

## **GENERAL TERMS AND CONDITIONS**

### FOR THE PURCHASE OF GOODS AND SERVICES (AGENCY AS THE CLIENT)

#### **1 Scope**

The Agency develops and creates advertising campaigns and measures on behalf of its customers, including advertising spots, print and music productions, online advertising, merchandise etc., which are to be extensively exploited - not limited to advertising purposes. The following General Terms and Conditions of Business ("T&C") shall apply for all purchases of goods and orders of services from third parties ("Contractor") occasioned by the Agency ("Client"). These T&C shall form an essential component of the order/agreement concluded with the Contractor. The Contractor's deviating terms and conditions of business as well as changes and supplements to these T&C shall only be valid if they have been recognized in writing by the Client. This shall also apply if the Client has not expressly objected to the Contractor's business and/or delivery terms.

#### **2 Placement of the order by the Agency, scope of the order**

**2.1** Orders shall only be binding if they have been placed in writing.

**2.2** The volume ordered in the order shall be binding. Excess quantities shall not be remunerated even if they are due to reasons of technical production.

#### **3 Provision of services, delivery time, place of fulfillment, storage**

**3.1** The Contractor affirms that it will personally render the service. It shall be entitled, however, to use subcontractors for the provision of services with the Client's prior consent.

**3.2** The set delivery schedule or deadlines shall be binding (fixed date transactions pursuant §§ 323 Section 2 No 2 of the German Civil Code [BGB], 376 of the German Commercial Code [HGB]).

**3.3** The Client shall be immediately notified regarding any exceeding of the delivery schedule and deadlines, indicating the reasons and presumed duration. This obligation shall also apply if the Contractor is not responsible for the reasons.

**3.4** If the Contractor is in arrears with a partial delivery the Client may also withdraw from the entire agreement or claim compensation for damages due to non-performance of the entire agreement if it has no interest in the partial delivery or the breach of the obligation is not negligible.

**3.5** The deadlines shall be suspended if, after placing the order, the Client's requested changes cause a significant restructuring of the schedule. The Contractor shall immediately report this to the Client and coordinate a new date with it.

**3.6** Insofar as not otherwise expressly agreed in writing the place of performance shall be the delivery address. The Contractor shall effect the delivery at its own expense and risk.

#### **4 Acceptance, notification of defects, delivery**

**4.1** Receipt and payment shall not represent acceptance.

**4.2** If the Contractor is to individually manufacture a moveable item for the Client the statutory provisions regarding acceptance shall apply. The remuneration shall not be payable until after acceptance.

**4.3** If the work product is not acceptable the Contractor shall provide subsequent performance within an appropriate grace period at the Client's request. The Client shall have the unrestricted right to choose subsequent improvement or subsequent delivery, an appropriate reduction of the manufacturing price or to withdraw from the agreement.

**4.4** If the Contractor is in arrears with the subsequent performance or it does not exhibit the result desired by the Client then the Client may have the subsequent improvement or new manufacture effected by a third party at the Contractor's expense without setting further grace periods. On request the Contractor shall be obligated to surrender all of the materials already manufactured for this purpose. Other claims by the Client, particularly for compensation for damages due to delay as a result of remedying defects, shall remain unaffected by this.

**4.5** The regulations of § 377 Sections 1 to 3 of the German Commercial Code [HGB] (duty of inspection and notification of defects) shall not apply, insofar as an apparent defect does not exist.

**4.6** Insofar as not otherwise set forth in the respective order, the Contractor shall deliver freight paid to the agreed delivery address.

**4.7** Partial deliveries – if not otherwise expressly agreed – shall not be permitted.

**5 Material defects and defects of title**

- 5.1** The order can only be fulfilled by the best quality deliveries and services (Collectively: “the Work”). “Defective” shall mean improperly or carelessly executed Work as well as such Work, the assigned tasks and/or the desired design of which have been disregarded and/or have deviated from instructions and/or do not correspond to the state-of-the-art of technology and/or deviate from samples provided.
- 5.2** The Contractor affirms that all Work is original and free from third party rights. The Contractor shall guarantee that its Work neither infringes on anti-competition law nor third party rights (for example brand, copyright, personality, patent rights) nor other rights.

**6 Price, invoicing, payment**

- 6.1** The agreed price shall be binding and include all ancillary expenses (freight, packaging, postage, customs, taxes, duties, etc.). In the event of requested changes and additions a separate compensation for the Contractor’s additional expenditures shall only be paid with the Client’s express written consent.
- 6.2** Insofar as not otherwise agreed there shall be a payment target for all invoices to the Client of 30 days. If payment is effected within 14 days following receipt of the invoice then the Client shall be entitled to the deduction of a 3% discount.
- 6.3** Insofar as not otherwise agreed, payment of the remuneration shall only be made, however, after receipt by the Client of the Work as contractually required, its acceptance as well as receipt of a due and auditable invoice detailing the Client’s project, order and contractor number. For calculating the payment date deliveries made prior to the agreed delivery date shall not apply as received until the agreed delivery date.
- 6.4** If advance payments have been agreed these shall be made at the Client’s discretion against a bank guarantee by a major German bank or a corporate guarantee. The guarantee shall apply for any claims for non-contractual order execution, invoicing or warranty, waiving the defense rights to contest, off-set or preliminary proceeding against the principal debtor and excluding a possibility of discharge by deposit; it shall not however exclude further claims. The right to off-set must not be waived if the Contractor’s claim is not disputed by the Client, ready for a decision or established as final by a court.
- 6.5** Payment shall be made via bank transfer. All payments shall be under reserve of a future reexamination and potential assertion of reclamations in addition to interest claims. The Contractor may consequently not invoke any claim for a lapse of enrichment (§ 818 of the German Civil Code [BGB]).
- 6.6** Insofar as not otherwise expressly agreed, all costs for the transfer of rights regulated here as well as the production and any subsequent performance shall be contained in the agreed price, particularly:
- 6.6.1** Expenditures for the Contractor’s trips to meetings with the Client or its customers and for coordinating and acceptance with the Client or its customers,
- 6.6.2** All material shipping costs, including customer and Agency specimen copies (shipping in stabile packaging also via courier to the destination designated by the Client),
- 6.6.3** Costs for decorations, props and furnishings, which the Contractor had manufactured or acquired for the Client in association with the execution of the order, as well as their return delivery,
- 6.6.4** All costs associated with the order execution incurred for rough versions and rushes as well as data storage media,
- 6.6.5** All ancillary expenses (freight, packing, postage, customs, taxes, duties, etc.).
- 6.7** Additional copies shall be paid after delivery and an acceptance inspection.

