



General Terms and Conditions

These general terms and conditions describe the business relationship between the company Frank Michel Media (in the following referred to as "agency"), owned by Frank Michel, with registered office in Hornisgründestraße 26 in 77749 Hohberg, Germany, and the principal (in the following referred to as "client").

1 Object

1.1 The general terms and conditions are considered as agreed, if the client does not object to them immediately after their receipt. The general terms and conditions are supplemented and detailed, if an agreement between the agency and the client is concluded.

1.2 The general terms and conditions of third parties and/or non-German contractual partners are not part of the agreement.

1.3 The general terms and conditions of the client are not applicable, even if they are not explicitly objected to.

2 Conclusion of agreement

2.1 A binding agreement between the client and the agency is concluded with a quotation sent by the agency, a corresponding order by the client and a written confirmation by the agency. Oral agreements are not valid. Modifications of the stipulations require the written form.

2.2 The agency does not check in how far the ordering client is authorized to place the order and sign the agreement. In case financial obligations are not fulfilled, claims following from contractually agreed performances are directed at the signing natural person and are legally enforced.

2.3 The agreement is fulfilled, if all invoices pertaining to the order have been paid by the client and all contractual services of the agency have been rendered.

3 Order and quotation

3.1 Quotations of the agency are subject to change and not binding. The agency is bound to its quotation for 14 days. If the client does not place an order within this period, the quotation is rendered invalid.

3.2 The client is bound to its order for ten days. If the agency does not reject the acceptance of the order within five days after the receipt of the order, the order is considered as confirmed.

4 Services and work phases

4.1 The agency renders its contractually guaranteed services in several consecutive work phases depending on the order:

Briefing: At the briefing with the client, information concerning all basically needed facts are determined in writing in order to be able to carry out the order. This results in a briefing report.

Conceptual design: The conceptual design substantiates the information of the briefing and contains ideas and structures of the services contractually to be rendered. This results in a written document, whose extent corresponds to the extent of the order.

Creation: In the creation phase, the ideas are artistically developed and designed in coordination with the client and on the basis of the conceptual design referred to above. This results in a graphic and/or textual concept or prototype, which in general shows design features, structure and basic functions.

Realization: The authorized concept or prototype is realized and finished in this work phase in accordance with the conceptual design and the contractually agreed services. This results in the work.

Production: If the agency is commissioned by the client to have the realized work produced by an external service provider, the agency undertakes to process the order with the external service provider in the best interest of the client. The agency only monitors production on the basis of a special agreement. If the production of the work is commissioned and processed by the client, the agency must be provided with correction samples before the duplication, which must be authorized by the agency. The client leaves the agency at least five unfolded faultless documents of all duplicated works free of charge.

4.2 The agency strives to fulfill the order of the client as soon as possible. The agency must only adhere to a deadline, if such a deadline was agreed in writing in advance. If the work cannot be completed in the agreed time for reasons within the sphere of control of the client, the agency must not adhere anymore to the completion date.

5 Content and models

5.1 If not agreed otherwise, the client has the sole responsibility for the production of all contents and models. The client makes the contents and models necessary for the execution of the order available to the agency in due time, i.e. at the latest immediately after the termination of the conceptual phase (see clause 4.1b) in accordance with the following stipulations:

- All textual contents and models must be provided by the client in digital form in a conventional and editable file format (.doc, .pdf, .txt, .rtf, .xls, .ppt).
- All graphic contents and models must be provided by the client in digital form in a conventional file format (.eps, .ai, .pdf, .jpg, .bmp, .tif, .gif, etc.).

5.2 If, contrary to the stipulations above, the client provides contents and models in analog form, the agency must be provided with such contents and models:

- in exposed form (e.g. print-outs, prints, slides) and
- in a format that is suitable for digitalization with a scanner and
- in a reproducible quality corresponding to the respective output medium.

The processing of analog contents and models is calculated in working hours, if not agreed otherwise.

5.3 The client assures to send duplicates only to the agency, whose loss will not or only marginally result in material damage. Furthermore, the client undertakes to make back-up copies of all data, irrespective of the format, sent to us.

5.4 The contents and models are sent at the risk and on the account of the client.

6 Freedom of design

6.1 Freedom of design is applicable within the scope of the order. Complaints concerning the artistic design are precluded. If the client requires modifications during or after the realization phase, the additional costs are for the account of the client. The agency is entitled to compensation for already started works.

6.2 Correction and extension requests need only be taken into account by the agency, if they are necessary for technical reasons in order to fulfill the purpose of the agreement.

7 Approvals and corrections

7.1 After the termination of each work phase as well as after the completion of the order, the

client undertakes to check the already rendered services for correctness and completeness and to approve of the respective work by way of a written declaration.

