

# General Terms and Conditions of Cemper GmbH

for selling, renting and delivering of online advertising space (text links, presell pages/hosted content etc.), creation of advertising material (advertising texts, websites, graphics, etc.) as well as the delivery of consulting, project management and research services. The company Cemper GmbH might be occasionally referred to as "CEMPER.COM" hereafter as well as in other documents..

Status: January 2006

## 1. Validity

- 1.1. The Cemper GmbH – hereafter referred to as the agency – adduces its achievements exclusively on the groundwork of the present general terms and conditions. Those are also applicable for all future business relations, even if it they are not explicitly referred to.
- 1.2. Side agreements, reservations, amendments or additions to these general terms and conditions must be in writing in order to be effective; this is also applicable for the deviation from the requirement of the written form.
- 1.3. Opposing or from these general terms and conditions deviating conditions of the contracting partner will only be effective – even if informed – if specifically accepted by the agency and in written form.
- 1.4. Single terms of these general terms and conditions which become ineffective do not affect the commitment of the remaining conditions and the contracts which where entered based on them. The ineffective term shall be replaced by an effective term that comes as close as it gets regarding reason and intention of the previous term.

## 2. Conclusion of a contract

- 2.1. Foundation for the conclusion of a contract is the respective offer from the agency respectively the client's order, which contains the scope of services and the remuneration. The agency's offers are exemptible and non-binding.
- 2.2. If the client places an order he is bound to the agency for a time frame of two weeks beginning with the admittance to the agency. The contract is concluded through confirmation of the order by the agency.
- 2.3. The confirmation shall be in written form (eg. via order confirmation) unless the agency shows doubtless (eg. via taking action based on the order) that it confirms the order.

## 3. Scope of services, order procedure and the client's duty to collaborate

- 3.1. The scope of adducing services results of the client's order respectively the specifications for tenders or the information of the contract. Subsequent amendments of the scope of services require the written form.
- 3.2. All services performed by the agency have to be monitored by the client and released within three days. Non-occurrence within the previously mentioned three days shall be seen as confirmation by the client.
- 3.3. The client will immediately provide the agency with all the information and data which are necessary for the service delivery. He will inform the agency about all the processes which are important for the

execution of the order even if these circumstances were discovered throughout the process of the order. The client will cover the expenses for services which have to be performed again or delayed due to inaccurate, imperfect or afterwards altered indications provided by the client.

- 3.4. The client is also obliged to check all the data (pictures, logos, etc.) provided for the completion of the order for potential existing author rights, trademarks or third-party rights. The agency can't be held liable in court for copyright violation. If the event occurs that the agency is held liable in court due to a copyright violation, the client has the obligation to recoup that agency; client shall cover all extra expenditures occurred through third-party demands.

#### **4. External Services / Commission a Third-Party**

- 4.1. The agency is authorized due to its own judgement to provide the services by itself, contact a third party to perform services covered by the contract and/or substitute such services.
- 4.2. Commissioning a third-party takes place either on behalf of the company's name or the client's name but in every case on account of the client.
- 4.3. The agency will choose the third-parties carefully and pay attention that these parties will be equipped with the required skills.

#### **5. Terms**

- 5.1. Term and date arrangements must be recorded and confirmed in written form.
- 5.2. The agency endeavors to stick to the agreed appointments. Appointments set by the agency will be delayed respectively if the client doesn't provide the necessary information in the appropriate form and on time (8 weeks before execution).
- 5.3. Non-compliance of appointments authorizes the client to be legally entitled to his rights only if he grants the agency an appropriate (at least 14 days) grace period. This grace period starts upon receipt of a reminder.
- 5.4. After expiration of the grace period without any results, the client is entitled to withdraw from the contract. The right to claim default damages is only granted upon intention or gross negligence by the agency.
- 5.5. Unpreventable or unforeseen events – especially delays with the agency's contractors – discharge the agency from the compliance of the agreed delivery date. This is also applicable if the client defaults his required obligations for the completion of the order (eg. provision of data or information) If this event occurs, the negotiated appointment shall be postponed at least by the delay.

## 6. Cancellation of a Contract / Refund Policy

6.1. The agency is in particular entitled to cancel a contract, if

- the execution of service is impossible due to reasons for which the client is responsible or it will be postponed although a grace period is granted.
- a justified doubt regarding the solvency of the client exists and he refuses to make a prepayment or a suitable security before the delivery of service desired by the agency.
- Negotiated payments (especially prepayments for advertising material) from the client stay out.

