

General Terms and Conditions of blackbird/berlin, Katharina Schnäcker

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§ 1 General information

1. The following terms and conditions ("GTC") apply between blackbird/berlin Katharina Schnäcker (hereinafter "Agency") and her contractual partners, in particular clients for services of the Agency in the areas of marketing, public relations and event management (hereinafter "Client"), as well as cooperation partners for the implementation of PR campaigns ("Cooperation Partners"). The details of the service result from the concept developed by the Agency, the offer and the individual orders.
2. These GTC also apply in their respective version for future orders without the Agency having to refer to the GTC again in each individual case. Furthermore, the GTC apply exclusively. Conflicting or supplementary terms and conditions of the Client shall only become part of the contract if and to the extent that the Agency expressly agrees to their validity in writing. This requirement of consent applies in any case, especially if the Agency performs the service to the Client without reservation in knowledge of the Client's general terms and conditions.

§ 2 Offer and Conclusion of Contract

1. Unless expressly otherwise agreed in writing, the presentation of the services to be provided and/or the preparation of a cost calculation by the Agency shall not constitute a binding offer by the Agency. The same applies to offers which are subject to change and also non-binding, unless expressly otherwise agreed in writing.
2. Only the binding order placed by the Agency through the client constitutes an offer to conclude a contract, which the Agency can accept - also tacitly and/or by conclusive behavior, as in particular the provision of the contractual services.

§ 3 Service; Duty to cooperate

1. The subject of the order is the agreed service specified in the contract, but not the achievement of a certain economic success. Subsequent changes to the content of the service must be made in writing. In the event of subsequent changes to the content of the service, any deadlines, acceptance modalities, remuneration and reimbursement of expenses shall be adjusted in accordance with the changes.

2. All services of the Agency (in particular drafts, press releases and film cuts) are to be checked for their content by the Client and released within three days. If they are not released on time, they are deemed to have been approved by the Client.
3. The Client must immediately provide the Agency with all information and documents necessary for the provision of the service. The Client will immediately inform the Agency about all processes which are of importance for the execution of the order, even if these circumstances only become known during the execution of the order. The Client shall bear the costs arising from the fact that work has to be repeated or delayed by the Agency as a result of incorrect, incomplete or subsequently amended information.
4. The Client is obliged to check the documents (photos, logo etc.) made available for the execution of the order for any existing copyrights, trademark rights or other rights of third parties. The Agency shall not be liable for infringement of such rights. If a claim is made against the Agency due to such an infringement of rights, the Client shall indemnify and hold the Agency harmless; the Client shall compensate the Agency for all disadvantages incurred by it as a result of a claim by third parties.
5. Unless expressly agreed otherwise, the Client must obtain all official permits necessary in connection with the contractual service in good time and at his own expense. He is responsible for compliance with these permits and all other public and legal regulations in connection with the event.
6. If the Client provides the Agency with samples, the Client must ensure that a sufficient number of duplicates remain with him or his contractual partners, which may make it possible to carry out upcoming production processes without using samples provided to the Agency.
7. The Agency is not obliged to document the results or produce clipping reports.

§ 4 PR Communication through Cooperation Partners

1. If the Agency provides the Client with communication services of third parties and takes over the communication with these third parties, only the third party is responsible for the PR communication.
2. The Client hereby authorises the Agency to conclude the contract and to communicate with third parties carefully selected by the Agency for the PR campaign.
3. The Agency is not responsible for monitoring the content of the third parties. If the Agency becomes aware of contents which are in connection with the PR

campaign carried out through the Agency by third parties and which obviously run counter to the interests of the Client, the Agency shall immediately inform the Client thereof and arrange for the deletion of the relevant contents vis-à-vis the responsible third party.

