

## **GENERAL TERMS AND CONDITIONS OF STORYMAKER AGENTUR FÜR PUBLIC RELATIONS GMBH**

### **Sec. 1 – Scope of application**

- (1) These General Terms and Conditions (“GTC”) shall apply to all services rendered and/or work performed (herein after together referred in short also as “services”) by us, Storymaker Agentur für Public Relations GmbH, Derendinger Straße 50, 72072 Tübingen, to you, the customer (“Customer”).
- (2) Our GTC shall apply exclusively. Any conflicting, additional or deviating terms and conditions of Customer shall not become part of the contract, unless we have expressly approved their validity. Our GTC shall also apply if we render our services without reservation in knowledge of Customer’s conflicting or deviating terms and conditions.
- (3) Our GTC Software Purchase shall only apply if Customer is an entrepreneur (Sec. 14 BGB – German Civil Code), a legal person under public law or a special fund under public law.

### **Sec. 2 – Offers**

- (1) In the absence of an agreement to the contrary, our offers are free of charge.
- (2) Unless stipulated otherwise in the offer, we shall be bound by our offer for the period of 6 weeks as from the date of the offer.
- (3) We shall reserve the title and/or all rights of use to all offers and cost estimates submitted by us as well as to all concepts, presentations and other documents made available to Customer in connection with the offer. Without our express consent, Customer may not make available or disclose to third parties, use or allow third parties to use or reproduce either these documents and items themselves or their contents.

### **Sec. 3 – Services, modifications to the scope of services**

- (1) To the extent that we arrange with Customer an annual budget containing various services, these services shall be binding during that period, unless they are expressly designated as optional or elective services. Customer undertakes to call off the binding services contained in the annual budget. Where deviations become apparent (exceeding or not reaching the annual budget), the Parties shall notify each other in good time.
- (2) In the case of video productions, one shooting day comprises ten hours (incl. the way to and from the shooting location and lunch break). Any overtime hours will be charged separately.
- (3) While rendering our services, we shall be entitled to call on third parties (e.g. freelance editors) as subcontractors.
- (4) In consultation with Customer, we may call on third parties to render services, also in the name and for the account of Customer. Corresponding contracts with third parties shall be negotiated and concluded by Customer.
- (5) If Customer requests that we analyse the feasibility or practicability of a modification to the services, we shall be entitled to charge Customer separately for the costs of such analysis at the agreed hourly rates or, in the absence of an agreement, at our hourly rates applicable at that time. We shall notify Customer to the extent that an analysis requested by Customer has an influence on the agreed period for performance. In this case, we shall be entitled to postpone the provision of the corresponding services for the duration of the analysis plus a reasonable lead time.

### **Sec. 4 – Cooperation, points of contact, duties of cooperation; data privacy and data backup, archiving**

- (1) If either Party notices that any specifications and requirements, whether those of their own or those of the other Party, are incorrect, incomplete, ambiguous or impracticable, that Party shall notify the other Party thereof and of any foreseeable consequences without delay. In such cases, the Parties shall seek and

endeavour to reach a solution that accommodates their interests, if necessary, in accordance with the provisions on modifications to the services.

- (2) The Parties may appoint points of contact as well as substitutes who take care of the fulfilment of the contractual duties in a responsible and professional manner on behalf of the Party appointing them. The Parties shall report to each other any changes in the appointed persons without delay. Until receipt of such notice, the previously appointed points of contact and/or their substitutes shall be deemed authorised to submit and accept declarations within the scope of their previous power of representation.
- (3) Customer undertakes to cooperate in processing the order. In particular, he shall make available to us in a timely manner and free of charge all Provisions pursuant to Sec. 5 Cl. 1 as well as all other documents, data, information and contacts required for the performance.
- (4) The cooperative acts to be performed by Customer constitute real duties and no mere obligations. Any extra costs resulting from the improper or untimely fulfilment of duties of cooperation may be charged separately at the agreed hourly rates or, in the absence of an agreement, at our hourly rates applicable at that time. This shall be without prejudice to our further claims or rights.
- (5) We shall store Customer's data in compliance with the applicable provisions of data privacy. Data backup shall be solely incumbent upon Customer.
- (6) Video productions will be stored by us free of charge for possible modifications for a period of two months following invoicing (the date of invoice is decisive). Thereafter, only the finished editing files will be stored for an additional period of four months. Customer may arrange with us the further storage of the overall project at any time for a fee. If no further storage is requested, we shall be entitled to delete the raw material after half a year.

