



General Terms and Conditions of LHLK Agentur für Kommunikation GmbH

(Last updated 1 January 2024)

§ 1 General

(1) All deliveries and other services, particularly the sale of goods and artistic or other services and work, are subject exclusively to the following terms and conditions in the version applicable at the time the contract was agreed. These General Terms and Conditions shall apply accordingly to all future business relations with the Client, even if an express agreement to this effect is omitted

(2) Deviating, conflicting or supplementary terms and conditions of the contractual partner (hereinafter: Client) shall not be part of the contract unless the agency expressly agrees to them.

§ 2 Offers, scope of services, conclusion of contract

(1) Offers made by the agency are non-binding.

(2) The agency's order confirmation/offer is exclusively authoritative for the scope of the contractually owed service.

(3) Partial deliveries are permissible insofar as this is reasonable for the Client.

(4) The documents on which the offer or the order confirmation is based, such as calculations of time and third-party costs, are only to be understood as approximations, unless they are expressly designated as binding.

§ 3 Prices and terms of payment

(1) Unless expressly agreed otherwise, invoicing will be based on the agency's hourly rates according to the actual time spent.

(2) If agreed, any "flat-rate fees" will cover, in particular, both the time to be spent by the agency and the provision of processing capacities by the

agency. The flat-rate fees are generally binding for both parties, irrespective of whether the estimated time spent corresponds to the actual time spent. The agency will only be entitled to remuneration in excess of the agreed flat-rate fees if the agency expressly reserved this right when the order was placed or if and insofar expressly agreed between the parties or if a claim to remuneration arises from these General Terms and Conditions.

(3) The agency will receive a customary commission from its Clients for the successful mediation of contacts that lead to financially beneficial partnerships or alliances and other economically assessable contractual relationships.

(4) The prices apply ex place of performance (Munich/Berlin), excluding packaging and other shipping and transport charges.

(5) If there are more than 4 months between conclusion of the contract and fulfilment, without the agency being responsible for this delay, the agency may increase the price appropriately, taking into account any incurred material, wage and other ancillary costs to be borne by the agency.

(6) The additional costs incurred as a result of the agency's efforts to accommodate Client change requests will be charged to the Client.

(7) The invoices issued by the agency to the Client will be due immediately upon receipt without deduction. If the payment deadline is culpably exceeded by more than 14 days from the invoice date, interest will be charged at a rate of 9% above the applicable discount rate of the Deutsche Bundesbank, subject to the assertion of further claims.

(8) With regard to media (§ 4 No. 3), the agency will issue advance invoices to the Client, in each case for one month of placement. The agency will not be obliged to place the orders for the respective intended advertisements with the media outlets if the Client does not pay the aforementioned remuneration to the agency despite being asked to do so.

(9) The hourly rates and/or technical services stated in the price lists are valid for a period of one year from the date the order is placed. Once this period ends, the agency will be entitled to adjust these prices in a reasonable manner to reflect annual general cost developments.



(10) All services offered by the agency are subject to VAT at the statutory rate.

(11) The agency will be entitled to charge the Client for any levies incurred in accordance with the German Social Security Act for Artists (Künstlersozialversicherungsgesetz) if persons commonly referred to as “artists” (e.g. graphic designers, presenters, journalists, copywriters, etc.) are employed as freelancers with the approval of the Client, and if these costs are charged to the Client as third-party services in the meaning of § 4 Third party costs. The percentages valid on the cut-off date for performance will apply in each case.

§ 4 Third-party costs

(1) Unless expressly agreed otherwise, the agency will receive separate payment for third-party costs in return for appropriate receipts. Such costs include, but are not limited to, those incurred when third party services are used, in particular for courier, graphics, text, typesetting, high-volume copy orders, letter and fax mailings, lithography, printing, photography, media monitoring, market research, advertisement placements, et cetera.

(2) Third-party costs will incur a handling fee of 5% of the respective third-party net invoice amount.

(3) Instead of the handling fee agreed in Clause 2, the agency will receive the usual agency commission for the respective Client net placement volume (the Client net is the gross placement price of the advertising media less potential discounts, before deduction of cash discounts) for advertisement placements in media carried out on behalf of the Client.

§ 5 Incidental and travel expenses

(1) Incidental costs of the day-to-day relationship are costs incurred for the execution of an order, in particular for telephone/fax/e-mail/internet, as well as postage and copies, and will be charged to the Client at a flat rate of 5% of the agreed fees in accordance with § 3, in each case oriented to the type of order.