**7 Rights of use, performance and protective rights**

- 7.1** The Contractor hereby grants the Client the exclusive rights of use related to copyrights and ancillary copyrights, as well as other protective rights, not limited to advertising purposes and unrestricted with respect to time, territory and content, to all Work (incl. all developmental stages), which has been or will be created in the course of its activities to fulfill this agreement. This shall include the Client’s right to exploit the production made using the Contractor’s Work through unlimited use in all media, technologies and systems and all forms of ancillary rights exploitation. The Client shall be entitled to transfer the rights granted in this agreement in whole or in part to third parties, grant third parties simple or exclusive rights of use or concede certain uses for exploitation and to permit third parties to further transfer rights. If the Work is transferrable as such and not merely as a right of use the Client shall be entitled thereto. This shall particularly include the rights to inventions and software patents, as well as the economic rights, pursuant § 69b of the German Copyright Law [UrhG] in the form of exclusive rights of use. In particular – however not limited to – the Contractor grants the Client the following specified rights to the Work in the form of exclusive rights of use for all known

types of use, unlimited with respect to territory, time and content:

- 7.1.1** Right of reproduction and distribution, particularly the right to reproduce and distribute the Work in the framework of the types of use listed in the individual order as desired – also on data storage made other than originally used – on image/sound/data storage media and other storage media (for example CD Video, CD-ROM, CD-I, Digital Versatile Disc (DVD), HD-DVD, Blu-Ray-Disc, magnetic tapes or cassettes, chips, memory cards and sticks, computer drives or similar systems), to archive it, input it into databases and make it accessible to the public in a material or immaterial form. Included shall be the right to reproduction and distribution in the form of individual images.
- 7.1.2** The editing right, in particular the right to abridge, split up, rearrange and supplement the Work, adapt plot sequences ensuring the moral rights of the author for all exploitations in the framework of the rights transferred, to combine the Work with other work and/or image/sound materials or to integrate them therein. This shall also include the right to insert advertising/sponsoring, even in an interruptive form, to make the work perceivable simultaneously with advertising (e.g. via split screens), undertake format adjustments, superimpose symbols or messages, insert interactive elements and substitute the music. Also included shall be the right to re-title or otherwise edit the title in another manner and/or to (re-) design the opening and final credits in consideration of any crediting obligations corresponding to the usages existing for this. Also included shall be the right to personally or using third parties synchronize and subtitle the Work, which has been or is being produced, into any desired language as often as desired and to produce voice-over versions. The Work thus edited or synchronized may be exploited in the same scope as the Work, which is the object of the agreement.
- 7.1.3** The broadcasting right (television right), in particular the right to make the Work accessible via radio communication and/or other technical means (e.g. electronic or visual signals) to the public and/or a limited number of recipients. This shall apply for as many transmissions as desired and all possible broadcasting processes (e.g. terrestrial broadcasters, cable systems, including cable retransmission, satellite systems, TCP/IP and internet-based transmission systems, mobile telephony, including all mobile telephony standards [particularly GSM, GPRS, HSCSD, EDGE, UMTS and LTE] or a combination of such technologies), in each case independent from frequency ranges, bandwidths and resolution, compression and transmission standards or the type of receiving equipment (particularly including mobile receivers, e.g. smart phones etc.). The right shall include encrypted and unencrypted broadcasts, analogue and digital processes and shall be independent of the legal form of the broadcasting organization (regulated by public law or private television), the television organization's manner of financing (commercial or non-commercial television) or type and manner of telecast (e.g. Near-video-on-demand TV, web TV, multiplexing) or the form of legal relationship between the broadcaster and recipient (Free TV, pay TV, e.g. Pay-Per-View, Pay-Per-Channel etc.). The right to the public playback of radio broadcasts is also hereby transferred.
- 7.1.4** The presentation right (theater/cinema right), meaning in particular the right to make the Work publically perceivable as often as desired in public performances in movie theaters and other locations suitable for this purpose (e.g. restaurants, discotheques, ships, airplanes, hospitals, etc.). The performance may use all suitable processes and technologies (analogue and digital systems, including remote transmission of the program-carrying signal) against payment or free of charge, commercial or noncommercial, and in all formats and on all types of image and/or sound media. This shall include the right to make the Work publicly perceivable at festivals, trade fairs, sales exhibitions and similar events, as well as the right to make the Work perceivable to a limited group of recipients (closed circuits), e.g. in schools, hotels, hospitals, airplanes, ships etc. To avoid misunderstandings broadcasts in closed circuits in airplanes and ships should be subject with respect to territory to the "ship's flag principle".
- 7.1.5** The rental and loan right, also in particular the right to rent or loan the Work or adaptations of the Work or its reproductions.
- 7.1.6** The film production right, meaning in particular the right to use the unedited or edited Work as a template in the manufacture of a movie and/or TV production in all known technological processes (e.g. film, television, video, photographic, sound recordings etc., in digital and non-digital form, including a 3D version) and in all language versions; this shall include the right to edit the Work as desired with respect to all elements (e.g. characters, ideas, formats, plot elements, dialogues, scenes, drawings, figures, graphic representations, sounds and noises), to remove parts of the Work or add other parts, to change or redesign plot elements and sequences, figures or their characteristic features, scenes, dialogues or other components and elements of the Work and have the edited or unedited Work translated into all languages, commission screenplay authors or other third parties to adapt as well as use the Work as often as desired in edited or unedited form in whole or in part as a template, including the right to use it in documentaries about the Work (e.g. the "Making of") and for use in the framework of bonus materials or in the exploitation of surplus materials or in producing a different cut.
- 7.1.7** The right to digitalization, hence in particular the right to digitally capture the Work or adaptations of the Work, to digitalize non-digital content, multimedia applications and accompanying materials, in particular documentaries, associated

