

GENERAL TERMS AND CONDITIONS OF ZOOM PRODUCTIONS GMBH

Last update April 2010

1. GENERAL INFORMATION, AMBIT AND CONTRACT CONCLUSION

- 1.1. The following Terms and Conditions („TC“) govern all business relations between ZOOM Productions GmbH as the agent („Agency“) and the client as the customer („Customer“). The relevant version as amended periodically is applicable at the time of contract conclusion.
- 1.2. Notwithstanding acknowledgment, aberrant, conflicting or amendatory terms and conditions will not become subject of the TC, unless their validity is expressly approved by the Agency in writing.
- 1.3. Quotations by the Agency are subject to change and without any commitment on the part of the Agency.
- 1.4. Orders or modifications thereof are binding only if submitted in writing.
- 1.5. The contract will come about only after written confirmation by the Agency.

2. SIZE AND TRANSACTION OF ORDER, COOPERATION OBLIGATION OF THE CUSTOMER

- 2.1. The range of activities results bindingly from the acknowledgment of the Agency or from the service specification in an existing Agency contract. Within the framework specified by the Customer the Agency has freedom of scope in the fulfillment of the order.
- 2.2. All performances of the Agency (in particular all preliminary drafts, layouts, final artwork, proofs, blueprints, copies, color printouts and digital files) must be reviewed and released by the Customer within three workdays upon receipt. Should the release be delayed the Customer's approval shall be presumed.
- 2.3. The Customer shall make all information and data required for the provision of a service available to the Agency in a timely manner and in extenso. Furthermore, he shall inform the Agency of all circumstances that are of substance to the performance of the order, regardless of whether those emerge only in the course of the implementation of the order. The Customer shall bear all expenditures arising from incorrect, incomplete or belatedly modified information by the Customer resulting in extra operations that must be repeated by the Agency or which are delayed.
- 2.4. Furthermore, the Customer is bound to verify possible copyrights, trademarks or other rights of third parties regarding the documents submitted for the performance of the order (photos, logos, etc.). The Agency is not to be made liable for infringements of such rights. The Customer undertakes to indemnify and hold harmless the Agency respectively in the event of being claimed against. He shall compensate the Agency for all losses incurred through claims laid by third parties.
- 2.5. The Agency, at its sole discretion is entitled to carry out the services alone, to employ competent third parties in the supply of services covered by the contract as vicarious agents and/or to substitute services.
- 2.6. The assignment of third parties in line with an external service will take place on the Agency's own behalf, but in all events on account of the Customer. The Agency shall select third parties carefully and make every effort to ensure the required professional qualification.
- 2.7. Should the Agency commission essential or stipulated external services the respective contractors are not vicarious agents of the Agency.

3. DEADLINES AND DELIVERY TERMS

- 3.1. The denoted delivery or service terms are held to be only proximate and noncommittal, provided that they were not explicitly stipulated to be mandatory. Mandatory scheduling is to be recorded in writing or to be approved in writing by the Agency, respectively.
- 3.2. In the case of a delay of a delivery/service of the Agency due to events the Agency is unaccountable for, e.g., force majeure and other unforeseeable events unpreventable through reasonable means, contractual obligations are suspended for the duration and the scope of the hindrance. The deadlines are extended accordingly. The Customer and the Agency are entitled to withdraw from a contract provided that such delays persist for more than two months.
- 3.3. Should the Agency be behind schedule the Customer may withdraw from the contract only when the Agency has been granted a grace period of 14 days minimum and the grace period has elapsed effectless. Claims for damages

of the Customer due to failure of performance or default are foreclosed provided that no evidence of deliberate intention or culpable negligence has been provided.

