

GENERAL TERMS AND CONDITIONS

1) General

These "Uniform Conditions" alone apply to all transactions between the Client and Standort Marketing Agentur GmbH (hereinafter referred to as sma). Any terms and conditions from the Client shall only be effective if they are recognized expressly by sma in writing. Any agreements that differ from these "Uniform Conditions" must be made in written form. Should any of these "Uniform Conditions" be invalid, this shall not affect the validity of their remaining provisions or any contracts concluded on their basis. The invalid provision shall be replaced by a valid one that corresponds as closely as possible to the intention and purpose of the original.

2) Contract

Offers made by sma are subject to confirmation. The Client shall be contractually bound from two weeks after the receipt of said confirmation by sma. Client contracts shall be considered to have been accepted only after written confirmation by sma insofar as sma has not otherwise indicated that it has accepted said contract, e.g. by beginning activities related to the contract

3) Performance and fees

Unless otherwise agreed upon, sma is entitled to the fees for each individual service it performs as soon as that service has been provided. sma is entitled to demand advance payments to cover its expenses. All services provided by sma that are not expressly covered in the agreed fee will be billed separately.

This is especially true for all ancillary services performed by sma. The Client shall pay all out-of-pocket expenses beyond those generally incurred during the normal course of business (examples include, but are not limited to, messenger services, extraordinary shipping costs, and travel). Cost estimates provided by sma are generally not binding. If it becomes apparent that actual costs will exceed those estimated in written form by sma by more than 20%, sma shall inform the Client of the higher costs. The cost overrun is considered approved by the Client if the Client does not dispute it within three days after receiving this notice and fails to offer more cost-effective alternatives. sma is due reasonable remuneration for any work it is unable to complete, regardless of the reason. By paying this fee, the Client acquires no rights to this work. Unexecuted concepts, designs, etc. are instead to be returned to sma immediately. Unless otherwise agreed in writing, the amount of the fee depends on the "Fee Guidelines for Public Relations Consultants/Agencies" ("Honorarrichtlinien für Public-Relations-Berater/Agenturen") published by the Fachverband Werbung und Marktkommunikation (Association of Advertising and Marketing Communications) valid at the time of billing.

4) Presentations

sma is entitled to a reasonable fee for participating in presentations, which shall cover at least the entire staff and operating expenses for the sma presentation and the costs of all third-party services. If sma does not receive a contract after presenting, all sma materials and content, especially presentation documents and their contents, remain the property of sma. The Client is not entitled to use these, in whatever form; the documents are to be returned immediately to sma. If the ideas and concepts presented for accomplishing communication tasks are not used in sma-designed promotional materials, sma is entitled to use the presented ideas and concepts elsewhere. The passing of presentation documents to third parties and their publication, reproduction, distribution, or other use is forbidden without the express consent of sma.

5) Ownership and copyright protection

Everything created by sma, including items from presentations (e.g. suggestions, ideas, sketches, drafts, scribbles, artwork, concepts, negatives, and slides) and parts thereof, remain the property of sma along with individual pieces and design originals. sma may reclaim these at any time, especially at the end of the sma's contract. By paying the fee, the Client purchases the right to use (including duplication) sma creations for the agreed purpose and within the agreed scope.

Unless otherwise agreed with sma, only the Client may use the products and services provided by sma. Furthermore, these are to be used only within Austria and only for the duration of the contract with sma. Changes to sma products by the Client are permissible only with the express consent of sma and the original author (if the products are subject copyright).

The explicit approval of sma is required for the use of its products and services that goes beyond the originally agreed purpose and scope of use—regardless of whether that product or service is protected by copyright. In such a case, sma and the author are entitled to a separate, appropriate remuneration. In principle, the appropriate amount is the fee stated in the sma agreement, but with a minimum amount of 15% of the amount paid by the Client to third-parties involved in the production, distribution, or publication of advertising material. Explicit approval from sma is also necessary for the use after expiration of the sma contract of sma products or advertising, for which the sma developed conceptual or design templates—regardless of whether said product is protected by copyright. In such a case, sma is entitled to the full amount of remuneration agreed upon in the expired contract in the first year after expiration, usually 15%. In the second and third years after the expiration of the contract, only a half and a quarter, respectively, of the contractually agreed remuneration is to be paid. From the 4th year after the end of the contract, no further remuneration must be paid to sma.

