

## GENERAL TERMS AND CONDITIONS OF ZOOM PRODUCTIONS GMBH FOR SUBCONTRACTORS

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### 1. GENERAL INFORMATION, AMBIT AND CONTRACT CONCLUSION

- 1.1. The following Terms and Conditions („TC“) govern all business relations between ZOOM Productions GmbH („Agency“) and the contractor („Contractor“) arising from an already established contractual relationship between the Agency and its client or customer („Client“), irrespective of whether the Agency concludes the contract on its own behalf or under the name of the client, in any case however on account of the Client.
- 1.2. 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

- 2.1. The quantitative scope of services results from the Agency's notice of award, which is binding. Optional surplus quantities shall not be remunerated – even though they may have been essential for the production. The scope of services also comprises designs and quotations, in particular those for alternative solutions.

### 3. DEADLINES AND DELIVERY TERMS

- 3.1. Deadlines and delivery terms agreed upon in writing between the Agency and the Contractor are binding.
- 3.2. Should the Contractor be behind schedule the Agency may withdraw from the contract after the expiration of a grace period of 14 days and demand compensation for failure of performance or default.
- 3.3. If the Contractor delivers ahead of schedule the Agency is not obliged to accept the service on the one hand and on the other hand the due date for payment claims agreed upon shall not be altered.
- 3.4. The Contractor is obliged to immediately inform the Agency in writing of an apprehended delay in delivery. If it is foreseeable that delivery/performance cannot be provided on schedule and consequently a considerable interference with production is to be expected with the Agency and/or its Client the Agency is entitled to withdraw from the contract.
- 3.5. Delivery takes place at the Contractor's risk and expense and to the delivery address specified by the Agency.

### 4. ACCEPTANCE, NOTICE OF DEFECTS, WARRANTY AND SUBSEQUENT IMPROVEMENT

- 4.1. The acceptance of the delivery/performance is effected only when the Agency has expressly acknowledged it as being as stipulated in the contract.
- 4.2. The acceptance of the contractual object and payment before deficiency statement do not constitute recognition of a faultless delivery and performance, or a waiver of the right of reprimand. This goes as well for the delivery receipt of inward goods by the Agency or the Client.
- 4.3. The Contractor expressly waives his right stipulated in § 377 of the Austrian Business Code which for want of a notice of defects forecloses the enforceability of a warranty claim, compensation of damages for the deficiency itself and due to an error regarding the faultlessness of an item.
- 4.4. Regarding the deliveries of the design or production of promotional material the assigned tasks must have been solved and comply with the latest state of technology and, where applicable, conform with the provided drafts and instructions. Provided the Contractor has submitted work samples prior to the contract award, the deliveries must be on a level with the technical, promotional and artistic standard of these samples.
- 4.5. In the case of a notice of defects the Agency is entitled to improvement or replacement of the delivery/performance by the Contractor. The Contractor is obliged to immediately redeem the rejected delivery and performance. In case of negligent refusal of acceptance of the return the Agency stores the items until pickup, however no longer than three months at Contractor's risk and expense. After expiry of this period and written General Terms and Conditions for Subcontractors notice given to the Contractor the Agency is entitled to destroy

the items at the Contractor's risk and expense after a grace period of 14 days.

## 5. FEES, INVOICE AND PAYMENT

- 5.1. The costs agreed upon are quoted net plus statutory sales tax and are binding.
- 5.2. The Contractor shall be paid separately for additional expenditure that may arise due to amendment and complement requests by the Client after contract award only when he submits a notice regarding the claim for payment to the Client immediately and in writing.
- 5.3. Eventual packaging costs shall not be refunded.
- 5.4. The invoice must be forwarded to the Agency immediately after delivery/performance. Unless particular payment terms have been stipulated in individual cases payment of the invoice amount shall take place within 14 days after receipt less 2% discount or within 30 days after receipt due net.

## 6. SPECIAL PROVISIONS FOR PHOTOGRAPHERS AND STYLISTS

- 6.1. In the name of the Client the Agency is entitled to specify persons participating in the design of a photo motif (such as models, makeup artists, stylists and their costumes), props, specific technical effects (such as particular lighting) as well as the location. This is essential in regard to an optimal implementation of the campaign concept endorsed by the Client. The Contractor has to close the required employment, purchase and lease contracts by order and on account of the Client. The Contractor has to close the contracts mentioned above in line with the quotations approved by the Client and in line with the special provisions valid for photographers and stylists.

## 7. INSURANCE

- 7.1. The Contractor undertakes to procure adequate insurance for potential damages of all kind in conjunction with the fulfillment of the assignment. In particular cases the Agency may request proof of insurance.
- 7.2. The Contractor carries the cost for the insurance. The costs are on account of the Agency only when the Agency commissions the Contractor in writing to procure the insurance is by.