4. PREMATURE TERMINATION

- 4.1. The Agency may terminate the contract for cause with immediate effect. Cause is given when
 - a) the performance of the service becomes impossible for reasons accountable by the Customer or is being further delayed after expiration of a granted grace period of 14 days;
 - b) the Customer continues to transgress constitutive obligations notwithstanding written notice of 14 days, e.g., payment of an amount due or cooperation obligations;
 - c) justifiable reservations regarding the creditworthiness of the Customer persist and upon the Agency's demand he fails to make a deposit or offer suitable collateral prior to any performances of the Agency;
 - d) the Customer has been adjudged bankrupt or bankruptcy and composition proceedings have been dismissed due to lack of self-liquidating assets or when the Customer suspends payments.
- 4.2. The Agency may terminate the contract for cause with immediate effect. Cause in particular is given, when the Agency continues to infringe integral provisions of the contract notwithstanding a written reminder with a grace period of 14 days in which to rectify the default in the performance.

5. FEES, PAYMENTS AND RESERVATION OF PROPRIETARY RIGHTS

- 5.1. The Agency is entitled to payment for every single service upon provision unless agreed otherwise. For the cover of expenditures the Agency is entitled to demand advance payment. Furthermore, the Agency is entitled to provide interim billing or advance invoices, respectively or to draw installments.
- 5.2. Fees are quoted net plus statutory sales tax. In particular cases, failing express agreement the Agency is entitled to fees of a market standard amount for services rendered and, if applicable, for the cession of copyright and trademark utilization.
- 5.3. Such Agency services not explicitly covered by the agreed upon fee shall be compensated for separately. The Customer is required to refund the Agency for all cash expenditures accrued.
- 5.4. Cost estimates of the Agency are noncommittal. The Agency shall advise the Customer if it is to be anticipated that the actual costs will exceed the assessed costs of the written estimate of the Agency by more than 15 %. Should the Customer not object in writing within three workdays of the advice, concurrently disclosing more favorable alternatives the cost overrun is to be assumed accepted by the Customer. Cost overruns of up to 15 % are considered to be approved by the Customer from the outset. The Agency is not required to specifically advise the Customer in this case.
- 5.5. The Agency is entitled to the agreed upon fee even for those services that, for whatever reason are not being realized by the Customer. The Crediting Clause of § 1168 of the German Civil Code is foreclosed. The Customer does not acquire any right of utilization whatsoever of services already rendered by payment of remuneration. In fact, unimplemented drafts, designs, and other documentation must be returned to the Agency without delay.
- 5.6. The account is due net upon receipt unless special payment terms have been agreed upon in writing on an individual basis. The same goes as well for the further charging of cash expenditures and other expenses. The merchandise delivered by the Agency remains the property of the Agency until the remuneration including all lateral liabilities have been paid in full.
- 5.7. In case of the Customer's default the statutory moratory interest rates apply to the amount applicable to transactions between entrepreneurs. Furthermore, in case of default the Customer is obliged to reimburse the Agency all accrued collection expenses and dunning fees inevitable for an expedient litigation. This comprises at least the standard cost of two notices as well as one notice of a law office in charge of execution. The Agency explicitly reserves the right of enforcement of further rights and arrears.
- 5.8. In the case of the Customer's default the Agency is entitled to invoice any accumulated claims for performances and partial performances rendered within the scope of all other contracts closed and to demand immediate payment. Moreover, the Agency is not indented to render any further services until the outstanding amount has been canceled. If partial payments have been agreed, disregard of rates or collateral charges entitles the Agency to demand payment of all the outstanding amounts.
- 5.9. The Customer is not entitled to charge his receivables up against receivables of the Agency, unless the Customer's receivables have been acknowledged by the Agency in writing or determined by a court decision.

6. COPYRIGHT AND TERMS OF USE

- 6.1. All Copyright is owned by the Agency. The Agency reserves the right to determine whether to label the works developed by the scope of services and if yes, in what manner.
- 6.2. The Agency reserves the exclusive right to grant license or right of utilization, which may be restricted temporally or locally. The concession of the respective license or right is subject to a separate agreement. Should no separate agreement have been made as to the scope of the license or right, a temporally unlimited license of utilization localized to the Austrian territory applies by default, however granted exclusively for the works created according to the scope of services rendered. Products that are not encompassed by the scope of services rendered are not furnished with any automatic license or right.
- 6.3. The Agency exclusively precludes the adaptation right by the customer or third parties, unless the Agency explicitly consents. If the adaptation right has been issued, the result may not be labeled with an author's designation in a manner that imparts the adaptation with a semblance of the original.