6) Trademarking

sma is entitled to trademark as sma creations all promotional materials and all advertising. This does not entitle the Client to any payment.

7) Approval

All sma goods and services (especially all drafts, sketches, artwork, proofs, blueprints, and color prints) must be examined by the Client and released within three days. If they are not released by this deadline, they will be considered to have been approved by the Client. In particular, the Client shall be responsible for examining the legal admissibility of sma creations, with the greatest weight placed on competition and trademark law admissibility. The sma shall initiate an external legal review only upon the Client's written request. All associated costs shall be borne by the Client.

8) Deadlines

sma shall strive to meet agreed deadlines. Late delivery shall only entitle the Client to assert his legal rights after he has granted sma a grace period of at least 14 days, however. This period shall begin upon receipt by sma of the first dunning letter. sma shall be obliged to pay compensation for damages resulting from the delay only where this has occurred through intent or gross negligence.

Unavoidable or unforeseen circumstances—in particular delays with sma contractors—also absolve sma from the need to comply with the agreed delivery date.

9) Payment

sma invoices are due from the invoice date and are to be paid promptly net cash without any deduction, unless otherwise agreed. In the case of late payment, a fee of, currently, 12% per annum is considered agreed. Delivered goods remain the property of sma until paid in full. The Client may offset payment only against uncontested or legally established receivables; the same shall apply to the exercise of rights of retention.

10) Warranty and Damages

The Client shall announce and justify in writing any complaints within three days after performance by sma. In the case of justified and timely complaints, the Client has a right only to improved performance through sma. When the complaint is justified, defects will be corrected within a reasonable period, during which the Client will allow the contractor to take all necessary measures to identify and correct any defects. The burden of proof under § 294 of the Austrian Civil Code is excluded, the Client must prove a defect existed on the date of transfer. Claims for damages by the Client, in particular for delay, impossibility of performance, positive breach of contract, negligence in contracting, defective or incomplete performance, consequential damages, or for tortious acts are excluded, insofar as they are not the result of intent or gross negligence on the part of sma. sma accepts no liability for material provided to it by the Client for processing.

11) Liability

sma will implement the work assigned to it taking into account generally recognized principles of law and inform the Client in ample time of any discernible grave risks. The Client himself is responsible for compliance with the law, particularly with competition rules, including advertising and marketing actions suggested by sma. He will release a proposed sma advertising campaign only when he himself is satisfied that it is unobjectionable from a competition law standpoint or if he himself is willing to bear the risks associated with implementation of the campaign. Any liability on the part of sma for claims that are raised against the Client due to the campaign is expressly excluded, provided that sma has met its obligation to inform; the exemption from liability shall also apply in particular to court fees, attorneys' fees, sentencing costs, or for any damage or similar claims made by third parties. In the event that any such a claim is raised against sma due to the implementation of an advertising campaign, the Client shall indemnify sma: the Client shall compensate all financial and other losses (including intangible losses) sma may suffer due to such third party claims. sma shall only be liable for damage if intent or gross negligence can be proven, in accordance with statutory regulations. Liability for minor negligence is excluded. The damaged party must prove the existence of gross negligence.

12) Applicable Law

The legal relationship between the Client and sma shall be governed by and construed exclusively in accordance with the laws of Austria.

13.) Place of performance and jurisdiction

The place of performance is the sma office. The venue for all disputes arising directly between sma and the Client is agreed to be the local and competent Austrian court for the seat of sma. The Consultant shall also be entitled to take legal action at any court responsible for the Client.

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