

Terms and Conditions

1. Scope

- 1.1 These general terms and conditions („AGB“) are of the essence for the entire business relation between mediendesign AG für Informationsmanagement und Unternehmenskommunikation, located at Bartholomäus St. 26 in 90489 Nuremberg, Germany, (hereinafter referred to as “mediendesign”) and the customer, as far as the customer is an entrepreneur in pursuance with section 14 of the German Civil Code or the customer is an artificial person subject to public law.
- 1.2 Any other contradictions or contradictory terms except for these terms and conditions herein are not to be accepted by mediendesign, unless expressly agreed upon by mediendesign. The same is true for customers´ offers and acceptances, made expressly under their own terms and conditions.
- 1.3 The terms and conditions herein are valid only by the current version and are also subject to all further business relations between the customers. For current versions of terms and conditions see: www.mediendesign.de/agb

2. Offers, Conclusion of Contract and Form

- 2.1 A contract is concluded by the confirmation of the customer´s offer and the confirmation of acceptance by mediendesign.
- 2.2 There is no need of a special form. Especially in writing is not required.
- 2.3 Offers by mediendesign are, unless stated differently, non-binding. In default of other terms mediendesign shall perform reliable offers within 2(two) weeks . However, essential is the time of making the offer.
- 2.4 The customer shall not have any right of use of drawings, drafts, layouts, software as well as any other material and documents which are handed over concerning the offers and negotiations by mediendesign. Transferring to third parties requires permission in writing by mediendesign.

3. Collaboration

- 3.1 The parties to the contract both appoint agents who are in charge of all concerns of carrying out the contract. In case of absence due to illness, holidays, etc. another agent is to be appointed. Any changes concerning the agents are to be disclosed immediately. Not until disclosure has been made, are the original agents entitled to act within their agency and to be informed as well.
- 3.2 The agents are to communicate regularly. If there is demand they also inform about progress and obstacles when carrying out the contract.
- 3.3 mediendesign is to keep the customer informed about communication and information of the agents. This confirmation sent to the customer is mandatory as long as the customer does not object immediately.

4. Services

- 4.1 The service in detail, which mediendesign shall perform, is to be listed in the offer.
- 4.2 Unless expressly agreed upon mediendesign is not obliged to disclose interim results, drafts, layouts data of resource and such.
- 4.3 mediendesign is entitled to partial performance as long as it is deemed acceptable to the customer.
- 4.4 Unless expressly agreed protection and registration of patent, copyright and trademark, concerning performed ideas, inspirations, suggestions, concepts and drafts under this contract are not owed.

5. Cooperation

- 5.1 The customer shall support mediendesign with the conclusion of the contract; i.e. especially, if customer's cooperation is needed for providing information, material, data ("contents") as well as hard- and software in time.

- 5.2 Provided data are to be at disposal in a standardized format for direct use. For a current list of used formats see: www.mediendesign.de/formate. If conversion of the provided contents is required, the customer is to bear all costs which are known in advance. Current charge-out-rates of mediendesign are to find at subsection 12.3.
- 5.3 If the customer recognizes that information, demands or contents, provided by the customer, are flawed, incomplete, not explicit or inexecutable, the customer is obliged to inform mediendesign immediately and to inform about the consequences closely connected.
- 5.4 The customer's cooperation, owed under the contract, shall be without any special payment by mediendesign unless expressly agreed.

6. Change of service

- 6.1 If any changes concerning the scope of services under the contract are required, the customer is to inform mediendesign in writing. mediendesign shall verify the customer's needs as well as the consequences connected to the agreements that had been entered into. This process is to be paid in accordance with the current charge-out-rates of mediendesign (see ss. 12.3).
- 6.2 mediendesign shall inform the customer about the results of the verification hereunder. Either a detailed suggestion of the execution of the customer's needs will be made or the rejection will be explained.
- 6.3 If, after verifying, execution is possible the parties to the contract shall agree upon the contents of the suggestion. If the parties confirm, the contract shall be amended to this extent. If there is no agreement, the original contract is still valid.
- 6.4 Appointments that had been agreed upon are postponed if and to the extent of the process of amendments, considering the duration of the verification, unification process, suggestions are affected and where applicable the execution of the customer's needs in addition of an appropriate period of the approach is affected. mediendesign shall inform the customer about new appointments.
- 6.5 If mediendesign demands any changes of the services owed under the contract, mediendesign shall inform the customer in

writing and shall suggest how to proceed pursuant to ss. 6.2. Further proceedings are in compliance with ss. 6.3 and 6.4.

mediendesign is responsible for any all expenditures caused by working out the changes. The customer is to bear all the costs agreed upon and caused by the execution.

