall be deemed to have been agreed. Delivered goods remain the property of the agency until full payment has been received. The customer may only offset or assert a right of retention with undisputed or legally established claims.

3.2

Unless otherwise agreed, the Agency's fee entitlement for each individual service shall commence as soon as the service has been rendered. The Agency shall be entitled to demand advance payments to cover its expenses. All services provided by the Agency that are not expressly covered by the agreed fee shall be remunerated separately. This applies in particular to all ancillary services provided by the Agency. All cash expenses incurred by the Agency that go beyond the usual course of business (e.g., for courier services, unusual shipping costs, or travel) shall be reimbursed by the Client. If it is foreseeable that the actual costs will exceed the Agency's written estimate by more than 20 percent, the Agency shall notify the Client of the higher costs. The cost overrun shall be deemed to have been approved by the customer if the customer does not object in writing within three days of this notification and at the same time announces more cost-effective alternatives.

3.3

The agency shall be entitled to reasonable remuneration for all work performed by the agency that is not carried out for whatever reason. Payment of this remuneration does not entitle the client to any rights to this work; concepts, drafts, and similar items that are not executed must be returned to the agency without delay.

4. Presentation

4.1

The Agency shall be entitled to a reasonable fee for participating in presentations, which shall cover at least the Agency's total personnel and material expenses for the presentation as well as the costs of all external services. If the Agency does not receive an order after the presentation, all services provided by the Agency, in particular the presentation documents and their content, shall remain the property of the Agency; the client is not entitled to continue using them in any form whatsoever; rather, the documents must be returned to the agency immediately. If the ideas and concepts presented in the course of a presentation for the solution of communication tasks are not used in advertising materials designed by the agency, the agency is entitled to use the presented ideas and concepts elsewhere.

4.2

The transfer of presentation documents to third parties as well as their publication, reproduction, distribution, or other dissemination is not permitted without the express consent of the Agency.

5. Property rights and copyright protection

5.1

All services provided by the agency, including those from presentations (e.g., suggestions, ideas, sketches, preliminary drafts, scribbles, final artwork, concepts, renderings, and mockups...), as well as individual parts thereof, remain the property of the agency, as do the individual workpieces and original designs, remain the property of the Agency and may be reclaimed by the Agency at any time, in particular upon termination of the Agency Agreement. By paying the fee, the Customer only acquires the right of use (including reproduction) for the agreed purpose and to the agreed extent of use.

5.2

Unless otherwise agreed with the Agency, the Client may only use the Agency's services themselves, exclusively in Austria, and only for the duration of the Agency Agreement. Changes to the Agency's services by the Client are only permitted with the express consent of the Agency and—insofar as the services are protected by copyright—the copyright holder. The use of the Agency's services beyond the originally agreed purpose and scope of use requires the Agency's consent, regardless of whether these services are protected by copyright. The agency and the author are entitled to separate, appropriate remuneration for this; the fee specified in the agency agreement is generally considered appropriate, but shall be at least 7.5% of the remuneration paid by the customer to the third party commissioned with the production, distribution, or publication of the advertising material. The use of the Agency's services or advertising materials for which the Agency has developed conceptual or design templates after the expiry of the agency contract also requires the Agency's consent, regardless of whether this service is protected by copyright. For this, the agency is entitled to the full agency remuneration agreed in the expired contract, usually 15%, in the first year after the end of the contract. In the second and third years after the end of the contract, only half or a quarter of the remuneration agreed in the contract is payable. No agency remuneration shall be payable from the fourth year after the end of the contract. It is expressly pointed out that, as is customary in the industry, open data, raw video data, and raw material from filming shall remain with the agency unless otherwise agreed and shall only be made available to the customer through a buyout.

6. LABELING

The agency is entitled to refer to the agency and, if applicable, the author on all advertising materials and in all advertising measures without the customer being entitled to any remuneration for this.

7. APPROVAL

All services provided by the agency (in particular all preliminary drafts, sketches, final artwork, brush proofs, and color proofs) must be checked by the customer and approved within three days. If approval is not given in time, they shall be deemed to have been approved by the customer. In particular, the customer shall have the legal admissibility of the agency's services checked, especially with regard to competition and trademark law. The agency shall only arrange for an extreme legal review at the written request of the customer; the associated costs shall be borne by the customer.

8. DEADLINES

The Agency undertakes to adhere to the agreed deadlines. However, failure to meet the deadlines shall only entitle the Client to assert its statutory rights if it has granted the Agency a grace period of at least 14 days. This period shall commence upon receipt of a reminder letter by the Agency. An obligation to pay damages on the grounds of delay shall only exist in the event of intent or gross negligence on the part of the Agency. Unavoidable or unforeseeable events shall in any case release the Agency from compliance with the agreed delivery date.

9. Warranty and compensation

The customer must submit any complaints in writing within three days of performance by the agency and state the reasons for them. If the complaint is justified, the defects shall be remedied within a reasonable period of time, whereby the client shall enable the contractor to take all measures necessary for investigation and rectification of the defects. Claims for damages by the customer, in particular due to delay, impossibility of performance, positive breach of contract, fault at the time of conclusion of the contract, defective or incomplete performance, consequential damage due to defects, or due to tortious acts, are excluded unless they are based on intent or gross negligence on the part of the agency. The agency accepts no liability for the customer's documents provided to it for processing.

10. Liability

10.1

The Agency shall carry out the work assigned to it in accordance with generally accepted legal principles and shall inform the Client in good time of any significant risks that it becomes aware of. However, the Client itself shall be responsible for compliance with legal regulations, in particular competition law, including in relation to the advertising measures proposed by the Agency. The client shall only approve an advertising measure proposed by the agency (a trademark proposed by the agency) once they have satisfied themselves that it does not infringe any competition law (trademark law) or if they are prepared to bear the risk associated with the implementation of the advertising measure (the use of the trademark) themselves.

10.2

Any liability on the part of the Agency for claims brought against the customer on the basis of the advertising measure (the use of a trademark) is expressly excluded if the Agency has fulfilled its duty to provide information; in particular, the Agency shall not be liable for legal costs, the customer's own legal fees or the costs of publishing judgments, nor for any claims for damages or similar claims by third parties. In the event that claims are made against the Agency itself due to the implementation of an advertising measure (the use of a trademark), the customer shall indemnify and hold the Agency harmless: the customer shall therefore compensate the Agency for all financial and other disadvantages (including immaterial damages) incurred by the Agency as a result of claims made by a third party. The contractor shall only be liable for damages if intent or gross negligence can be proven, within the framework of the statutory provisions. Liability for slight negligence is excluded.

11. Applicable law

The legal relationship between the customer and the agency shall be governed exclusively by Austrian law.

12. Final conditions

Place of jurisdiction: St. Pölten. The law of the Republic of Austria applies. Status: 2025.