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# General Contractual Terms for Communications Design (GCT Communications Design)

## 1. General

1.1 The following GCT apply exclusively to all agreements regarding communications design work between the Communications Designer and the Principal. This provision is to be upheld particularly if the Principal utilises the «Allgemeine Geschäftsbedingungen» (General Terms and Conditions of Trade) as established in German law and these contravene or deviate from the GCT set out here.

1.2 The GCT outlined here also apply if the Communications Designer agrees without reservation to perform the commission of the Principal in the knowledge that it contains conditions which contravene or deviate from the conditions set out here.

1.3. Deviations from the conditions set out here are only valid if the Communications Designer agrees to them expressly in writing.

## 2. Subject of Contract: Copyright and Right of Use

2.1 Any commission awarded to the Communications Designer is deemed to be a contract for copyright work which grants right of use for the work which has been commissioned. The contract does not govern or apply to any assessment of the validity of the Communications Designer's work with regard to competition law. Similarly, the contract does not govern or apply to the question of whether the Communications Designer's work may be used or registered under copyright protection laws. The Principal is responsible for such research.

2.2 All designs and final artwork are subject to the German Copyright Law (Urheberrechtsgesetz). The provisions of this law apply to the parties to this contract **even if** the requisite **conditions for copyright protection**, e.g. the so-called **level of creative content**, should **not apply** in an individual case. Thus, should such a case arise, the regulations governing copyright contracts in §§ 31 of the aforementioned law apply in particular; in addition, should such a case arise, the parties are particularly subject to the copyright entitlements outlined in §§ 97 of the aforementioned law.

2.3 All designs and final artwork may not be altered or passed to a Third Party, either in original form or as reproductions, without the express agreement of the Communications Designer. Any imitation, also of parts of the work, is forbidden. Infringement of these provisions entitles the Communications Designer to demand contractual compensation amounting to 100% of the agreed fee, or of the usual fee in accordance with the AGD Collective Agreement on Fees for Design Services (latest version), in addition to the agreed fee, which is to be paid as normal.

2.4 The Communications Designer grants the Principal the necessary rights of use for the relevant purpose of the work. Unless otherwise agreed, in each case only simple (non-exclusive) rights of use are granted. Transfer of rights of use to any Third Party requires a separate written agreement.

2.5 The rights of use shall not be deemed to have passed to the Principal until the agreed fee has been paid in full.

2.6 The Communications Designer is to be credited as the author of the work on all reproductions. Infringement of this provision entitles the Communications Designer to demand contractual compensation amounting to 100% of the agreed fee, or of the usual fee in accordance with the AGD Collective Agreement on Fees for Design Services (latest version), in addition to the agreed fee.

2.7 Suggestions made by the Principal or any of his/her employees, or any other contribution made by the Principal or any of his/her employees, shall have no influence on the amount of the fee. Such suggestions or contributions do not substantiate any claim to joint copyright.

2.8 All designs and final artwork may only be used to the extent agreed upon (in terms of time, space and content). Use of the work outside these restrictions (in terms of time, space and content) is not allowed, and infringement of this provision entitles the Communications Designer to demand contractual compensation amounting to 100% of the agreed fee for such extended use, or of the usual fee in accordance with the AGD Collective Agreement on Fees for Design Services (latest version), in addition to the agreed fee.

### **3. Fee**

3.1 All designs and final artwork, together with the granting of rights of use, form a single service. Unless otherwise agreed, payment is to proceed in accordance with the stipulations of the AGD Collective Agreement on Fees for Design Services. Fees are calculated as net amounts, and Value Added Tax is to be paid on these amounts in accordance with the legal requirements.

3.2 Should no rights of use be granted and only designs and/or final artwork be delivered, then payment for rights of use is not to be effected.

3.3 The production of designs, together with all other activities that the Communications Designer performs for the Principal, are to be charged to the Principal unless it has been expressly agreed otherwise.

### **4. Due Date for Payment, Acceptance and Delay**

4.1 Payment is due upon delivery of the work. Payment is to be effected immediately. If the work which has been commissioned is accepted in parts, then a proportionate partial payment is due upon the acceptance of each part. Should the commission extend over a long period or require high financial outlay on the part of the Communications Designer, then payment of the fee shall be in appropriate instalments, i.e.  $\frac{1}{3}$  of the total fee when the commission is awarded,  $\frac{1}{3}$  after completion of 50% of the work, and  $\frac{1}{3}$  upon delivery.

4.2 Acceptance may not be withheld for reasons associated with the structural or artistic character of the work. It is understood that the Communications Designer is granted artistic freedom in executing the commission.

4.3 Should payment not be effected on the due date, then the Communications Designer is entitled to demand interest as compensation at the rate of 8% over the current

base rate of the European Central Bank p.a., while reserving the right to claim higher compensation upon production of appropriate evidence.

## **5. Additional Services, Ancillary and Travel Expenses**

5.1 Additional services, such as the revision or alteration of final artwork, manuscript proofreading or the supervision of printing, shall be invoiced separately on the basis of the time involved, in accordance with the AGD Collective Agreement on Fees for Design Services (latest version).

