

GENERAL TERMS AND CONDITIONS

Blackfish Animation Studios Günther Hold & Michael Bass

Translation from German

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1. Applicability; Conclusion of contract

1. (hereinafter "Agency") shall provide its services exclusively on the basis of the following General Terms and Conditions. They shall also apply to all future business relations, even if they are not expressly referred to.

1.2 Deviations from these GTC and other supplementary agreements with the Customer shall only be effective if they have been confirmed by the Agency in writing.

1.3 Terms and conditions of the Customer, if any, shall not be accepted unless expressly agreed otherwise in writing on a case-by-case basis. No separate objection of the Agency to the Customer's GTC shall be required.

1.4 If any provisions of these General Terms and Conditions are ineffective, the effectiveness of the remaining provisions and the contracts concluded on the basis of the same shall not be affected. The ineffective provision shall be replaced by an effective provision which comes as close as possible to the meaning and purpose of the ineffective one.

1.5 The Agency's offers shall be subject to change without notice and non-binding.

2. Scope of services; Order processing; Customer's duties to co-operate

2.1 The scope of the services to be rendered shall be based on the specifications of the Agency Agreement or the Agency's acknowledgment of order, if any, and the briefing report, if any. Subsequent modifications of the services shall be subject to the Agency's written confirmation. When executing the order the Agency shall be free in its discretion within the framework specified by the Customer.

2.2 All services of the Agency (including but not limited to all preliminary designs, sketches, final drawings, proofs, blueprints, copies, coloured prints and electronic files) shall be checked by the Customer and released within three working days of receipt by the Customer. If they are not released within that period, they shall be deemed approved by the Customer.

2.3 The Customer shall make accessible to the Agency completely and in time all information and documents required for rendering the service. The Customer shall notify the Agency of all circumstances that are relevant to execution of the order, even if they become known only in the course of execution of the order. The Customer shall bear the costs incurred due to the fact that work has to be done again by the Agency or is delayed because of his incorrect, incomplete or subsequently modified specifications.

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2.4 The Customer shall further be obliged to examine the documents made available for execution of the order (photos, logos, etc.) for any copyrights, trademarks or other rights of third parties. The Agency shall not be liable for any violation of such rights. If the Agency is held liable for an infringement of such rights, the Customer shall fully indemnify and hold harmless the Agency and shall reimburse any disadvantages suffered by the Agency due to third-party claims.

3. External services; Commissioning of third parties

3.1 The Agency shall be entitled at its own discretion to render the services itself, to employ expert third parties as agents [Erfüllungsgehilfen as defined by Section 1313a of the Austrian General Civil Code [ABGB]] and/or to commission a third party to render such services ("External Services").

3.2 Commissioning third parties to render External Services shall either be in the name of the Agency or in the name of the Customer but in any case for the Customer's account. The Agency shall select the relevant third party with care and ensure that it is appropriately qualified.

3.3 If the Agency commissions necessary or agreed External Services, the relevant contractors shall not be considered agents [Erfüllungsgehilfen] of the Agency.

4. Deadlines

4.1 Unless expressly agreed to be binding delivery or service periods stated shall only be approximate and non-binding. Binding agreements on deadlines shall be recorded in writing and subject to the Agency's written confirmation.

4.2 If the delivery/service of the Agency is delayed for reasons for which the Agency is not responsible, such as, e.g. events of force majeure or other unforeseeable events that cannot be prevented by reasonable means, the service obligations shall be suspended for the duration and to the extent of the impairment and the periods shall be extended accordingly. If such delays continue for more than two months, the Customer and the Agency shall be entitled to rescind the contract.

4.3 If the Agency is in default, the Customer may only rescind the contract after having granted the Agency a grace period of at least 14 days and such period has expired fruitlessly. Claims of the Customer for damages on the ground of non-performance or default shall be excluded, unless intent or gross negligence can be proved.