(2) Travel expenses are costs for travel and out-of-pocket travel costs incurred for the execution of an

order. They are always charged according to receipts. Travel expenses within Munich/Berlin will not be charged.

§ 6 Netting and retention

(1) Netting is not allowed, unless the netting claim is undisputed or has been legally established.

(2) The right of retention is excluded.

§ 7 Copyright

(1) Unless expressly transferred in writing and/or acquired in accordance with the following clauses, the agency will retain all rights to preliminary work, such as drafts and concepts, as well as the agency’s other work results, particularly copyrights, rights of use and ownership, even after the work results have been handed over to the Client.

(2) At the time of creation or, at the latest, at the time of purchase, the agency shall grant the Client all transferable rights, in particular the copyrights, trademark rights and naming rights for the use of the services provided, including all legal positions in ideas, drafts and designs, clear of third-party rights, for exclusive, comprehensive exploitation in all currently known and future media and types of use that is unrestricted in terms of geographic distribution, content or material. This includes in particular, but not exclusively, the right of reproduction, distribution, exhibition, presentation, performance and demonstration; the broadcasting right; the right of reproduction by means of analogue and/or digital image and/or sound media; the right of reproduction of analogue and/or digital radio broadcasts; as well as online usage rights.

(3) Raw materials and accompanying media (concepts, drafts, layouts, project files, etc.) remain with the agency and are not handed over together with the end product. If the Client is interested in these materials, a separate fee agreement between the parties is required. (4) The agency will acquire the copyrights held by any third parties (vicarious agents) it uses to fulfil the contract and will transfer them to the Client to the same extent.



(5) The agency will inform the Client in each case, in advance of the order being placed, of any restrictions on copyright. The agency will provide notification of existing rights of GEMA or VG Wort.

(6) A separate fee agreement must be made in advance if the Client wishes to exploit the work designed by the agency abroad, in whole or in part.

(7) § 7 does not apply to the preparation and delivery of clipping reports (online/offline), media monitoring reviews, recordings and other monitoring and evaluation documents. The relevant regulations in this regard are contained in the following paragraph (§ 8).

§8 Monitoring/documentation/clippings

Clipping reports, media monitoring reviews or other documentation and evaluation documents (print/TV/radio/online) supplied by the agency – hereinafter referred to collectively as “Works” – are protected by copyright and may only be used by the Client within the framework of the copyright provisions. In particular, they may only be used within the company and for other own use within the meaning of Section 53 of the German Act on Copyright and Related Rights (Urheberrechtsgesetz). Any further use of the Works as submitted, in particular their reproduction and distribution without the prior conclusion of corresponding licence agreements, is not permitted. A contract between the Client and PMG Presse-Monitor GmbH (PMG), Berlin, is required for Works delivered electronically or by fax. After receipt of the Works, the Client will be responsible for compliance with copyright, property rights, rights of use and industrial property rights, as well as other rights of third parties, and will be solely liable for any infringements of these rights committed by the Client. The Client undertakes to indemnify the agency and its legal representatives and employees against claims by third parties based on infringements committed by the Client. In addition to the claims for damages, the indemnity also includes the entire costs of legal prosecution and legal defence.

§ 9 Changes or termination of the work, term/termination

(1) The Client is entitled to cancel pending work and to abandon and amend plans and other adopted measures. In such cases, the agency will immediately make all appropriate arrangements to comply with the instructions and keep costs to a minimum. However, the Client undertakes to indemnify the agency against all liabilities already incurred that were previously approved or were part of the measures already adopted and to compensate the agency for all damages resulting from such measures due to the cancellation or changes. The agency will be entitled to payment for the services already prepared and provided up to that point in accordance with the agreements made.

(2) Any fixed terms for order processing agreed between the agency and the Client will remain unaffected by Clause 1; the mutual rights and obligations will end upon conclusion of the agreed term.

(3) Ongoing consultancy relationships between the agency and its Client that are established for a term of at least one year will be extended by six months in each case, unless they are terminated by one of the parties with six months' notice to the end of the respective term.

(4) Cancellations are subject to the written form requirement (in the sense of an original signature by post).

§ 10 Delivery period and deadline

Any delivery dates will be specified based on the best judgement, stating an appropriate amount of working days, and will be extended appropriately if the Client, for its part, delays or fails to perform any necessary or agreed acts of cooperation. The same will apply in the event of measures within the framework of industrial disputes, in particular strikes and lock-outs, as well as the occurrence of unforeseen obstacles that lie outside the will of the agency, such as delivery delays by a sub-supplier, traffic and operational disruptions, and material or energy shortages. Changes to the delivered goods initiated by the Client will also lead to a reasonable extension of the delivery period.



