



## GENERAL TERMS AND CONDITIONS

currycom communications GmbH

### 1. Scope, conclusion of agreement

- 1.1 currycom communications GmbH (hereinafter "Agency") renders its services exclusively on the basis of the General Terms and Conditions as laid down hereinafter. These shall also apply to any and all future business relationships, even where no explicit reference is made to them. As a member of PRVA (Public Relations Association Austria) the Agency is bound to the PRVA's Code of Honour (see attachment or follow this link: <http://prva.at/about-us/ethics-in-pr>). This Code of Honour forms an integral part of these General Terms and Conditions.
- 1.2 Any deviations from them and any other complementing agreements with the Customer shall only be effective if they have been confirmed by the Agency in writing.
- 1.3 Any terms and conditions of the Customer, if applicable, shall not be accepted, unless expressly agreed otherwise in writing in individual cases. Any special objection to the Customer's terms and conditions by the Agency shall not be required.
- 1.4 In the event that individual provisions of these General Terms and Conditions are legally void, this shall not affect the binding nature of the remaining provisions hereto nor of the agreements entered into basing on them. The invalid provision shall be replaced by a valid provision that comes as close as possible to the meaning and purpose of the intended provision.
- 1.5 The basis for the conclusion of an agreement is the respective quote by the Agency and/or the Customer's order where the scope of services and remuneration are laid down. The Agency's quotes are subject to change without notice and non-binding.
- 1.6 As soon as the Customer places an order, the Customer shall be bound to it for two weeks following its receipt by the Agency. The contract shall take effect when the order is accepted by the Agency. This acceptance shall be in writing (e.g. in the form of a confirmation of order), unless the Agency shows without any doubt (e.g. by becoming active on the basis of the order) that it accepts the order.

### 2. Scope of services, order processing and the Customer's cooperation obligations

- 2.1 The scope of services to be rendered shall result from the service specification in the Agency agreement or any other confirmation of order by the Agency, as well as the briefing protocol if applicable. Subsequent modifications of the service features shall require written confirmation by the Agency. Within the framework provided by the Customer the Agency shall have creative freedom in the fulfilment of the order.
- 2.2 Any and all of the Agency's services (particularly all preliminary drafts, sketches, finished drawings, proofs, blueprints, copies, colour prints and electronic files) shall be examined by the Customer and approved for release within three working days following receipt by the Customer. They shall be deemed as approved by the Customer in case of untimely approval for release.
- 2.3 The Customer will make all information and documents required for rendering the service completely accessible to the Agency in a timely manner. The Customer shall inform the Agency about any and all circumstances of importance for implementing the order, even when and if they only become known in the course of the realisation of the order. The Customer shall bear the expenses arising from tasks having to be repeated by the Agency or being delayed as a result of the Customer's information being incorrect, incomplete or subsequently changed.
- 2.4 In addition, the Customer shall be obliged to examine the material made available for the implementation of the order (photos, logos, etc.) for any applicable copyright laws, trademark legislation or any other rights of third parties. The Agency shall not be liable for any violation of such rights. Should any claims be made against the Agency due to such violation, the Customer undertakes to indemnify and hold the Agency harmless; the Customer shall compensate it for any and all disadvantages arising due to claims by third parties.
- 2.5 The risk of obtaining any approvals for the construction supervising authority, approvals connected with event legislation or any other shall rest with the Customer.

### 3. External activities / commissioning of third parties

- 3.1 The Agency shall be entitled at its complete discretion to carry out the service itself, employ competent third parties as vicarious agents for the rendering of services hereunder and/or substitute such services.
- 3.2 The commissioning of third parties within the framework of an external activity shall either be conducted in its own name or in the name of the Customer, in any case however for the account of the Customer. The Agency shall carefully select such a third party and ensure that the latter has the required specialist qualification. This shall particularly apply to public legal acts (e.g. registration with public authorities or with the State Authorised Society for Authors, Composers and Publishers AKM) or legal acts pursuant to private law, the renting of premises, the conclusion of agreements in the gastronomy sector, and the conclusion of agreements with artists, suppliers and sub-contractors.
- 3.3 Should the Agency commission necessary or agreed external activities or third-party services, the respective clients shall not be deemed vicarious agents of the Agency.
- 3.4 The Agency's artists and service providers shall be subject to a first-contact agreement and shall - in the absence of any agreement to the contrary - subsequently be booked via the Agency. In case the Customer books them directly, this shall result in claims by the Agency in the amount of the usual Agency fee.