#### **Sec. 5 – Provisions provided by Customer**

- (1) To the extent that Customer provides us with videos, pieces of music, texts, images, logos, drawings, data, templates, documents, etc. ("Provisions") for use during the performance of our services, he represents and warrants that these Provisions are free from defects and do not infringe any third-party rights, relevant laws or regulations or the terms of these GTC.
- (2) Unless expressly agreed otherwise, Customer shall be solely responsible for compliance with the obligations to collecting societies (such as GEMA or VG-Wort), in particular any duties of notification, the obtaining of corresponding consents as well as the payment of fees in respect of the materials provided by him.
- (3) The intellectual property rights to the materials provided by Customer shall remain with Customer or his licensors. Customer hereby grants us (or acquires for us from the respective owner of the intellectual property rights) a non-transferrable, non-exclusive, worldwide, royalty-free right to use the materials provided by Customer during the term of the contract for the purpose of meeting our obligations under this contract.

#### **Sec. 6 – Delivery period**

- (1) In the absence of an agreement to the contrary, the delivery periods and delivery dates refer to the point in time at which our services are forwarded to Customer for the purpose of approval by Customer.
- (2) We shall notify Customer of any delays in service immediately after becoming aware thereof. Delays in service caused by force majeure, e.g. strike or lockout in third-party businesses or in our business (in the latter case, however, only if the industrial action is lawful), official orders, general disturbances in telecommunications or other circumstances beyond our control (hereinafter "force majeure") or circumstances within Customer's sphere of control, e.g. due to modifications requested by Customer, untimely performance of cooperative acts and/or delays caused by Customer or third parties within Customer's sphere of responsibility, etc., shall not be attributable to us and shall entitle us to postpone the provision of the corresponding services for the duration of the obstacle plus a reasonable lead time. This shall be without prejudice to our further (statutory) claims or rights, in particular those arising from default in acceptance on part of Customer.
- (3) Customer's claims for compensation of damage or reimbursement of futile expenses in the event of default in or impossibility of delivery shall be governed by the provisions set forth in Sec. 11.

### **Sec. 7 – Approvals and acceptance**

- (1) Prior to publication or reproduction, we shall forward to Customer the due performance or delivery for the purpose of inspection and approval by Customer. Customer shall approve our performance in writing without delay. Email is deemed sufficient to observe the written form requirement. Until approval by Customer, we shall not be obliged to render any follow-up services.
- (2) In the case of video productions, we will initially submit the storyboard to Customer for approval as part of the pre-production. The approved storyboard forms the basis of the further production. As part of the post-production, we will submit a version without final sound and colour correction to Customer for approval. Cl. (1) shall apply mutatis mutandis.
- (3) To the extent that we owe a particular success of work (“work performance”), Customer shall, after notice of completion and handover by us, accept our performance. If Customer does not deem the work performance as being essentially in conformity with the contract, he shall notify us of his objections within two weeks after handover of the work performance. If Customer fails to raise objections within the aforementioned period, the performance shall be deemed tacitly accepted. We will specifically point out to customer the significance of his conduct along with the notice of completion.