§ 11 Retention of title

(1) The agency will retain ownership of delivered goods until payment has been made in full. The retention of title will also apply until all claims, including future and conditional claims, arising from the business relationship between the Client and the agency have been fulfilled.

(2) The Client is not authorised to transfer ownership of the goods by way of security or to pledge the goods, but may resell the goods subject to retention of title in the orderly course of business. The Client hereby assigns to the agency any claims against its business partners arising therefrom.

(3) The agency is entitled to assert the right of retention of title without withdrawing from the contract.

§ 12 Warranty

(1) The Client must inspect the goods immediately upon receipt, insofar as is feasible in the ordinary course of business, and must notify the agency immediately if a defect becomes apparent. If the Client fails to give such notice, the goods will be deemed to have been approved, unless the defect was not recognisable during the inspection. Otherwise, Section 377 et seq. of the German Commercial Code (Handelsgesetzbuch) will apply.

(2) Warranty claims will be limited to rectification of defects or replacement at the discretion of the agency. If rectification or replacement fails, the Client has the right to demand a reduction of the cost or cancellation of the contract at its discretion.

§ 13 Liability

(1) The Client's claims for damages are excluded, unless stated otherwise as below. This does not include claims for damages by the Client arising from injury to life, limb or health or from the breach of essential contractual obligations (cardinal obligations) as well as liability for other damages based on an intentional or grossly negligent breach of duty. Cardinal obligations are obligations that must

be fulfilled for the proper execution of the contract and on whose compliance the contractual partner regularly relies and can expect to reply on; in this case, the agency's liability is limited to compensation for foreseeable, typically occurring damage. The restrictions mentioned in paragraph 1 also apply to representatives and vicarious agents of the Client.

(2) The agency undertakes to perform the work assigned to it with professional care and due diligence to the best of its knowledge. It will inform the Client in good time of any significant risks recognisable with all reasonable and usual care, skill and forethought. The agency's scope of services does not include the verification of the legal admissibility of factual statements made about products and services of the Client, as well as of advertising or other measures developed by the agency on behalf of the Client. The agency is therefore not liable for the legal admissibility of the content and/or design of the work results.

(3) The Client will indemnify the agency in this context against claims by third parties, particularly if the agency has acted at the explicit request of the Client despite notifying the Client of its concerns with regard to the permissibility of the measures.

(4) At the request of the Client, the agency will assist in obtaining a legal examination of the risks, in particular those of competition and copyright law, as carried out by an expert person or institution at the expense of the Client for the measures to be implemented.

(5) The contact persons named to the agency by the Client must be authorised signatories, in particular with regard to the release of budgets, cost estimates, texts and other coordination processes. Notification of any restrictions on the authority to sign must be provided by the Client in writing in good time.

§ 14 Confidentiality

The agency is obliged to maintain secrecy with regard to all business secrets of the Client of which it becomes aware in the course of its relationship with the Client. The agency will impose the same obligation on any third parties that it uses to perform its tasks. The duty of confidentiality will continue beyond the duration of the working relationship. All Client documents that have been provided will be returned to the Client by the agency after termination of the relationship or destroyed upon request.



§ 15 Final provisions

(1) Amendments and additions to the agency's Ts&Cs and the contracts concluded with the Client must be made in writing and signed. The same applies to this clause requiring written form and signature.

(2) The agency will notify the Client in writing of any amendments or extensions to the Ts&Cs, in particular due to changes in the legal situation or supreme court rulings, market conditions or a currency conversion. The Client may object to the amendment or extension of the Ts&Cs within a period of 6 weeks.

(3) The inclusion and interpretation of these terms and conditions, as well as the conclusion and interpretation of legal transactions with the Client itself, are governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

(4) The place of performance for the payment obligation is the registered office of the agency. The place of performance for deliveries and services of the agency is the place to which it is to deliver the goods or at which it is to perform the service.

(5) The place of jurisdiction for all disputes arising from this contractual relationship is Munich, unless otherwise stipulated by law.

(6) The invalidity of individual provisions of this contract or its components will not affect the validity of the remaining provisions. The parties to the contract are obliged, within the bounds of what is reasonable and in good faith, to replace any invalid provisions with valid provisions that are of equivalent economic and financial benefit in a legally permissible manner, provided that doing so does not result in a significant change to the content of the contract; the same applies if a matter requiring stipulation is not expressly governed.

LHLK Agentur für Kommunikation GmbH
Munich, 1 January 2024