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5. Early termination

5.1 The Agency shall be entitled to terminate the contract for important reasons with immediate effect. Important reasons shall include but not be limited to situations where:

(a) provision of a service has become impossible for reasons for which the Customer is responsible or is further delayed even though the Customer was granted a grace period of 14 days;

(b) the Customer continues to violate material obligations under this contract, such as, e.g. payment of an amount payment of which has been demanded or duties to co-operate, despite a written warning and having been granted a grace period of 14 days;

(c) legitimate concerns exist regarding the Customer's credit standing and the Customer fails to make an advance payment or to furnish suitable security at the Agency's request;

(d) bankruptcy or composition proceedings are opened over the assets of the Customer or a petition for opening of such proceedings is dismissed for lack of assets to cover the costs or the Customer discontinues his payments.

5.2 The Customer shall be entitled to terminate the contract for important reasons without having to grant a grace period. An important reason shall be, in particular, where the Agency repeatedly violates material provisions of this contract despite a written warning and having been granted a grace period of 14 days to remedy the breach of the contract.

6. Fees

6.1 Unless otherwise agreed the Agency's entitlement to fees shall arise for any specific service once the same has been rendered. The Agency shall be entitled to ask for advances to cover its expenses. From a contract volume involving a (an annual) budget of EUR 2000.- or contracts extending over a prolonged period of time, the Agency shall be entitled to render interim accounts or issue advance invoices or demand payments on account.

6.2 The fees shall be stated as net fees plus statutory value added tax. If in a specific case no agreement on fees has been concluded, the Agency shall be entitled to fees at market rates for the services rendered and for transfer of copyrights and marks.

6.3 All services of the Agency which are not expressly covered by the agreed fees shall be paid for separately. All cash expenses incurred by the Agency shall be reimbursed by the Customer.

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6.4 Cost estimates provided by the Agency shall be non-binding. If it becomes clear that the actual costs will exceed the Agency's written cost estimate by more than 15 per cent, the Agency shall advise the Customer of such higher costs. The increase in costs shall be deemed accepted by the Customer if the Customer does not object to such increase in writing within three working days of the advice and state cheaper alternatives at the same time. Cost increases of up to 15 per cent shall not have to be advised separately. Such deviations from the cost estimate shall be deemed accepted by the Customer from the beginning.

6.5 The Agency shall be entitled to the agreed fees for all services provided by the Agency which are not implemented by the Customer for whatsoever reason. The setoff provision of Section 1168 of the Austrian General Civil Code [ABGB] shall be excluded. By payment of the fees the Customer shall acquire no rights to use work already carried out; concepts, drafts and other documents which were not implemented shall rather be returned to the Agency without delay.

7. Payment; Retention of title

7.1 The fee shall be due for payment immediately upon receipt of the invoice without any deductions, unless special payment terms are agreed in writing on a case-by-case basis. The same shall apply to all cash and other expenses charged. The Agency shall retain title to the goods delivered by it until full payment of the consideration including all ancillary payables.

7.2 In the case of payment default of the Customer statutory default interest at the rate applicable to business-to-business transactions will be charged. In the case of default the Customer also undertakes to reimburse the Agency the dunning and collection charges incurred to the extent they are necessary for pursuit of the claim. This shall in any case include the costs of two dunning letters at market rates and of one dunning letter of a lawyer who has been instructed with collection. Assertion of further rights and claims shall remain unaffected.

7.3 If the Customer is in default of payment, the Agency may call for immediate payment of services or partial services rendered under different contracts concluded with the Customer. Furthermore, the Agency shall not be obliged to render additional services until payment of the amount outstanding. If payment by instalments has been agreed, the Agency reserves the right to demand immediate payment of the total debt outstanding if instalments or ancillary claims are not paid in time (acceleration clause).

7.4 The Customer shall not be entitled to set off claims of the Agency against his own claims unless the Customer's claim has been recognised by the Agency in writing or ascertained by court.



