



## GENERAL TERMS AND CONDITIONS

 +49 - 30 - 236 21 934  
info@lm-kommunikation.de  
lm-kommunikation.de

### 1. General points

1.1 The following T&Cs shall exclusively govern all contracts for communication design services between Tanja Lemke-Mahdavi (hereinafter referred to as Designer) and Client. This applies in particular, even in cases where the Client uses General Terms and Conditions which include contradictory T&Cs or those with conditions which deviate from the existing clauses.

1.2 The existing T&Cs shall remain applicable, even if Designer unconditionally executes the order, while aware of conditions of Client which contradict or deviate from those contained herein.

1.3 Deviations from the conditions contained herein are only deemed valid if Designer explicitly agrees in writing.

### 2. Subject matter of contract; copyright and usage rights

2.1 Each order placed with Designer is a contract for copyright work, which is intended to grant usage rights to the work services. The contract is not intended to verify the admissibility of the works of Designer under competition law. Nor does it address the issue of whether the works of Designer may be used or registered under copyright protection laws. The Client is responsible for performing its own due diligence.

2.2 All drafts and final artwork are subject to copyright. The provisions of this law shall continue to apply between the parties, even if the necessary requirements for protection, e.g. the so-called level of originality, is absent in individual cases. Accordingly, such cases shall be subject to copyright contract regulations of §§ 31 et seq. German Copyright Act; moreover, under such circumstances, both parties shall be entitled in particular to copyright claims under §§ 97 et seq. German Copyright Act.

2.3 Drafts and final pieces of art, must not be modified or passed to any third party, whether as an original document or a copy, without the explicit consent of Designer. Any reproduction – even partial – is prohibited. Any breach of this clause 2.3 lines 1 and 2 shall entitle Designer to demand payment of a contractual penalty amounting to 100% of the agreed fee, or the amount deemed appropriate in accordance with the AGD Collective Agreement on Fees for Design Services (latest version) in addition to the otherwise agreed fee.

2.4 Designer hereby grants Client the required usage rights for the relevant purpose of the work. Unless otherwise agreed, only simple usage rights are granted in this context. Any transfer of usage rights to third parties requires written agreement.

2.5 The usage rights are only transferred to Client when the agreed payments due are settled in full.

2.6 Designer shall be designated as the creator on any copies of the work. Any breach of this provision shall entitle Designer to demand payment of a contractual penalty amounting to 100% of the agreed fee, or the amount deemed appropriate in accordance with the AGD Collective Agreement on Fees for Design Services (latest version) in addition to the otherwise agreed fee.

2.7 Proposals of Client or his/her employees or any other contribution made by either party shall have to influence on the level of fees due. Moreover, they do not form the basis of any joint copyright.

2.8 The drafts and final pieces of art must only be deployed within the agreed scope of use (in terms of timing, area and content). Any usage over and above the agreed scope of use (in terms of time, area and content) is prohibited and shall entitle Designer to demand a contractual penalty amounting to 100% of the agreed fee, or the amount deemed appropriate in accordance with the AGD Collective Agreement on Fees for Design Services (latest version) in addition to the otherwise agreed fee.

### 3. Remuneration

3.1 Drafts and final pieces of art, together with the granting of usage rights, constitute a single service. Remuneration shall be based on the AGD Collective Agreement of Fees for Design Services, unless any other agreements have been concluded. All remunerations are net and subject to the legally applicable rate of value-added tax.

3.2 If no usage rights are granted and only drafts and/or final pieces of art are delivered, no fee for usage shall be due.

3.3 The production of drafts and all other services rendered by Designer for Client shall be chargeable, unless explicitly agreed otherwise.

### 4. Due date for fee, acceptance, default

4.1 The fee is due when the work is delivered. It is payable strictly net. If the commissioned work is accepted in parts, a proportional part-payment shall also be due with the acceptance of each part. In the event of an order extending over a lengthy period or imposing a high financial outlay on the part of Designer, appropriate instalment payments shall be made, namely 1/3 of the total fee when the order is commissioned, 1/3 when 50% of the work is complete and 1/3 after the final delivery.

4.2 Acceptance may not be withheld for design-related or artistic reasons. Creative freedom applies when fulfilling the order.

4.3 In the event of any default of payment, Designer may impose default interest amounting to 8% over the respective base interest rate of the European Central Bank per year. The right to assert claims for higher verifiable damages is reserved.

5. Special services, ancillary and travel costs

5.1 Special services, such as revising or altering final pieces of art, manuscript proofreading or print monitoring shall be separately chargeable based on time required and corresponding to the AGD Collective Agreement on Fees for Design Services (latest version).

