

Standard Terms and Conditions, Version of 14.08.2009



Subject and scope

The subject of the following Standard Terms and Conditions is the contractual relationships of konstruktiv GmbH (hereinafter referred to as the Agency), which as an advertising agency provides services in the fields of advertising planning, advertising consulting, design and production of advertising copy, and advertisement contracting.

The Standard Terms and Conditions apply to all contracts signed by the Agency and exclude any deviations from them in the contracting party's terms and conditions insofar as such deviations are not confirmed by the Agency in writing or electronically (§ 126 a of the German Civil Code). Special agreements and collateral agreements are only valid insofar as they are confirmed in writing or electronically by the Agency.

Proposals; concluding the contract

The Agency's proposals are subject to its confirmation insofar as no agreement to the contrary exists.

Placing orders with third parties

The Agency may at its discretion commission third parties that seem to be suitable for this purpose with providing its contractual services. Orders placed with third parties are placed in the name of and for the account of the contracting party. Before commissioning a third party the Agency is obliged to inform the contracting party of the type and the fee of the third party service.

The contracting party is entitled, within 3 days from receiving the aforementioned information, to contest the placement of the order. If the order is placed by the contracting party with another company, the work involved in procuring the proposal will be charged by the Agency on the basis of time spent and costs incurred.

Contracting party's obligation to co-operate

The contracting party is obliged to place at the Agency's disposal all information required for providing the contractual services and, without being explicitly requested to do so, to inform the Agency of all relevant circumstances hitherto unknown to the Agency.

The Agency is entitled to terminate the contract without notice if the contracting party does not fulfill its obligation to cooperate within an appropriate period of time with the threat of rejection. If the contract is terminated, the contracting party is obliged to reimburse the Agency for the entire volume of work carried out by the Agency up to that time on the basis of time spent and costs incurred.

Clause prohibiting the enticement of employees

During the term of cooperation between the parties and for a period of one year thereafter the contracting party shall neither entice away Agency employees nor engage them without consent from the Agency. In the event of a culpable violation the contracting party shall pay liquidated damages that shall be determined by the Agency and, in the case of dispute, reviewed by the competent court.

Terms of payment, right of retention, setting off payment

Invoices issued by the Agency are to be paid immediately and without any deductions. In the case of orders involving projects the Agency can require installments to be paid in an amount of half the agreed fee when the order is accepted and quarter at the end of the conceptual planning phase. The remaining payment is due upon delivery of the goods or provision of the service.

If the consumer price index officially determined and published by the Federal Statistical Office of the Federal Republic of Germany changes by eight or more percent relative to the level at the time when the contract is concluded, the price shall change by the same percentage. This change shall take effect from the month when the eight or more percent has been reached.

The contracting party becomes remiss in payment 30 days after receiving an invoice at the latest. Then the Agency is entitled to demand interest on the amount owed equal to the German bank rate plus 8% default interest as defined by § 247 of the German Civil Code. The Agency reserves the right to enforce a higher interest payment. Furthermore, in the case of arrears in payment, the Agency is entitled to treat all outstanding payments due from the contracting party as being immediately due for payment, and to retain any outstanding deliveries of goods or provision of services.

If after conclusion of the contract a significant deterioration in the financial position of the contracting party comes about that puts payment of debts at risk, the Agency can refuse to provide services, even if obliged to do so before payment, until the contracting party makes payment or pledges collateral. If, in spite of being required to do so within a reasonable period of time, the contracting party is prepared neither to make a payment in installments nor to pledge security, the Agency has the right to withdraw from the contract. The statutory rights concerning withdrawal in accordance with §§ 323, 324 of the German Civil Code and damages in accordance with § 325 of the German Civil Code remain unaffected by this.

Offsetting the claim for payment against claims made by the contracting party is permissible only insofar as these are recognized by the Agency as existing and due or they have been judged to be non-appealable and binding. A right of retention exists for the contracting party only if it is covered by the same contractual relationship.

Retention of title

The title in the delivered goods remains in force until the Agency has been paid in full. The contracting party is only entitled to dispose of the objects concerned with the prior agreement of the Agency in writing or electronically. At the time this contract is concluded the contracting party assigns all outstanding payments due to him from third parties in an amount equal to the total payment due to the Agency. If the contracting party defaults on payment, it is obliged to surrender the goods if due payments are not made within a reasonable additional period of time.