7. Approval

- 7.1 After mediendesign´s request the customer is obliged to give approval to drafts and interim results as far as these are to be deemed as reasonable.
- 7.2 Any change request constitutes a change of service. (See section 6).
- 7.3 If integration of the performed service into the surroundings or systems takes place, the customer is responsible for ensuring whether the performance meets the requirements and whether it can easily be used. The same is true if mediendesign, on behalf of the customer, works at systems or surroundings.

8. Access to internet-based tools

- 8.1 mediendesign operates a web-based project tool. Access is made via Internet with a standard web browser. There tasks are administrated with priorities and appointments. On request the customer obtains an individual password which accesses the project tool. Passing on the password to third parties is forbidden. Furthermore, the customer is to keep the password safely to avoid abuse.
- 8.2 The customer is obliged to inform mediendesign immediately if the password got lost or if an unauthorized third party obtained access. If the customer cannot prove that an unauthorized person obtained access to the project tool without approval, all the clarifications made via this access will be attributed to the customer.

9. Periods

- 9.1 Defaults of service caused by the customer (e.g. failure of cooperation by the customer) or force majeure (e.g. strike, lock-out, faults of telecommunication) are not within the liability of mediendesign. As a consequence mediendesign is entitled to postpone delivery of performance by the time needed to catch up on the delay in addition to certain warm-up time. mediendesign shall inform the customer about any delay by force majeure.

- 9.2 If the customer's assertion of rights causes reasonable grace, this shall constitute a grace of 2 (two) weeks at least.

10. Rights

- 10.1 After complete payment for performed service mediendesign shall grant a non-exclusive right of usage of service under the contract and to the extent agreed upon. Unless otherwise agreed usage is restricted as far as Germany only.
- 10.2 Shall the customer demand various use of designed work by mediendesign either partly or completely other than agreed, separate fees for usage rights, stipulated in advance, are required.
- 10.3 Unless expressly agreed, passing on usage rights or granting sublicenses is not admissible.
- 10.4 Unless expressly agreed, the customer is not entitled to alter or manipulate the performed service. Any alterations, required for the conclusion of the contract are hereby excluded.
- 10.5 The customer is obliged to mention the company by name, mediendesign, on each and every completed work and its copies.
- 10.6 The customer's cooperation or any suggestions made by the customer shall not constitute any alteration considering fees.

11. Delivery and Dispatching

- 11.1 The customer shall bear the risk of transmission of the work or performance (e.g. damage, loss, delay) irrespective of the medium used for transmission.
- 11.2 Shall, on the customer's request, the work be delivered to a different place other than the place of performance, risk of accidental destruction or impairment is at delivery to be transferred to a forwarder or carrier. However, risk shall transfer to the customer latest after leaving the company or the warehouse, irrespective whether dispatching is to take place from the place of performance.

- 11.3 If route of the dispatching or means of transport are not individually agreed, mediendesign shall determine the most reasonable alternatives. mediendesign shall hereby consider the customer's needs.
- 11.4 Shall the customer demand a special packing, all additional costs are to be borne by the customer.

12. Payment

- 12.1 If fixed payment is agreed, mediendesign is entitled to invoice installment for closed and individually usable parts.

40% of the payment is due at order confirmation, additional 30% are due after 6 weeks and the rest of 30% after acceptance or after inserting the devices owed under the contract.
- 12.2 Shall payment depend on time exposure, rates of remuneration are in default of other agreement applicable and monthly invoice is to take place by mediendesign.
- 12.3 For all services of advising, developing, design and software mediendesign orients itself by customary in trade remuneration. Underlying time exposures shall also orient themselves by common and published guidelines or experiences by approved and efficient methods and proceedings. (Applicable for all services of design are indications of time exposures, recommended by the association "Allianz deutscher Grafiker", www.agd.de).

In default of any agreements, mediendesign shall invoice € 130 per hour for services of advising in terms of business process, information technology, marketing, project management; € 110 per hour for software and developing service and € 95 per hour for services of design.
- 12.4 All prices are to be understood excluding packing and shipping and plus VAT, regulated by law.
- 12.5 Shall payment depend on time exposure, all outlays, expenses and travelling expenses caused within the order, are to be borne by the customer and are added to cost price. Every ridden kilometer within the order shall be invoiced by € 0, 60. Travelling time corresponds to half of working time.

- 12.6 Quotations by mediendesign are, unless differently agreed, non-binding. If, however, the actual costs exceed the quoted costs by 15%, mediendesign shall inform the customer immediately. Any customer's right of termination in accordance with section 650 of the German Civil Code remains unaffected.

