

General Terms and Conditions of TEMA Technologie Marketing AG

I. Subject matter and scope

1. These General Terms and Conditions (hereinafter referred to as "GTC") apply, subject to deviating agreements, to all deliveries and services of TEMA Technologie Marketing AG (agency), to entrepreneurs within the meaning of § 14 of the German Civil Code (BGB), legal entities under public law or special funds under public law (i.e. "commissioning company"; Agency and commissioning company (hereinafter referred to as "Parties"), in particular for services or works in the areas of advertising, communication, digital, social media, influencer mediation, content marketing, editing, production, PR and strategic and political consulting.
2. These GTC shall also apply to all future business relationships between the Agency and the commissioning company, without the need for further express inclusion.
3. The terms and conditions of the commissioning company are hereby rejected. They shall only apply if the Agency expressly agrees to their validity in writing.

II. Presentations and Pitches

1. Insofar as the agency presents drafts, concepts or designs to the commissioning company on its own initiative or in the context of pitches, presentations or comparable formats (i.e. "presentations") before a corresponding commission, this serves solely to initiate business.
2. Any reproduction and distribution of such presentations requires the consent of the Agency. The agency does not transfer ownership of documents, samples, etc. handed over in the context of presentations to the commissioning company and does not grant it any rights of use to the protectable content contained or embodied in the presentation (such as works, trademarks, designs). In particular, the commissioning company will not use the drafts, concepts and designs presented in presentations as a basis for the production of its own material without the consent of the agency and will not pass them on to third parties. If the commissioning company decides not to commission the Agency to do so, or if it does not commission the Agency after three months at the latest, it will delete all copies of the presentations in its possession at the request of the Agency.

III. Offers and Commissioning

1. At the request of the commissioning company, the Agency shall submit to the commissioning company a cost estimate or an offer setting out the services to be provided by the Agency, the remuneration and the other conditions of the assignment (i.e. "cost estimate"). Unless the agency's remuneration shown in the cost estimate is calculated according to the time spent and unless otherwise stated, this is a non-binding estimate of the expected effort.
2. The contracting company shall instruct the Agency by approving the cost estimate within the period specified therein or, in the absence of such a quote, within one week of receipt.

IV. Services of the Agency

1. The Agency shall provide its services during its normal business hours (Monday to Friday between 9.00 a.m. and 6.00 p.m.). For services provided by the Agency in consultation with the commissioning company outside normal business hours, it receives a surcharge of 10% of the remuneration agreed for the corresponding services.
2. The Agency shall provide the services covered by the contract in compliance with the generally recognised principles of the agency system with the usual care in this respect.
3. The examination of legal issues, in particular the performance of trademark searches, their evaluation, an examination of possible collisions with pre-existing industrial property rights (e.g. trademarks, designs or utility models) as well as an examination under competition law (e.g. advertising comparisons, top position advertising, special legal advertising restrictions), copyright or data protection law is not part of the Agency's services. The commissioning company decides independently on the implementation of corresponding legal audits and carries them out at its own expense. However, the Agency will draw the attention of the commissioning company to any legal risks of the content or design of planned advertising measures that are recognizable to it. In this case, the commissioning company decides (if necessary after examination) whether the advertising measure should nevertheless be carried out or changed.
4. If the object of the Agency's service is the development of distinctive signs (trademarks, logos, company logos, slogans, etc.), the Agency guarantees that it does not have any rights of third parties at the time of the presentation of the first draft.
5. If agency services include correction loops, the following applies: Correction loops enable changes to agency services provided in accordance with the contract, which are transmitted to the commissioning company by the agency as final work or interim results. The subject of correction loops are generally change requests that represent an optimization or fine-tuning of agency services that have not already been approved. Changes to the commissioned services in the sense

of a change or extension of the order (see Section V.5) are not possible in the context of correction loops. Correction loops included in the remuneration are specified in the respective individual order. If no determination is made in the respective individual order, included correction loops are only compensated up to the equivalent of a total of 5% of the agency fee estimated for the total service with the agreed remuneration. Any additional expenditure shall be remunerated by the Agency in accordance with the hourly rates applicable at the time of commissioning..

