

GENERAL BUSINESS CONDITIONS

The following business conditions apply to all quotations and services of crossover – Wolfgang Peter, Crossmedia Communication, Peter-Thumb-Str. 6 B, 79100 Freiburg, hereinafter referred to as the agency.

GENERAL

These business conditions apply exclusively to all transactions between the customer and the agency. Contrary T&Cs or different conditions of the client are not recognised unless the agency has agreed to their application in writing.

Agreements that vary from or supplement these general conditions must be in written form. If individual provisions of these T&Cs are ineffective, this does not affect the binding nature of the other provisions and the contracts concluded on which they are based. The ineffective provision is to be replaced by an effective one that comes as close as possible to the original purpose.

CONCLUDING THE CONTRACT

The basis of the business relationships is the relevant quotation stating all of the agreed services including the fees. The agency's quotations are non-binding. Orders are only accepted by the written order confirmation to the extent to which the agency does not make it clear - for example through activities based on the order - that it accepts the order.

All agency services that are not explicitly stated to have been paid by the agreed fee are to be charged separately. This shall apply in particular to subsidiary services.

If during or after the end of a contract there are differences of opinion with regard to the requested project, an out-of-court mediation procedure is to be followed before starting court proceedings.
For disputes relating to quality assessment or the level of the fees, external assessments are produced in order to achieve out-of-court agreement if possible. The costs for this are divided in two and paid by the customer and agency.

WITHDRAWAL FROM THE CONTRACT

The agency is in particular permitted to withdraw from the agreement if the execution of the service is impossible for reasons for which the customer is responsible or has been delayed after setting a subsequent period. This also applies to outstanding payment balances after dunning or the customer does not provide payment at the agency's request nor provides usable collateral before performance by the agency.

Cancellations by the customer are only possible with the written agreement of the agency. In the event of cancellation, the agency has the right to charge an appropriate cancellation fee in addition to the services provided and the costs incurred.

SERVICES AND FEES

If nothing further has been agreed, the agency's fee claim is created for each individual service as soon as this has been provided. The agency is permitted to request payments in advance as it sees fit to cover the expenses.

For changes to or cancellation of orders, work or similar by the customer, the agency is to be reimbursed for all costs thereby incurred and the agency is to be indemnified for all liabilities to third parties.

This also applies to changes to the requirements for service provision.

Statutorily required fees to the artists' social security fund for artistic third-party services, GEMA and other essential fees such as customs charges, will be paid to the agency by the customer, even if these are only collected later.

CUSTOMER'S DUTY OF COOPERATION

The customer will provide the agency without delay with all of the information and documentation required to provide the service. It will inform the agency about all events that are important to implement the order even if these circumstances only become known when implementing the order. The customer bears the costs incurred by work that must be repeated or delayed by the agency resulting from its incorrect, incomplete or subsequently modified information.

The customer is also obliged to check the documents provided to implement the order (photos, logos etc.) for any existing copyrights or other rights held by third parties. The agency is not liable for the infringement of such rights. If a claim is made by the agency due to such a rights infringement the customer will indemnify the agency. It must reimburse it for all of the disadvantages incurred by it from claims by third parties.

The customer will in connection with a requested project only issue requests to other agencies or service providers in agreement and with the consent of the agency.

PRICES

The prices stated in the contractor's quotation apply under the condition that the order data on which the quotation is based remains unchanged, at most four months after the contractor receives the order.

For orders with delivery to third parties, the ordering party is considered to be the client if no other explicit agreement has been made.

The prices contained in the quotation do not include value-added tax and apply from the agency's head office, if nothing further has been agreed. They do not include packaging, postage, freight, insurance and other dispatch costs.

Subsequent changes to the client's request, including the additional costs thus incurred are also charged to the client. Material costs such as print-outs, copies, data storage on such data media as CD/DVD etc. requested by the client are charged separately. All of the cash expenses incurred by the agency (e.g. costs for taxi and courier services) must be reimbursed.

Quotations issued by the agency are non-binding. Variances of +/-10 % are considered to have been approved; for variances above this amount the agency will inform the customer of the higher costs. These excess costs are considered to have been approved by the customer if they are not opposed within two days.

For all work by the agency that is not executed for any reason whatsoever, the agency is entitled to a fee of 15% of the quotation price for the costs and lost profit incurred by working on the order. The assertion of higher damages remain unaffected. The customer acquires no rights whatsoever on payment for this work; concepts, drafts not realised etc. are rather to be handed to the agency without delay.

PRESENTATIONS

The agency is entitled to an appropriate fee for participating in presentations that at least covers the agency's complete HR and material costs as well as the costs of all third-party services. If the agency does not get an order after the presentation, all services provided by the agency, in particular the presentation documents, remain the property of the agency. The customer is not entitled to continue to use these in any form whatsoever; the documents are to be handed to the agency or deleted if they are in electronic form. If the presentation results in an order within one month, the presentation fee is offset.

If the ideas and concepts provided during a presentation to customers are not used to solve communication tasks for this customer, the agency is entitled to use the ideas and concepts presented in other ways. The transfer to third parties, publication, reproduction or other distribution is not permitted without the explicit agreement of the agency.

THIRD-PARTY SERVICES

The agency is permitted at its own discretion to implement the service itself, to use third parties to provide the contractual services and/or to substitute such services ("supply agents").

The appointment of supply agents takes place in the agency's own name or that of the customer but if there is no explicit agreement in all cases on the customer's account.

