

# GENERAL TERMS AND CONDITIONS

## KAPITEL 4 GMBH



AS OF 11/2023

### 1. VALIDITY, CONCLUSION OF CONTRACT

- 1.1 Kapitel4 | Agentur für Werbung und Kommunikation GmbH (hereinafter referred to as the “agency”) provides its services exclusively on the basis of the following General Terms and Conditions (GTC). These apply to all legal relationships between the agency and the customer, even if no express reference is made to them.
- 1.2 The version valid at the time the contract is concluded shall be authoritative. Deviations from these and other supplementary agreements with the customer shall only be effective if they are confirmed in writing by the agency.
- 1.3 Any terms and conditions of the customer shall not be accepted, even if known, unless otherwise expressly agreed in writing in individual cases. The agency expressly objects to the customer’s GTC. No further objection to the customer’s GTC by the agency is required.
- 1.4 The customer shall be notified of amendments to the GTC and these shall be deemed to have been agreed if the customer does not object to the amended GTC in writing within 14 days; the customer shall be expressly informed of the significance of silence in the notification.
- 1.5 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 as close as possible to the meaning and purpose of the invalid provision.
- 1.6 The agency’s offers are subject to change and non-binding.

### 2. SOCIAL MEDIA CHANNELS

Before placing the order, the agency expressly points out to the customer that the providers of “social media channels” (e.g. Facebook, Instagram, LinkedIn etc., hereinafter referred to as “providers”) reserve the right in their terms of use to reject or remove adverts and appearances for any reason. The providers are therefore not obliged to forward content and information to users. There is therefore a risk, which cannot be calculated by the agency, that adverts and appearances may be removed for no reason. In the event of a complaint from another user, the providers are granted the option of a counterstatement, but even in this case the content will be removed immediately. In this case, the restoration of the original, lawful condition may take some time. The agency shall work on the basis of these terms of use of the providers, over which it has no influence, and shall also base any order placed by the customer on them. By placing an order, the customer expressly recognises that these terms of use (co-)determine the rights and obligations of any contractual relationship. The agency intends to fulfil the customer’s order to the best of its knowledge and belief and to comply with the guidelines of “Social Media Channels”. However, due to the currently valid terms of use and the simple possibility for any user to claim legal violations and thus achieve removal of the content, the agency cannot guarantee that the commissioned campaign will be available at all times.

### 3. CONCEPT AND IDEA PROTECTION

If the potential client has already invited the agency to prepare a concept in advance and the agency fulfils this invitation before the main contract is concluded, the following provision shall apply:

- 3.1 The potential client and the agency already enter into a contractual relationship (“pitching contract”) through the invitation and the acceptance of the invitation by the agency. This contract is also based on the GTC.

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- 3.2 The potential client recognises that the agency is already providing cost-intensive preliminary services with the concept development, although it has not yet assumed any performance obligations itself.
- 3.3 The concept is protected by copyright law in its linguistic and graphic parts, insofar as these reach the level of a work. The potential client is not permitted to use or edit these parts without the agency's consent, if only because of copyright law.
- 3.4 The concept also contains ideas relevant to advertising that do not reach the level of a work and therefore do not enjoy the protection of copyright law. These ideas are at the beginning of every creative process and can be defined as the spark that ignites everything that is created later and thus as the origin of the marketing strategy. Therefore, those elements of the concept that are unique and give the marketing strategy its characteristic character are protected. In particular, advertising slogans, advertising texts, graphics and illustrations, advertising media, etc. are regarded as ideas within the meaning of this agreement, even if they do not reach the level of a work.
- 3.5 The potential client undertakes to refrain from commercially exploiting or having exploited or using or having used these creative advertising ideas presented by the agency within the framework of the concept outside the corrective of a main contract to be concluded at a later date.
- 3.6 If the potential client is of the opinion that ideas were presented to him by the agency which he had already thought of before the presentation, he must inform the agency of this by e-mail within 14 days of the day of the presentation, stating the means of proof which allow a chronological allocation.
- 3.7 In the opposite case, the contracting parties assume that the agency has presented the potential customer with an idea that is new to him. If the idea is utilised by the client, it is assumed that the agency has made a profit in the process.

- 3.8 The potential customer may release himself from his obligations under this point by paying appropriate compensation plus 20% VAT. The exemption shall not take effect until the agency has received full payment of the compensation.