6.2. The client is in particular entitled to cancel a contract, if

- the client observes the cancellation period of 60 days before renewal date of all the agency's booked services. Otherwise the contract will be considered renewed by the client for the upcoming period.
- No refunds are possible for early cancellation of a started contract term periods

6.3. The client is in particular entitled to cancel a consulting contract, if

- the client observes the cancellation period of 60 days or cancellation date agreed in the contract.
- No refunds are possible for early cancellation of a started contract term

6.4 If the client cancels the contract prior to its due date, the outstanding payments have to be paid to the agency. If the client refuses to pay its obligations, the agency has the right to discontinue all services immediately. All claims by the client, including the reimbursement of all advance payments made, expire with immediate effect.

## 7. Remuneration

7.1. Unless otherwise agreed, the claim of remuneration by the agency for each service performed emerges as soon as it has been performed. The agency has the right to require prepayments to cover the expenses.

7.2. All expenditures for the booking of online advertisement (eg. text links, banner, presell pages) must be satisfied up front and to the full extent. A deferred payment entitles the agency to cancel and remove the online advertisement immediately.

7.3. The agency receives remuneration in the amount of 38 % of the transacted advertisement budget for the performed services and the compensation for authority rights and trademarks due to a lack of arrangement. Services such as workshops, creation of concepts and other services shall be invoiced based on the actual number of work hours. It is self-evident that the remuneration, quotes and invoices exclude Austrian VAT tax except if the client is an Austrian company.

7.4. All services performed by the agency which are not explicitly satisfied by the remuneration will be satisfied separately. All expenditures that emerge for the agency have to be covered by the client.

7.5. Cost estimates by the agency are categorically non-binding. If it is predictable that the actual costs will exceed the cost estimates in written form by more than 25 %, the agency will inform the client of the higher costs. Other than that they are treated as approved and within the limits of the cost estimate. The cost exceedance is treated as approved by the client if the client doesn't disagree in written form within three days after the advice and offers more cost-efficient alternatives.

7.6. The agency is entitled to claim an appropriate refund for all services which are performed by the agency but are not executed by the client for whatever reason. This refund consists of the labor costs of the agency according to the actual hourly rates as well as the cash expenditures which have already been

carried out. By carrying out these refunds the client doesn't acquire any rights on these services; not yet executed concepts, drafts and other materials have to be returned to the agency without delay.

- 7.7. The agency is entitled to claim an appropriate refund for all services which are performed by the agency for support and problem diagnosis as well as troubleshooting according to the actual hourly rates.
- 7.8. The agencies hourly consulting rates shall be increased by 5% per year, per January 1.
- 7.9. The advertisement fees shall be increased as justified by the market prices.
- 7.10. The advertisement fees shall be increased as justified by the market prices.

## **8. Payment**

- 8.1. The agency's invoices are understood as net cash and are due without any discount on the date of invoice and unless otherwise agreed the invoices have to be settled within ten calendar days upon receipt of the invoice.
- 8.2. If a payment is delayed, the agreed upon default interests per month in the amount of 5 % above the discount rate of the Austrian Central Bank are valid but at least 7 %. The claim on default interests comes into being ten business days after the invoice has been sent. Delivered goods remain property of the agency until the full payment has been done.
- 8.3. The client is obliged to cover all costs which arise due to collection of debt, as well as encashment expenses or other costs that are necessary for prosecution.
- 8.4. A delayed payment by the client entitles the agency to set all performed services of every contracted agreement with that client due immediately. The agency is furthermore entitled to cancel the contract immediately.
- 8.5. The client is not entitled to clear his claims against the claims of the agency except the client's claims have been confirmed in written form by the agency or adjudged. The client has no right of retention.
- 8.6. Due to the nature of online advertisement (e.g. text links) payments in advance can't be refunded (also not partially) even if the contract was cancelled. Another monthly payment in advance is due because it is necessary for the cancelation of all booked online advertisements. This monthly payment shall entirely be covered by previously received advance payments.
- 8.7. The encashment currency is EUR as agreed upon. Deviations which occur due to fluctuations of currencies towards other currencies such as USD or GBP shall be covered solely by the client. The agency is using a 12 month trailing average rate for EUR/USD.

## **9. Pre-Sales, Work shops, Presentations**

- 9.1. The agency is legally entitled to receive an appropriate fee for the participation in work shops or presentations (Pre-Sales) which will cover – unless otherwise agreed – at least the agency's total amount of personnel and material expenses for the presentation as well as the costs for all external services.
- 9.2. If the agency doesn't receive an order after the presentation, all services by the agency especially the presentation materials and the content remains property of the agency; the client is not entitled to use – no matter in what way – them any further from this point; the materials have to be returned to the agency immediately. The transfer of presentation materials to a third party as well as the publication, duplication or any other utilization is not allowed without explicit consent.

- 9.3. The client is also not entitled to use the presented ideas and concepts independently of existing copyrights. The client doesn't acquire any exploitation right or right of use on the presented services by paying the presentation fee.
- 9.4. The agency is entitled to use the ideas and concepts which are presented for the solution of communication tasks otherwise if these ideas and concepts will not be utilized for advertisement materials by the agency.