with the Work, or to combine the Work with other digitalized works.

- 7.1.8** The printing right, meaning the right to manufacture, reproduce, distribute, public playback and/or otherwise exploit illustrated and unillustrated products of any kind (books, booklets, comic strips, also in electronic form, e.g. e-books), which are derived from the Work via playback, re-narration, restructuring, summarizing or otherwise adapting the content (e.g. film novels, the book of the film, etc.) also in a modified form or via photographic, drawn or painted illustrations or the like, and to exploit these in a similar form as the Work itself as well as the right to promote such products using the Contractor's titles, names and illustrations and/or to promote elements from the Work in all forms and media and/or use these for the purpose of advertising and public relations in the press, radio, Internet, etc.
- 7.1.9** Image and sound media right (videogram right), meaning in particular the rights to partial or full reproduction and distribution of the Work (e.g. through sale, rental, loan, also e-commerce) on image-sound storage media of all types for the purpose of non-public playback in a given or individually designed sequence (particularly including interactive use). This right shall include all audiovisual systems independent from their respective specific, technical configuration (particularly including all resolution and/or compression standards), such as cine film cassettes, videocassettes and videotapes, video discs of all types, CD video, CD ROM, CD-I, digital versatile disc (DVD), HD DVD, Blu-ray disc, magnetic tapes or cassettes, chips, memory cards and sticks, computer drives or similar systems, independent of the type of use. The right to (public) playback (§ 21 of the German Copyright Law [UrhG]) is hereby included.
- 7.1.10** Database right, thus in particular the right to capture the Work in a machine-readable format and electronically store it in an in-house database, also insofar as this is not for the database operator's own use according to § 53 of the German Copyright Law [UrhG], or to develop "abstracts" of the Work (summaries of important content from individual Work), to capture it in a machine-readable format and store it electronically in an in-house database.
- 7.1.11** The right of making the work publicly available (retrieval/online right), meaning in particular the right to make the Work available in whole or in part, such that the Work is available to the public and/or a limited group of recipients for each individual retrieval from locations and at times of their choosing (video-on-demand), independent from whether this occurs without storing (streaming), with intermediate storage or with permanent storage ("download to own"). This shall include all possible storage and transmission systems (terrestrial, cable, satellite, including distribution via direct satellite, encrypted or unencrypted), including in particular those over the Internet (e.g. TCP/IP) and mobile telephony, including all mobile telephony standards (particularly GSM, GPRS, HSCSD, EDGE, UMTS and LTE), and shall apply independent from the type of receiving equipment (including mobile terminal equipment, such as iPads, Tablet PCs, smart phones, mobile telephones, etc.) and type of use (including interactive use). The right shall also include all forms of push and/or pull services as well as paid services (Pay VOD, e.g. transactional VOD/TVOD, subscription VOD/SVOD (e.g. podcasts), electronic-sell-through/EST) as well as non-paid services (Free VOD/FVOD), including further making it publicly available, re-transmission and/or interactive use. Included shall also be the right to public play it back from publically provided content.
- 7.1.12** The right of exploitation in interactive forms, meaning in particular the right to manufacture versions of the Work, reproduce it, distribute it on image/sound media of all types or make its access on demand available in terms of the above Paragraph 7.1.11, which are made exclusively or primarily available for individual adaptation of the Work and/or its individual sound or image components, in particular by way of abridging, distorting, restructuring, combining it with other work or other change (e.g. in the form of video games, computer games and online games) and to make available and perceivable the corresponding interactive versions of the Work, insofar as the Contractor's moral rights are preserved.
- 7.1.13** The sound storage media right, meaning in particular the right to reproduce and/or distribute the soundtrack and/or music soundtrack of the Work as well as re-narrations, restructurings or other adaptations of the Work (e.g. in the form of audio dramas) in whole and/or in parts (as applicable also by adding other sound and/or music elements) on sound storage media of any kind (electronic, magnetic, optical or other storage media) and/or to exploit it in another manner in the same scope as the Work itself, as well as the right to furnish such products with the Contractor's name and/or image and/or elements from the Work and to advertise it in all forms and media.
- 7.1.14** The archiving right, meaning in particular the right to archive the Work or parts thereof (including abstracts or other content information) in any form and particularly also to capture it in a digitalized form and enter it in electronic databases and data networks, on all storage media, also together with other work or parts of work and to make it accessible to third parties against payment or free of charge. Included shall be the right to use the Work in the framework of its own or third party EPGs (Electronic Program Guides).
- 7.1.15** The merchandising right, meaning the right to the commercial exploitation of the Work through manufacture and distribution of goods or the marketing of services of all types, particularly "added value services" (e.g. telephone value added services, such as the distribution of ringtones, ringback tones, cellular phone games, MMS, wallpapers, logos,

clips, audio text services, other remunerated or non-remunerated telephone services, including WAP, GPRS, i-mode, UMTS and LTE services), the edited or unedited excerpts from the Work or events, names, titles, figures, illustrations or other combinations, which are related to or contain the Work, as well as the right to advertise goods and services of any kind using such types of elements or edited or unedited excerpts from the Work (Tie-in advertising).