#### **4. Dates**

- 4.1 Any agreements on dates and deadlines shall be laid down and confirmed in writing.
- 4.2 Where the Agency's delivery/service/performance is delayed for reasons for which it is not responsible, such as instances of force majeure and other unforeseeable events that cannot be avoided by using reasonable means, the service/performance obligations shall rest for the duration and to the extent of the obstacle, and time periods shall be extended accordingly. The same shall apply if and when the Customer is in default with his obligations required for the implementation of the order (e.g. making available documents, material or information). Any additional expenses and/or third party costs incurred as a result shall be invoiced separately without this requiring any approval for release by the Customer.
- 4.3 Should the Agency be in default, the Customer can only withdraw from the Agreement after having granted the Agency an appropriate grace period of at least 14 days in writing and this grace period has elapsed without result. Any damage compensation claims by the Customer due to non-performance or delay shall be excluded, except where intent or gross negligence can be proven.

#### **5. Premature termination**

- 5.1 The Agency shall be entitled to terminate this Agreement with immediate effect for material breach of contract. Such material breach of contract shall in particular be deemed as given if and when
- the provision of the service/performance becomes impossible for reasons for which the Customer is responsible or is further delayed despite the granting of a grace period of 14 days;
  - the Customer continues, despite a written warning including the granting of a grace period of 14 days, to violate major obligations hereunder, such as payment of an amount for which a due date has been set or any cooperation obligations.
  - any legitimate concerns regarding the Customer's creditworthiness exist and the Customer, upon the Agency's request, neither makes any advance payments nor provides a suitable security before the Agency's service/performance;
  - bankruptcy or judicial composition proceedings have been opened against the Customer's assets or an application for opening of such proceedings is rejected for lack of cost-covering assets or if the Customer discontinues his payments.
- 5.2 The Customer shall be entitled to terminate the Agreement for material breach of contract. A material breach of contract shall in particular be deemed as given if and when the Agency continues, despite a written warning including the granting of a grace period of 14 days to remedy the contract violation, to violate major provisions hereunder.

#### **6. Conditions regarding cancellation**

Unless otherwise agreed, the following conditions regarding cancellation shall apply:

- 100% of the conceptual services already rendered at the time of cancellation
- 100% of rendered internal activities (services and performances) until 4 weeks before the beginning of the event and/or implementation
- 60% of the project/implementation fee between 4 and 2 weeks before the beginning of the event and/or implementation
- 80% of the project/implementation fee between 2 weeks and 1 week before the beginning of the event and/or implementation
- 100% of the project/implementation fee starting 1 week before the beginning of the event and/or implementation
- 100% of the external activities or of the third-party services already paid and/or ordered and no longer cancellable at the time of cancellation, or in cases where a cancellation is possible, 100% of the cancellation fee.

#### **7. Fee**

- 7.1 Unless otherwise agreed upon, the Agency's entitlement to its fee shall accrue for every individual service/performance as soon as it has been provided. The Agency shall be entitled to draw up interim invoices and/or advance invoices or demand down-payments.
- 7.2 The fee shall be a net fee exclusive of value-added tax to the statutory amount. In the absence of agreements in individual cases, the Agency shall be entitled to a fee of a customary market amount for the services rendered and the assignment of rights of use in terms of copyright or trademark legislation.
- 7.3 Any and all of the Agency's services that are not expressly compensated by the agreed-upon fee shall be remunerated separately. Any and all cash expenses accruing to the Agency shall be reimbursed by the Customer.
- 7.4 The Agency's estimates shall not be binding. If and where it is foreseeable that the actual costs exceed the costs estimated by the Agency in writing by more than 10%, the Agency shall point out the increase in costs to the Customer. The cost increases shall be deemed as approved by the Customer if the Customer does not object to this in writing within three working days and at the same time informs about more inexpensive alternatives. In the event of a cost increase of up to 10%, separate notice to the Customer shall not be required. Such an increase of the cost estimate shall be deemed as approved by the Client in advance.
- 7.5 The Agency shall be entitled to the agreed-upon fee for any and all of the Agency's works that are not implemented by the Customer for any reason whatsoever. The application of the crediting provision pursuant to Section 1168 of the General Contract Terms and Conditions Regulation Act (AGBG) shall be excluded. The Customer shall not acquire any rights of use in already completed activities with payment of the fee; any not executed concepts, drafts and other documents and material shall rather be immediately returned to the Agency.