4. Payment of the third parties is handled by the Agency on behalf of the Client.

§ 5 Obligations of the Cooperation Partners

1. The Cooperation partner presents the advantages of the products of the Clients represented by the Agency in their media articles ("posts").
2. The posts do not contain any offensive content.
3. Photos and videos must be taken personally by the Cooperation partner. The Client's product is shown in action or in an organic environment.
4. The Cooperation partner ensures that the posts do not infringe the rights of third parties, in particular trademark rights and copyrights, and indemnifies the Agency and the Client from all claims of third parties for infringement of their rights in the posts.
5. The Cooperation partner ensures compliance with legal requirements, in particular those of criminal and competition law, for its action and indemnifies the Agency and the Client from all onerous legal consequences.
6. The Cooperation partner immediately notifies the Agency of any substantial complaints from third parties or from authorities that are connected with posts on blackbird products.
7. The Cooperation partner shall immediately notify the Agency of all circumstances which may have a negative influence on its market perception, in particular the initiation of criminal proceedings, insolvency proceedings or civil actions.
8. The Agency receives the rights to further use the images and contributions created and may in particular share the Instagram posts of the Cooperation partner via its Facebook page. Further processing is also remunerated under this Cooperation agreement.
9. The Agency and the Client may instruct the Cooperation partner to delete the posts at any time. The Cooperation partner shall immediately comply with the request for deletion.
10. Three months before and after the publication of a post, the Cooperation partner does not advertise any directly competing products.

11. The Cooperation partner agrees to treat confidentially all provisions of this Agreement and all non-public, proprietary or confidential information of which it becomes aware with regard to the Agency and the Client and not to disclose it to any natural or legal persons.

§ 6 Dates and Deadlines

1. Periods and dates for deliveries and services stated by the Agency or the contractual partner are not fixed dates, unless they have been expressly agreed as such in writing by the parties.
2. If the Agency's performance is delayed for reasons outside its sphere of responsibility or for reasons for which it is not responsible, such as events of force majeure and other unforeseeable events that cannot be averted by reasonable means, the Agency's performance obligations shall be suspended as long as the obstacle exists. The performance periods shall be extended accordingly. If such delays last more than two months, the Client and the Agency are entitled to withdraw from the contract.
3. If the Agency is in default, the Client can only withdraw from the contract after he has set the Agency a reasonable deadline in writing after the default has occurred, but at least 2 weeks, and the deadline has elapsed fruitlessly.

§ 6 Assignment of Third Parties

1. The Agency is entitled, at its own discretion, to perform the contractual services itself or to make use of competent third parties as subcontractors for the provision of such services.
2. The Client is only entitled to independently commission third parties in connection with the contractual service after prior consultation with the Agency and at his own expense. If the Client commissions external services, the respective contractors are vicarious agents of the Client.

§ 7 Compensation; Expenses

1. The remuneration of the Agency for the contractual service is determined according to the individual contractual provision.
2. If work of the Agency cannot be carried out for reasons for which the Agency is not responsible and the Agency is not entitled to full contractual remuneration, the Client shall in any case owe an appropriate fee for the work performed. The fee is determined by the ratio of the services provided to the contractually agreed scope of services. This does not affect the assertion of further claims against the customer, in particular any claims for compensation.

3. Unless expressly agreed otherwise, the expenses incurred by the Agency in connection with the respective service are to be reimbursed separately by the Client. Expenses within the meaning of this paragraph include in particular third-party costs arising from the commissioning of third parties, travel and transport costs, room rentals, etc., as well as the costs of the services provided. All external costs are charged with 15 % handling fee. The expenses will be invoiced separately and shown in the invoice.
4. The Agency may require reasonable advances for expenses.
5. The Client acknowledges that the calculated expenses of the Agency may differ in their amount from the actual expenses. If it is foreseeable that the actual expenses will exceed those calculated by the Agency, the Agency will point out the additional expenses to the Client. In the event of a deviation of no more than 10%, the actual expenses shall be deemed to have been approved by the Client. Any additional expenses incurred shall only be reimbursed by the Client if he has expressly approved them. Approval is deemed to have been granted by the Client if the Client does not object in writing within three working days of this notification and at the same time announces cheaper alternatives.
6. Unless otherwise stated, amounts invoiced are shown without statutory value-added tax.