7.2 In case of extensive orders, the agency may request partial approvals within one work phase.

7.3 If the agency does not receive a written request for corrections within five days from the client, the rendered services of a work phase are considered as approved with the expiry of this term of five days.

8 Reservation of title

8.1 If not specifically agreed otherwise, originals provided to the client by the agency must be returned in undamaged condition to the agency after three months at the latest at the risk and on account of the client. In case of damaging or loss, the client must pay the costs necessary for the recovery of the originals. This does not affect the right to assert higher claims in case of proof.

8.2 The agency is not obligated to deliver digital data to the client. If the client requests the delivery of digital data, such request must be agreed separately and compensated respectively. If the agency provided the client with digital data, such data may not be modified or duplicated without the prior consent of the agency.

9 Copyright and right of use

9.1 In the following, the term "work" describes all briefings, conceptual designs, creations and works prepared by the agency in connection with the order.

9.2 The works are subject to the copyright law. The provisions of the copyright law are also applicable, if the threshold of originality required by § 2 German Copyright Law is not reached.

9.3 Without the explicit consent of the agency, the works may not be modified, neither as original nor as reproduction. An imitation, also partially, is forbidden. If these stipulations are violated, the agency has the right to demand a contractual penalty amounting to 200% of the agreed remuneration.

9.4 The agency transfers to the client the right of use necessary for the respective purpose. If not agreed otherwise, the basic right of use only is transferred. A transfer of the right of use to third parties requires a written agreement. The right of use is not transferred before the complete payment of the invoice.

9.5 Suggestions of the client or any cooperation of the client do not influence the amount of the remuneration. Suggestions or the cooperation of the client do not establish a joint authorship.

10 Mentioning of name and references

10.1 The agency is entitled to have its name mentioned as author on its works and duplications. The client may not remove this information without the consent of the agency. This applies in particular to the information concerning the author specified in the program code. If this stipulation is violated, the agency has the right to demand a contractual penalty amounting to 100% of the agreed remuneration. This does not affect the right to assert higher claims in case of proof.

10.2 In any case, the agency retains the right, even if it granted the exclusive right of use to the client, to use its works and duplications, even if they are based on the client's models, for self-marketing purposes and to publish such works and duplications as references or to introduce them to third parties.

11 Remuneration

11.1 The work of the agency is remunerated on a flat-rate basis and/or hourly basis. The remuneration is due at the issuing of the invoice after the delivery or the publication of the work. Expenditures and costs are due at the issuing of the invoice.

11.2 If the order covers a long period of time or requires great financial advance performances, the agency has the right to demand partial payments in accordance with the services rendered. Such partial payments are due at the issuing of the invoice.

11.3 Special payments, travel expenses and expenses for travels that are necessary in connection with the order and have been coordinated with the client, must be paid by the client.

11.4 In case of delayed payments, the agency is entitled to require the payment of default interest amounting to 4% above the respective prime rate of the German Federal Bank. This does not affect the right to assert higher claims in case of proof.

11.5 A consistent service is formed by the totality of the works and the granting of rights of use. If the works are reused or used to a greater extent than originally intended, the agency is entitled to demand a subsequent remuneration for the use of the works or to demand the payment of the difference between the higher remuneration for the use of the works and the initially paid remuneration.

11.6 Additional expenses following from modifications commissioned by the client, which significantly exceed the extent of the contractual obligations of the agency, may be charged without explicit notification. This is in particular applicable to modifications or extensions after approval for the purpose of taking into account requests of the client as well as for an extensive review of whether and under which conditions such modifications or extensions can be carried out.

11.7 If the execution of the order is delayed for reasons within the sphere of control of the client, the agency may demand a reasonable increase of the remuneration. In case of intent or gross negligent behavior, the agency may even demand the payment of damages. This does not affect the right to assert higher claims in case of proof.

11.8 The agency may order third-party performances necessary for the execution of the order in the name and for the account of the client. The client undertakes to grant the respective authorizations to the agency and to indemnify the agency in their internal relationship from any liabilities following from the conclusion of the agreement.

11.9 Legal titles do not exist for services exceeding the contractual stipulations offered on a voluntary basis and free of charge by us. Free services may be terminated by us at any time and without prior notification. A long-standing rendering of such services does not constitute common legal titles.

12 Liability

12.1 Liability claims of the client brought against the agency are limited to the agreed value of the order.

12.2 The agency is not liable for works approved by the client, declarations of intent made by the client orally or by telephone, writing and calculating mistakes in the quotation as well as for the legitimacy under competition and trademark laws and the registrability of the works.