5.2 The Communications Designer is entitled, after reaching prior agreement with the Principal, to subcontract any work necessary for the fulfilment of the commission on behalf of and for the account of the Principal. The Principal undertakes to provide the Communications Designer with the necessary authorisation for this purpose.

5.3 Should individual agreements for subcontracted work be concluded on behalf of and for the account of the Communications Designer, the Principal undertakes for the purposes of their internal relationship to hold the Communications Designer free from all obligations which result from the conclusion of such agreements.

5.4 Expenses incurred by the Communications Designer for ancillary technical costs, and in particular for special materials, the construction of models, photographs, progress records, typesetting and printing, etc, are to be refunded by the Principal.

5.5 Travel costs and expenses for travel undertaken in connection with the commission and with the prior agreement of the Principal are to be refunded by the Principal.

## **6. Ownership of Designs and Data**

6.1 The rights to all designs and final artwork hereby granted are rights of use, not ownership rights.

6.2 The originals are to be returned undamaged to the Communications Designer after a reasonable period of time, unless otherwise agreed in writing. In the event of loss or damage the Principal is to bear the costs incurred in replacing the originals. Any further claims for compensation remain unaffected by this provision.

6.3 Any data which is created during the fulfilment of this contract remain the property of the Communications Designer. The Communications Designer is not obliged to provide the Principal with such data. Should the Principal require such data, a separate agreement is to be reached regarding the provision of this data to the Principal and payment for such data.

6.4 If the Communications Designer provides the Principal with such data, this may only be modified with the prior consent of the Communications Designer.

6.5 The dispatch of all Communications work as outlined in Sections 6.1 to 6.4 is to be at the risk of and for the account of the Principal.

## **7. Checking, Supervision of Production, Free Copies and Personal Promotional**

7.1 Samples for checking must be made available to the Communications Designer before reproductions are made.

7.2 The supervision of production by the Communications Designer is only to proceed on the basis of a separate agreement. Should the Communications Designer agree

to supervise production, he/she is entitled to make all necessary decisions and issue relevant instructions on the basis of his/her personal judgement.

7.3 The Principal is to provide the Communications Designer with 10 perfect sample copies of all reproduced work, free of charge. The Communications Designer is entitled to use these samples and any and all work which has been created during the fulfilment of the contract for personal promotional purposes in any media, and to refer to his/her activities for the Principal in any other fashion.

## **8. Liability**

8.1 The Communications Designer is only liable for damages caused to objects, documents, films, displays, layouts, etc, which are placed in his/her care in the event of intent or gross negligence, except in the case of claims arising from injury to life, body or health; the Communications Designer is also liable for such damages arising from contributory negligence. In other cases he/she is only liable for damages caused by contributory negligence insofar as an obligation is thereby neglected which is of particular importance for the achievement of the contractual aim (cardinal duty).

8.2 The Communications Designer shall not accept any liability towards the Principal for work which is subcontracted to Third Parties on behalf of and for the account of the Principal, unless the Communications Designer is at fault in the selection of said subcontractor. In such cases the Communications Designer is to be regarded solely as an agent.

8.3 In releasing designs and final artwork for reproduction the Principal accepts responsibility for the technical and functional correctness of the product, text and image.

8.4 The Communications Designer bears no liability for such designs and final artwork released for reproduction by the Principal.

8.5 Complaints regarding apparent defects are to be brought to the attention of the Communications Designer in writing within 14 days of delivery. It shall be deemed that this notice period has been met if the complaint is dispatched within 14 days.

## **9. Creative Freedom, Execution of the Commission and Original Documents**

9.1 This contract is executed on the basis of creative freedom. Complaints on the basis of artistic expression are excluded. Should the Principal require changes to be made during or after production, he/she is to bear any and all additional costs so incurred.

9.2 Should the execution of the commission be delayed due to causes for which the Principal is responsible, the Communications Designer is entitled to demand an appropriate increase in payment. In the event of intent or gross negligence the Communications Designer is also entitled to claim compensation. Further claims for compensation for delay shall remain unaffected by this provision.

9.3 The Principal warrants that he/she is authorised to use any original documents which he/she provides to the Communications Designer. Should it emerge that he/she is not authorised to do so, in contravention of this provision, the Principal is to hold the Communications Designer free from any claims for compensation by Third Parties.

#### **10. Termination of Contract**

Should the Principal terminate the contract before the due date, the Communications Designer is to receive the agreed fee, with any deductions necessitated by any expenses which have been saved and by any executed or deliberately omitted substitute contracts (according to § 649 of German Civil Law). However, the parties to the contract hereby agree on the following lump-sum payment for work and expenses incurred up to the termination of contract: if the contract is terminated before work begins, 10% of the agreed sum or, if no agreement has been reached, 10% of the usual fee in accordance with the AGD Collective Agreement on Fees for Design Services (latest version). Naturally, individual agreements which override this provision are possible. The Principal is to provide evidence of lower actual performance or higher actual expenditure.

#### **11. Final Provisions**

12.1 If the Principal is a merchant or trader, the place of performance of the contract is the domicile of the Communications Designer.

12.2 The contract is to be governed by the laws of the Federal Republic of Germany.