



GENERAL TERMS AND CONDITIONS

May2024

1. AREA OF APPLICABILITY AND CONCLUSION OF THE CONTRACT

- 1.1 HC&CREATIVE e.U., Johann-Strauss-Weg 13, 8141 Premstätten, hereinafter referred to as the "Agency", provides its services exclusively on the basis of these General Terms and Conditions. These shall also apply to all future business relations, even if no express reference is made to them.
- 1.2 Additional agreements, provisions, amendments or supplements to these General Terms and Conditions must be in writing in order to be valid; this also applies to any deviation from the written form requirement.
- 1.3 Terms and conditions of the contractual partner that are contrary to or deviate from these terms and conditions shall only become effective, even when known, if they are expressly acknowledged by the Agency in writing.
- 1.4 Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the binding nature of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid provision that comes as close as possible to its meaning and purpose.
- 1.5 The basis for the conclusion of the contract is the respective offer of the Agency or the order of the customer, in which the scope of services and the remuneration are specified. The offers of the Agency are subject to change and non-binding.
- 1.6 If the customer places an order, they are bound to it for two weeks from receipt by the Agency. The contract is concluded by the acceptance of the order by the Agency. Acceptance must be made in writing (e.g. by order confirmation) unless the Agency indicates beyond doubt (e.g. by taking action on the basis of the order) that it accepts the order.

2. EXTENT OF SERVICES, ORDER HANDLING AND COOPERATION OBLIGATIONS

- 2.1 The scope of the services to be provided results from the service description in the Agency contract or any order confirmation by the Agency. Subsequent changes to the content of the service require written confirmation by the Agency. Within the framework set by the customer, the Agency has freedom of design in the fulfillment of the order.
- 2.2 All services provided by the Agency (in particular all preliminary drafts, sketches, final artwork, blueprints, copies, colour prints and electronic files) must be checked by the customer and approved within three working days of receipt by the customer. If they are not approved in time, they shall be deemed approved by the customer.
- 2.3 Errors in the manuscript or in the customer's documents will be corrected to the best of the Agency's ability, but the Agency assumes no liability for them. Correction proofs are to be checked by the customer and returned with a note of approval. Proofs are to be checked by the customer and returned with a note of approval. After a period of five days, the correction proof is automatically considered approved. Spoken changes or changes made by telephone must be repeated in writing. The Agency is not responsible for any shortcomings as a result of a shorter delivery time requested by the customer.
- 2.4 The customer shall immediately provide the Agency with all information and documents necessary for the provision of the service. They shall inform them of all events that are of importance for the fulfillment of the order, even if these circumstances only become known during the fulfillment of the order. The customer shall bear the expenses incurred by the fact that work has to be repeated or delayed by the Agency as a result of his incorrect, incomplete or subsequently changed information.
- 2.5 Furthermore, the customer is obliged to check the documents (photos, logos, etc.) provided for the fulfillment of the order for any existing copyrights and trademark rights or other rights of third parties. The Agency shall not be liable for any infringement of such rights. If a claim

is made against the Agency due to such an infringement, the customer shall not hold the Agency liable; the customer shall compensate the Agency for all disadvantages incurred by the Agency as a result of a third-party claim.

3. EXTERNAL SERVICE AND COMMISSIONING OF THIRD PARTIES

- 3.1 The Agency shall be entitled, at its own discretion, to perform the service itself, to make use of competent third parties for the performance of services that are the subject matter of the contract and/or to substitute such services (third-party service).
- 3.2 The Agency will carefully select third-party service providers and ensure that they have the required professional qualifications.
- 3.3 The commissioning of external service providers shall be carried out either in its own name or in the name of the customer, but in any case for the account of the customer. The General Terms and Conditions of the commissioned subcontractors always apply – even if the tasks should be charged to the customer via the Agency. The full invoice amount is to be paid in due time, a reduction of the invoice amount is only permissible as soon as the Agency has received a credit note from the supplier; if the invoice has already been transferred, the Agency will refund the difference.

