

General Terms and Conditions of Business

As at: January 2010

§ 1 General/Scope

- (1) These standard terms and conditions shall form an essential component of each agreement signed, unless any deviations have been agreed in detail. The basis of the Agreement is the breakdown of costs signed by us and by the customer, hereinafter called the Agreement. The following standard terms and conditions apply exclusively for this Agreement; conflicting or diverging conditions and other provisions not foreseen in these standard terms and conditions apply only if we have explicitly agreed in writing or if a diverging provision exists in the form of a framework agreement.
- (2) Subject of the Agreement is the service described. We undertake to take due care in carrying out the Agreement.
- (3) We would like to draw the customer's attention to the fact that the agency is a member of the German Association of Public Relations Agencies (GPRA) and works strictly according to the rules of this trade association, in particular the principles of the CODE D'ATHENE. These rules can be found on the Internet at <http://www.drpr-online.de> → Kodizes → Code d'Athenes. These can also be supplied on demand.

§ 2 Presentations

A separate presentation fee is payable for any conceptual or creative proposals developed by the agency and for the presentation of any such proposals.

§ 3 Remuneration/Costs

- (1) The figures quoted in the Agreement shall prevail. These figures are based on experience and are indicative only. Billing for our services is carried out upon production of supporting documentation to show the actual time spent at the current hourly rates. An overrun of up to 10% of the total sum documented in the Agreement is deemed to be approved and requires no further approval. For changes in costs that exceed this amount a recosting exercise is required. Amounts for individual items can be offset as long as the total figure in the Agreement is not exceeded.
- (2) The Agreement may stipulate lump sum billing.

- (3) The reimbursement of other expenses incurred in carrying out the Agreement or as a consequence of carrying out the Agreement remains unaffected.
- (4) Out-of-pocket expenses incurred during the implementation of this Agreement (postage, telephone, copying etc.) are calculated at a flat rate of 10% of fees billed. Travel and subsistence expenses are charged separately in arrears and are not included in the flat rate.
- (5) The agreed fees and expenses of Ketchum Pleon GmbH that appear within the scope of these general terms and conditions are listed as net values and are subject to the local VAT and other taxes. If these taxes are owed by law, Ketchum Pleon GmbH will add them to the invoice in addition to the agreed net values. The legal contributions to the Artists' Social Welfare Fund will be made by the customer.
- (6) In order to carry out the project/order Ketchum Pleon is authorised, but not obliged, to buy in services and/or goods from third parties in the name of the customer and for the customer's account up to the limit of the estimated budget. Third-party services are commissioned in the name of the customer and for the customer's account. After suitable checks we forward the invoice to the customer for direct payment. There is a fixed charge of 10% of total third-party costs to cover the selection, commissioning and supervision of third-party services.

§ 4 Payment Terms

- (1) Prices, fees, costs and expenses quoted on the invoice are due for payment in full on receipt of invoice in accordance with the following payment terms:
 On Account: immediately
 Invoice recipient resident
 - in Germany: within 14 days
 - in European countries outside Germany within 21 days
 - other countries abroad within 28 days
 Interest will be charged at 8% above the base rate set by the German Bundesbank starting 90 days after invoice date. Billing for our services is strictly monthly.

- (2) The amount due may only be offset where claims are undisputed, legally binding or recognised by us. The assertion of a right of retention arising from counterclaims that are unrecognised or not legally binding is excluded unless these claims are based on the same contractual relationship.
- (3) Provided that, according to general statutory provisions, German legislation on labour and transportation contracts (Werksvertragsrecht) is by way of exception applicable to individual services or parts thereof under this Agreement, the agency may request monthly payments on account in accordance with the payment agreements whether or not completed units of work have been delivered. The due date for these payments on account is determined according to the payment dates agreements. Deliverables are deemed to be accepted once used or at the latest 10 days after receipt of the relevant invoice.