13. Terms of condition, Right of retention, Summation

- 13.1 Unless expressly agreed, every service is to be paid cash and without any discount within ten (10) days after the invoice date. All conditions and consequences of delay are regulated by law. Shall the customer be in any delay, mediendesign shall be entitled to charge interests for delay of eight (8) % over the basic interest rate of the Bundesbank.
- 13.2 Summation by counter claims is only applicable as long as it is proven to be uncontested and legally valid. Furthermore, instead of claiming the right of retention, the customer shall be entitled to use his right of counter claims.
- 13.3 The customer does only have a restricted right of retention under the same contract. In case of defects right of retention shall only correspond to the triple of the amount necessary to correct the defects. The customer is entitled to exercise the right of retention due to uncontested and legally valid claims.

14. Claims for defects

- 14.1 In case of defect liability of delivery the customer is entitled to supplementary performance. On the customer's request of supplementary performance mediendesign is obliged to correct the defect, to deliver or to produce new device that is free from defect. On the customer's request on replacement, the customer is obliged to give back defected delivery.
- 14.2 In case of failure of supplementary performance the customer is entitled to reduce the price or to rescind the contract without complying any periods.
- The same is true for refusal by mediendesign or if supplementary performance is deemed to be unacceptable for the customer.
- 14.3 Limitation period for claims of defects is twelve (12) months.

15. Liability

- 15.1 In case of intention or gross negligence mediendesign shall be completely liable. In case of ordinary negligence or violation of basic contractual obligations as well as claims of damages instead of claims of performance mediendesign shall be liable for the foreseeable typical damage. Apart from that liability for ordinary negligence shall not be applicable. In case of liability for ordinary negligence the amount shall be limited to the correspondent order value.
- 15.2 Pursuant to product liability law and compulsory legal regulations liability for damage to life, body and health shall remain unaffected.
- 15.3 Same regulations are also binding for personal liability of employers, representatives and agents.
- 15.4 The customer is liable in accordance with all statutory regulations.

16. Unknown Contents, Domain Name

- 16.1 mediendesign shall not be responsible for contents and material produced by the customer.

mediendesign shall not be obliged to inspect material and contents for possible statutory violation. Shall mediendesign fear an offhand tremendous risk, the customer shall be informed in time.
- 16.2 The customer is not entitled to file a claim neither to claim for liability after contracting mediendesign with self-produced material or contents.

17. Reservation

- 17.1 mediendesign shall remain owner of all delivered physical performances (goods subject to retention of title) until complete money requests under the business relation are fulfilled, even if payments for specific performance had been effected.
- 17.2 In case of measures for legal enforcement of goods the customer is to inform mediendesign immediately.

- 17.3 Shall the marketable value of current securities of mediendesign for outstanding accounts be exceeded by totally more than 10 (ten) %, on the customer's request, securities corresponding to a certain amount and determined by mediendesign shall be decontrolled.

18. Secrecy, Reference

- 18.1 The parties to the contract shall agree secrecy of contents and conditions of the contract as well as of all processes during its execution.
- 18.2 Secrecy shall also be valid beyond termination of relation of the contract.
- 18.3 On request of either one party to the contract documents shall be returned again after termination of the relation of the contract unless the other party is entitled to claim rights on these documents.
- 18.4 Relating to either one of the contract parties in statements to the press or providing information shall only be applicable after approval given in advance, either in writing or via email. Other than that mediendesign is entitled to mention the customer's name on its website or in other media as a reference customer. In terms of self-promotion mediendesign is entitled to copy and distribute delivered performance and in terms of presentations to render publically, unless the customer is entitled to claim rights hereto.
- 18.5 The customer is to be informed that email is an open medium. mediendesign shall therefore not be liable for secrecy of emails. On the customer's request all communication can be carried out via different media.

19. Data Protection

- 19.1 mediendesign shall be entitled to save data that refer to the concrete order and, in accordance with statutory regulations, to field and process them for business purposes.
- 19.2 Transferring data to third parties shall only be applicable as far as it is subject to the contract, e.g. registering a domain.

20. Closing provisions

- 20.1 In default of separate agreement place of performance shall be the branch office of mediendesign.
- 20.2 Place of jurisdiction shall only be Nuremberg; this is true for all legal actions caused mediately and immediately thereof as well as for conclusion of the contract and its efficiency; furthermore for disputes, referring to documents, drafts and checks. However, mediendesign shall be entitled to appear in courts that are located at the customer's residence or at the registered office.
- 20.3 Applicable only for all legal aspects caused by the order and its execution shall be German Law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 20.4 Shall, for any reason, single or more regulations of the terms and conditions hereof be void, validity of remaining regulation shall not be affected. In default of any regulation of the terms and conditions, it shall be replaced by one that is to be taken into account for economic purpose.