4. DEADLINES

- 4.1 Agreements on deadlines and dates must be recorded or confirmed in writing. The Agency shall make every effort to meet the agreed deadlines. However, failure to meet the deadlines shall not entitle the customer to assert their statutory rights until they have granted the Agency a reasonable grace period of at least 14 days. This period begins with the receipt of a reminder letter to the Agency.
- 4.2 After expiration of the grace period without results, the customer may withdraw from the contract. An obligation to pay damages under the title of delay exists only in the case of intent or gross negligence on the part of the Agency.
- 4.3 Unavoidable or unforeseeable events – in particular delays at contractors of the Agency – shall in any case release the Agency from compliance with the agreed delivery date. The same applies if the customer is in default with their obligations necessary for the execution of the order (e.g. provision of documents or information). In this case, the agreed date will be postponed at least to the extent of the delay.

5. EARLY TERMINATION AND RIGHT OF WITHDRAWAL

- 5.1 The Agency is entitled to dissolve the contract for important reasons with immediate effect. A good cause is present, in particular, if a) the fulfillment of the service becomes impossible for reasons for which the customer is responsible or is further delayed despite a grace period of 14 days being set; b) the customer continues, despite a written warning with a grace period of 14 days, to violate essential obligations under this contract, such as the payment of a due amount or obligations to cooperate; c) there are justified concerns about the creditworthiness of the customer and the customer does not make advance payments at the request of the Agency or provide suitable security prior to the Agency's performance; d) bankruptcy or composition proceedings are instituted against the customer's assets or an application for the institution of such proceedings is rejected for lack of assets sufficient to cover costs, or if the customer ceases to make payments.
- 5.2 The customer is entitled to dissolve the contract for important reasons without setting a grace period. Good cause shall be deemed to exist in particular if the Agency continues to violate essential provisions of this agreement despite a written warning with a grace period of 14 days to remedy the violation of the agreement.





6. FEES

- 6.1 Unless otherwise agreed, the Agency's fee claim arises for each individual service as soon as it has been rendered. The Agency is entitled to demand advance payments to cover its expenses. The Agency is also entitled to issue interim or advance invoices or to call for payments on account.
- 6.2 The fee is understood to be a net fee plus VAT at the statutory rate. In the absence of an agreement in the individual case, the Agency shall be entitled to a fee for the services rendered and the transfer of the rights of use under copyright and trademark law in the amount customary in the market.
- 6.3 All services provided by the Agency that are not expressly covered by the agreed fee shall be remunerated separately. This applies in particular to any editing rights to designs created by the Agency, including the transfer of open data. All cash expenses incurred by the Agency shall be reimbursed by the customer.
- 6.4 Cost estimates of the Agency are in principle non-binding. If it is foreseeable that the actual costs will exceed the costs estimated in writing by the Agency by more than 15 percent, the Agency will notify the customer of the higher costs. The extra costs shall be deemed to have been approved by the customer if the customer does not object in writing within three working days of this notice and at the same time discloses more cost-effective alternatives. If the cost overrun is up to ten percent, a separate notification is not required. This cost estimate surplus shall be deemed approved by the customer from the beginning.
- 6.5 The Agency shall be entitled to the agreed remuneration for all work by the Agency that is not carried out due to a breach of contract by the customer, taking into account a grace period of the least 14 days. The provisions of § 1168 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch/ABGB) shall be excluded. With the payment of this remuneration, the customer does not acquire any rights to these works; rather, concepts, drafts and other documents that have not been executed are to be returned to the Agency without delay.