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8. Title and copyright

8.1 The Agency shall retain title to all services of the Agency, including services in connection with presentations (e.g., suggestions, ideas, sketches, preliminary designs, scribbles, final drawings, concepts, negatives, slides), including parts thereof, as well as the individual workpieces and original designs shall remain the property of the Agency and the Agency may demand at any time, in particular in the case of termination of the contractual relationship, that they be returned to it. By paying the fees the Customer shall acquire the right to use the services for the designated purpose agreed. Unless otherwise agreed the Customer shall, however, use the Agency's services exclusively in Austria. Acquisition of rights to use and exploit the Agency's services shall in any case be subject to full payment of the fees charged by the Agency for the same.

8.2 Modifications and/or editing of services of the Agency by the Customer, including but not limited to further development of the same by the Customer or third parties working for the Customer, shall only be permitted with the express consent of the Agency and, to the extent that services are protected by copyright, of the author.

8.3 Use of services of the Agency beyond the originally agreed purpose and scope of use shall be subject to the Agency's consent irrespective of whether such service is protected by copyright or not. In consideration thereof the Agency and the author shall be entitled to a separate reasonable fee.

8.4 After termination of the Agency Agreement use of services of the Agency and/or advertising means for which the Agency prepared concepts or designs shall also be subject to the Agency's consent irrespective of whether the service is protected by copyright or not.

8.5 In the first year after termination of the contract the Agency shall be entitled to the full agency fees agreed in the expired contract for any use as described in paragraph 4. In the second and third year after expiration of the contract the Agency shall only be entitled to half or one fourth of the consideration agreed in the contract. From the fourth year after termination of the contract no agency fees shall be payable.

8.6 The Customer shall be liable to the Agency for any unlawful use in the amount of twice the reasonable fees for such use.

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9. Identification marks

9.1 The Agency shall be entitled to make reference to the Agency and the author, if applicable, on all advertising means and in any advertising and promotion measures, without the Customer being entitled to any payment in this respect.

9.2 The Agency shall be entitled to make reference to its business relationship with the Customer on its own advertising media, including but not limited to its website, by referring to the Customer's business name and business logo, with the Customer having the right to revoke his consent at any time.

10. Warranty

10.1 The Customer shall notify any defects immediately and in any case within eight days of delivery/provision of the service by the Agency and hidden defects not later than eight days after they were identified in writing including a description of the defect; otherwise the service shall be deemed accepted. In that case assertion of any warranty claims or claims for damages as well as the right to assert claims on grounds of mistake shall be excluded.

10.2 In the case of a justified and timely notification of defects the Customer shall be entitled to improvement or replacement of the delivery/service by the Agency. The Agency shall repair the defects within a reasonable period of time and the Customer shall enable the Agency to take all measures which are necessary for examination and repair of the defects. The Agency shall be entitled to refuse improvement of the service if such improvement is impossible or if the Agency were to incur disproportionately high costs. In that case the Customer shall be entitled to cancel the contract or get a fee reduction. In the case of improvement the Customer shall send the defective (physical) item at his cost.

10.3 The Customer shall be obliged to examine the service for its lawfulness, including but not limited to competition law, trademark law, copyright law and administrative law. The Agency shall not be liable for accuracy of any contents provided or approved by the Customer.

10.4 The warranty period shall be six months as of delivery/service. The right of recourse to the Agency as defined in Section 933 b (1) ABGB shall be forfeited one year after delivery/service. The Customer shall not be entitled to withhold payments on the ground of complaints. The presumption rule of Section 924 ABGB shall be excluded.

11. Liability and product liability

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11.1 In cases of slight negligence the Agency shall not be liable for damage to property or pecuniary loss suffered by the Customer, be it indirect or direct damage, lost profit or consequential damage resulting from a defect, damage due to default, impossibility, breach of obligation, culpa in contrahendo or due to defective or incomplete performance. The harmed party shall have to prove gross negligence.

11.2 Any liability of the Agency for claims asserted vis-à-vis the Customer on the ground of services rendered by the Agency (e.g. advertising and promotion measure) shall be expressly excluded, provided that the Agency complied with its duty to inform or if it was unable to see such a duty, even due to slight negligence. The Agency shall in particular not be liable for costs of legal proceedings, lawyer's fees of the Customer or costs of publication of judgments or for claims for damages, if any, or other claims of third parties; the Customer shall indemnify and hold harmless the Agency in this respect.