V. Order Processing

1. Delivery dates or deadlines are only binding if they are expressly marked or confirmed as binding by the parties in writing, otherwise they are considered target dates. After reaching a target date, the commissioning company may request the agency in writing to provide the outstanding services, setting a reasonable deadline; upon expiry of this period, the contracting company's claim to the performance is due.
2. After commissioning, the initial determination, shortening or bringing forward of delivery deadlines and dates shall require the approval of the Agency. The Agency may make its consent dependent in particular on the payment of an appropriate surcharge on the agreed remuneration of up to 100% on the service affected by the setting of the deadline or shortening.
3. The parties will cancel appointments (meetings, etc.) with at least 3 working days' notice. If this deadline is not met, the Agency shall be entitled to charge 25% of the estimated remuneration for that date. The parties will cancel production dates with at least 10 working days' notice. If the contracting company does not comply with this deadline, the Agency shall be entitled to charge 50% of the remuneration estimated for that production date. In case of cancellation of 5 or fewer working days in advance, the entire remuneration estimated for this production date will be charged. The commissioning company and the agency each reserve the right to prove that the specific damage suffered by the agency as a result of the cancellation was lower or higher. In this case, the Agency may claim compensation for the lower or higher proven damage. Claims of the Agency pursuant to Section VII.4 shall remain unaffected by the provisions of this paragraph.
4. Meeting minutes drawn up by the Agency and transmitted to the commissioning company become binding in terms of their content if the commissioning company confirms them in text form (e.g. e-mail) or does not object to them in the same form within five working days of receipt.
5. Subsequent requests for changes with regard to commissioned services (i.e. amendment request) must be notified to the Agency by the commissioning company as early as possible and in sufficient detail. They will only take effect with the express confirmation of the Agency. If, as a result of a change request, the originally commissioned service is not feasible or can only be partially carried out, the Agency shall inform the commissioning company of this and agree with it whether the provision of services should be suspended until the change request has been clarified or whether the original provision of services should be continued. Dates and deadlines are postponed or extended by the period of suspension. If the amendment entails additional costs, the Agency will draw the attention of the contracting company to them. The commissioning company then decides whether the change application should be carried out against payment of the additional costs or whether the original service content should remain.
6. Designs, templates, files and other work equipment such as negatives, models, original illustrations, etc., which the Agency creates or has created in order to provide the service owed under the Contract, remain the property of the Agency. There is no obligation to surrender.
7. If, in the course of the performance of this contract, technical know-how such as programming, structure and functionality of programs and software, as well as the linking of programs, data, databases and systems, in each case including the source codes, is developed, a claim to the release of the source code exists only if this is expressly agreed or for the exercise of the rights of use granted to the commissioning companies is necessary. If the release of the source code is owed and the software contains standard third-party software or other software that is subject to license restrictions, the source code release will take into account such license restrictions.
8. The Agency is authorised to use or integrate open source software or components when creating software. It must inform the commissioning company of this, stating the open source components used. The use of open source components that are under a license that would cause a so-called copy-left effect is only permitted with the express consent of the commissioning company.

VI. Involvement of the commissioning company

1. The contracting undertaking shall provide the Agency with appropriate support in the provision of its services and, in particular, shall provide it with information and data material in a timely manner and shall issue approvals or authorisations in such a timely manner that the Agency's work processes and the realisation of the assignment are not impaired. If the agency is unable to provide the services or can only provide them with additional expenses due to a lack of or insufficient cooperation or provisions, it is entitled to claim necessary additional expenses released by the commissioning company against the commissioning company. Dates and deadlines are postponed

by the delay caused by the commissioning company plus a reasonable start-up time of at least three working days.

2. The commissioning company shall inform the Agency of any special restrictions applicable to the commissioning company or its industry (e.g. statutory advertising bans or restrictions) or requirements for advertising measures to be observed (e.g. consumer information in accordance with the PKW-EnVKV, Lebensmittelinformations-VO) without being asked to do so and shall provide the Agency with the information and documents required to meet such requirements in good time.
3. The commissioning company shall ensure that materials or content (e.g. brand logos, texts, illustrations) provided or proposed to the Agency are free of third-party rights and that their use does not violate applicable law. If the Agency is claimed by third parties on the basis of such content, the commissioning company shall indemnify the Agency from these claims (including the necessary legal costs) upon first request.
4. The contracting company will back up data and programs before handing them over to the agency in order to enable recovery in the event of data loss.