§ 8 Due date; Set-off

1. Remuneration and reimbursement of expenses are due without deductions at the end of each month in the case of longer-term employment, otherwise at the latest after performance by the Agency after rendering of accounts.
2. The Client shall be in default immediately upon receipt of a reminder, but no later than 30 days after the due date and receipt of an invoice. According to § 247 of the German Civil Code, the Agency is entitled to interest on arrears in the amount of 5 percentage points above the respective base interest rate upon occurrence of the default, irrespective of its other rights and claims, unless these are legal transactions in which a consumer is not involved within the meaning of § 10 (3). In this case, according to § 247 of the German Civil Code, 10 percentage points above the respective base interest rate may be demanded. Any further right of the Agency to assert higher claims for damages remains unaffected by this.
3. If the Client has not made payments due, the Agency is entitled to assert a right of retention on the services still to be rendered or to refuse further performance.

Further rights of the Agency, in particular the right to withdraw from the contract remain unaffected by this.

4. The Client is only entitled to offsetting rights insofar as his claim is legally established or undisputed. The same applies to the right of retention, the effective exercise of which also depends on the fact that the counterclaim of the Client is based on the same contractual relationship.
5. The Agency is entitled to set off payments of the Client against older claims against the Client. The crediting takes place as follows: If costs and interest have already been incurred, the Agency shall offset the payment first against the costs, then against the interest and finally against the principal claim. In the respective receivables category, the amount is offset depending on the age of the receivable (the due date is decisive in this respect), whereby the oldest receivables are always repaid first.

§ 9 Term of Contract; Termination

1. Unless otherwise agreed, the contract runs until the end of the order.
2. Notice of termination can only be given without notice for good cause. This is particularly the case if one party
 - a) violates an essential contractual obligation or
 - b) violates confidentiality pursuant to § 13, or
 - c) is in default of acceptance, insofar as a reminder was issued beforehand, or
 - d) files an own application for the opening of insolvency proceedings if insolvency proceedings are opened or an application for the opening of insolvency proceedings is rejected for lack of assets.
3. The notice of termination must be in writing.
4. In the event of termination pursuant to subpara. 2, the Agency shall be entitled to 80% of the agreed remuneration for the outstanding part of the order as lump-sum damages, insofar as the fact justifying the termination is based on culpable conduct on the part of the Client. The Client shall be entitled to prove that the Agency has suffered no or substantially less damage; the Agency shall reserve the right to prove higher damage.
5. Unless expressly agreed otherwise in writing, the Client must return all materials provided by the Agency including documents, data carriers etc. to the Agency immediately after termination of the contract.

§ 10 Work Results; Intellectual Property

1. All works, in particular documents, presentations and drafts (sketches, concepts, film cuts) as well as the rights thereto, created by the activity of the Agency within the scope of the order remain or become the sole property of the Agency and may only be used by the Client for the agreed purpose and within the agreed period of use. Unless otherwise expressly agreed in writing, the Client is not entitled to any further use.
2. With full payment of all services provided by the Agency, the Client acquires the right to the agreed use.
3. Unless otherwise expressly agreed in writing, the intended use for "clippings" created by the Agency extends only to the use within the framework of the Client's internal documentation. A publication (especially in the context of) in presentations, social media or websites is not permitted.
4. The transferred rights of use are non-exclusive and limited to the territory of the Federal Republic of Germany. Any transfer of rights of use and exercise beyond subpara. 1 and 2 requires an individual contractual agreement; this also applies to ideas, concepts and drafts.
5. Changes, processing and the like of services of the Agency, such as in particular their further development by the Client or by third parties working for him, are only permissible with the express written consent of the Agency, unless a corresponding objection by the Agency would violate the requirement of good faith (§ 242 German Civil Code). The prohibition to change therefore does not apply in particular to necessary and contractually required updates.
6. Any partial or complete, explicit or conclusive transfer of the rights of use by the Client to third parties also requires the prior written consent of the Agency. This also applies to any actual making available which amounts to a transfer of the right of use. The Agency may only refuse consent to a transfer to companies affiliated with the Client for good cause. If a licence fee for the transfer has not been agreed, an important reason shall always exist.

§ 11 Guarantee

1. The Agency does not owe any success in the legal sense, unless expressly agreed otherwise in writing.
2. If, in exceptional cases, success is to be expressly owed according to the individual agreement of the parties, a claim to rectification of defects shall only exist insofar as the Client is not predominantly at fault.

