

General Terms and Conditions of Business of ergo Unternehmenskommunikation GmbH & Co. KG

Preamble – General Conditions of Business

The present General Terms and Conditions of Business (hereinafter referred to as the “TCs”) of ergo Unternehmenskommunikation GmbH & Co. KG (hereinafter referred to as the “Agency”) shall serve the purpose of defining the purpose, rights and obligations of the agency and its clients. The present TCs shall form an integral component of all service and/or work agreements, whose object is the performance of contracts in the field of communications consulting, financial communications, press and public relations and advertising.

The Agency shall be entitled to conclude subcontracts for the performance of contracts at its own discretion.

Clients shall ensure that the organisational framework conditions for performance of contracts carried out at their business premises permit uninterrupted work to ensure the rapid progress of the conception, design and execution of the work. Beyond this, clients shall ensure that the Agency is provided promptly with all the necessary documentation required for performance of contracts without having to expressly request this and that furthermore, the Agency is made aware of all the relevant procedures and circumstances. This shall apply equally to all documentation, procedures and circumstances of which clients become aware during the performance of contracts.

Section 1 Object and validity

1. The TCs below shall apply exclusively to all contracts and to the procurement of services, irrespective of type.
2. The Agency's TCs shall also apply if it accepts contracts at clients' terms and conditions of business which conflict or deviate from its own. Terms and conditions which conflict or deviate from its own TCs are not recognised by the Agency, unless their validity is expressly accepted in writing.
3. The Agency's terms and conditions of business shall apply also to any future business transacted with clients, even if they are not again expressly agreed.
4. Any agreement made between the Agency and a client for the purpose of performance of contracts shall be recorded in writing. Oral agreements require written confirmation for validity.

Section 2 General Terms and Conditions of Service

1. As a rule, an initial meeting taking place at the Agency's premises shall be free of charge. If the meeting does not take place at the Agency's premises, the client will be invoiced with travel and overnight accommodation disbursements. Beyond this, if the meeting involves comprehensive consultancy, clients will be invoiced with the actual time spent. Comprehensive consultancy shall be defined as one hour or more of consultancy taking place during the meeting.
2. If the Agency supplies services free of charge, these may be terminated at any time without prior notice without giving rise to any entitlement on the part of the client to any claims for reduced fees, replacement or compensation from the agency.
3. A contract shall be deemed as accepted if an Agency Agreement is signed by the Agency and the client or if the Agency has issued a client with written confirmation of acceptance. Oral agreements or agreements by telephone shall be binding only if subsequently confirmed in writing by the Agency. Confirmation by email is adequate for this purpose.
4. The Agency shall retain title to all bid documents (pictures, diagrams, drawings, designs, sketches, drafts and all other documentation). Clients require the express consent of the Agency before passing these on to third parties.
5. The Agency shall be entitled to deliver services and/or goods in instalments. Each instalment represents a stand-alone service.
6. Where the Agency's services involve data and information obtained from the Internet, due to the extensive volume of data and information posted on the Internet, it is not possible to assess all the data. Moreover, the Agency shall not verify the accuracy and integrity of such material obtained from outside and inasmuch as pertains to this, no liability shall be accepted for outside texts.

Section 3 Prices/Payment Terms

1. Unless otherwise stated in the Agency Agreement or the Agency's order acceptance, the price basis shall be deemed to be ex the Agency's premises, excluding packing and transport, which shall be invoiced as a separate item.

