

Mag. des. ind. JULIA KABELKA

Gendarmeriestraße 35/8
9073 Klagenfurt a. W.

hello@juliakabelka.com
+43 660/38 66 214

hereinafter referred to as „the Agency“.

1. APPLICABILITY

- 1.1 The following General Terms and Conditions shall apply exclusively to the business transactions of the agency. The contractual partner of the Agency is hereinafter referred to as „Customer“. These General Terms and Conditions are binding for all present and future business transactions of the Agency, even if no express reference is made to them.
- 1.2 The version valid at the time of the conclusion of the contract shall apply. Deviations from these as well as other supplementary agreements with the customer shall only be effective if they are confirmed in writing by the Agency.
- 1.3 Collateral agreements, reservations, amendments or supplements to these General Terms and Conditions must be in writing to be valid; this also applies to any deviation from the written form requirement.
- 1.4 Any regulations deviating from or supplementing these terms and conditions - in particular the customer's general terms and conditions - shall not be accepted, even if known, and the agency shall expressly object to them, unless otherwise agreed in writing in individual cases. A further objection to such regulations by the Agency is not required.
- 1.5 Changes to these General Terms and Conditions of Business shall be notified to the customer and shall be deemed to have been agreed if the customer does not object to the changed General Terms and Conditions of Business in writing within 14 days; the customer shall be expressly informed of the significance of silence in the notification.
- 1.6 Should individual provisions of these General Terms and Conditions of Business be invalid, this shall not affect the binding nature of the remaining provisions and of the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid provision which comes closest to the meaning and purpose of the invalid provision.

2. OFFER AND CONTRACT CONCLUSION

The agency's offers are subject to change without notice, unless they are expressly designated as binding. On the basis of this offer, the customer then places an order with the Agency, to which he is bound for at least 14 days. The contract shall only come into effect when the Agency has accepted the order placed by the customer.

3. SCOPE OF SERVICES, ORDER PROCESSING AND OBLIGATIONS OF THE CUSTOMER TO COOPERATE

- 3.1 The scope of the services to be provided is determined by the service description in the Agency's offer or the subsequent order confirmation issued by the Agency. Subsequent changes to the content of services require written confirmation by the Agency. The Agency shall be free to design the fulfilment of the order within the framework specified by the Customer.
- 3.2 All services provided by the Agency (in particular all preliminary drafts, sketches, final artwork, brush proofs, blueprints, copies, colour prints and electronic files) shall initially be transmitted to the customer in a form that cannot be further processed, shall be checked by the customer and approved within five working days of receipt by the customer. After this period has elapsed without a reply or justified rejection by the customer, they are deemed to have been approved by the customer.
- 3.3 As soon as the Agency's services have been approved / are considered approved, the service is deemed to have been provided and the Agency is entitled to invoice. Only after the invoice has been duly paid will the Agency make the documents available in a form that can be further processed.
- 3.4 The customer shall immediately and completely make available to the Agency all information and documents required for the provision of the service. He shall inform it of all circumstances that are of significance for the execution of the order, even if these only become known during the execution of the order. The Client shall bear the costs incurred if work has to be repeated or is delayed by the Agency as a result of its incorrect, incomplete or subsequently changed information.
- 3.5 Furthermore, the customer is obliged to check the documents (photos, logos etc.) provided for the execution of the order for possible copyrights, trademark rights, labelling rights or other rights of third parties.
- 3.6 The agency is not liable for any infringement of such rights. If claims are made against the Agency by a third party due to such a violation of rights, the Client shall indemnify and hold the Agency harmless. The Client shall compensate the Agency for any and all disadvantages incurred by the Agency as a result of a third-party claim.