The agency will carefully select supply agents and ensure that they have the necessary technical qualifications.

The customer is obliged not to appoint the employees used by the agency to implement the order directly or indirectly for projects over the course of the 12 months following the order without the cooperation of the agency.

On appointment by the agency as the client, the contractor may not provide project implementation, production or other order fulfilment services unless the agency has declared its consent to this in writing. The agency is not liable for production that takes place without written approval. The contractor bears the full risk for this.

Claims for damages arising from this for the agency remain unaffected.

MEDIA PLANNING AND IMPLEMENTATION

Requested projects relating to media planning are purchased by the agency to the best of its ability and in good conscience on the basis of the documents accessible from the media and the generally available market research data. The agency is not obliged to generate a particular advertising success for the customer from these services.

For comprehensive media services, the agency is entitled after discussion to invoice the third-party costs to the customer and to make the booking with the relevant media only after payment has been received.

The agency is not liable for any non-compliance with the publication data due to delayed payment.

This does not create a claim for damages by the customer against the agency.

CONFIDENTIALITY

The agency and its employees are obliged if nothing further has been agreed in terms of additional confidentiality duties in the individual contract to maintain the confidentiality of all matters of which they become aware in connection with the customer. Third parties used by the agency are obliged to maintain the same confidentiality.

OWNERSHIP RIGHT/COPYRIGHT PROTECTION

All services by the agency, such as suggestions, ideas, concepts, sketches, preliminary drafts, layouts, final artwork, photos or parts thereof remain in all cases the property of the agency. Through payment of the fee the customer only acquires the right to use these for the agreed purpose. All use beyond this, in particular editing and modification - no matter whether this service is protected by copyright - requires the approval of the agency. In this case the agency is also permitted to an appropriate, separate fee.

If nothing further is explicitly stated concerning the validity of the assigned usage rights, the services listed in the quotation and invoice are valid for a usage term of 12 months within the activity area of the customer at the time the order was issued. These are only considered to have been assigned by the Client to the agency after payment of the invoice.

The usage rights are only valid for the Client and may not be transferred to others without the agreement of the agency.

The agency may issue an invoice for the transfer or extension of the usage rights. This is subsequently legal if the customer does not notify the change in use in writing in advance.

For any documents and data to be obtained by the client, they are solely liable if its use infringes rights, in particular those of third parties. The client must indemnify the agency for all claims by third parties due to such a rights infringement.

Templates, files and other resources produced by or for the agency to provide the service required under the contract remain the property of the agency. The agency is not obliged to issue or store these.

APPROVAL

All proposed and implemented services and measures by the agency must be checked and approved by the customer. If the services to be implemented are transmitted to the agency during meetings, discussions or telephone calls, the services are approved by the customer on the basis of minutes or correspondence by email with the agency. The agency is not responsible for content and author corrections and only executes these after written stipulations from the customer.

The customer must approve production and publication. The risk of any errors in the printing proofs or other manuscripts is transferred on declaration of approval for printing or other production to the customer.

If the customer delegates approval in full or in parts to the agency, it indemnifies it from the liability. For colour reproductions, slight colour variations from the original in all printing processes cannot give rise to complaints.

DEADLINES

The agency makes every effort to comply with the agreed deadlines. Non-adherence to the deadlines only permits the customer to assert the statutory rights if the agency has been granted a subsequent period that is appropriate to the project scope of at least 14 days. This period starts on receipt of the dunning letter by the agency. After the unsuccessful end of the subsequent period, the customer can withdraw from the contract.

PAYMENT

Payments, if nothing further has been agreed contractually, are due within 14 days of invoicing without any deduction. If the payment dates are not met, the agency is entitled without additional reminders to default interest of 7% above the base rate as defined in Section 247 of the German Civil Code (BGB). The right to assert additional damage remains unaffected by this provision.

DEFECT CLAIMS

The customer must check the contractual compliance of the services provided in each case without a culpable delay, at the latest 7 days after receipt. The agency is liable only for the proper execution of the services it has itself provided. Otherwise the agency assigns claims from defects from production orders undertaken by third-party companies to the customer. The agency is not liable for the correctness of all texts, photos and illustrations provided to the agency as well as their use. The agency is not liable for corrections provided by telephone.

Complaints by the customer must be notified with reasons within three days of checking the agency's work. For justified complaints the customer may request free subsequent improvement and/or replacement delivery within a reasonable period. If the subsequent period has passed unsuccessfully, the subsequent improvement and/or replacement delivery fails, the agency refuses subsequent fulfilment or subsequent fulfilment is unreasonable for one of the parties, the customer has the right to request a reduction in the purchase price, to withdraw from the contract or to assert the reimbursement of expenses incurred in vain. Subsequent improvement is considered to have failed after an unsuccessful second attempt if nothing further arises from the type of matter, fault or other circumstances.

COMPENSATION

Claims for compensation by the customer, in particular due to delay, impossibility of the service, positive contractual infringement, warranty or tort are excluded if they are not based on deliberate action or gross negligence unless they are a deliberate or negligent obligation infringement relating to injury to life, limb or physical health for which the agency is responsible.

PLACE OF FULFILMENT AND JURISDICTION

The place of fulfilment and jurisdiction for all claims and legal disputes arising from the contractual relationship is the head office of crossover – Wolfgang Peter. In addition, it is agreed that German law is applicable no matter whether the ordering party has its office in another country or not.

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