

General Terms and Conditions of the Daniel Stieber Advertising Agency

Valid from 20.01.2020

1. General

- 1.1. All business transactions between the Client and the Daniel Werner Maria Stieber Advertising Agency, Roßauer Lände 27/4, 1090 Wien, (hereinafter: "Contractor") are governed exclusively by these General Terms and Conditions.
- 1.2. Any contrary Terms and Conditions of Client shall apply only if Contractor has delivered his written and express acknowledgement of their application. Agreements that deviate from or supplement these General Terms and Conditions must be in writing (whereby e-mails are deemed to satisfy this requirement).

2. Services provided by Contractor

Contractor typically provides the following services in the field of marketing:

- Consulting and strategy
- Concept creation
- Concept implementation
- Design
- Programming

3. Conclusion of contracts

- 3.1. Offers made by Contractor are non-binding until Client has accepted them. Client shall be bound for a period of two weeks to any orders that he places, starting with the receipt of such orders by Contractor and within which period Contractor can declare his acceptance of such an order. Orders shall only be considered to have been accepted if Contractor has given a written order confirmation, insofar as Contractor has not in another way – for instance by starting work on basis of the order – demonstrated that he accepts the order. Orders can no longer be revoked after Contractor has accepted them.

- 3.2. Changes and supplements to agreements concluded with Client must be in writing (e-mail).

4. Provision of services and remuneration
 - 4.1. Contractor is entitled to engage third parties as subcontractors and agents in order to provide his services. This shall not affect his contractual duties.
 - 4.2. Contractor's claim for remuneration exists for any and every single (partial) service, as soon as this service has been provided. Contractor is entitled to charge advance payments of up to 50 % of the agreed order value. In the event that Contractor – upon instruction of or in agreement with Client – subcontracts services to third parties, Contractor is entitled to issue an invoice for the estimated costs for these services without delay.
 - 4.3. Contractor typically provides his services in two steps, beginning with the creation and if necessary presentation of concepts, proposals, suggestions and ideas, for which he shall be entitled to a fee pursuant to section 5.1 of these General Terms and Conditions, and as a second step – if requested – the actual implementation or use of the created solutions, for which Contractor is entitled to a fee pursuant to section 6 of these General Terms and Conditions.
 - 4.4. All services provided by Contractor that are not expressly covered by the agreed fee shall be remunerated separately. This applies in particular for ancillary services and cash expenses (travel costs, copying costs, etc.).
 - 4.5. Cost estimates provided by Contractor are in principle non-binding to the extent that their binding character was not expressly agreed upon. If the actual costs are expected to exceed the written estimated costs by more than 20 %, Contractor shall inform Client of the imminent cost overrun. This cost overrun shall be considered to have been accepted by Client if Client does not issue an objection to this overrun within three days after having been informed by Contractor.
 - 4.6. Should the Client, after placing an order, wish for an extension of the agreed scope of services or for the provision of further services not contained in the cost estimate or offer, these are to be remunerated separately and, failing a concrete agreement, in any event in an – for the field of marketing – normal amount.
 - 4.7. All ordered services that Contractor can, due to reasons for which Contractor is not responsible, not (fully) perform, Contractor shall be entitled to the full agreed fee. In the event that Contractor and Client agree to end an order prematurely, Contractor shall in any event be entitled to an appropriate remuneration as well as compensation for any efforts expended. With the payment of this remuneration, Client shall obtain no rights to any work made; rather,

any provided concepts, designs etc. are to be returned without delay and may not be used by Client.

4.8. Services by Contractor are typically provided for and charged with a lump sum or an hourly rate. If no lump sum was expressly agreed, any billing shall be done using on basis of an hourly rate.

5. Presentations, strategy, concepts, ideas and remuneration

5.1. For the creation of strategies, concepts, ideas, proposals, graphs, texts etc. as well as for the participation in presentations Contractor is entitled to the agreed or in any event appropriate fee on basis of an hourly rate as well as for the costs incurred by all third-party services. The (intellectual) property of as well as any rights of use and exploitation pertaining to these services shall remain with Contractor. The granting of rights of use requires the conclusion of a separate agreement and is subject to a separate fee (see section 6). Without the conclusion of such a license agreement, the transfer to third parties of services rendered by Contractor as well as their publication, reproduction, distribution or other use and exploitation by Client is not allowed.

5.2. If, pursuant to the provision of services, no agreement pertaining to the granting of rights of use, all services rendered by Contractor, in particular presentation documents and their contents, shall remain property of Contractor. Client is not – in any way whatsoever – entitled to continue using these.

5.3. Contractor is entitled to use services that have been provided in accordance with an order for different purposes insofar as Client does not, within an appropriate time, concludes an agreement pertaining to the granting of rights of use.

6. Rights of use and remuneration

6.1. All services provided by Contractor (e.g. presentations, concepts, suggestions, ideas, texts, preliminary drafts etc.) as well as individual parts thereof shall, failing an express agreement to the contrary, remain property of the Contractor without Client obtaining any rights of use thereto.

6.2. Client shall only by separate written agreement and after full payment of the herein agreed fee obtain a right of use for the agreed purpose and in the agreed scope. Failing any agreement to the contrary, the scope of use is territorially limited to Austria and limited to a three-year time period.