- 7.2** The Client shall additionally receive the right with respect to unknown types of use, meaning the rights to all types of use as yet unknown at the point in time of the conclusion of the agreement, insofar as the rights thereto have not already been granted on the basis of the above provisions. The Client shall notify the Contractor in advance in writing of its intended use of such rights and shall come to an understanding with the Contractor regarding an appropriate share in the commercial use of this right. If and insofar as the right of revocation with respect to granting rights for unknown types of use or the obligation hereto is not excluded pursuant §§ 88 Section 1 Clause 2, 89 Section 1 Clause 2 of the German Copyright Law [UrhG], the following shall apply in addition to the statutory provisions: A Client notification to the Contractor regarding the intended integration of the exploitation of the Work into the new type of use pursuant § 31a Section 1 Clause 3 of the German Copyright Law [UrhG] ("Notification") shall be made exclusively to the Contractor's address specified in the order heading, if the Contractor has not expressly notified the Client and in writing expressly citing the relevant order and the contribution, which is the object of the agreement, that the Notification is to be sent to a different address in future.
- 7.3** Beyond the rights and authorizations specified in the preceding Paragraphs 7.1 and 7.2 the Work shall be understood as commissioned work with effect for all copyright systems that recognize a corresponding concept. The Contractor hereby transfers the copyright to the Work to the Client with effect for all foreign legal systems, which permit a transfer of the copyright. The Work and the Contractor's activities, as applicable, shall be deemed "work made for hire" in terms of US copyright law. The Client shall be entitled to have this transfer registered with the entities applicable for this purpose (e.g. United States Copyright Office). If this is possible pursuant the respective legal system, the Contractor moreover declares a waiver of the assertion of moral rights ("waiver of moral rights"). Moreover the granting of the rights shall apply with effect for all legal systems, which permit granting rights also for unknown types of use, also for types of use that first become known in the future. To the extent these legal systems provide that the Client as a license holder is to grant the Contractor the corresponding interests herein the Client shall be obligated to make these payments to the Contractor at the point in time of the use of the Work in these as yet currently unknown type of use.
- 7.4** Prior to accepting the order the Contractor shall inform the Client regarding if and – as applicable – which of its transferred rights of use had been transferred to collecting societies (e.g. GEMA) pursuant this Paragraph 7.
- 7.5** The Contractor shall, in consideration of the Work, exercise any rights to which it is entitled pursuant §41 of the German Copyright Law [UrhG] at the earliest following expiration of five years since the creation of the Work and not assert any potential personality rights entitlements to the Work pursuant §§ 12, 25 and 39 of the German Copyright Law [UrhG]. The Client shall be entitled to exercise the moral rights to the Work. The Client shall take the Contractor's moral rights into account, insofar as this is technically and economically reasonable. The Contractor shall waive its right to be named as the author under § 13 of the German Copyright Law [UrhG], it may however be mentioned with its real name or a fictitious name.
- 7.6** Insofar as the Contractor enlists third parties for the execution of the order, it shall ensure that their rights are also transferred to the Client unrestricted in the scope specified above. The Contractor shall release the Client from any claims by its employees or other third parties, which the Contractor enlists for the execution of the order. The Contractor shall guarantee that all performing and portrayed artists and models shall also waive their right to a credit, however may be mentioned (real name or fictitious name).
- 7.7** The Client shall be entitled to exploit the rights listed in the above paragraphs and the rights of use granted itself or through third parties, to which it may transfer the rights in whole or in part, individually or in any desired combination.
- 7.8** The Contractor shall transfer to the Client irrevocably and for the exclusive, transferrable use, unlimited with respect to territory and time, all brand, title and other labeling rights associated with the Work.
- 7.9** The granting/transfer of rights pursuant this Paragraph 7 is remunerated by the agreed fee. The Contractor shall release the Client from claims pursuant §§ 32 ff. of the German Copyright Law [UrhG] by its employees or other third parties the Contractor enlists to carry out the order.
- 7.10** Any terminations of this agreement by one of the two parties shall not affect the rights acquired by the Client up until that point in time or the effectiveness of rights granted and/or transferred by third parties.

## **8 The Client's documents**

- 8.1** All working documents made available, such as final artwork, reproductions, stamps, image templates, drafts, samples or other documents, shall remain the Client's property. The working documents provided shall be handled with

care and immediately returned following completion of the order as well as upon first request. At the Client's request the Contractor shall archive the working documents for a period of two years. The Contractor shall not be entitled to a right of retention to the working documents.

**8.2** All working documents and work products as well as the Work may only be used for the execution of the order placed.

## **9 Confidentiality, sampling, data protection**

**9.1** Working documents and the Work as well as all information associated with the order about the Client or its customers becoming accessible shall be treated with the utmost secrecy by the Contractor also after the termination of the order. It shall impart this confidentiality obligation to its salaried employees and staff as well as other third parties, which it enlists to execute the order. The Client's customers shall be expressly included in the scope of protection of this confidentiality agreement.