### **Sec. 8 – Remuneration and payment**

- (1) The remuneration agreed with Customer shall not include travel costs, costs of packaging and shipment, banking and transaction fees as well as any external costs (unless these are charged to Customer directly by the third party). External costs shall also include fees of collecting societies, to the extent that these are charged to us or we settle them on Customer’s behalf. In the absence of an agreement to the contrary, any costs of video productions incurred for filming permits, location rent, parking fees, admission fees, accreditation and other shooting-related external costs will be charged in addition.
- (2) If we, in consultation with Customer and on his behalf, commission third parties whose fees we directly pass on to Customer, we shall be entitled to charge Customer for what is referred to as a “handling fee” amounting to 10% of the net remuneration of the third party.
- (3) The statutory value-added tax is not included in the price and will be shown separately in the invoice at the statutory rate applicable on the invoice date.
- (4) In the absence of an agreement to the contrary, we will invoice our remuneration after performance on a monthly basis, in the event of work performance, upon acceptance.
- (5) Agreed fixed-rate remuneration (“retainer”) for project and communications management will be invoiced in advance at the beginning of each calendar month.
- (6) In the absence of an agreement to the contrary, the remuneration shall be due and payable in full immediately. The date of receipt of the payment by us shall be decisive for its timeliness.
- (7) In the event of default in payment, Customer shall pay default interests amounting to 9 (nine) percentage points above the respective base interest rate p.a. Moreover, we may charge a lump sum of EUR 40.00 to Customer’s account. We reserve the right to assert claims for higher interests and/or further claims for damages. The lump sum pursuant to Sentence 2 shall be set off against any due compensation payment, to the extent that the damage arises from costs incurred in pursuit of rights. This shall be without prejudice to any claims for default interests, in particular for work performance pursuant to Sec. 641 Cl. 4 BGB as well as against merchants pursuant to Sec. 353 HGB [German Commercial Code].
- (8) We shall be entitled to execute outstanding deliveries or provide outstanding services only against advance payment or provision of security if we become aware of any circumstances after conclusion of the contract that are likely to substantially affect Customer’s creditworthiness and jeopardise the payment of our receivables due from Customer under the respective contractual relationship.

### **Sec. 9 – Rights of use, advertising**

- (1) We shall grant Customer the rights of use required for the respective specific contractual purpose in respect of the final versions of our work results created on Customer’s behalf. Unless agreed otherwise, only non-exclusive rights of use will be transferred. Moreover, the rights of use shall be limited to the Federal Republic

of Germany. The rights of use shall not include the right to transfer to third parties, which shall be subject to a separate agreement with us.

- (2) The aforementioned rights of use in respect of the final versions of our work results shall not pass on to Customer until payment of our performance in full. Until full payment of the remuneration, we shall tolerate the use by Customer on a revocable basis. If Customer defaults on the payment, our toleration of the use shall end automatically.
- (3) Drafts and final versions of our work results may not be altered or copied, either in whole or in part, without our express consent. We shall not be obliged to hand over to Customer raw data or raw material ("raw data") of video productions or print templates. If we do hand over raw data, we shall retain the corresponding rights of use. The transfer of raw data to third parties as well as any modification or further processing of the raw data shall be subject to our separate express written consent.
- (4) Our press addresses (in particular points of contact, email addresses, postal addresses, telephone and/or fax numbers) that are disclosed to Customer or come to his knowledge in the course of the cooperation may only be used by Customer with our express consent, during the term of the cooperation and to the extent required for this purpose. They may neither be made available nor otherwise disclosed to third parties.
- (5) We shall be entitled to being named on reproductions as authors.
- (6) We may list Customer as a reference customer on our websites or in other media and may issue a press release on the order with Customer. We shall arrange the press release with Customer prior to publication. We shall be entitled to use our work results for our own advertising purposes.

## **Sec. 10 – Warranty claims in respect of work performance**

- (1) To the extent that we owe a particular success of work ("work performance"), Customer's rights under warranty shall be governed by the following regulations set forth in this section.
- (2) We shall be entitled to make the due subsequent performance conditional upon payment of the due remuneration by Customer. However, Customer shall be entitled to retain a portion of the remuneration that is appropriate in relation of to the defect.
- (3) We shall not be liable for defects to the extent that
  - (a) Customer has made modifications to our work performance,
  - (b) Customer has provided defective Provisions, unless these modifications or materials did not have an influence on the occurrence of the defect.
- (4) Before asserting claims for subsequent performance, Customer shall verify with all due care that a defect in the work performance justifying subsequent performance is present. Insofar as an alleged defect does not fall under the obligation of subsequent performance (pseudo-defect), we may charge to Customer's account the work performed for verification and error recovery at the remuneration rates valid at that time plus any outlays, unless Customer would not have been able to recognise the pseudo-defect even by applying all due care.
- (5) Customer's claims for compensation of damage or reimbursement of futile expenses shall be governed by the provisions set forth in Sec. 11.
- (6) The limitation period for all claims for defects by the customer and other claims based on a defect shall be one year. In the event of liability for damages due to intent or gross negligence, in the event of fraudulent concealment of the defect, in the event of damages arising from injury to life, limb or health and in the event of guarantees, the statutory limitation periods shall apply, as shall claims under the German Product Liability Act [Produkthaftungsgesetz].