2. The prices agreed shall apply plus the statutory VAT at the rate applying at the time of invoicing and which will be separately itemised on the invoice.
3. The prices indicated in the quotation or the order confirmation shall be subject to no change in the underlying data pertaining to the contract. Disbursements for any travel which is agreed with the client as necessary to the contract shall be refunded by the client.
4. If, at the express request of a client, or based on a delay for which a client is responsible, work extends beyond 21.00 hrs on working days or takes place at weekends, the agreed rates shall be uplifted by 30%.
5. Deduction of discount requires written agreement.
6. The Agency shall be entitled to add 12.5% to invoices to client for substantiated costs charged by third parties for services carried out in their own name, but for the purposes of fulfilling the client's order (Agency commission).
7. Invoices shall be due for payment within 21 days of the date of invoice, unless otherwise agreed under the terms of the Agency Agreement or the order confirmation.
8. If payment is delayed, the Agency shall be entitled to charge interest at 8 percentage points above the prevailing interest rate of the European Central Bank. This shall not affect claims for proven losses in excess of this. Clients shall be at liberty to prove a lower figure, or the non-existence of any losses.
9. In the case of contracts involving several modules or work stages, the Agency shall be entitled to invoice on account for each module or service on delivery. The payment terms applying to the contract as a whole shall apply equally to invoices on account.
10. Clients shall only be entitled to retain or offset sums if claims are accepted by law, if they are undisputed or if the Agency acknowledges these. Moreover, clients shall only be entitled to exercise a right of retention pro rata of the value of the claim to the overall contract.
11. Should a client withdraw from a contract issued for reasons which are not attributable to any fault of the Agency, the latter shall be entitled to claim 10% of the agreed contract price as costs arising for processing the contract and in respect of loss of profit. This shall not affect any claim to proven higher losses. Clients shall be at liberty to prove a lower sum or the non existence of losses.

Section 4 Acceptance

Individual works or components of the contract shall be deemed to have been accepted as fault free unless a client gives notification of a claim concerning defects in writing within four weeks of presentation or handover of the contractual results.

Section 5 Confidentiality

Both contractual parties hereto shall undertake to preserve the confidentiality of any business secrets of which they gain cognisance during their work together. Moreover, they shall undertake to devolve the duty of confidentiality to any third parties engaged for performance of the contract. The obligation of confidentiality shall continue after termination of the working cooperation.

Section 6 Proprietary Rights and Patent/Copyright Provisions

1. Clients shall undertake to ensure that the goods and services supplied by the Agency are used solely for the contractual purpose, use and that they are used only in the agreed scope.
2. Clients shall only acquire rights in any proprietary work produced by the Agency under the terms of the contract on full payment of the Agency's charges, providing such rights may be granted under the terms of the statutory provisions or in accordance with the prevailing circumstances, and this applies in particular where music, film, advertising graphics and photographs are concerned. Use of any rights held by performing rights societies must be agreed separately by clients.
3. Unless otherwise agreed, assignment of the above rights of use to third parties and repeat use (e.g. reprints) and any changes to the work require the consent of the Agency.
4. Clients are prohibited from transmitting any media addresses, including email addresses, to third parties.

Section 7 Obligations and Liability of the Client

1. Clients shall be obliged to check any material to be made available for potential patent and copyright infringements and if necessary, to obtain the necessary permits.
2. Clients shall bear the full responsibility of any claims pursuant to patent and copyright infringements under the terms of paragraph 1 above. Clients shall bear sole responsibility for any potential text content or other published material.
3. Clients shall indemnify the Agency from any third party claims made against the Agency with regard to material in accordance with paragraph 1 above on the grounds of behaviour for which clients are

liable under the terms of the contract of the present TCs. Clients shall also bear the costs of any legal proceedings instituted.

Section 8 Schedule of Performance

1. Agreements on performance schedules or deadlines require written form.
2. If delivery of the goods or services is delayed in whole or in part on grounds for which the Agency is not responsible, in particular, events relating to force majeure such as transport disruptions, strikes, fire, water damage, power failure, factory downtime, official measures, lock-outs, lack of materials or other unavoidable circumstances – even if these are incurred by subcontractors – then the Agency shall be entitled to request the agreed deadlines and schedules to be postponed by the time of the interruption plus an appropriate lead time or, under circumstances where part of the contract remains to be fulfilled, to withdraw from the contract in whole or in part.
3. If the interruption lasts more than three months, and with an appropriate grace period, clients shall be entitled to withdraw from the part of the contract which remains to be fulfilled. If the delivery deadline is extended or if the Agency is released from its obligation, clients shall not be entitled to claim compensation.
4. A prerequisite of compliance with the Agency's obligation to deliver goods and services is the prompt and proper fulfilment of the obligations of the client. If the client is in default, the Agency shall be entitled to claim compensation for any losses arising. In the event of a default, the risk of coincidental deterioration or failure shall be transferred to the client.

