

## **1. SCOPE OF VITALITY**

1.1. The agency moodley strategy & design group 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.

1.5. The contracting parties confirm that they have provided all information in the contract conscientiously and truthfully and undertake to notify each other immediately of any changes.

## **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).

2.3. The Agency's employees are not authorized to make verbal subsidiary agreements or to give verbal assurances that go beyond the content of the written contract; the Agency is not bound by verbal subsidiary agreements or assurances made by its employees.

## **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 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.

3.6 The Client shall ensure that the organizational framework conditions for the fulfilment of the assignment at its place of business allow the work to be carried out as undisturbed as possible and in a manner conducive to the rapid progress of the consultancy process. For this purpose, the Client shall nominate persons from its team who have the necessary expertise and who cooperate closely and on an ongoing basis with the Agency. The costs for their participation shall be borne by the Client.

3.7 The Client shall also provide the Agency with comprehensive information about previously carried out and/or ongoing consultations - also in other specialist areas. Any advice given shall relate exclusively to the specialist area concerned; liability for the "advice of the specialist" in accordance with ABGB §1299 shall be limited to this area.

3.8 The client shall ensure that all documents necessary for the fulfilment and execution of the consultancy assignment are submitted to the contractor in a timely manner, even without the contractor's special request, and that the contractor is informed of all processes and circumstances that are of importance for the execution of the consultancy assignment. This shall also apply to all documents, processes and circumstances that only become known during the consultant's work.

#### **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. Should the Agency realize that it will not be able to meet the agreed deadlines and/or dates, it shall be obliged to inform the Client in writing without delay, stating the reasons and the expected duration of the delay.

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.

5.4 Unless otherwise stated in the offer, a feedback loop shall be deemed to have been agreed for all services provided by the Agency. Feedback after the Client's approval is associated with additional work and may lead to a delay in the project.

## **6. WITHDRAWAL FROM THE CONTRACT**

6.1 The Agency shall in particular be entitled to withdraw from the contract if - the performance of the service is impossible for reasons for which the Customer is responsible or is further delayed despite the setting of a period of grace; - there are justified concerns about the Customer's creditworthiness and the Customer fails to make advance payments at the Agency's request or to provide suitable security prior to the Agency's performance.

## **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 & E-BILLING**

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.

8.5 The Agency shall be entitled to send invoices to the Client also in electronic form by e-mail. The Client expressly agrees to the Agency sending invoices in electronic form.

## **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, CAD data, renderings, CG data, source code etc.) 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 / reproductions of the Agency's services, such as in particular their further development by the Client or by third parties acting on the Client's behalf, shall only be permitted with the express consent of the Agency and the payment of the fee for a total buy-out according to the offer and - insofar as the services are protected by copyright - of the author. Under no circumstances shall an unauthorised reproduction/dissemination of the work give rise to any liability on the part of the agency - in particular, for example, the accuracy of the work - vis-à-vis third parties.

10.3. The Agency's consent shall be required for the use of the Agency's services that goes beyond the originally agreed purpose and scope and period of use, irrespective of whether this service is protected by copyright. The Agency and the author shall be entitled to a separate appropriate remuneration for this.

Unless otherwise agreed, this shall amount to 50% of the original offer amount should the period of use exceed 5 years and shall thereby be automatically extended to a further 5 years (with the exception of photography see item 10.4.).

10.4. If the agency's service also includes the creation of the photograph, it should also be noted that the agency can only ever pass on the rights to the photographic design to the client, but not the rights to photographed persons or objects - these must be agreed and observed separately.

By paying the fee, the customer acquires the right to use photos for the purpose agreed in the offer and within the agreed temporary and geographical scope of use. In the absence of an agreement to the contrary with the agency, the customer may only use these services of the agency himself and only for the duration of the agency contract. The acquisition of rights of use and to services of the Agency in respect of photographic rights shall in all cases be subject to full payment of the fees charged by the Agency for them.

The images, photographs, animations, sound recordings, audiovisual files and illustrations used in Agency services are protected by copyright and may not be used by the Client without licensing.

It should be noted that images, graphics, text, or other files may be subject in whole or in part to the copyright of third parties.

10.5. The Agency's consent shall also be required for the use of the Agency's services or applications for which the Agency has prepared conceptual or design templates, after expiry of the Agency contract, irrespective of whether this service is protected by copyright or not.

10.6. The Client's breach of these provisions shall entitle the Agency to terminate the contractual relationship immediately and prematurely and to assert other legal claims, for injunctive relief and/or damages.

10.7. As a matter of principle, the Agency shall not be obliged to check the legal admissibility of the services provided by the Agency under the contract, or of services, products or statements provided by the contractual partner or third parties (in particular with regard to unfair competition law or industrial property rights, patents, samples, utility models, design patents, trademarks, etc.), unless this has been expressly agreed in writing and is thus the subject of the order. If the Client commissions the Agency with such a review of the services, the Client shall bear the fees and costs of the Agency and third parties (lawyer, authorities, etc.) arising from this, unless otherwise expressly agreed in writing.

## **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 color aberrations in the printouts compared to the print run result will not be recognized 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 unauthorized 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 recognized legal principles and will inform the client in good time of any risks which are recognizable 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**

14.1. 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.