4. SOCIAL MEDIA CHANNELS

The agency expressly points out to the customer prior to the conclusion of the contract that the providers of „social media channels“ (e.g. Facebook, hereinafter referred to as the provider) reserve the right in their terms of use to reject or remove advertisements and appearances for any reason. Accordingly, the Providers are not obliged to forward content and information to the users. There is therefore a risk, which cannot be calculated by the agency, that advertisements and appearances are removed without reason. In the case of a complaint from another user, the providers will grant the possibility of a counter-statement, but in this case, too, the contents will be removed immediately. In this case, the recovery of the original, legitimate state may take some time. The agency works on the basis of these terms of use of the providers, over which it has no influence, and also bases the contract with the customer on these terms. By concluding the contract, the customer expressly acknowledges that these terms of use (co-)determine the rights and obligations of any contractual relationship. The Agency intends to execute the contract with the Customer to the best of its knowledge and belief and to comply with the guidelines of „social media channels“. However, due to the currently valid terms of use and the simple possibility of every user to claim infringements of rights and thus to achieve removal of the content, the agency cannot guarantee that the commissioned campaign will be available at all times.

5. COMMISSIONING OF THIRD PARTIES

- 5.1 The agency is entitled at its own discretion to perform its services itself, to use third parties to provide services which are the subject of the contract and/or to substitute its services
- 5.2 The commissioning of the third parties necessary for the provision of services is always carried out in our own name and is already included in the offered fee. The agency will carefully select this third party and ensure that they have the necessary professional qualifications.
- 5.3 The customer shall indemnify and hold the Agency harmless for all damages and disadvantages vis-à-vis these third parties, which are incurred by the Agency due to the customer's conduct in violation of the law and/or the contract.

6. DEADLINES

- 6.1 Unless expressly agreed as binding, the performance periods and dates are non-binding and are always to be understood as the expected time of performance. Non-binding performance periods and dates shall be adhered to by the Agency as far as possible, but exceeding them shall not trigger any legal consequences. All other provisions of these General Terms and Conditions of Business relating to dates and deadlines are based on binding periods and deadlines.

- 6.2 If the Agency is in default, the Client may only withdraw from the contract after having granted the Agency a reasonable grace period of at least 14 days in writing and this grace period has expired without result. This 14-day period shall begin with the receipt of the request by the Agency. Claims for damages on the part of the customer due to non-fulfilment or delay are excluded, except in cases of proof of intent or gross negligence.
- 6.3 Delays for reasons beyond the sphere of the Agency shall in any case release the Agency from the obligation to meet the agreed deadline. This shall apply in any case if the customer is in default with the cooperation obligations incumbent on him/her and necessary for the performance of the service. The respective dates shall be postponed in this sense to the extent of the delay, without the need for further explanation.

7. CANCELLATION OF THE CONTRACT

- 7.1 In particular, the Agency shall be entitled to withdraw from the contract if the performance of the service is impossible for reasons for which the Client is responsible or is further delayed despite the setting of a reasonable period of grace, if there are justified concerns about the Client's creditworthiness and the Client, at the request of the Agency, neither makes advance payments nor provides suitable security before the Agency's performance.
- 7.2 In particular, the customer shall be entitled to dissolve the contract if the Agency continues to breach material provisions of the contractual relationship despite a written warning with a reasonable grace period of at least 14 days to remedy the breach of contract.

8. FEES

- 8.1 Unless otherwise agreed in the specific contractual relationship, a flat-rate fee shall be agreed as compensation for the services of the agency.
- 8.2 If changes to the provision of services commissioned or approved by the customer should occur, these are to be invoiced and paid for according to the hourly workloads specified in the offer.
- 8.3 The Agency's claim for fees for services rendered shall arise as soon as these have been released by the Customer or are deemed to have been released.
- 8.4 The Agency shall always be entitled to demand reasonable advances to cover its expenses. The Agency shall not be obliged to provide services before payment of the requested advances.
- 8.5 The Agency shall be entitled for the first time after a contract period of six months to issue partial invoices. Further invoices on account may not be issued at intervals of less than one quarter.
- 8.6 The fee is understood to be net plus value added tax at the statutory rate. In the absence of an agreement in individual cases, the Agency shall be entitled to a

fee in the usual market amount for the services rendered and the transfer of the copyright and trademark rights of use.