VII. Remuneration and Terms of Payment

1. Unless otherwise agreed, the Agency shall receive remuneration according to the time spent on the basis of the Agency's hourly rates applicable at the time of commissioning. The agency regularly concludes individual contracts for agency services in the field of the development of trademarks, company logos, trademark claims or comparable characteristics for comprehensive use in the corporate communications of the commissioning company only against separate remuneration for the use of the work results, the amount of which depends on the scope of the rights of use desired by the commissioning company.
2. An excess of up to 10% of the expenditure shown in approved cost estimates is covered by the approval of the commissioning company.
3. After the complete provision of services and before that, the agency is entitled to bill (partial) services provided according to the time spent or according to the progress of the project.
4. GEMA fees, artists' social security contributions, customs costs and similar costs are to be borne by the commissioning company and will be passed on in the event of payment by the agency, even if they are only levied retrospectively.
5. All expenses and ancillary costs which are pre-financed by the agency and then passed on to the client (such as expenses for ad placement, domain costs, travel expenses, license costs, expenses, trade fair material, printing costs, couriers, etc.) will be charged **with a handling fee of 20% upon proof**. Travel times will be charged at 50%.

6. If the commissioning company terminates an order before the service has been performed in full, without good cause, the Agency shall be entitled to demand the agreed remuneration. However, it must have credited for what it saves in expenses as a result of the termination of the contract or which it acquires or maliciously fails to acquire through other use of its labour. It is presumed that the agency is then entitled to 60% of the agreed remuneration attributable to the part of its services that has not yet been provided.
7. All remuneration and expenses of the Agency are exclusive of VAT in the amount applicable by law.
8. Remuneration and expenses are payable 14 days after invoicing, advance invoices are payable immediately.
9. The assertion of rights of retention and the set-off against counterclaims is only permissible on the basis of claims or counterclaims arising from the same contractual relationship or with claims or counterclaims recognised or legally established by the Agency.

VIII. Subcontractors and Third-Party Services

1. The agency is entitled to carry out the work assigned to it itself or to commission subcontractors – in particular other companies affiliated with TEMA Technologie Marketing AG – to do so.
2. **Third-party services**
 - 2.1. The Agency is also entitled to commission third-party services. Third-party services are services provided by third parties that are clearly not intended to act as vicarious agents of the agency for the commissioning company (regularly e.g. film productions, photo shoots, delivery of stock photos, testimonials, influencers, performers and models, production of advertising materials, printing, editing, translations, market research, legal advice and trade fair construction).
 - 2.2. Third-party services are always recognisable as such by the commissioning company if the agency discloses them separately in the context of a cost estimate or if the commissioning company can recognise the nature of external services on the basis of its own expertise.
 - 2.3. If, in the course of its activities, the Agency undertakes the processing of contracts for external services (e.g. selection, solicitation of tenders, negotiations, coordination, invoicing or payment processing), it shall receive additional remuneration for this according to the time spent.
 - 2.4. In each case, the Agency shall obtain the consent of the commissioning company to commission external services. Separate consent is not required if the costs, the essential

conditions of the assignment and the identity of the third parties are already shown in the cost estimate approved by the commissioning company, in particular if the cost estimate is already accompanied by third-party offers. Furthermore, it is not necessary if the order is not expected to exceed the net amount of EUR 5,000.00 or if it is a follow-up service of suppliers who have already entered into an agreement.

- 2.5. The client of third-party services is the commissioning company. Subject to the conditions set out in Section VIII.2.4, the Agency is authorised to commission the external services in the name and for the account of the commissioning company.
- 2.6. If, by way of derogation from Section VIII.2.5, the Agency exceptionally commissions third parties in its own name and for its own account, this shall be at the expense and risk of the commissioning company. In this case, the regulations on business management (§§ 675 et seq. BGB including the corresponding reference to the regulations of contract law) apply. In particular, the Agency shall be entitled to demand an advance and, without prejudice to its own remuneration claims (see Section VIII.2.3), to pass on remuneration paid or disbursed by it to third parties **plus a risk premium of 20%**. Claims by the commissioning company due to defects in third-party services are limited in content and scope to the rights to which the agency is entitled vis-à-vis third parties.

IX. Reservation of Rights and Title

1. The granting of rights of use by the Agency is subject to the condition precedent that the commissioning company pays the remuneration owed for the contract in full. Until full payment has been made, the use of work results already delivered to the extent of Section IX.1.1 shall only be permitted at any time on a revocable basis. The authorisation expires if the commissioning company is in default and does not pay even after the expiry of a reasonable grace period.
2. Rights of use for agency services (ideas, drafts, etc.) that are rejected or not approved for execution by the commissioning company remain with the agency and can be used freely by it.
3. Until the remuneration due for the assignment has been paid in full, the Agency retains ownership of all work results from the respective assignment handed over to the commissioning company.