**9.2** Drafts, drawings, printing plates, templates, samples or other documents and information, which the Contractor receives, shall remain the Client's or its customers' property, may only be used for the execution of the order or enquiry and shall be carefully safeguarded by the Contractor and returned upon first request. The Contractor shall have no right of retention to these records.

**9.3** The confidentiality obligations pursuant the above Paragraphs 9.1 and 9.2 shall only not be applicable if and insofar as the relevant information is demonstrably generally known or becomes generally known at no fault of the Contractor or is or was lawfully acquired by a third party or the Contractor was already in possession thereof or had to be disclosed by order of the court.

**9.4** Imprimaturs and samplings shall be prohibited. The Contractor may not manufacture copies, parts or excerpts of the Work (also materials produced but not however used in the final version) without the express and written consent of the Client, neither audio nor visual, for its own or third party purposes, nor distribute, show or provide it to third parties.

**9.5** The Contractor may only use the Work for self-advertising purposes or refer to the existing business relationship with the Client's written consent.

**9.6** Without the Client's prior express written consent the Contractor may neither issue press releases about the order or Work nor arrange press interviews. The same shall apply to press photos or other communications about the order or Work.

**9.7** The Contractor shall be obligated to observe the regulations of the Federal Data Protection Act (BDSG) as currently amended. If necessary it shall conclude a separate agreement with the Client pursuant § 11 of the BDSG.

**9.8** In the event of a breach against the obligations under this Paragraph 9, the Contractor shall pay the Client a contractual penalty for each event of infringement, the amount of which shall be determined by the Client at its reasonable discretion, the appropriateness of which can however be reviewed by the competent court in the event of dispute. § 348 of the German Commercial Code [HGB] shall not apply. Damage claims shall remain unaffected by a contractual penalty.

## **10 Liability**

**10.1** The liability of the Client, its representatives and vicarious agents for slightly negligent breaches of obligations shall be excluded with the exception of breaching essential contractual obligations ("cardinal duties", meaning such obligations, the fulfillment of which even make it possible in the first place to duly execute the agreement and adherence to which the other party may normally rely on) as well as the injury to health, body and life. The liability of the Client, its representatives and vicarious agents shall be limited to settlement of direct damages that are contractually typical and foreseeable for the type of service. It shall particularly not be liable for a loss of profit.

**10.2** The Contractor's liability shall be governed by law.

## **11 The Contractor's guarantees**

**11.1** The Contractor has all of the necessary copyright-related exploitation rights, in particular the reproduction, distribution, broadcasting, presentation, adaptation and ancillary copyrights required to fulfill the agreement.

**11.2** The Contractor guarantees the rights to be transferred under Paragraph 7 and affirms that these rights have not already been transferred to third parties (e.g. banks) nor are encumbered with third party rights (e.g. lien or securities) and third parties were not instructed to exercise these rights.

**11.3** The Contractor further affirms that in relation to the performance of this agreement no other obligations exist that could prevent the services from being rendered.

- 11.4** The Contractor affirms that it is currently not working for any client that is in competition with the Client's customers, for which the Work is recognizably intended. The Contractor shall notify the Client thereof if such a conflict should be evident here. The Contractor may withdraw from the order free of charge in the event of such a conflict and/or terminate it at any time.
- 11.5** The Contractor shall be responsible that all people it arranges to be involved in the manufacturing and editing of the production, which is the object of the agreement, and who are entitled to copyright, ancillary copyrights, property rights or other rights, have submitted all necessary declarations of consent for the Work to be able to be exploited in the agreed scope.
- 11.6** At the Client's request the Contractor shall arrange a subsequent acquisition of extended rights, particularly beyond the agreed term of use and/or in further media.
- 11.7** The Contractor guarantees that due tax and social security payments are made for all people it involves in participating in the manufacturing and adaptation of the work product, which is the object of the present agreement.
- 11.8** The Contractor guarantees that it will adhere to the provisions of the law governing a general minimum wage (German Minimum Wage Act [MiLoG]) as currently amended. It guarantees in particular to pay its employees at least the minimum wage owed, pursuant § 1 of the Minimum Wage Act [MiLoG] by the legally proscribed due date, according to § 2 of the Minimum Wage Act [MiLoG] and that subcontractors it uses, as well as further subcontractors used by them, shall likewise adhere to the provisions of the German Minimum Wage Act [MiLoG] as currently amended. The Contractor shall be obligated to submit monthly proof regarding its timely payment of the minimum wage and – insofar as relevant – by its subcontractors (e.g. records of hours worked and the remunerations paid for these). The Client shall additionally have the right to inspect the Contractor's (anonymised) wage and salary lists. The Contractor shall ensure that the Client is also entitled to such a right of inspection vis-à-vis the Contractor's sub-providers.
- 11.9** In the event of a breach against the obligations under Paragraph 11.8, the Contractor shall pay the Client a contractual penalty for each case of infringement, the amount of which shall be determined by the Client at its own discretion, the reasonableness of which, however, can be reviewed by the competent court in the event of dispute. § 348 of the German Commercial Code [HGB] shall not apply. Claims for damages shall remain unaffected by a contractual penalty.
- 11.10** The Contractor shall be obligated in particular to refrain from all activities, which could lead to a breach of the Minimum Wage Act [MiLoG], punishability for fraud, breach of trust, criminal offences against competition, unfair advantage or bribery of persons employed by the Contractor or of third parties. In the event of infringement against this as well as against the obligations in Paragraph 11.8, the Client shall be entitled to the right to withdraw from/terminate all existing agreements and legal transactions (including orders and offers not yet accepted) with the Contractor without notice and interrupt all negotiations. Independent from this the Contractor shall be obligated to adhere to all laws and provisions relevant to it and the business relationship with the Client. In the event of a breach of the aforementioned obligations, the Contractor shall release the Client from all claims, damages, losses and costs, including the costs for a necessary and appropriate legal defense.
- 12** **Withdrawal, termination for an important reason**
- 12.1** The Client can in particular withdraw from or terminate the order with immediate effect if the due execution of the order is thereby called into question that the Contractor has not only temporarily suspended payments, the Contractor has suspended its business operations or a significant part of its business operations or compulsory execution measures to collect payment obligations under this agreement have remained unsuccessful.
- 12.2** The statutory rights to withdraw and extraordinary termination shall remain unaffected by the above Paragraph 12.1.
- 13** **Statute of limitations, off-setting, assignment, rights of retention**
- 13.1** The Contractor's claims against the Client shall be subject to a statute of limitation of twelve months.
- 13.2** The Contractor off-setting against the Client's claims shall only be permissible if the Contractor's claims are undisputed or established as final by a court.
- 13.3** The Contractor's rights under the order, in particular the right to remuneration may not be assigned without the Client's written consent.
- 13.4** The Contractor can only assert rights of retention, in particular with respect to a claim for return by the Client, with respect to claims that are undisputed by the Client or established as final by a court. In the event of differences of opinion by the parties regarding the interpretation and execution of the agreement, as well as the exploitation of the Work by the Client, the Contractor waives interim legal protection measures.