- 8.7 All services provided by the Agency that are not expressly compensated for by the agreed fee shall be remunerated separately. All cash expenses incurred by the Agency that are not covered by the fee shall be reimbursed by the customer.
- 8.8 A cost estimate shall be prepared by the Agency to the best of its knowledge, but no guarantee can be given for its accuracy. Should there be cost increases of more than 15% after conclusion of the contract, the Agency shall inform the customer immediately. If it is a matter of unavoidable cost overruns of less than 15%, a separate notification is not necessary and these costs can be invoiced without further ado. Cost estimates are subject to payment.
- 8.9 If the customer unilaterally modifies work commissioned without the involvement of the Agency or withdraws from the contract, the customer shall compensate the Agency for the services rendered up to that point in accordance with the fee agreement in the offer and reimburse all costs incurred. Insofar as the withdrawal is not due to a grossly negligent or intentional breach of duty on the part of the Agency, the customer shall also reimburse the Agency for the entire fee agreed for this order, whereby the crediting of the fee pursuant to § 1168 ABGB is excluded.
- 8.10 Stability of the value of the fee claim is expressly agreed. The consumer price index (CPI 2015 = 100) published monthly by the Austrian Central Statistical Office or an index replacing it shall be used as a measure for calculating the stability of value. The index figure calculated for the month in which the contract is concluded shall serve as the reference figure for the contract. Fluctuations of the index number up or down to 2% exclusively are not taken into account. This margin shall be recalculated each time it is exceeded upwards/downwards, whereby the first index figure outside the respective applicable margin shall always form the basis both for the new determination of the amount of the claim and for the calculation of the new margin. The resulting amounts shall be rounded up to one decimal place.

9. PAYMENT

- 9.1 The invoices of the agency are due for payment without deduction within 14 days of receipt of the invoice, unless special payment conditions are agreed in writing in individual cases.
- 9.2 In the event of default of payment by the customer, the statutory default interest shall apply at the rate applicable to business transactions. Furthermore, in the event of default of payment, the customer undertakes to reimburse the Agency for any reminder and collection charges incurred, insofar as these are necessary for appropriate legal prosecution. This includes in any case the costs of two reminders in the usual market amount of currently at least € 20.00 per reminder as well as a reminder from a lawyer commissioned with the collection. The assertion of further rights and claims remains unaffected.

- 9.3 In the event of default of payment by the customer, the agency can demand immediate payment for all services and partial services provided under other contracts concluded with the customer.
- 9.4 While the customer is in default of payment, the Agency shall not be obliged to provide further services and to withhold its previous services until the entire outstanding amount has been paid. The obligation of the customer to make payment remains unaffected by this right of retention.
- 9.5 If payment in instalments has been agreed upon, the Agency shall lose the deadline in case of late payment and all outstanding amounts shall become due for payment within five days.
- 9.6 The customer shall not be entitled to set off his own claims against claims of the Agency, unless the customer's claim has been acknowledged by the Agency in writing or has been established by a court of law.