- 6.3. The right of use is – insofar nothing to the contrary was agreed – not transferable. If no specific purpose was agreed, the right of use shall be limited to fields of business in which Client was active at the time of conclusion of the agreement.
- 6.4. The right of use shall cover only expressly agreed media and advertising mediums, failing any such agreement only such media and advertising mediums that Client actually and mainly used at the time of conclusion of the agreement. Any use on television or radio shall in any event require an express agreement to that end.
- 6.5. The use of services provided by Contractor that exceed the originally agreed purpose or the original territorial, temporal or material scope shall – regardless of whether these services are protected by copyright – require the consent of Contractor. For such use Contractor is in any event entitled to a separate and to be individually agreed fee.
- 6.6. The adaptation of services provided by Contractor by Client is only permissible following express consent of Contractor.

7. Acceptance

All services provided by Contractor are to be inspected by Client and Contractor is to be informed of any defects without delay, in any event within one week. If a notice of defects is not given in time, the service provided by Contractor shall be considered to have been accepted and approved.

8. Deadlines

- 8.1. Contractor endeavors to meet any agreed deadlines. Delivery dates can only be met if Client provides all requisite documents and information in full and fulfills his duties to cooperate.
- 8.2. In the event that Contractor culpably fails to meet delivery dates, Client shall first be entitled to exercise any statutory rights after having granted Contractor a grace period of at least 14 days. This grace period starts with Contractor's receipt of a corresponding reminder. Contractor shall only be liable to indemnify damages resulting from the delay in the event of malicious intent or gross negligence on the part of Contractor and in case of foreseeable damages.
- 8.3. Unavoidable or unforeseeable events will in any event release Contractor from the obligation to meet agreed delivery dates.

9. Payment

- 9.1. All prices are indicated in Euro (€) and are to be understood as net prices, i.e. excluding the applicable sales tax.
- 9.2. Contractor's invoices are due payable promptly and without any discounts from the invoice date on unless otherwise agreed. In the event of delayed payment Contractor is entitled to charge default interest pursuant to § 352 UGB (Austrian Commercial Code).
- 9.3. Client is not entitled to offset any claims with obligations vis-à-vis Contractor or withhold payments in part or in full due to incomplete or delayed delivery, guarantee or warranty claims.
- 9.4. Any payments made will, regardless of reference indications, always be used for the settlement of any oldest open claim.

10. Warranty

- 10.1. Contractor warrants the orderly performance of any orders given to him with the care of a careful entrepreneur. As a provider of creative services, Contractor vouches to provide an effort consistent with contractual provisions, but not a certain result.
- 10.2. Client is obligated to submit any complaints, including the reasons for such complaints, in writing (e-mail), without delay and in any event within a week after provision of the concerned service. In the event that a complaint is timely and justified, Client has a right to rectification by Contractor. In case of warranty, rectification shall in any event have priority over the assertion of a price reduction or contract termination. In the event of a justified complaint, the concerned defects shall be remedied within an appropriate timeframe. No warranty is given in the event of complaints that were submitted too late.
- 10.3. The duty to provide warranty shall in no case encompass the costs for a substitutive performance. The parties agree to exclude this legal remedy.
- 10.4. In the event that Client or third parties in an unauthorized manner interfere with any services provided or the service provision by Contractor, any and all warranty and damages claims shall become excluded.

11. Documentation

- 11.1. Client is free to document and publish the service provision as well as the results created thereby.

11.2. Contractor is obligated to maintain secrecy with respect to the business relationship and services provided if, before conclusion of the contract, Client has informed Contractor expressly and in writing of his interest in maintaining such secrecy.

12. Liability

12.1. Contractor shall be liable pursuant to the relevant statutory provisions for any damages if it is demonstrated that such damages were caused by malicious intent or gross negligence on part of Contractor. The burden of proof rests on Client. Any liability for slight negligence is excluded. The compensation of consequential damages, financial losses, loss of profits, reduced savings and damages resulting from claims by third parties is excluded.

12.2. Client himself is responsible for compliance with all statutory rules, in particular with competition, marking and copyright rules in connection with the implementation of measures suggested or instructed by Client. Client shall not approve a measure suggested by Contractor before he has availed himself of its legal permissibility or if he is prepared to bear the risks related to the implementation of the measure. Contractor shall only initiate external legal examination upon written request of Client; Client shall in this event bear all related costs.

12.3. Any liability of Contractor for claims resulting from a suggested measure or instruction of Client is expressly excluded.

12.4. Any and all types of damages shall, except in case of malicious intent, in their amount be limited with the total order value.

13. Limitation period

All claims of Client, irrespective of their legal grounds, shall expire, insofar as these General Terms and Conditions have not stipulated a shorter period, after 12 months. The statutory limits in the event of malicious intent.

14. Duty to confidentiality

Contractor, his employees and any third parties are obligated to remain confidentiality about all matters of which they obtain knowledge in the course of their work for Client. This duty to confidentiality covers both Client as well as his business relationships.

15. Applicable law, place of performance and legal venue
 - 15.1. Concluded agreements are governed by Austrian law with the exclusion of UN Sales Law.
 - 15.2. Place of performance is Vienna, Austria. Legal venue is Vienna, Innere Stadt.
 - 15.3. Are or should individual provisions of these General Terms and Conditions become ineffective or invalid, the effectiveness and validity of the remaining provisions shall not be affected. The ineffective or invalid provision is to be replaced by an effective and valid provision that comes closest to the contractual purpose emanating from these General Terms and Conditions.
 - 15.4. Ancillary agreements and changes to these General Terms and Conditions must be in writing.
 - 15.5. In order to become effective, any notices can be sent to the last postal or e-mail address that Client provided.