## **8. Presentations**

- 8.1 The Agency shall be entitled to an appropriate fee for participation in presentations. The fee, in the absence of any agreements, shall at least cover the Agency's entire staff and material expenses for the presentation as well as the costs of all external activities and third-party services.
- 8.2 Should the Agency not receive any order after the presentation, any and all of the Agency's services/performance, particularly the presentation documents and their content, shall remain the Agency's property; the Customer shall not be entitled to continue to use them - in any form whatsoever; the documents shall immediately be returned to the Agency. The forwarding of presentation documents to third parties as well as their publication, reproduction, dissemination or other exploitation shall not be permitted without the express consent of the Agency.
- 8.3 Similarly, the Customer shall be prohibited to continue to use the ideas and concepts contributed in the course of the presentation, irrespective of whether the ideas and concepts obtain protection in terms of copyright legislation. With payment of the presentation fee the Customer shall not acquire any rights of exploitation and use in the presented services/performance.
- 8.4 Should the ideas and concepts contributed in the course of the presentation not be commissioned in the form as presented by the Agency, the Agency shall be entitled to use these ideas and concepts elsewhere.

## **9. Payment, retention of title**

- 9.1 The fee shall be due for payment immediately upon receipt of the invoice and without discount unless special terms and conditions of payment have been agreed upon in writing in the individual case. This shall also apply to any invoices made out to third parties regarding any and all cash expenses and other expenses. The goods delivered by the Agency shall remain the Agency's property until complete payment of the fee including any other secondary obligations.
- 9.2 In case of default in payment by the Customer, statutory default interest in the amount applicable to business transactions shall apply. In addition, the Customer undertakes, in case of default in payment, to compensate the Agency for any and all accruing dunning and collection charges as far as they are necessary for proper legal proceedings. This shall comprise by all means the costs for two reminders in a customary market amount as well as of one reminder of a lawyer commissioned with the collection. Assertion of any more far-reaching rights and claims shall remain unaffected.
- 9.3 In case of default in payment by the Customer, the Agency can immediately demand payment of any and all services and subservices rendered within the framework of other agreements concluded with the Customer. Furthermore the Agency shall not be obliged to render any other services/performance until payment of the outstanding amount. Where payment in instalments has been agreed, in case of non-timely payment of instalments or incidental claims, the Agency reserves the right to demand immediate payment of all outstanding amounts (default).
- 9.4 The Customer shall not be entitled to set off his own claims with the Agency's claims except if the Customer's claim has been recognised by the Agency in writing or established by court.

## **10. Property right and copyright**

- 10.1 Any and all services performed by the Agency, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, finished drawings, concepts, negatives, slides), as well as individual parts thereof, shall remain the Agency's property just like the individual workpieces and draft originals, and the Agency shall be entitled to demand them back any time - particularly at the time this contractual relationship is terminated. With the payment of the fee the Customer shall acquire the right of use for the agreed-upon purpose. In the absence of any agreement to the contrary, the Customer shall however be entitled to use the Agency's services/performances only in Austria. Acquisition of rights of use and rights of exploitation in the Agency's services/performances shall by all means require complete payment of the fees invoiced for that purpose by the Agency.
- 10.2 Any changes to or amendments or revisions of the Agency's services/performances, such as in particular their further development by the Customer or third parties that are active for the Customer shall only be permitted following the express consent of the Agency and - insofar as the services are protected by copyright - of the copyright holder.
- 10.3 For any use of the Agency's services/performances exceeding the purpose and scope of use originally agreed upon, the Agency's consent shall be required - irrespective of whether this service/performance is protected by copyright. In this case the Agency and the copyright holder shall be entitled to separate appropriate remuneration.
- 10.4 For the use of the Agency's services/performances or of advertising media for which the Agency has elaborated conceptual or design models, drafts, outlines or blueprints, the Agency's consent shall also be required upon expiry of the Agency agreement irrespective of whether this service/performance is protected by copyright or not.
- 10.5 For any use according to paragraph 4 the Agency shall be entitled to compensation of the full Agency fee as agreed on in the expired agreement in the first year following termination of the agreement.
- 10.6 The Customer shall be liable to the Agency for any unlawful use in double the amount of the fee appropriate for such use.