12.3 The client assures that it is authorized to use and publish all contents and models made available to the agency. If the client, against this affirmation, is not authorized, the client must indemnify the agency from any damage claims of third parties. The agency, in particular, is not obligated to check the contents for possible legal violations and/or demonstrate the actual

safeness of the contents. The client must compensate the agency for all costs accrued by the agency due to possible legal violations.

12.4 The agency undertakes to treat the models provided by the client with the utmost care. The agency is only liable for damage or loss occurred in case of intent or gross negligent behavior. A compensation exceeding the material value is excluded.

12.5 The agency undertakes to choose and instruct its agents carefully. Liability beyond what is set out in the previous sentence is not assumed for its agents.

12.6 If the agency commissions external works necessary for the execution of the order, the respective contractors do not act as agents of the agency. The agency is only liable for actual faults and only in case of intent and gross negligent behavior.

12.7 In case the agency monitors the production, the agency is entitled to make necessary decisions in its own discretion and to issue respective instructions. The agency is only liable for actual faults and only in case of intent and gross negligent behavior.

12.8 The agency is not liable for loss accrued by the client due to delays in the execution of the order. In case of bindingly agreed deadlines, the agency is not liable for delays in the rendering of the services caused by force majeure and by events that prevent the agency from the fulfillment of the services or complicate the fulfillment considerably. The agency is subsequently entitled to prolong the deadline by the duration of the delay, plus a reasonable run-up time.

13 Warranty

13.1 The agency does not guarantee the correctness and completeness of its works. Furthermore, the agency does not guarantee that the services rendered correspond to a purpose particularly intended by the client.

13.2 A warranty is only granted for deviations from the agreed performance that considerably affects the suitability of the product for normal use.

13.3 After the fulfillment of the order, warranty cannot be claimed for deficiencies caused by the client or the influence of third parties. This applies in particular to open data and source code.

13.4 The agency must be notified in writing of complaints or deficiencies within ten days after the delivery or publication of the work. After the payment of the invoice and after the expiry of the 10-days deadline at the latest, the work is considered to be approved by the client without defects.

13.5 Hidden defects identified by the client within the warranty period of six months, starting from the date of the delivery or publication of the work, and enforced in writing at the agency, are remedied or exchanged free of charge by the agency. Expenses beyond the remedy or exchange are invoiced separately and after consultation with the client.

13.6 If the rectification of the same defect fails repeatedly, the client may ask for a reduction of the purchase price.

14 Data security, data protection and nondisclosure

14.1 The client undertakes to take reasonable measures to prevent loss of data and to protect itself against the loss of data. All works of the agency must be protected against unauthorized access of third parties.

14.2 The client's data necessary for the preparation and execution of the order are electronically saved by the agency. The client's personal data are treated strictly confidentially and are not disclosed to third parties.

14.3 Both contractual partners undertake to treat information marked as confidential and made known to them within the scope of the agreement confidentially.

15 Termination

15.1 An agreement concluded between the client and the agency may only be terminated for an important reason. Such an important reason can be for instance that the client lastingly violates its obligations in accordance with clause 5.1 of this agreement, that the client does not pay the partial payments described in clause 11.2 of this agreement despite a reminder and the appointment of a new date or that the client violates the stipulations of clause 12.3.

15.2 Maintenance agreements may be terminated at the earliest three months after the conclusion of such an agreement. The agreement is prolonged by three months respectively, if it is not terminated in writing one month before the end of the agreement. Clause 15.1 remains unaffected.

16 Communication

16.1 As far as the contractual partners communicate with each other by e-mail, they accept the unlimited effectiveness of declarations of intent transferred in this way under the conditions set out below.

16.2 The e-mail must contain the name and the e-mail address of the sender, the time of the posting (date and time) as well as a repetition of the name of the sender at the end of the message.

16.3 Secrecy cannot be guaranteed for data transferred without coding via the Internet. Upon the request of the other contractual partner, each contractual partner provides a verified coding system. An e-mail received without coding is considered as an e-mail from the other partner, if not proven otherwise.

16.4 An e-mail is binding for all declarations made in the course of the normal execution of the order. Exceptions are formed in particular by declarations that are explicitly required by one of the contractual partners to be made in writing.

17 Applicable law and place of delivery

17.1 The regional court of Offenburg is agreed to be the competent court. Any legal relationships following from these general terms and conditions as well as agreements based upon these general terms and conditions are governed by German law. German law is also applicable to transnational orders. The UN Convention on Contracts for the International Sale of Goods is explicitly excluded.

17.2 The place of delivery of the mutual services is agreed to be Hohberg.

18 Severability clause

If a provision of these general terms and conditions is or becomes invalid, the other provisions of the terms and conditions remain unaffected. The contractual partners will replace the invalid provision by a provision that comes closest to the economic intention of the contractual partners. The same applies to gaps in the agreement.