#### 4. SCOPE OF SERVICES, ORDER PROCESSING AND THE CUSTOMER'S DUTY TO CO-OPERATE

- 4.1 The scope of the services to be provided is set out in the service description in the agency contract or any order confirmation by the agency, as well as any briefing protocol ("offer documents"). Subsequent changes to the content of the service shall require written confirmation by the agency. Within the framework specified by the customer, the agency shall have freedom of design in the fulfilment of the order.
- 4.2 All services provided by the agency (in particular all preliminary drafts, sketches, final artwork, brush proofs, blueprints, copies, colour prints and electronic files) must be checked by the customer and approved by him within three working days of receipt by the customer. If they are not released in good time, they shall be deemed to have been approved by the customer.
- 4.3 The customer shall provide the agency with timely and complete access to all information and documents required for the provision of the service. He shall inform the agency of all circumstances that are of significance for the fulfilment of the order, even if these only become known during the execution of the order. The customer shall bear the costs incurred if work has to be repeated or delayed by the agency as a result of incorrect, incomplete or subsequently changed information provided by the customer.
- 4.4 The customer is also obliged to check the documents (photos, logos, etc.) provided for the execution of the order for any copyrights, trademarks, labelling rights or other rights of third parties (rights clearing) and guarantees that the documents are free of third-party rights and can therefore be used for the intended

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purpose. In the event of merely slight negligence or after fulfilment of its duty to warn, the agency shall not be liable – at least in the internal relationship with the customer – for any infringement of such third-party rights by the documents provided. If a claim is made against the agency by a third party due to such an infringement of rights, the customer shall indemnify and hold the agency harmless; the customer shall reimburse the agency for all disadvantages incurred by the agency as a result of a claim by a third party, in particular the costs of appropriate legal representation. The customer undertakes to support the agency in the defence against any third-party claims. The customer shall provide the agency with all documents for this purpose without being requested to do so.

### 5. EXTERNAL SERVICES/COMMISSIONING OF THIRD PARTIES

- 5.1 The agency shall be authorised at its own discretion to perform the service itself, to make use of expert third parties as vicarious agents in the provision of contractual services and/or to substitute such services (“external service”).
- 5.2 The commissioning of third parties within the scope of an external service shall be carried out either in the agency’s own name or in the name of the customer. The agency shall carefully select this third party and ensure that it has the necessary professional qualifications.
- 5.3 Insofar as the agency commissions necessary or agreed external services, the respective contractors are not vicarious agents of the agency.
- 5.4 The customer shall enter into obligations towards third parties that extend beyond the term of the contract. This also applies expressly in the event of cancellation of the agency contract for good cause.

### 6. DATES

- 6.1 Unless expressly agreed as binding, stated delivery or performance deadlines shall only be approximate and non-binding. Binding deadline agreements must be recorded in writing or confirmed in writing by the agency.
- 6.2 If the agency’s delivery /service is delayed for reasons for which it is not responsible, such as events of force majeure and other unforeseeable events that cannot be averted by reasonable means, the service obligations shall be suspended for the duration and to the extent of the hindrance and the deadlines shall be extended accordingly. If such delays last for more than two months, the customer and the agency shall be entitled to withdraw from the contract.
- 6.3 If the agency is in default, the customer may only withdraw from the contract after setting the agency a reasonable grace period of at least 14 days in writing, which has expired without result. Claims for damages by the customer due to non-fulfilment or delay are excluded, except in the case of proof of intent or gross negligence.

### 7. EARLY CANCELLATION

- 7.1 The agency is entitled to cancel the contract with immediate effect for good cause. Good cause shall be deemed to exist in particular if
  - a) the performance of the service becomes impossible for reasons for which the customer is responsible or is further delayed despite the setting of a grace period of 14 days;
  - b) the customer continues, despite a written warning with a grace period of 14 days, to violate essential obligations arising from this contract, such as payment of a due amount or obligations to co-operate;
  - c) there are justified concerns regarding the customer’s creditworthiness and the customer neither makes advance payments at the request of the agency nor provides suitable security prior to the agency’s performance.

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7.2 The customer is entitled to cancel the contract for good cause without setting a grace period. Good cause shall be deemed to exist in particular if the agency continues to violate essential provisions of this contract despite a written warning with a reasonable grace period of at least 14 days to remedy the breach of contract.