7. LABELING

- 7.1. The Agency is entitled to indicate the Agency as author of all advertising media and all promotions, as the case may be. The Customer is not entitled to any claims in return.
- 7.2. The Agency is entitled to refer to existing business relations with the Customer, using his name and corporate symbol on the Agency's own communication media, in particular his internet website.

8. WARRANTY

- 8.1. The Customer must advise in writing of possible deficiencies immediately, at all events within seven days after delivery/performance by the Agency, hidden defects within seven days after identification. Otherwise the service shall be deemed to have been accepted, in which case no warranty claims or claims for compensation or avoidance on account of mistakes shall be recognized.
- 8.2. In the event of justifiable claims, which have been received by the Agency within the agreed period, and which the Agency is clearly and unequivocally responsible for then the Agency undertakes to rectify the defects in an appropriate manner or provide an appropriate replacement service within a reasonable period. Should the improvement of the service prove impossible or should it require disproportionately high expenditures from the Agency, the latter is entitled to refuse improvements. In this case the Customer is entitled to the compulsory rights of conversion and reduction. In the case of improvement the customer is incumbent upon the transfer of the defective (physical) objects at his own expense.
- 8.3. It is for the Customer to ensure that the service complies with all legal requirements, in particular with the requirements regarding competition, brand names, copyright and administrative law. The Agency is not liable for the accuracy of contents that were provided or authorized by the Customer.
- 8.4. The period of warranty is 12 months after delivery/performance. The right to recourse against the Agency according to § 933b Sec. 1 Civil Law Code expires 12 months after delivery/performance. The assumption ruling of § 924 Civil Law Code is foreclosed.

9. LIMITATION OF LIABILITY AND INDEMNIFICATION CLAUSE

- 9.1. The Agency's liability for material or financial damages to the Customer is foreclosed in cases of slight negligence regardless of whether the damages are proximate or collateral, result in lost profit or consequential harm, are due to delay in performance, impossibility thereof, positive breach of obligation, default upon completion of the contract, inadequate or incomplete service. The burden of proof of gross negligence lies with the customer.
- 9.2. Any liability of the Agency for claims lodged against the Customer on account of services rendered by the Agency are expressly foreclosed when the Agency has complied with his information obligation or when such obligation was not in evidence. Slight negligence does not cause any damage. The Agency is not liable for litigation costs, the Customer's own attorney fees or judgment publication costs, neither for possible compensation claims nor for miscellaneous claims of third parties. The Customer must save the Agency harmless in this regard.
- 9.3. Compensation claims of the Customer expire after six months' awareness of the damage. In any case they fall under the statute of limitations three years after the Agency's infringement.

10. PROPRIETARY INFORMATION

The Customer expressly agrees that the Agency automatically determines, processes, and stores the data disclosed by the Customer (name, address, email, credit card data, bank transfer data) for the purpose of contract fulfillment and customer support as well as for the Agency's own advertising purposes in the form of automatic data processes. The customer agrees to receive electronic mail for promotional purposes until revoked.

11. FINAL CLAUSE

- 11.1. Place of fulfillment is the registered office of the Agency. For the legal venue for all disputes arising directly or indirectly from the contract or these general terms and conditions the Austrian court of law competent for the seat of the registered office of the Agency will be stipulated. Regardless of this agreement conferring jurisdiction the Agency is entitled to lodge a claim against a Customer at any place and before any court of law that has jurisdiction according to statutory provisions – in particular the court of the Customer's domicile.
- 11.2. The laws of the Republic of Austria shall govern the contract the rights and the obligations of the parties hereunder. The application of the United Nations Convention on Contracts for the International Sale of Goods is foreclosed.
- 11.3. The effectiveness of other provisions is not affected should individual provisions of the contract or of these general terms and conditions be or become wholly or partially ineffective. The wholly or partially ineffective provision shall be regarded as being replaced by such provision that comes as close as possible to the economic intent.