§ 5 Duty to Cooperate and Provide Information

- (1) The customer must provide all necessary cooperation and support for the execution of this Agreement. This duty of cooperation applies in particular for projects with fixed dates where customer cooperation is essential to meet specific deadlines.
The customer must provide us with all documentation necessary for the execution of the Agreement without being specifically requested to do so and inform us immediately about any events that could be significant for the execution of the Agreement.
- (2) We are entitled to terminate the Agreement after setting an appropriate notice period and giving warning of notice of termination if the customer is behind schedule with its cooperation or acceptance of services rendered. Reimbursement for additional expenditure and losses incurred in the course of the above remains unaffected.

§ 6 Minutes/Meeting Reports

If a meeting is minuted or a meeting report is produced the contents of these documents are deemed by us to be binding and used as a basis for our work.
The customer is responsible for ensuring that the contact names it has given to the agency are authorised signatories, in particular with respect to the approval of budget, cost estimates, wording and other approval processes. The customer must communicate to the agency in writing any limitations to the authority of a signatory well in advance of each action.

§ 7 Liability

- (1) The customer's rights resulting from warranty claims against us become time-barred after one year; for services under a contract for specific deliverables (Werkvertrag) this time period begins at acceptance and for services under a contract for services (Dienstvertrag) as soon as these are carried out.
- (2) In case of failure to meet the duty of ordinary care then for each contract type the liability of the agency is limited to foreseeable direct losses typical for that contract type. This also applies where there is a failure to meet the duty of ordinary care on the part of the agency's representatives or agents. The agency is not liable to companies for failure to meet the duty of ordinary care with respect to minor contractual obligations.
- (3) The agency is not responsible for checking legal issues, particularly in the area of legislation relating to copyright, competition and trademarks. In the absence of any written agreement to the contrary the agency is therefore not liable for the legal admissibility of the content and/or design of the deliverables. The same applies regarding liability for mistakes that originate from documentation supplied by the customer. If the agency does agree to assume liability then the liability of the agency will be in accordance with clauses 8 (1), (2).
- (4) Claims for damages by the customer due to failure to meet the duty of ordinary care are time-barred one year after supply of the deliverable/performance of the service, provided that the agency is not accused of fraudulent intent.
- (5) A shift in the burden of proof to the detriment of the customer is not part of the above provisions.
- (6) If a claim for omission, damages or similar is made on the agency by third parties as a result of the design and/or content of the deliverable, the customer shall indemnify the agency from liability provided that such claim is not based on the agency's failure to meet the duty of ordinary care for which the agency is liable, according to the terms of the Agreement.
- (7) Documentation is shipped at the customer's risk. This also applies if documentation is sent within the same building or by employees or agency vehicles. The agency is entitled, but not obliged, to insure deliveries in the name of the customer and for the customer's account.

§ 8 Laws relating to Copyright and Rights of Use, Title

- (1) All rights to preparatory works such as drafts and designs as well as other agency deliverables, especially copyright-protected rights of use and title, remain with the agency even once the deliverables have been handed over to the customer unless they are expressly transferred in writing.
- (2) The agency shall be named as author in the usual way in any publications. For any publications made by the agency, the agency is entitled to omit the author's copyright notice of photographers/designers. The customer undertakes to enter into corresponding agreements with any photographers/designers it commissions.
- (3) The scope of any transfer of title must be solely in accordance with the contractual agreements or the purpose of the Agreement. Rights are transferred to the customer only after settlement in full of the total contractual amount.

§ 9 Other

Place of performance for delivery and payment is Düsseldorf. Place of jurisdiction for all disputes between the parties to the Agreement is Düsseldorf insofar as the customer is a business person, a public corporation or a special fund under public law. The agency is, however, also entitled to bring an action against the customer at another place of jurisdiction that is applicable for it. The place of jurisdiction applies also for persons other than the above-mentioned persons where the customer has no place of general jurisdiction in Germany, or has moved its place of residence and/or business abroad or where the customer's place of residence and/or business or normal abode is not known at the time the action is brought.

Unless otherwise agreed, German law also applies to contractual relationships with customers outside of Germany

with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

Should any individual provisions become invalid this shall not affect the validity of the remainder of the Agreement. An invalid clause is to be replaced by supplementary interpretation, where possible by a provision that corresponds as far as possible to the purposes of the original clause. Changes, additions and other side agreements must be in writing. This also applies expressly to changes to or the revocation of the clause requiring the written form itself.