### 8. FEE

8.1 Unless otherwise agreed, the agency shall be entitled to a fee for each individual service as soon as it has been provided. The agency is entitled to demand advance payments to cover its expenses. From an order volume with an (annual) budget of €10,000 or those that extend over a longer period of time, the agency is authorised to issue interim invoices or advance invoices or to request payments on account.

8.2 The fee is understood to be a net fee plus VAT at the statutory rate. In the absence of an agreement in individual cases, the agency shall be entitled to a fee in the usual market amount for the services rendered and the transfer of the rights of use under copyright and trademark law.

8.3 All services provided by the agency that are not expressly covered by the agreed fee shall be remunerated separately. All cash expenses incurred by the agency shall be reimbursed by the client.

8.4 The agency's cost estimates are non-binding. If it is foreseeable that the actual costs will exceed the agency's written estimate by more than 15%, the agency shall inform the customer 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 working days of this notification and at the same time announces more cost-effective alternatives. In the case of a cost overrun of up to 15%, a separate notification is not required. This cost estimate overrun shall be deemed to have been approved by the client from the outset.

8.5 The agency shall be entitled to the agreed remuneration for all work carried out by the agency that is not completed by the client for whatever reason. The off-setting provision of §1168 ABGB is excluded. Upon payment of the fee, the customer shall not acquire any rights of use to work already performed; concepts, drafts and other documents that have not been executed must be returned to the agency immediately.

### 9. PAYMENT, RETENTION OF TITLE

9.1 The fee is due for payment immediately upon receipt of the invoice and without deduction, unless special payment terms are agreed in writing in individual cases. This shall also apply to the charging of all cash outlays and other expenses. The goods delivered by the agency shall remain the property of the agency until full payment of the fee, including all ancillary liabilities, has been made.

9.2 If the customer is in default of payment, statutory default interest shall apply in the amount applicable to business transactions. Furthermore, in the event of default of payment, the customer undertakes to reimburse the agency for the dunning and collection expenses incurred, insofar as they are necessary for appropriate legal prosecution. This shall in any case include the costs of two reminders in the usual market amount of currently at least €20.00 per reminder as well as a reminder from a lawyer commissioned with the collection. The assertion of further rights and claims remains unaffected by this.

9.3 In the event of default of payment by the customer, the agency may demand immediate payment of all services and partial services provided under other contracts concluded with the customer.

9.4 Furthermore, the agency shall not be obliged to provide further services until the outstanding amount has been settled (right of retention). The obligation to pay remuneration remains unaffected by this.

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9.5 If payment in instalments has been agreed, the agency reserves the right to demand immediate payment of the entire outstanding debt in the event that partial amounts or ancillary claims are not paid on time (loss of deadline).

9.6 The customer shall not be entitled to offset its own claims against claims of the agency unless the customer's claim has been recognised by the agency in writing or established by a court of law.

### 10. PROPERTY RIGHTS AND COPYRIGHT

10.1 All services of the agency, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final artwork, concepts, photos, videos, animations, renderings), including individual parts thereof, shall remain the property of the agency, as shall the individual workpieces and design originals, and may be reclaimed by the agency at any time – in particular upon termination of the contractual relationship. By paying the fee, the client acquires the right of use for the agreed purpose. The acquisition of rights of use and exploitation of the agency's services shall in any case require full payment of the fees invoiced by the agency. If the customer uses the agency's services before this point in time, this utilisation shall be based on a loan relationship that can be revoked at any time.

10.2 Changes or adaptations of the agency's services, in particular their further development by the Client or by third parties working for the Client, are only permitted with the express consent of the agency and – insofar as the services are protected by copyright – of the author.

10.3 The agency's consent is required for the use of the agency's services beyond the originally agreed purpose and scope of use, irrespective of whether these services are protected by copyright. The agency and the author shall be entitled to separate appropriate remuneration for this.

10.4 The agency's consent is also required for the use of the agency's services or advertising materials for which the agency has developed conceptual or design templates, regardless of whether these services are protected by copyright or not, once the agency contract has expired.

10.5 In the first year after the end of the contract, the agency shall be entitled to the full agency fee agreed in the expired contract for utilisation in accordance with paragraph 4. In the 2<sup>nd</sup> or 3<sup>rd</sup> year after expiry of the contract, only half or a quarter of the remuneration agreed in the contract. From the 4<sup>th</sup> year after the end of the contract, no more agency remuneration is payable.

10.6 The client shall be liable to the agency for any unlawful use in double the amount of the appropriate fee for such use.