**14 Orders by proxy**

- 14.1** If the Client places an order in a third party name and for a third party account of one of its customers the Client shall not be liable for payment for the goods and/or services ordered or for the fulfillment of the respective customer's other contractual obligations. The Contractor shall be paid directly by the customer and not by the Client. The Client shall not be liable for the customer's creditworthiness, which it also did not review.
- 14.2** If the Client places the order in its own name and for its own account but on behalf of one of its customers, which is to be indicated upon commissioning, the remuneration shall be payable by the Client if the Client was for its part furnished by the customer with the corresponding funds for the purpose of satisfying the claims. The Client shall not be obligated to the payment of amounts owed on its part if and as long as the customer has not paid these to the Client. This shall apply independent from whatever reason the payment to the Client has not been made (including the customer's insolvency).

**15 Production of moving image materials**

- The following rules shall additionally apply for the production of TV spots, movie theater advertising, animated advertising films, viral films etc. and other moving image materials (collectively: "Films"):
- 15.1** The Client shall be entitled to decide regarding the content, creative and technical design. It shall also bear responsibility for the objective accuracy of the Films insofar as its instructions have been followed.
- 15.2** The Films shall be produced according to the script, storyboard, layout film or briefing delivered by the Client as well as the record of the results of the pre-production meeting ("PPM") and the Client's instructions. If the Contractor wishes to deviate from the script, storyboard, briefing or instructions for whatever reason may be it shall obtain the Client's prior written consent. The same shall apply if the Contractor has uncertainties regarding the appropriate implementation of the guidelines.
- 15.3** The Contractor shall itself create the film and produce and deliver it of a quality, which at least corresponds to the state-of-the-art of production technology of its company as evident in its sample roll.
- 15.4** The Contractor shall develop a precise schedule regarding the individual manufacturing phases of the film in agreement with the Client and inform the Client regarding the respective manufacturing status in such good time for said party to be able to influence each manufacturing phase.
- 15.5** The Client and its customer shall have the right to be present during the production of the Films, in order to issue corresponding instructions, if need be (e.g. guidelines for models, props, technical effects etc.). The Contractor shall take the Client's requested changes into consideration. If this results in significant additional expenses (>2% of the net manufacturing price) then these shall be borne by the Client, if the Contractor had reported these additional costs and the amount thereof in good time prior to carrying out the measures and the Client has approved them in writing. If the Client's requested changes reduce the manufacturing costs then the amount saved through this shall be to the Client's benefit.
- 15.6** The Contractor shall commission third parties, such as models, directors, singers and the like, in its own name and for its own account. It shall assume liability for performance for them.
- 15.7** Cinema films shall be filmed in consideration of normal/wide screen or 16/9 or other European or international standards pursuant the Client's instruction as well as the FSK/SPIO guidelines, and TV spots in consideration of the television cache. Television copies shall meet the ARD specification standards.
- 15.8** The Client shall provide the products to be promoted and represented in the Films free of charge as originals or dummies. They shall be returned following the end of the production. If the originals or dummies do not correspond to a cinematic realization the Contractor shall immediately notify the Client thereof and give it the opportunity to make film-suitable preparations. The Contractor shall not be entitled to substitute the original products provided to it with other ones.
- 15.9** The Contractor guarantees that the Client shall be entitled to the right to film the script/storyboard if this was not provided by the Client, and the right to its design in word, sound and images. The same shall apply for all rights of the scriptwriter, filmmakers and the performers and models (e.g. actors, cameramen, animators, directors, set designers, composers, musicians, narrators etc.).
- 15.10** The Client shall be entitled to have still photos made during the filming by a photographer of its choosing and to use these in the scope of the rights granted under this agreement.
- 15.11** The agreed length of the Films shall be precisely adhered to. The film lengths endorsed by the Filmwirtschaft e.V. ("FSK") shall apply for movie theater films. If the Client so desires and insofar as not otherwise agreed in an individual agreement, the Contractor shall submit the film at its expense to the umbrella organization of the FSK. There shall always be a submission for Films, which are to be shown in movie theaters. If the FSK or the television advertising

company objects to the work result due to elements, which are attributable to an express wish of the Client then necessary changes shall be borne by the Client, otherwise by the Contractor. This provision shall correspondingly apply for the Freiwillige Selbstkontrolle Fernsehen e.V. ("FSF"), the Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V. ("FSM") as well as for other similar organizations.