## **Sec. 11 – Liability**

- (1) We shall be liable – no matter on what legal grounds – for compensation of damage or reimbursement of futile expenses in accordance with the provisions stated in Lit. (a) and (b):
  - (a) In the event of wilful intent or gross negligence, we shall be liable without limitations. In the event of simple negligence, we shall only be liable for damages arising from the breach of a material contractual obligation (obligation the discharge of which is an essential prerequisite for the proper performance of the contract and the discharge of which Customer generally can and does rely upon); in this case, however,

- our liability shall be limited to the foreseeable damage, typical of this type of contract.
- (b) The exclusions and limitations of liability set forth in Lit. (a) shall not apply as far as we have fraudulently concealed a defect or have given a guarantee of the quality of the thing (§ 639 BGB), for damages arising from injury to life, body or health as well as in the event of liability under the German Product Liability Act [Produkthaftungsgesetz].
- (2) To the extent that liability to us is excluded or limited, this shall also apply to the personal liability of our legal representatives and agents.

### **Sec. 12 – Cancellation of services; postponement of shooting days**

- (1) In the event of early termination (“Cancellation”) of contractual services in connection with events, in particular in connection with press dates, press conferences and other media events, by Customer for reasons for which we are not responsible, the following shall apply:
  - (a) In the absence of an agreement to the contrary, we shall be entitled to demand the agreed remuneration, however, reduced by the expenditure we save because we do not have to perform the service. In order to simplify the process, the agreed net-remuneration shall be reduced to a fixed rate of 50% upon cancellation up to two weeks before the event, to 80% upon cancellation up to five working-days before the event and to 100% upon cancellation at a later point.
  - (b) Customer shall be at liberty to provide evidence that no or lower remuneration or reimbursement is due than the fixed rate demanded by us.
  - (c) We reserve the right to demand higher remuneration in lieu of the fixed rates listed above, to the extent that we are able to prove to Customer that we are entitled to higher remuneration or reimbursement.
  - (d) Furthermore, Customer shall reimburse us (on presentation of proof) for all (travel) costs and indemnify us against third party claims in connection with these contractual services as far as these costs and/or claims are not part of the agreed remuneration but will be charged separately towards the customer.
- (2) If Customer postpones any agreed shooting days for video productions for reasons beyond our responsibility (“postponement”), the following shall apply:
  - (a) Customer shall inform us in writing of the postponement of shooting days.
  - (b) Customer shall reimburse us for the additional costs arising from the postponement of shooting days. To simplify the process, the following fixed rates will be charged: postponement up to 48 hours prior to the shooting day: free of charge; postponement up to 24 hours prior to the shooting day: 50% of the remuneration for the respective shooting day; postponement less than 24 hours prior to the shooting day: 100% of the remuneration for the respective shooting day.
  - (c) Cl. (1) Lit. (b) to (d) shall apply mutatis mutandis.

### **Sec. 13 – Confidentiality**

- (1) Any documents handed over as well as any knowledge and experience disclosed to the other Party may be used exclusively for the purposes of this contract and may not be made available to third parties, unless they are intended to be passed on to or are already known by the third parties. Agents such as freelancers, subcontractors, etc. called on for the purpose of implementing the contract shall not be considered third parties.
- (2) The obligation to maintain confidentiality shall continue to apply for the period of three years beyond the term of the contractual relationship. Any agents called on shall also be committed to confidentiality.
- (3) If requested by either Party, the documents handed over by him shall be returned after termination of the contractual relationship, unless the other Party is able to prove that he has a legitimate interest in these documents.

### **Sec. 14 – Final provisions**

- (1) If Customer is a merchant within the meaning of the HGB [German Commercial Code], a legal person under public law or a special fund under public law, the place of jurisdiction for any disputes arising from the



business relationship between us and Customer shall be our place of business in Tübingen. We shall also be entitled to bring legal action at Customer's place of business as well as at any other competent place of jurisdiction.

- (2) The business relationship between us and Customer shall be governed exclusively by the law of the Federal Republic of Germany, without giving effect to the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).