11.3 Claims of the Customer for damages shall be forfeited six months after knowledge of the damage and in any case three years after the Agency's infringement. Claims for damages shall be limited to the net contract value.

12. Data protection (visual emphasis according to court decisions)

The Customer expressly agrees that the Agency will electronically collect, store and process the data provided by the Customer (name, address, e-mail address, credit card data, bank details) for purposes of performance of the contract and Customer service as well as for its own advertising and promotion purposes. The Customer agrees to be sent electronic mail for advertising purposes until further notice.

13. Applicable law

The Agreement and all mutual rights and duties resulting therefrom as well as any claims between the Agency and the Customer shall be subject to Austrian substantive law, and UN Sales Law shall be excluded.

14. Place of performance and place of jurisdiction

14.1 The place of performance shall be the registered office of the Agency. In the case of shipping the risk shall pass to the Customer once the Agency has delivered the goods to the transport company chosen by it.

14.2 The agreed place of jurisdiction for all legal disputes arising between the Agency and the Customer in connection with this contractual relationship shall be the court having jurisdiction over the subject-matter and the Agency's registered office. Notwithstanding the foregoing the Agency shall be entitled to sue the Customer at his general place of jurisdiction.



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Supplementary information on the General Terms and Conditions for Advertising Agencies

1. The "General Terms and Conditions" (GTC) published by the Association of Businesses in Advertising and Marketing Communication of the Austrian Economic Chamber is merely a form intended to provide points of reference and ideas. That means that it is not certain that the model GTC will be applied in all details by every communication business in the form suggested. As any other form also the model GTC may be amended and/or adapted according to the specific requirements of the relevant business. For example, if a business does not only provide services but also supplies goods (e.g. software), the GTC will most probably contain a retention of title clause.

2. GTC are predefined clauses that are presented by one party to the other prior to conclusion of a contract. However, they will not automatically be included in the contract and cannot be forced on the contracting party. They will only apply if agreed by contract. Thus, the contracting party or customer must give his consent to the GTC used by the supplier. Consent may also be implied, e.g. where the customer does not object to the GTC (which, for instance, were enclosed with the offer).

3. The customer's consent to the GTC may only be assumed if he was aware of the fact that his supplier uses GTC in the first place. It is usually sufficient for the contractor to inform the customer about the GTC in writing or orally. Such information must, however, be clear; small print and hardly legible information on the reverse of an offer are not sufficient. If conclusion of a contract is offered via the internet, reference to the GTC may be made by means of a button or link.

4. Merely referring to General Terms and Conditions is not sufficient. The customer must provably have had an opportunity to inspect the GTC prior to conclusion of the contract. It is irrelevant whether he actually inspects the same or not. If an offer is made via the internet, the contracting party should also be able to print or save the GTC.

5. If reference to the GTC is made only after conclusion of the contract (e.g. on a delivery note or invoice) that would be too late: in that case the General Terms and Conditions are no part of the contract.

6. If both contracting parties use GTC and some provisions are in conflict, there is no accord of will so that conflicting GTC will not become part of the contract. If the conflicting GTC concern material points of the contract, the entire contract may even be frustrated in a specific case. Therefore, we strongly recommend that the contracting parties reach an agreement on conflicting provisions of their respective GTC at an early stage.

7. Complete exclusion of liability, exclusion of warranty in the case of insufficient performance or similar unilateral clauses would put the other contracting party in a grossly disadvantageous position and are, therefore, contra bonos mores as defined in Section 879 (3) of the Austrian General Civil Code [ABGB]. In the case of doubt about the legal unobjectionable nature of terms and conditions it is advisable to obtain professional legal advice.

8. In the case of public tenders only the customer provides the GTC. If in the course of a public tender a business includes in his offer GTC other than those required by the public authority, the offer will be deemed to be in conflict with the public tender, which usually constitutes an irreparable defect and will lead to exclusion of the entrepreneur.



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