**15.12** The Contractor shall not insert its name or the name of its company or a third party or any other distinctive mark of its company into the Films or make it visible or audible in another manner.

## **16 Film score**

The following terms shall apply for the production of film scores ("Music"):

**16.1** The order for music production shall only include production of the Music (incl. singing and composition) and its associated production processes.

**16.2** The length, type as well as the instrumentation of the Music to be composed and integrated by the Contractor shall be oriented to the creative requirements of the advertising production and shall be determined by the Client. The agreed length of the Music shall be precisely adhered to.

**16.3** The Contractor shall be obligated with respect to its composition services to provide exclusively, personally created, original work. The use of third party themes or motifs is not permissible. The Client shall be entitled at any time to refrain from using the Music created by the Contractor or parts thereof and/or commission other composers with the (further) editing and adaptation. The Contractor shall grant all rights pursuant Paragraph 7 both in its capacity as the copyright and ancillary copyright holder to the sound recordings.

**16.4** The Music shall be produced according to the briefing provided by the Client. The Client shall be entitled to decide regarding the content, creative and technical design. If the Contractor wishes to deviate from the briefing or instructions, regardless of the reason, it shall obtain the Client's prior written consent. The same shall apply if the Contractor experiences uncertainties regarding the appropriate realization of the guidelines.

**16.5** The Contractor shall personally create the Music and produce and deliver it of a quality, which at least corresponds to the state-of-the-art of production technology of its company as evident in its sample roll.

**16.6** The Client shall have the right to be present during production in person or represented by its Agency, in order to issue the corresponding instructions, if need be. The Contractor shall take the Client's requested changes into consideration. If this results in significant additional expenses (>2% of the net manufacturing price) then these shall be borne by the Client, if the Contractor had reported these additional costs and the amount thereof in good time prior to carrying out the measures and the Client has approved them in writing. If the Client's requested changes reduce the manufacturing costs then the amount saved through this shall be to the client's benefit.

**16.7** If the Music is to be presented in movie theaters the Contractor shall submit the Music to the umbrella organization of the FSK at its own expense. If the FSK or a television advertising company objects to the Music or individual title due to elements, which are attributable to an express wish of the Client then necessary changes shall be borne by the Client, otherwise by the Contractor.

## **17 Special acceptance rules for film and music orders**

**17.1** The Contractor shall be obligated to deliver technically impeccable, completely mixed Work of broadcast quality. It expressly guarantees that the Work is of impeccable sound and image quality.

**17.2** In the case of advertising films the Contractor shall first screen the rough draft version of these to the Client and/or its customer after previously arranging a date. The Client shall immediately report any requested changes to the Contractor.

**17.3** For music productions, following the delivery of the Music until the acceptance of each final version, the Contractor shall undertake modifications, supplements and improvements, insofar as desired by the Client.

**17.4** The necessary final acceptance of the Work (online release) shall be effected in the presence of the Client and/or its customer and at the Client's request in the presence of the Contractor or an authorized agent (e.g. director) after previously arranging a date. Acceptance shall be effected at the Client's discretion at its headquarters, the headquarters of its customer or at the Contractors headquarters.

**17.5** The acceptance shall extend in each case to the design with respect to creativity, advertising and taste, conformity with the script, storyboard, layout film/briefing, the PPM specifications and the Client's additional instructions as well as in the online release to the sound and image quality (particularly to color determinations) and technical design. Statutory provisions governing contracts for work and services in the German Civil Code [BGB] shall also apply.

**17.6** Any defects appearing in the Work shall be remedied by the Contractor immediately at its expense.

**18 Programming services**

If the Contractor is commissioned with programming, program and data orders ("Software"), the following rules shall additionally apply:

- 18.1** If the Contractor's service consists of the creation or adaptation of a software, the program shall be delivered on a suitable data storage media in a machine-readable form together with the source code.
- 18.2** The Contractor warrants that the Software contains no open source software.
- 18.3** If the Software according to the work service to be rendered – pursuant the Client's prior written consent – nevertheless contains open source software deviating from Paragraph 18.2 above then the Contractor shall record a precise description of the open source software in the service description. The Contractor warrants that all licensing obligations that exist with respect to the open source software have been fully satisfied by the Contractor, the Contractor shall provide the Client with all relevant license texts and all necessary source codes, such as build scripts, for each version of the open source software delivered to it, in order to enable the Client to create an executable version of such open source software. In the event of a breach of the aforementioned obligations, the Contractor shall release the Client from all claims, damages, losses and costs, including the costs for a necessary and appropriate legal defense and assume the defense against all claims the Client incurs due to the breach of this obligation.
- 18.4** In Flash sources the Contractor's own developments can be implemented as closed files in the programming section in the source files with the Client's prior written consent; however, these sections must not significantly limit the possibility of adaptation (language version adaptation, modularity of the web special, if specified etc.).
- 18.5** If the Contractor's service consists of creating or adapting a software, the created and adapted programs shall be delivered to the Client in testable form after a program test has been performed at the contractor's premises. After the Contractor's declaration of readiness for acceptance is on hand and the delivery of all documents belonging to the order has been made, the Client shall effect acceptance within four weeks. If the review of the Contractor's services require a putting into operation or service for testing purposes then the acceptance shall not follow until the successful conclusion of the tests. The acceptance will be effected when all services and criteria set forth in the service description have been satisfied and the Work is free from errors.
- 18.6** A formal acceptance protocol shall be created regarding the acceptance. The formal acceptance shall be withheld, however, until the Contractor remedies any defects determined. The defects shall be remedied immediately, at the latest within a period specified by the Client.
- 18.7** Customary documentation shall be submitted for acceptance of the Software at the latest and is hence a prerequisite for the acceptance.