3. The Client must report obvious defects within one week of delivery. If the Client is an entrepreneur according to § 14 of the German Civil Code, he must report non-obvious defects within two weeks of discovery. If the Client is a consumer according to § 13 of the German Civil Code, he must notify us of non-obvious defects within the statutory period of limitation. Late notifications of defects exclude the warranty.
4. Warranty claims of the contracting parties become statute-barred one year after the respective contracting party becomes aware of the circumstances giving rise to the claim. The statutory provisions at the beginning, suspension and recommencement of the limitation period shall remain unaffected.

§ 12 Liability, Damages

1. The Agency shall only be liable for damages - on whatever legal grounds - in cases of intent and gross negligence. In the event of simple negligence, the Agency shall only be liable for damages resulting from injury to life, body or health or for damages resulting from the violation of an essential contractual obligation (obligation the fulfilment of which is essential for the proper performance of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, the liability of the Agency shall be limited to compensation for the foreseeable, typically occurring damage.
2. The duty of the Agency to take care of samples does not constitute a cardinal obligation according to § 11 (1), so that the Agency is only liable for damage, destruction or loss of samples in cases of intent or gross negligence. If the Client violates his obligation under § 3 No. 6 of these GTC, damages resulting from the fact that production processes at the Client or third parties are negatively affected because they are dependent on samples that the Client has temporarily provided to the Agency for this purpose are not considered foreseeable, typical and reimbursable.
3. The Agency accepts no liability for defective deliveries or services from third parties that are commissioned at the request of the customer. Excluded from this is a possible selection and monitoring fault for unauthorized actions.
4. The Agency is not liable for the correctness of factual claims concerning goods or services of the customer which are the subject or part of the means of communication to be produced. The allegations of facts are made exclusively on the basis of information provided to the Agency by the client.

5. Furthermore, the Agency shall not be liable for the legal protectability or registrability of ideas, concepts, drafts or other materials created within the scope of the order.

§ 13 Non-disclosure

1. All information and documents of the other party which are marked as confidential or are to be regarded as confidential under the circumstances, in particular information on operational processes, business relationships and know-how, are to be treated confidentially and protected from access or knowledge by unauthorized persons.
2. The parties agree not to disclose such confidential information (other than publicly available information). This obligation continues for a period of two years after termination of the contract.
3. Such confidential information is exempt from this obligation,
 - a) which were demonstrably already known to the recipient at the time of conclusion of the contract or which subsequently become known to the recipient by a third party without this violating any confidentiality agreement, statutory provisions or official orders;
 - b) which are publicly known when the contract is concluded or are subsequently made public, unless this is due to a breach of this contract;
 - c) which are required to be disclosed by law or by order of a court or authority. To the extent permissible and possible, the recipient obliged to disclose will inform the other party in advance and give it the opportunity to take action against the disclosure.

§ 14 Data Privacy

1. The contracting parties observe the relevant data protection regulations. In particular, if the Agency comes into contact with personal data, it will only collect, process or use this data within the meaning of Art. 28 GDPR in accordance with the instructions of the contracting authority. The contracting parties oblige their employees to observe the confidentiality of personal data, unless such an obligation already exists.
2. The Agency is also entitled to have the data processed by third parties, provided that they are subject to the provisions of para. 1 such as employees.
3. The Agency is permitted to publish the Client as a reference.

§ 15 Concluding Provisions

1. Oral subsidiary agreements have not been made. Amendments and changes to the contract must be made in writing. This also applies to the waiver of the written form requirement.
2. In the event that individual provisions should be invalid, the validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a provision that comes as close as possible to the economic interests of both parties.
3. The respective contract and these GTC shall be governed exclusively by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. Unless otherwise stated in the order confirmation of the Agency, the place of performance shall be the place of business of the Agency.
5. The exclusive - also international - place of jurisdiction for all disputes arising from the respective contractual relationship is the place of business of the Agency, provided that the Client is an entrepreneur. The Agency is entitled to bring an action at the place of performance, even if this is not the place of business of the Agency.