### 11. LABELLING

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

11.2 Subject to written cancellation by the customer, which is possible at any time, the agency shall be entitled to refer to the existing or former business relationship with the customer on its own advertising media and in particular on its Internet website by name and company logo (reference).

### 12. GUARANTEE

12.1 The customer must report any defects immediately, in any case within eight days of delivery / service by the agency, hidden defects within eight days of recognising them, in writing with a description of the defect; otherwise the service shall be deemed approved. In this case, the assertion of warranty claims and claims for damages as well as the right to challenge errors due to defects shall be excluded.

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12.2 In the event of justified and timely notification of defects, the customer shall be entitled to rectification or replacement of the delivery / service by the agency. The agency shall rectify the defects within a reasonable period of time, whereby the customer shall enable the agency to take all measures necessary to investigate and rectify the defects. The agency shall be entitled to refuse to improve the service if this is impossible or involves disproportionately high costs for the agency. In this case, the customer shall be entitled to the statutory rights of cancellation or reduction. In the event of rectification, the client shall be responsible for transferring the defective (physical) item at its own expense.

12.3 It is also the responsibility of the client to check the legal admissibility of the service, in particular with regard to competition, trade mark, copyright and administrative law. The agency is only obliged to carry out a rough check of legal admissibility. In the event of slight negligence or after fulfilment of any duty to warn the customer, the agency shall not be liable for the legal admissibility of content if this was specified or approved by the customer.

12.4 The warranty period shall be six months from delivery / service. The right of recourse against the agency pursuant to Section 933b(1) ABGB shall expire one year after delivery / service. The customer shall not be entitled to withhold payments due to defects. The presumption rule of §924 ABGB is excluded.

### 13. LIABILITY AND PRODUCT LIABILITY

13.1 In cases of slight negligence, liability of the agency and its employees, contractors or other vicarious agents ("people") for material or financial losses of the customer is excluded, regardless of whether it concerns direct or indirect damages, loss of profit or consequential damages, damages due to delay, impossibility, positive breach of contract, culpa in contrahendo, due to defective or incomplete performance. The existence of gross negligence must be

proven by the injured party. Insofar as the liability of the agency is excluded or limited, this shall also apply to the personal liability of its "people".

13.2 Any liability of the agency for claims asserted against the Client on the basis of the service provided by the agency (e.g. advertising measure) shall be expressly excluded if the agency has fulfilled its duty to inform or if such a duty was not recognisable to it, whereby slight negligence shall not be detrimental. In particular, the agency is not liable for legal costs, the customer's own legal fees or costs of judgement publications or for any claims for damages or other third-party claims; the customer must indemnify and hold the agency harmless in this respect.

13.3 The customer's claims for damages shall expire six months after the damage becomes known; in any case, however, after three years from the agency's act of infringement. Claims for damages are limited to the net order value.

### 14. DATA PROTECTION (VISUAL EMPHASIS IN ACCORDANCE WITH THE CASE LAW)

The customer agrees that his personal data, namely name / company name, profession, date of birth, company register number, powers of representation, contact person, business address and other addresses of the customer, telephone number, fax number, e-mail address, bank details, credit card details, VAT number) may be used for the purpose of fulfilling the contract and supporting the customer as well as for our own advertising purposes, for example for sending offers, advertising brochures and newsletters (in paper and electronic form), as well as for the purpose of referring to the existing or previous business relationship with the customer (reference). The client agrees that electronic mail may be sent to him for advertising purposes until cancellation.

This consent can be revoked at any time in writing by e-mail, fax or letter to the contact details listed at the top of the GTC.

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### 15. APPLICABLE LAW

The contract and all reciprocal rights and obligations and claims between the agency and the customer derived therefrom shall be governed by Austrian substantive law to the exclusion of its conflict of law rules and to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

### 16. PLACE OF FULFILMENT AND JURISDICTION

16.1 The place of fulfilment is the registered office of the agency. In the case of dispatch, the risk shall pass to the customer as soon as the agency has handed over the goods to the transport company selected by it.

16.2 The place of jurisdiction for all legal disputes arising between the agency and the customer in connection with this contractual relationship shall be the court having subject-matter jurisdiction for the registered office of the agency. Notwithstanding this, the agency is authorised to sue the customer at his general place of jurisdiction.

16.3 In this respect as designations relating to natural persons in this contract are only given in the masculine form, they refer to women and men in the same way. When applying the term to certain natural persons, the respective gender-specific form shall be used.