Section 9 Warranty

1. The warranty period for material defects and legal title shall be 12 months from transfer of the risk.
2. In respect of all goods and services supplied by the Agency, clients shall assume an obligation to examine and censure such goods and services in accordance with section 377 German Commercial Code (*Handelsgesetzbuch* - HGB), which shall apply equally to any contract for work agreed. On transfer of the risk or acceptance of the services delivered by the Agency, clients shall immediately check and notify the Agency forthwith in writing and giving a description of any visible or hidden defects ascertained, however, within 7 days at the latest. Clients shall be obliged to supply the contractor with all the necessary information and evidence to substantiate any defect. If the Agency cannot detect any defect on checking, the client shall bear the cost of checking the items in question.
3. If a defect is found to be present, the Agency shall be entitled to choose either three attempts at rectification or to supply a replacement (redress). If the attempts to rectify the fault fail, and on expiry of an appropriate grace period, clients may reserve their rights pursuant to section 437 nos 2 and 3 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB). The grace period must be given in writing and shall be no less than 14 working days. If the Agency chooses to rectify the defect, it shall be liable for all the costs associated with this, in particular, transport, handling, labour and material costs, unless such costs are increased because goods or services were transported to a location other than the contractual place of fulfilment. If clients are legally entitled to withdraw, the duty of value replacement under the terms of section 346 (3) no. 3 BGB shall apply only if clients have exercised due care in accordance with good commercial practice. The Agency's right to redress shall cease only on payment of compensation, even if clients have previously requested redress.

Section 10 Liability

1. Insofar as the provisions set out below do not provide for anything to the contrary, damage claims vis-à-vis the Agency are excluded, unless the damage is the result of gross negligence or wilful misconduct or involves personal injury (injury to body, health or life).
2. The Agency shall submit the drafts that it has produced to the client so that the latter can check the factual information contained therein. If the client approves the drafts, it assumes sole liability for the accuracy of the factual information.
3. The Agency is not liable for the protection or registrability, under patent, utility model, copyright and trademark law, of the suggestions, proposals, designs, drafts, etc. provided within the framework of the Agreement. The client alone shall bear the risk attached to the legal admissibility of a measure. This applies, in particular, in the event that measures violate competition law, copyright law and the specific acts governing advertising rights. Assessment of legal issues, in particular those connected to the fields of copyright law, competition law and trademark law, shall be the sole preserve of the client and is not the business of the Agency.

4. The Agency shall be liable for non-compliance with any guarantee obligations assumed; however, the Agency shall only assume guarantees if these are expressly referred to as such in writing.
5. The Agency shall not be liable for slight negligence. This shall not apply if the Agency violates, by way of slight negligence, what is known as a cardinal obligation, i.e. an obligation that must be fulfilled in order to enable the proper execution of the Agency Agreement and which the client can normally assume has been fulfilled. In this case, any compensation is limited to the typically foreseeable damage.
6. The compulsory provisions of the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected.

Section 11 Acknowledgements

The Agency may make suitable reference to its name on the contractual products with the consent of the client. Moreover, the Agency may include the client in its portfolio of references. Client may only refuse to give their agreement on the grounds of a major issue.

Section 12 Final Provisions

1. Notice to terminate a contract must be given in writing.
2. Variations, supplements and ancillary agreements to a contract require written form or written confirmation from the Agency. The requirement for written form can only be relinquished or surrendered if confirmed in writing.
3. The client shall be in agreement that any personal data passed to the Agency may be stored, and automatically processed and analysed by the latter's IT system. Such data shall be used solely for internal purposes and not transmitted to third parties.
4. The law of the Federal Republic of Germany, to the exclusion of the UN Sales Convention (CISG), shall apply to the present TCs as well as to all legal relationships between the client and the Agency.
5. If clients constitute commercial business entities in the context of the German Commercial Code, legal persons under civil law or German sector special funds, the sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the Agency's registered office in 50823 Cologne. The Agency's registered office in 50823 Cologne shall also be the place of fulfilment.
6. If any of the provisions of the present TCs or of any other agreement made by the parties should be or become invalid, this shall not affect the validity of the remaining provisions. Where possible, invalid provisions shall be replaced by others which are valid, and which corresponds as far as possible, in economic terms, to the original purpose of the Agreement. This shall also apply in the event that one of these provisions should be invalid within the framework of other provisions.

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