7. PAYMENT AND RESERVATION OF PROPRIETARY RIGHTS

- 7.1 The fee shall be due for payment within 14 days of receipt of the invoice and without deduction, unless special payment terms have been agreed in writing in individual cases. This also applies to the charging on of all cash expenses and other expenses. The goods delivered by the Agency shall remain the property of the Agency until full payment of the remuneration including all secondary liabilities.
- 7.2 In the event of late payment by the customer, the following shall apply: After seven days of delay in payment, a payment reminder (first reminder, without fees) shall be sent to the customer by mail. After 14 days of delay in payment, the second reminder will be sent by mail (five euros reminder fee). After 21 days of delay in payment, the third reminder (ten euros reminder fee) will be sent by mail (registered mail). The customer undertakes to bear all costs and expenses associated with the collection of the claim, such as, in particular, collection expenses or other costs necessary for an appropriate legal prosecution. In any case, this shall include the costs of three reminders in the amount customary in the market as well as at most one reminder letter from a lawyer commissioned with the collection. The assertion of further rights and claims remains unaffected.
- 7.3 In the event of the customer's default in payment, the Agency may declare all services and partial services rendered under other contracts concluded with the customer immediately due and payable. Furthermore, the Agency is not obligated to provide further services until the outstanding amount is paid. If payment in installments has been agreed upon, the Agency reserves the right to demand immediate payment of the entire outstanding debt in the event that partial amounts or ancillary claims are not paid on time (deadline not adhered to).
- 7.4 The customer is not entitled to set off their own claims against claims of the Agency, unless the customer's claim has been acknowledged by the Agency in writing or has been established by a court of law. A right of withholding on the part of the customer is excluded.

8. PRESENTATIONS

- 8.1 The Agency shall be entitled to an appropriate fee for participation in presentations, which, in the absence of an agreement, shall at least cover the entire personnel and material expenses of the Agency for the presentation as well as covering the costs of all third-party services.
- 8.2 If the Agency does not receive an order after the presentation, all services provided by the Agency, in particular the presentation documents and their contents, shall remain the property of the Agency; the customer shall not be entitled to make further use of them – in whatever form; rather, the documents shall be returned to the Agency without delay. The transfer of presentation documents to third parties as well as their publication, duplication, distribution or other utilization is not permitted without the express consent of the Agency.
- 8.3 Likewise, the customer is prohibited from further use of the ideas and concepts introduced in the course of the presentation, regardless of whether the ideas and concepts obtain copyright protection. With the payment of the presentation fee, the customer does not acquire any exploitation and usage rights to the presented services.
- 8.4 If the ideas and concepts contributed in the course of a presentation for the solution of communication tasks are not utilized in advertising materials designed by the Agency, the Agency shall be entitled to use the ideas and concepts presented elsewhere.

9. PROPERTY RIGHTS AND COPYRIGHT PROTECTION

- 9.1 All services provided by the Agency, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final drawings, concepts, negatives, slides, structure trees), including individual parts thereof, remain the property of the Agency, as do the individual work pieces and design originals, and may be reclaimed by the Agency at any time. By paying the fee, the customer only acquires the right of use (including reproduction) for the agreed purpose and to the agreed extent of use. In the absence of any agreement to the contrary with the Agency, the customer may only use the Agency's services itself for an unlimited period of time and place. The acquisition of rights of use and exploitation of services provided by the Agency requires in any case the full payment of the fees charged by the Agency for such services.
- 9.2 Changes to services provided by the Agency, such as in particular their further development by the customer or by third parties acting on the customer's behalf, are only permissible with the express consent of the Agency and the payment of the fee for a "total buy-out" as per the offer and, insofar as the services are protected by copyright, of the copyright holder.
- 9.3 The Agency's consent is required for the use of the Agency's services that go beyond the originally agreed purpose as well as the scope and period of the agreed use, regardless of whether this service is protected by copyright. For this, the Agency and the author are entitled to a separate appropriate remuneration. Unless otherwise agreed, this amounts to 50 percent of the original offer amount if the term of use exceeds five years, and is thereby automatically extended by a further five years (with the exception of photographs, see item
- 9.4 If the Agency's service also includes the creation of images, moving images and audio recordings, it should also be noted that the Agency can only ever pass on the rights to the design to the customer, but not the rights to photographed as well as recorded persons or objects – these must be agreed and observed separately. By paying the fee, the customer acquires the right to use images, moving images and audio files for the purpose agreed in the offer and within the agreed temporary and geographical scope of use. In the absence of any agreement to the contrary with the Agency, the customer may only use these services of the Agency itself and only for the duration of the Agency agreement. The acquisition of rights of use and services of the Agency in relation to photographic, moving image and audio rights shall in any case be subject to full payment of the fees charged by the Agency for them. The images, moving images and audio recordings used in services of the Agency are protected by copyright and may not be used by the customer without licensing. It should be noted that images, graphics,





text or other files may be subject in whole or in part to the copyright of third parties.