5.2 The Designer is entitled, subject to reaching prior agreement with the Client, to commission the external services required to fulfil the order on behalf and at the expense of Client. The Client undertakes to provide appropriate authorisation to Designer.

5.3 Where individual cases involve contracts for external services being concluded on behalf and at the expense of Designer, Client undertakes to exempt Designer from any obligations arising from the conclusion of such contracts within the scope of the internal relationship.

5.4 Expenses incurred for technical ancillary costs, particularly for special materials, or for producing models, photos, progress records, reproductions, typesetting and printing, etc., are to be refunded by Client.

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

6. Ownership of drafts and data

6.1 The rights to all drafts and final artwork hereby granted are usage rights, not ownership rights.

6.2 The originals shall be returned to Designer within an appropriate period undamaged, unless otherwise agreed in writing. In the event of damage or loss, Client must refund the costs incurred to recreate the originals. The right to assert claims for more extensive damages is reserved.

6.3 Data and files produced in the course of executing the contract shall also remain the property of Designer. Designer is not obliged to provide such data and files to Client. If Client wishes to obtain the same, this must be separately agreed and paid for.

6.4 If Designer has provided Client with data and files, these may only be modified with the prior consent of Designer.

6.5 The shipping of all objects cited in clauses 6.1 to 6.4 is at the risk and expense of Client.

7. Correction, production monitoring, specimen copies and self-promotion

7.1 Copies for checking must be sent to Designer prior to reproduction.

7.2 Production monitoring work by Designer is solely by separate agreement. When tasked with production monitoring, Designer is entitled to make the required decisions at its reasonable discretion and issue corresponding instructions.

7.3 Client shall present Designer with 6 specimen copies of all reproduced work, in perfect condition and free of charge. Designer is entitled to use these samples and all other work pursuant to the contract for the purpose of self-promotion in all media and also to make reference to the duties performed on behalf of Client.

## 8. Liability

8.1 The Designer shall only accept liability for damage caused e.g. to templates, films, displays and layouts placed in its care etc., in the event of deliberate intent and gross negligence, unless the damage involves any fatality, physical injury or other harm to health; Designer shall be liable in these cases for damage, even in the event of minor negligence. In all other cases, Designer shall only be liable for minor negligence in the event of a breach of duty; the performance of which is of particular importance for the achievement of the contractual object (cardinal obligation).

8.2 For orders, which are commissioned to third parties on behalf and at the expense of Client to third parties, Designer disclaims all liability vis-a-vis Client, unless Designer is culpable even in the act of selection. Under such circumstances, Designer shall only act as intermediary.

8.3 Upon approval of drafts or final pieces of art by Client, it shall assume responsibility for ensuring the technical and functional correctness of products, text and illustrations.

8.4 Designer disclaims all liability for drafts or final pieces of art approved in the manner described by Client.

8.5 Complaints concerning obvious defects shall be addressed within 14 days of delivery of the item in writing to Designer. Sending appropriate notification before the deadline is deemed observance of the specified time limit.

## 9. Creative freedom, implementation of the order and templates

9.1 Creative freedom applies when fulfilling the order. Objections concerning aspects of the artistic implementation are excluded. If Client desires modifications during or after production, it must bear any additionally incurred costs as a result.

9.2 If the implementation of the order is delayed for reasons attributable to Client, Designer may request an appropriate increase in the fee. In the event of deliberate intent or gross negligence, Client is also entitled to assert compensation claims for damages. The assertion of further damages due to the default remains reserved.

9.3 The Client assures that it is fully entitled to use all templates handed over to the Designer. If Client is not, contrary to this assurance, entitled to use said content, Client shall indemnify Designer against all possible third party damage compensation claims.

10. Cancellation of contract

If Client terminates the contract prematurely, Designer shall receive the agreed fee, but must make allowances for saved expenses or alternative commissions performed or maliciously omitted (§ 649 German Civil Code). However, the parties hereby agree on a consolidated lump sum to cover payment of services rendered and expenses incurred up to the time of termination, as follows: Termination before commencement of work: 10% of the agreed fee or in the absence of any agreed fee, 10% of the fee deemed appropriate in accordance with the AGD collective agreement for design services (latest version). Moreover, there is also, of course, scope for deviating individual agreements. Client remains entitled to prove that a lower level of services or greater expenses were involved.

11. Final provisions

11.1 Provided Client is a merchant, the place of performance and place of jurisdiction is the registered office of Designer.

11.2 This contract is governed by the law of the Federal Republic of Germany.

Version as of November 2014