10. PRE-CONTRACTUAL RELATIONSHIP

- 10.1 If the customer has already invited the Agency in advance to create a concept, presentation or similar, the following provisions shall apply in the event that the Agency accepts this invitation even before the formal conclusion of the contract in the sense of these General Terms and Conditions:
- 10.2 Already through the invitation and the acceptance of the invitation by the Agency, the Customer and the Agency enter into a contractual relationship. This contractual relationship is also based on these General Terms and Conditions.
- 10.3 The customer acknowledges that the Agency is already providing cost-intensive advance services at this time.
- 10.4 The Agency shall be entitled to an appropriate fee for such services, which, in the absence of an agreement, shall at least cover the Agency's entire personnel and material expenses for the services actually provided.
- 10.5 If the Agency actually does not receive an order after the concept has been created or the presentation has been held, all services provided by the Agency, in particular the concept itself, the presentation documents and their contents shall remain the property of the Agency; the Customer shall not be entitled to continue using these - in whatever form; the documents shall rather be returned to the Agency without delay. The passing on of presentation documents to third parties as well as their publication, duplication, distribution or other use is not permitted without the express consent of the Agency.
- 10.6 The customer shall only acquire any rights of exploitation and use of the services provided by the Agency if he pays an appropriate fee to be determined in detail by the Agency. If the services of the Agency provided in the course of the invitation are not paid for by the customer or not paid for in accordance with the Agency's specifications, the Agency shall be entitled to use these services elsewhere.

- 10.7 If the Client is of the opinion that the services provided by the Agency were not of value and the Agency therefore did not deserve to be credited, the Client shall notify the Agency of this in writing within a reasonable period of time, but no later than 14 days after the date on which the services were provided, stating the reasons for this in an appropriate manner.
- 10.8 If no such notification is made, the contracting parties shall assume that the Agency has in any case been meritorious for the customer.

11. USE, OWNERSHIP AND COPYRIGHT

- 11.1 Unless otherwise agreed, all services provided by the agency - including individual parts thereof - shall always remain the property of the agency. Unless otherwise agreed, the unrestricted protection of copyright applies to all services of the Agency. By paying the fee, the customer acquires the right of use for the agreed purpose and to the agreed extent. The acquisition of rights of use and exploitation rights to services of the Agency shall in any case be subject to full payment of the fees charged by the Agency for such services. If the customer already uses the services of the Agency before this time, this use is based on a loan relationship that can be revoked at any time.
- 11.2 Unless otherwise agreed in writing, the unrestricted rights of use for reproduction and use of the Agency's services shall only be granted after full payment of the invoiced contracts.
- 11.3 A transfer of the rights of use to third parties requires a written agreement between the agency and the customer.
- 11.4 Changes or processing of services of the agency, such as in particular their further development by the customer or by third parties working for the customer, are only permitted with the express consent of the agency and - insofar as the services are protected by copyright - of the author. Any complete or partial imitation is not permitted.
- 11.5 For the use of services of the Agency, which go beyond the originally agreed purpose and scope of use, the consent of the Agency is required - regardless of whether this service is protected by copyright. This consent shall only be granted if the Agency is paid a separate appropriate fee for it.
- 11.6 For the use of services provided by the agency after termination of the contractual relationship, regardless of whether or not this service is protected by copyright, the consent of the agency is also required.
- 11.7 For uses after the end of the contractual relationship, the Agency shall be entitled to the full remuneration agreed in the expired contract for the first year after the end of the contract. In the second or third year after the end of the contract, the Agency shall only be entitled to half or a quarter of the agreed remuneration. From the fourth year after the end of the contract onwards, no remuneration shall be payable.

- 11.8 The Client shall be liable to the Agency for any unlawful use of its services with an amount equal to twice the appropriate fee for such use, but at least twice the fee originally agreed. If the Agency should incur additional damages due to the unlawful use, these can in any case be claimed separately.

12. LABELING

- 12.1 Unless expressly agreed otherwise in writing, the customer shall refer to the Agency as the originator of all results of the Agency's services, without the customer being entitled to any remuneration for this.
- 12.2 The Agency shall be entitled to refer to the Agency and, if applicable, to the originator on all advertising material and in all advertising measures, without the customer being entitled to a fee for this.
- 12.3 The Agency is entitled, subject to the written revocation of the customer, which is possible at any time, to refer to the existing or former business relationship with the customer on its own advertising media and in particular on its Internet website with name and company logo.

13. CONFIDENTIALITY

The agency undertakes to maintain secrecy towards third parties about the details of the customer's business operations that become known to it. The advertising agency can only be released from this obligation by instruction of the customer if the fulfilment of the order requires the communication of confidential details.