- 9.5 For the use of services provided by the Agency or of advertising materials for which the Agency has developed conceptual or design templates, the consent of the Agency shall also be required after the expiry of the Agency agreement – irrespective of whether this service is protected by copyright or not.
- 9.6 The customer shall be liable to the Agency for any unlawful use in the double amount of the fee agreed for such use.

10. IDENTIFICATION/LABELLING

- 10.1 The Agency shall be entitled to make reference to the author on all advertising media and in all advertising measures and at all events without the customer being entitled to any remuneration for this.
- 10.2 The Agency is entitled to refer to the existing business relationship with the customer on its own advertising media and in particular on the internet website and on social media channels with the name and company logo. The Agency may refer to the cooperation with the customer in an appropriate manner in both analog and digital publications, at exhibitions and in its own printed materials. In this context, the Agency may photographically and/or illustratively depict all work designed and/or implemented by it and publish it as a reference, unless the customer indicates in writing that the Agency's services may not be published for self-promotion.

11. WARRANTY AND COMPENSATION

- 11.1 The customer shall report any defects immediately, in any case within eight working days after delivery/service by the Agency, as well as hidden defects within eight working days after detection of the same in writing, describing the defect and giving reasons; otherwise the service shall be deemed approved. In this case, the assertion of warranty claims and claims for damages as well as the right to contest errors due to defects shall be excluded. In the case of justified and timely complaints, the customer is only entitled to the right to improvement or replacement of the service by the Agency. Minor colour deviations of the printouts from the result in the production run will not be accepted as a complaint.
- 11.2 In case of justified notice of defects, the defects shall be remedied within a reasonable period of time, and the customer shall enable the Agency to take all measures necessary for the investigation and remedying of defects. The Agency shall be entitled to refuse to improve the performance if this is impossible or involves a disproportionately high effort for the Agency.
- 11.3 The warranty period is six months from delivery/service. The right of recourse against the Agency according to § 933b para. 1 ABGB expires one year after delivery/service. The customer is not entitled to withhold payments due to alleged defects. The presumption rule of § 924 ABGB is excluded.

- 11.4 Claims for damages by the customer, in particular due to delay, impossibility of performance, positive breach of contract, fault in conclusion of a contract, defective or incomplete performance, consequential harm caused by a defect or unlawful acts are excluded, unless they are based on intent or gross negligence on the part of the Agency. Lost profit or contribution margin cannot be claimed.
- 11.5 Any claim for damages may only be asserted within six months of knowledge of the damage.
- 11.6 Claims for damages are limited to the net order value.

12. LIABILITY

- 12.1 The Agency shall fulfil the work assigned to it in compliance with generally accepted legal principles and shall inform the customer in a timely manner of any risks that are apparent to it. Any liability of the Agency for claims made against the customer due to the advertising measure (the use of a trademark) is expressly excluded if the Agency has fulfilled its duty to inform; in particular, the Agency shall not be liable for litigation costs, the customer's own legal fees or costs of judgment publications as well as for any claims for damages or similar claims of third parties.
- 12.2 The Agency is only liable for damages within the scope of the legal regulations, if it can be proven that it acted intentionally or with gross negligence. Liability for minor negligence is excluded. The existence of gross negligence must be proven by the injured party.

13. APPLICABLE LAW AND JURISDICTION

- 13.1 The contract and all mutual rights and obligations derived therefrom as well as claims between the Agency and the customer shall be governed by Austrian law, excluding the UN Convention on Contracts for the International Sale of Goods and the IPRG
- 13.2 The place of contractual relationship shall be the registered office of the Agency. In case of shipment, the customer shall bear the risk as soon as the Agency has handed over the goods to the carrier chosen by it.
- 13.3 The place of jurisdiction for all legal disputes arising between the Agency and the customer in connection with this contractual relationship shall be the court with jurisdiction for the Agency's registered office. Notwithstanding the foregoing, the Agency shall be entitled to sue the customer at the customer's general place of jurisdiction.