## 8. PROPRIETARY RIGHT OF UTILIZATION/ANCILLARY COPYRIGHT

- 8.1. After payment the proprietary right of utilization and ancillary copyrights of the Contractor as well as the right to use the image of the model – regarding the contract subject respectively – are transferred to the Client without temporal or regional limitations for his exclusive utilization. Purpose of usage: promotional and non-promotional, primary and multiple utilization; type of use: All conceivable as well as new future types of use, all conceivable as well as new future reproduction techniques; further authorizations: utilization of parts of the contract subject as well (also utilization of clippings, photo-composing, film-composing), modification right, complete or partial transfer of the exclusive right of utilization to a third party.
- 8.2. In his quotation the Contractor must inform the Client whether and which of, as the case may be, the utilization rights to be transferred to him according to section 8.1. he has transferred to collecting societies.
- 8.3. Insofar utilization rights have not been transferred notwithstanding section 8.1. the Client may subsequently claim their transfer wholly or partially in exchange for an adequate compensation. Insofar as possible the compensation conforms with what has already been agreed with the Contractor or otherwise with the fees of the collecting societies; as long as the latter do not interfere the compensation shall be assessed by the Client based on fair judgment, verifiable by law.
- 8.4. Should the Contractor appoint collaborators and/or subcontractors and/or models in fulfillment of the contract he is obliged to acquire their utilization rights and transfer them to the Client to the extent as stipulated in section 8.1. for the Contractor's own performances. In addition, he has to entail the same obligations on these persons for their performance contribution in favor of the Client as he must assume for his performance himself.
- 8.5. The Contractor guarantees that third party rights on his contractual performance that may interfere with the transfer of rights and/or the stipulated utilization of his performance (e.g., personal rights of pictured persons) do not exist.
- 8.6. The Contractor has to provide the utilization rights that are to be transferred by him comprehensively according to section 8.1., as well as restricted to the type of advertising media to be commissioned for the contract subject, but in other respect according to section 8.1. Any further restrictions are to be explained in an additional alternative quotation. The working fee is to be disclosed separately, it is included in the remuneration agreed upon.

- 8.7. The Contractor is obliged to have collaborators and/or subcontractors and/or models sign a declaration on the transfer of utilization rights and to submit it to the Agency.
- 8.8. The Agency shall be entitled but not obligated whatsoever to name the Contractor or any authors, inventors or designers in connection with the utilization of the services/works. The Contractor shall also apply this to any involved third parties.
- 8.9. In addition, the Agency has the right to register provided services/works as a trademark, registered design, copyright, utility model, patent or other intellectual property right. The Contractor waives its right to be mentioned in connection with the registration.

## 9. ACQUISITION OF OWNERSHIP, CUSTODY, ASSURANCE AND LIEN

- 9.1. With payment of the royalties for illustrations as well as the reproduction material manufactured or procured by the Contractor for the fulfillment of the contract (such as printing material like typesetting, photographs, stamping die molds, lithography, films, tools, electronic files etc. including drafts not delivered and archival backup copies) the Client gains ownership or unrestricted utilization rights. From this moment on the Contractor carefully stores these items for the Client for up to a maximum of 24 months. At the end of this period and after a written notice to the Client with a deadline of at least six weeks the Contractor is entitled to destroy the items at his own expense.
- 9.2. The Contractor has to store an archival backup copy of every electronic file on a separate storage medium at his own expense and to store it apart from the primary storage medium.
- 9.3. Regarding the items that the Contractor receives from the Agency or the Client the Contractor does not gain ownership nor any exploitation rights. He may use these items only for the transaction of the contract. The Contractor must store them carefully and return them immediately upon demand.
- 9.4. The Contractor does not retain a possessory lien on the items to be returned.

## 10. CONFIDENTIALITY

- 10.1. The Contractor has to treat all information and documentation to which he gains access in the course of contract development as well as the commissioned promotional media and items according to section 9. as strictly confidential. The duty to observe secrecy remains effective even after completion of the contract and even then if the contract does not come to conclusion.
- 10.2. The Agency remains the owner of all provided documents and fully retains all intellectual property rights. Upon the Agency's request, the Contractor shall return or destroy all provided documents.
- 10.3. The Contractor may use copies of the contractual performance for his own advertising only with prior written approval by the Agency.
- 10.4. The Contractor commits to impose a confidentiality agreement in writing on his collaborators, subcontractors, models, etc. involved with the implementation of the contract, insofar this is essential for safeguarding confidentiality.
- 10.5. Furthermore, the Contractor shall disclose any received information only to those employees who need the information to work on the project.
- 10.6. The Contractor is only permitted to use any produced materials as a work reference after prior approval by the Agency.
- 10.7. The Contractor shall ensure that all provided information is properly protected against theft, damage, loss or unauthorized access.
- 10.8. A breach of confidentiality may entail a contract penalty of € 6,000.00 for each single offence. This contractual penalty shall not depend on any actual damage suffered, it shall be due for each instance of infringement, regardless of negligence, and shall not be subject to an equitable review by the courts. Payment of the contractual penalty shall not affect the Agency's right to claim damages exceeding the amount of the contractual penalty.

## 11. TRANSFERABILITY OF RIGHTS, RETENTION

- 11.1. A relinquishment of the Contractor's rights from the contract, particularly the claim for remuneration is possible only with prior sanction of the Agency.
- 11.2. The Contractor is not entitled to charge his own receivables against the Agency's receivables unless the Contractor's receivables have been acknowledged by the Agency or were determined by a court decision.
- 11.3. A retaining lien for the Contractor is not applicable.

## 12. LIABILITY

12.1. The contract must be conducted through the Agency in any case, even when the Agency has commissioned it on behalf of a third party. Any liability of the Agency for the Client's contract fulfillment or for his credit rating that was not verified by the Agency is excluded in this case.

## 13. COMMITMENT TO STANDARDS

13.1. The Agency is committed to the FTA's Business Social Compliance Initiative (BSCI) for improving social standards in the global supply chain of commerce and expects the Contractor and all of its subcontractors to respect the standards outlined in this initiative as well.

## 14. FINAL CLAUSE

14.1. 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.

14.2. 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.

14.3. 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.