14. WARRANTY / COMPENSATION

- 14.1 The customer shall immediately, and in any case within seven days of the Agency providing the service or within seven days of the defect becoming known, make any complaints in writing and give reasons for them, failing which all warranty claims, compensation for damages due to the defect itself and for an error concerning the defectiveness can no longer be asserted.
- 14.2 In the case of a justified and timely complaint, the customer is initially only entitled to the right to improvement of the service by the agency. In this case, the defects shall be remedied within a reasonable period of time, whereby the customer shall enable the Agency to take all measures necessary for investigation and remedy of the defects. The Agency shall be entitled to refuse to improve the service if this is impossible or involves disproportionate effort for the Agency. In this case the customer shall be entitled to the statutory rights of conversion and reduction.
- 14.3 The warranty period shall be six months from delivery/service. The right of recourse against the agency according to § 933b para. 1 AGBG expires one year after the service has been rendered. The customer is not entitled to withhold

payments due to complaints. The presumption provision of § 924 ABGB is excluded.

- 14.4 The application of § 924 ABGB is expressly excluded. The customer must prove that the defect was present at the time of delivery, the time of discovery of the defect and its timeliness.
- 14.5 The Agency is only obliged to check its services for legal, in particular competition, trademark, copyright and administrative law admissibility within the scope of its service provision and will only carry out a rough check in this sense.
- 14.6 The agency is not responsible for content that has been specified or approved by the customer, nor is it responsible in cases in which it has fulfilled any existing obligation to warn.
- 14.7 Claims for damages by the customer for material or financial losses, regardless of whether they are direct or indirect damages, lost profits or consequential damages, damages due to delay, impossibility, positive violation of claims, culpa in contrahendo, due to defective or incomplete performance, are excluded, unless they are based on intent or gross negligence on the part of the Agency. The existence of gross negligence must be proven by the customer.
- 14.8 Claims for damages shall expire six months after knowledge of the damage and of the party causing the damage, but in any case after three years after the corresponding act of infringement by the Agency.
- 14.9 Claims for damages are limited to the amount of the contract value excluding taxes.

15. DATA PROTECTION

In order to be able to fulfil the contract, the Client shall provide the Agency with the data that is naturally required for this purpose in accordance with Art. 6 Para. 1 lit. b DSGVO. A number of personal data are also required for pre-contractual services, without which the Agency cannot fulfil the contract with the customer. The following data are required and are provided by the customer:

- Name (first and last name or company name)
- Address (street, house number, postal code, town)
- Contact details (telephone number, e-mail address)
- Contact person (name, contact details)
- UID number for corporate customers
- The data necessary for the order in the respective scope

The customer shall ensure the legality of any transfer of personal data from third parties to the agency in accordance with Art. 6 DSGVO. The data protection information of the processing by the Agency in accordance with Art. 13 and Art. 14 DSGVO, is available at <https://www.juliakabelka.com/legal> at any time and has been read and understood by the customer.

16. APPLICABLE LAW

The contract and all mutual rights and obligations derived from it as well as claims between the agency and the customer are subject to Austrian substantive law to the exclusion of its referral norms and to the exclusion of the UN Sales Convention.

17. PLACE OF PERFORMANCE AND JURISDICTION

- 17.1 The place of performance is the registered office of Studio Kabelka. In the case of dispatch, the risk is transferred to the customer as soon as the agency has handed over the goods to the transport company chosen by it.
- 17.2 The place of jurisdiction for all legal disputes arising between the Agency and the customer in connection with this contractual relationship is agreed to be the court which is competent for the seat of the Agency. Irrespective of this, the Agency shall be entitled to sue the Customer at his general place of jurisdiction.
- 17.3 Insofar as terms referring to natural persons are only used in the masculine form in this contract, they shall refer to women and men in the same way. When applying the designation to specific natural persons, the respective gender-specific form shall be used.