4. Reference advertising

- 4.1. TEMA Technologie Marketing AG and other companies affiliated with it within the meaning of Section 15 et seq. of the German Stock Corporation Act are – also in the event

of the transfer of exclusive rights of use to the commissioning company – entitled to publish the commissioning and to use the work results, name and brands of the commissioning company free of charge in all media (including Internet and social media channels (e.g. Instagram, Facebook, YouTube)) as well as in competitions and presentations in the context of its own advertising, even after the end of the contract.

- 4.2. Reference advertising is excluded if it is opposed by obvious legitimate interests of the commissioning company. The commissioning company also has the option of objecting to self-promotion in writing with effect for the future, provided that this is justified taking into account the interests of both parties. In this case, the Agency will remove the reference advertising within a reasonable period of time. Physical media that have already been created (especially print material) may be used up.

X. Warranty and rights of third parties

1. If the services of the Agency are subject to a statutory warranty, the following applies:
 - 1.1. The contracting company must inspect the work and services provided by the agency immediately upon receipt, but in any case before use, and report defects immediately after discovery. If the immediate notification of defects is not made, there are no warranty claims with regard to obvious defects, known defects or their consequential defects.
 - 1.2. If there is a defect, the Agency may, at its discretion, remedy the defect or provide a replacement (supplementary performance).
 - 1.3. The agency's warranty obligation expires on the expiry of one year after receipt or – if such is to be done – acceptance of the agency service by the commissioning company.
2. If third parties assert rights against the commissioning company with regard to the agency service, it is the responsibility of the commissioning company to notify the agency immediately, not to acknowledge the alleged infringement without the consent of the agency and to conduct or settle any dispute, including any out-of-court settlements, only in agreement with the agency. If the contracting company makes the use of the Agency services for damage mitigation or other important reasons, it is also incumbent on the third party to point out to third parties that the cessation of use does not imply an acknowledgment of the infringement of intellectual property rights.

XI. Liability

1. The Agency shall be liable without limitation in accordance with the statutory provisions for claims for damages by the commissioning company due to a) injury to body, life or health, b) a grossly negligent or intentional breach of duty by the Agency, its legal representatives or vicarious agents, c) breach of a guarantee assumed d) fraudulently concealed defects, e) under the Product Liability Act or f) pursuant to §§ 44, 44a TKG.
2. In all cases not covered by Section XI.1, the Agency shall only be liable for damages resulting from a slight or simply negligent breach of duty by the Agency, its legal representatives or its vicarious agents to the extent that it is a breach of essential contractual obligations (cardinal obligations). Cardinal duties are those whose fulfilment characterises the contract, enables the proper execution of the contract in the first place and on the compliance with which the commissioning company may regularly rely. In this case, liability is limited to the contract-typical and foreseeable damage. In all other respects, the Agency shall not be liable for damage caused by slight or simple negligence.
3. Insofar as the Agency is liable in accordance with Section XI.2 above, the liability shall be limited to EUR 50,000.00. If there is a risk of higher damage, the contracting company will draw the Agency's attention to this so that the parties can adjust the limit and the Agency can insure itself against such damages.
4. Liability of the Agency shall be excluded if and to the extent that the Agency has informed the commissioning company of concerns in accordance with Section IV.3 and the commissioning company decides against changing the relevant contractual services despite the notice. In these cases, the commissioning company shall indemnify the Agency against claims by third parties upon first request. This also includes the necessary legal costs.

XII. Confidentiality

1. The parties hereby mutually undertake to disclose all information and documents of the other party that are accessible or transmitted to them in connection with the conclusion of the contract and that are marked as confidential or are classified as business or trade secrets of the respective contracting party are recognisable and not to record, store, pass on, exploit or make them accessible to unauthorised persons unless necessary to achieve the purpose of the contract. Disclosure by the agency to TEMA Technologie Marketing AG or other companies affiliated with it within the meaning of Section 15 et seq. of the German Stock Corporation Act is always permissible, provided that they undertake to maintain confidentiality in accordance with this regulation.

2. Where the parties have entered into a separate agreement in respect of confidential information, the provisions of that agreement shall apply exclusively in this respect.

XIII. Data protection

1. The parties will comply with the legal provisions on data protection, in particular the provisions of the GDPR and the BDSG-neu, and will oblige their employees accordingly.
2. If personal data is transferred or processed for the performance of the contractual services, the parties conclude a separate order processing agreement (DPA).

XIV. Final Provisions

1. The place of performance for services and payment as well as the place of jurisdiction for all disputes between the contracting parties is the registered office of the Agency. The agency is also entitled to sue the commissioning company at its general place of jurisdiction.
2. The law of the Federal Republic of Germany shall apply to the exclusion of the provisions of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG)

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