**19 Source files and property**

- 19.1** All source files, HTML data and implementations, Photoshop files, flash sources and other files, image or sound storage media and other data storage media associated with the production of the Work as well as all props, furnishings, decorations, etc. acquired for the Work, shall be deemed the sole property of the Client from the point in time of their creation onwards, insofar as not expressly otherwise agreed in individual agreements. The handover to the Client shall be substituted by the Contractor safeguarding these objects for the Client free of charge. Image/sound negatives, data storage media as well as magnetic tapes shall be stored by the Contractor at its own expense in a replicator facility or video/sound studio in the name of the Client for a minimum period of three years from final acceptance. The Contractor shall notify the Client of the name and address of the storage facility in writing. The Contractor shall inform the Client at least six months prior to expiration of the aforementioned three-year period regarding the expiration of the period in writing, in order to give it opportunity to decide on a possible extension of the storage period. If the aforementioned information is not provided by the Contractor on time it shall be obligated to provide indefinite further storage at its own expense.
- 19.2** The Contractor shall immediately surrender to the Client all objects previously mentioned at the Client's request at any time, also prior to the completion of the Work, if applicable.

**20 Tax deduction for persons with limited tax liability (§ 50a of the German Income Tax Act [EStG])**

The following shall apply provided the Contractor is subject to limited tax liability (§ 49 of the German Income Tax Act [EStG]):

- 20.1** The remuneration agreed between the Client and Contractor shall be subject to tax deduction for the following income:

- 20.1.1** Income generated by creative, athletic, artistic, entertainment or similar performances, which are carried out domestically. Excluded from these shall be remunerations for not self-employed work, which are subject to tax deduction from wages pursuant § 38 Section 1 No. 1 of the German Income Tax Act [EStG],
- 20.1.2** Income, which is derived from the domestic exploitation of performances according to Paragraph 20.1.1 (see Paragraph 7),
- 20.1.3** Income, which is the result of remunerations for granting the use or the right to use rights pursuant Paragraph 7.
- 20.2** The Client shall be obligated to withhold income tax by means of the tax deduction to secure the tax liability (§ 50a Section 7 of the German Income Tax Act [EStG]). The tax shall be deducted from a remuneration of € 250.00. The tax deduction shall amount to 25% of all income.
- 20.3** In addition to remuneration, all income also means the Client's assumed and reimbursed travel and accommodation expenses, insofar as they exceed the actual costs, and the costs of meals if they exceed the flat fee amounts for room and board expenses. The sales tax owed by the Client shall not be part of the assessment basis.
- 20.4** At the point in time when the Contractor is paid the remuneration, the Client shall already withhold the income taxes for the Contractor's invoice in the course of the tax deduction and pay it to the competent tax office.
- 20.5** The Client is obligated under § 50a Section 5 of the German Income Tax Act [EStG] to evidence the Contractor upon request the tax deduction using the officially mandated form.
- 20.6** The Contractor shall further have the option to apply for the granting of a certificate of exemption at the Federal Tax Office. Further information and the required forms are available at [www.bzst.de](http://www.bzst.de).
- 21 Insurances**
- 21.1** The Contractor shall be obligated to appropriately insure the production risks and to deliver a copy of the corresponding insurance policies to the Client at its request. The risks to be insured shall particularly include:
- 21.1.1** until the final conclusion of the work: Loss of production if not otherwise agreed in an individual agreement; on the part of the Client no cancellation fees shall be owed if not agreed in an individual agreement.
- 21.1.2** until the complete delivery and online release: Property risks and personal liability for the objects used for the production (products to be promoted, props, structures, decorations, furnishings etc.) as well as all people collaborating in the film production (in particular directors, composers, artists, production crew, assistants and other people present at the manufacturing of the work product, programmers) as well as
- 21.1.3** The absence of an artist to be provided by the Contractor.
- 21.2** The Contractor shall ensure that the Client is named the sole beneficiary of the insurance for loss of production to be concluded for the production. The same shall apply for the film negative insurance. For the event that this is not possible in an individual case, the Contractor herewith assigns to the Client its claims for insurance benefit payouts under the insurance agreement. Said party accepts this assignment.
- 22 Final provisions**
- 22.1** There are no verbal ancillary agreements. Deviating or supplemental individual contractual provisions to these T&C or the placed order must be in written form to be effective and shall exclusively apply for each order. This shall also apply for a waiver of the written form clause.
- 22.2** If one of the terms of these T&C or the order is or becomes ineffective, this shall not affect the effectiveness of the rest of the T&C or the order. An effective and practicable term shall replace the ineffective or impracticable term, the effects of which come as close as possible to the commercial aim the contractual parties had pursued with the ineffective or impracticable term. The same shall apply in the event of a loophole.
- 22.3** Place of jurisdiction and place of fulfillment is the Client's headquarters unless another location is compulsory as prescribed by law. German Law shall apply excluding the United Nations Convention on Contracts for the International Sale of Goods.
- 22.4** If there is a written form clause in these T&C this shall also be satisfied via email or fax, excluding however the announcement pursuant Paragraph 19.1 and terminations as well as changes or supplements to these T&C pursuant Paragraph 22.1, which shall always be made pursuant the written form requirement, corresponding to § 126 Section 2 of the German Civil Code [BGB].