Guarantee

The contracting party is obliged to check deliveries to his premises by the Agency immediately after the delivery and to give notice of any defects as soon as they are discovered insofar as the contract is for him a trading transaction as defined by § 3 of the German Civil Code. If he fails to do this, the delivery is considered to be accepted even if there are defects.

Guarantee claims are excluded if a defect has arisen because of defective instructions, files and material of the contracting party or of prior work carried out by other companies. Insofar as the Agency simply passes on deliveries of third parties to the contracting party, the guarantee is restricted to culpability arising in connection with the selection of the third parties.

Otherwise guarantee claims are limited to the obligation for subsequent performance. The contracting party reserves the right to reduce the fee or to withdraw from the contract if the corrections are not satisfactory. The guarantee period is one year. In the case of deliveries of work and materials the period commences upon delivery of the goods. Otherwise the period commences upon acceptance of the work provided.

Website search engine optimization contracts, contracts for supporting sponsored links campaigns (e.g. Google AdWords) and contracts for online reputation management are contracts for services and no guarantee is given that the measures implemented will be successful.

Liability

The Agency is liable to the contracting party for damages arising from the infringement of contractual or comparable obligations only in the case of intention or gross negligence on the part of the company, its legal representatives and its universal agents. Liability is limited to the cost of foreseeable damage. The reimbursement of costs of consequential damage is excluded, as is also the loss of potential profits.

All claims of the contracting party that are not based on tort or intentional infringement of obligations are subject to the statute of limitations within one year of the due date. Acts leading to death, injury or impairment of health are excluded from this limitation of liability.

The Agency is not liable for damages arising from infringement of the contracting party's obligation to cooperate or from statements concerning the cooperation or goods or services provided by the contracting party to the Agency so that the latter can provide the services with which it has been commissioned.

Moreover, the Agency is not liable for any damages arising – in the course of providing its services – from the infringement of copyright, patents, brands, utility models, registered designs, and any other items subject to legal protection. It is also not liable for the legal acceptability of the services provided if the contracting party has accepted these, either by means of an explicit declaration or implicitly, as having been provided in a proper manner.

The Agency is not obliged to check where or, when applicable, to what extent work it commissions complies with directives etc. of third parties and does not accept liability in this context.

In providing support for sponsored links campaigns (e.g. Google AdWords) the Agency is not obliged to examine ads with regard to their legality and can in no way be held liable for any violations, especially of regulations involving competition law, trademark law, distinctive mark law, or copyright law.

The contracting party exempts the Agency from all claims filed by third parties against the Agency arising from the infringement of the aforementioned cases of property rights.

Copyright

The rights to use all services provided by the Agency that are protected by copyright is transferred exclusively to the contracting party only to the extent that the usage rights with respect to place, time and content correspond to the purpose of the contract. The Agency reserves the right to use the services it has provided for its own presentation purposes.

Furthermore, the usage rights are only transferred once the contracting party has fulfilled its payment obligations. In the case of default on payment the Agency has a right of retention. The contracting party is obliged to desist from exploiting the rights of usage as long as the transfer of the usage rights has not taken place.

Processing or altering the services protected by copyright or their publication and commercial exploitation by the contracting party is not permitted without the agreement of the Agency. Work provided or objects produced independently by the contracting party that are based on the permitted usage of the services protected by copyright are not affected by this.

Insofar as the transfer of the usage rights to the contracting party would infringe the copyright of third parties, the Agency must inform the contracting party without delay as soon as it is aware of the situation itself. The contracting party then has to decide without delay on further performance of the contract. Any acquisition of rights of usage of third parties takes place in the name of and for the account of the contracting party.

Obligation to maintain confidentiality and to preserve information

The Agency is obliged to maintain, with the diligence of an orderly businessman, confidentiality regarding all company secrets of the contracting party which become known to it in connection with the contractual relationship. This obligation remains in force after the contract has been terminated.

Insofar as no agreement regarding archiving has been made with the contracting party the Agency is not obliged to preserve and surrender at the end of the contractual relationship any data produced and stored within the scope of the relationship. In particular it is not liable to maintain the data in an orderly manner.

Place of performance, place of jurisdiction and applicable law

The place of performance for all services provided according to the terms of the contract is the municipality in which the Agency's head office is registered.

The municipality in which the Agency's head office is registered is the place of jurisdiction for all lawsuits – including those concerning promissory notes and checks – arising from business transactions with merchants, public corporations or special state funds in their capacity as legal entities.

konstruktiv®

Mutual legal relationships are determined exclusively in accordance with German law.

Saving clause

If any of the aforementioned provisions is invalid, this will not affect the validity of the remaining provisions.