## **10. Proprietary right and Copyright Protection**

- 10.1. All services performed by the agency including presentations (e.g. suggestions, ideas, sketches, drafts, concepts, etc.) as well as parts of it and single work pieces and blueprints remain property of the agency and can be reclaimed – especially if the contractual agreement is cancelled – at any time. The client acquires only the right of use (including duplication) for the purpose and degree of utilization which was agreed upon by paying the fee. Without converse agreement with the agency
- 10.2. the client is entitled to use the services performed by the agency only by himself, exclusively in Austria and only for the agreed upon time frame. The acquisition of exploitation rights or rights of use for services performed by the agency requires in any case the complete payment of fees charged by the agency.
- 10.3. Amendments of the agency's services especially the development through the client or by third parties instructed by him are only allowed with explicit confirmation by the agency and – if the services are copyrighted – by the author.
- 10.4. The exceeding utilization of the agency's services of the original agreed upon purpose and degree of utilization – independently if this service is copyrighted – requires the acceptance by the agency. The agency and the author are entitled to receive an appropriate payment in such a case.
- 10.5. The utilization of the agency's services or advertisement materials for which the agency developed conceptual or creative drafts – independently if this service is copyrighted – after expiration of the agency contract requires the acceptance from the agency as well. In this case the agency is entitled to receive full agency commission as agreed upon in the contract for the first year after the expiration of the contract. After the second respectively third year after the expiration of the contract the agency is entitled to 50 % respectively a quarter of the agreed upon agency commission. After the fourth year after expiration of the contract no agency commission shall be paid.

## **11. Labeling**

- 11.1. The agency is entitled to refer to the agency or the author on every advertisement material or advertisement effort without any claim of compensation by the client.
- 11.2. Under reservation of the client's possible disconfirmation in written form is the agency entitled to point out the existing business relationship with the client on the agency's very own advertising mediums and especially on its internet website with name and company logo of the client.

## **12. Warranty and Compensation**

- 12.1. The client shall hand in and explain possible complaints immediately but within three days after performance of the agency in written form. In a case of appropriate and on time complaints the client is only entitled to improvement or substitution of the agency's service.
- 12.2. Defects will be fixed within an appropriate time period if the notice of defects is justified whereby the client shall enable all measures which will help to investigate and fix the defects. The agency is entitled to refuse the improvement of services if this is impossible or related to disproportional high expenses for the agency.
- 12.3. Reversal of the burden of proof according to § 924 ABGB to the account of the agency is impossible. The presence of a defect at the point of transfer, the point of diagnosis and the timeliness of the notice of defect shall be proven by the client.
- 12.4. Claim for compensation by the client, especially regarding delay, impracticality of the service, positive violation of claim, guiltiness at conclusion of the contract, defective or incomplete services,

consequential damage by a defect or unlawful acting is ruled out unless they are based on intention and gross negligence of the agency.

- 12.5. Every claim for compensation can only be invoked within six months beginning at the knowledge of the defect.
- 12.6. Claims for compensation are limited by the contract value without taxes.

### **13. Liability**

- 13.1. The agency will perform the assigned services with respect to the general accepted rules of law and inform the client of potential risks in good time. Any liability of the agency for claims which are based on advertising efforts (use of a trademark) and filed against the client is explicitly foreclosed if the agency fulfilled its information obligation; the agency can't be held liable for legal costs, own lawyers' fees of the client or costs for the publication of judgement as well as claims for compensation or similar demands of third parties.
- 13.2. The agency is only liable for damages within the framework of the applicable laws and regulations if intention and gross negligence can be proven. The liability for ordinary negligence is foreclosed. The presence of gross negligence shall be proven by the aggrieved party.

### **14. Supplementary Provisions**

- 14.1. The agency doesn't accept specifications regarding competitive exclusion in general and is explicitly entitled to engage in business with the same or similar products or producers.
- 14.2. The contractual partners are obliged to mutual loyalty. They will refuse the enticement and employment of – even via a third party – the other partner's employees which worked on the realization of the order during the time period of the contract and 12 months after the expiration of the contract. The contractual partner who infringes this rule is obliged to pay the generalized compensation of EUR 100,000.-

### **15. Applicable Law, Place of Execution and Place of Jurisdiction**

- 15.1. Sole jurisdiction is Vienna, Austria.
- 15.2. Solely Austrian right with the exception of international reference norms shall be applied to the legal relationship between the client and the agency. The regulations of the UN Convention on Contracts for the International Sale of Goods (CISG) do not apply.
- 15.3. A local and factual responsible Austrian court for the place of business of the agency will be the agreed upon place of jurisdiction for all resulting conflicts between the agency and the client.