## **16. SPECIAL TERMS AND CONDITIONS FOR PROJECTS IN THE AREA OF DEVELOPMENT**

### **16.1. Quality assurance for browsers and devices**

During development, the agency ensures optimal display and usability for all widely used, modern browsers and their current versions, as well as for all common screen sizes and resolutions. The agency supports browsers and their associated versions, platforms and operating systems which are part of our quality assurance at the time of the development start and which can be accessed quarterly at the following URL: <http://browsersupport.moodley-interactive.com>.

Users of older browsers or browsers that are not part of the agency's quality assurance will be notified to update their browser to the latest version. The visual appearance may differ slightly depending on the browser manufacturer. Quality assurance for older versions and less widely used browsers or browser versions is only taken into account at the express request of the client and is associated with additional costs. For tests on a specific device, the customer must also provide us with the respective test device.

### **16.2. Warranty and maintenance**

After the Client has given final approval for the project or the Agency has performed the services defined in the offer, the Agency shall provide a warranty for technical errors for a period of three months. Errors, which are defined by the fact that they can be proven for functions and representations that have been clearly recorded in writing. In case of doubt, the simplest implementation shall always be deemed sufficient.

The warranty after completion of the project does not include, in particular, any changes or further developments of any kind, nor any maintenance of the system. In any case, technical errors that cannot be attributed to the agency's performance or that were not commissioned by the agency in the course of the cooperation are excluded from this warranty. This applies in particular to intervention in the source code by the Client or third parties as well as partners in the area of hosting.

### **16.3 Hosting, domain and operation**

Unless explicitly stated, hosting, domain and operation of the website are not part of the Agency's range of services. In the event that hosting is not provided by the Agency or a partner preferred by the Agency, and the hosting is not expressly designated by the operator as suitable for the systems used by the Agency, all expenses incurred in connection with the set-up shall be charged on an hourly basis.

### **16.4. Page speed**

The Agency uses numerous systems and methods to develop all web pages to a high degree of performance. In addition to the actual time it takes for either the entire website or the visible area of the website to load, the Agency also uses Google PageSpeed and the Insights tool to determine the PageSpeed value. Provided there are no external factors beyond the agency's control or their implementation is not part of the scope of services, the agency can guarantee a value of 65 points desktop and 65 points mobile. External factors are not exclusively, but in particular, file sizes (especially large image and moving image files) of content, technical conditions and functions on the server, insofar as the hosting is not with the Agency or a partner preferred by the Agency, as well as connections to third-party systems (especially ERP and marketing automation systems).

### **16.5. Search engine optimisation**

The Agency shall implement the technical basis for any On Page Optimisation. The active implementation of an On Page Optimisation, as well as an Off Page Optimisation are, unless explicitly stated, expressly not part of the Agency's range of services. The Agency assumes no liability for any change in the search engine rankings of the website.

### **16.6. Accessibility and freedom from barriers**

The Agency largely follows the standards of the W3C (World Wide Web Consortium) and the recommendations of the WAI (World Accessibility Initiative) in its development and ensures a flawless

and robust technical implementation. The current version of the WCAG (Web Content Accessibility Guidelines) Level A serves as the basis. The development, preparation and 100% compliance with a standard level (A, AA and AAA) are only taken into account at the express request of the customer and are associated with additional costs.

Excluded from this in any case are all transcriptions, descriptions and mark-ups and other preparation of content, in particular the preparation of alternative texts for image and video material, which are necessary for compliance with the standards.

#### 16.7 Security and backup

It is virtually impossible to provide all-embracing security for a website. Therefore, the agency has made it its goal to make it as difficult as reasonably possible for potential attackers. To this end, the agency installs and configures appropriate security systems that meet the basic requirements for securing a modern website. The client is also required to use secure passwords and 2-factor authentication. In order to be able to restore the website in the event of a disaster, the Agency recommends regularly (daily) creating backup copies of the site; unless explicitly stated, these are expressly not part of the Agency's range of services. The Agency shall not be liable for any damage caused by missing backups or security breaches.

#### 16.8 Domain registration

If the Agency registers domains for the Customer, the Agency shall assume no liability whatsoever that the registered domain does not encroach on the copyrights, trademark rights, rights to the name and labelling and other property rights or competition rights of third parties. The Customer undertakes to indemnify and hold the Agency harmless for any expenses and damages arising therefrom.

#### 16.9 External tools and services

In the event that the Agency accesses tools or services of third-party providers in the course of realization, the Agency shall expressly act only as consultant and intermediary for the provision of our services. These tools include, but are not limited to, content management systems (CMS), plug-ins or extensions for content management systems, enterprise resource management software (ERP), e-commerce software, customer relationship management software (CRM), software for sending newsletters and consent management tools. At the express request of the customer, the agency shall conclude the agreement with the respective third-party provider on behalf and for the account of the customer at the conditions of the third-party provider. Payment and invoicing shall be made directly with the third-party provider.

#### 16.10. Exclusion of liability for target achievement in the area of data

The Agency shall endeavor to achieve agreed marketing goals, in particular search engine rankings, accesses, conversions, clicks, engagements, etc., to the greatest possible extent. However, the agency assumes no liability for the achievement of these goals.

**The General Terms and Conditions in this form shall be applicable from September 2023.**