## **11. Inclusion of reference / identification**

- 11.1 The Agency shall be entitled to include a reference to the Agency and if necessary the copyright holder on all advertising media and in all advertising measures, without the Customer being entitled to any related payment.



11.2 Subject to written revocation by the Customer, which is possible at any time, the Agency shall be entitled to include a reference to the business relationship established with the Customer with name and company logo (reference particulars) on its own advertising media and in particular on its Internet website.

## 12. Warranty

12.1 The Customer shall be obliged to notify the Agency in writing of any defects immediately, at all events within eight working days following delivery/service/performance by the Agency, any hidden defects within eight working days following their identification, including a description of the defect; otherwise the service/performance shall be deemed as approved. In this latter case any assertion of warranty claims and claims for compensation or avoidance on account of mistake due to defects shall be excluded.

12.2 In the event of a legitimate and timely complaint of defect the Customer shall be entitled to improvement or exchange of the delivery/service/performance by the Agency. The Agency shall remedy the defects within a proper period of time, with the Customer enabling the Agency to carry out any and all measures required for examination and remedying the defect. The Agency shall be entitled to refuse improvement of the service/performance if it is impossible or connected with disproportionately high expenses for the Agency. In that case, the Customer shall be entitled to the statutory conversion privileges or rights of reduction. In case of an improvement, it shall be incumbent on the Client to conduct the transfer of the defective (physical) goods at the Client's own cost.

12.3 It shall be incumbent on the Client to examine the service/performance for its legal permissibility, particularly its admissibility in terms of competition, trademark, copyright and administrative legislation. The Agency shall not be liable for the correctness of content specified or approved by the Customer.

12.4 The period of warranty shall be six months and commence as of the date of delivery/service/performance. The right of recourse vis-à-vis the Agency according to Section 933b para. 1 ABGB shall expire one year following delivery/service/performance. The Customer shall not be entitled to withhold payments due to complaints. The application of the assumption provision pursuant to Section 924 of the General Contract Terms and Conditions Regulation Act (AGBG) shall be excluded.

## 13. Liability and product liability

13.1 The Agency undertakes to perform the work and services assigned to it by taking into account the generally recognised principles of law and inform the Customer of any risks identifiable for it in a timely manner. Any liability of the Agency for claims raised due to the service rendered by the Agency (e.g. advertising measure) against the Customer is expressly excluded if and when the Agency has met its information obligation or such an information obligation has not been recognisable for it, with slight negligence not causing any damage. In particular the Agency shall not be liable for any legal costs, the Customer's own lawyers' fees, or costs for publication of judgements, as well as any damage compensation claims or other claims by third parties; the Customer shall in this respect indemnify and hold the Agency harmless.

13.2 Within the framework of legal provisions the Agency shall only be liable for damage if it can be proven to have acted with intent or gross negligence. The presence of gross negligence shall be proven by the aggrieved party.

13.3 Any compensation claims by the Customer shall lapse six months following discovery of the damage; by all means, however, three years following the act of violation by the Agency. Any damage compensation claims shall be limited at the amount of the net order value.

13.4 When carrying out events, the Agency undertakes to take out sufficient organiser's liability insurance in the name and for the account of the Customer.

## 14. Data protection (optical highlighting in accordance with legislation)

The Customer herewith expressly agrees that the Agency collects, stores and processes the data made known by the Customer (name, address, e-mail, credit card data, data for account transfer) for the purpose of fulfilment of contract and customer support as well as for its own advertising purposes in an automation-supported manner. The Client agrees that it is sent electronic mail for advertising purposes until revoked.

## 15. Governing law

This Agreement and any mutual rights and obligations derived from it as well as any claims between the Agency and the Customer are subject to Austrian substantive law with the exclusion of the UN purchasing law (the United Nations Convention on International Sales of Goods).

## 16. Place of performance and jurisdiction

16.1 The place of performance shall be the seat of the Agency. Where goods are shipped, the risk shall pass to the Customer as soon as the Agency has handed over the goods to the carrier chosen by it.

16.2 Any disputes arising in connection with this contractual relationship between the Agency and the Customer shall be subject to the exclusive competence of the court with substantive jurisdiction at the seat of the Agency. Nevertheless the Agency shall be entitled to take legal proceedings against the Customer at the Customer's general place of jurisdiction.