graphic & design

GENERAL TERMS AND CONDITIONS

1. Validity of the General Terms and Conditions

These General Terms and Conditions (hereinafter 'GTC') govern the terms and conditions for all design orders (creative services) between ARTINA graphic & design (hereinafter 'ARTINA') and its client (hereinafter 'Client'). They do not apply to the sale of originals or to commercial services.

2. Principles of cooperation

2.1. The basis of every order is a briefing specified by the client, the requirements of which must be fulfilled by ARTINA. Within the briefing, there is freedom of design in the fulfillment of the order.

2.2. ARTINA creates the work on its own responsibility through its own design staff; however, it is entitled to call in expert freelancers or cooperation partners for the implementation.

2.3. Any advice provided by ARTINA relates exclusively to the field of design. The liability for the „advice of expert" according to ABGB (§ 1299) is limited to this field.

2.4. The client shall ensure that ARTINA is provided with all documents, circumstances and instructions necessary for the optimal fulfillment of the order in a timely and complete manner.

3. Copyright and right of use

3.1. Unless otherwise agreed between the customer and ARTINA, ARTINA shall grant the customer a right to use the work (exclusive right of use) for a fee.

3.2. Upon full payment of the total fee and ancillary costs, the customer acquires the agreed right of use tot he works created in fulfillment of the order in the delivered version, for the agreed purpose and scope of use. If no agreements have been made regarding the purpose and scope of use, the minimum scope required for the fulfillment of the order shall apply. Any other or further future use requires the consent of ARTINA for which a fee is payable.

3.3. Any modification, editing or imitation of the works provided for use is not permitted unless the right to edit has been granted in writing and for a fee.

3.4. The rights granted to the client, the user, may only be passed on to third parties against payment or free of charge with the express consent of ARTINA.

3.5. The client does not acquire ownership oft he drafts, elaborations and computer data. In the case of singular succession, all rights and obligations are transferred to the legal successor, but only to the extent agreed between ARTINA and the client. Any extension of use by the legal successor requires the consent of ARTINA in any case.

3.6. If the client wishes to continue to use the developed ord designed concepts, ideas or works unchanged after fulfillment of the order, withdrawal or after termination of a framework or support contract, this required the granting oft he unlimited right of use; if these are to be changed, updated or used as a basis for further developments by third parties or the client, additionally the granting of the right to processing by third parties. If the client wishes the computer data to be handed over, this requires an additional agreement.

4. Remuneration

4.1. All services of ARTINA are provided against payment, only the preparation of performance, time and cost plans necessary for the preparation of the offer is free of charge.

4.2. Cost estimates from ARTINA are non-binding. If it is foreseeable that actual costs will exceed ARTINA's written estimate by more than 10%, ARTINA will inform the customer of the higher costs. The cost overrun shall be deemed approved by the customer if the customer does not object in writing within three working days after this notification. If the cost overrun is up to 10%, a separate notification is not required. This cost estimate overrun shall be deemed to have been approved by the client from the outset.

4.3. The client's invitation to prepare a presentation with preliminary drafts shall be deemed to be an order to provide a defined service content. A presentation order shall be deemed to have been issued, accepted and fulfilled upon completion of the presentation.

4.4. If a client or the organizer of a presentation competition does not place an order with ARTINA at all or only places a significantly reduced order with ARTINA after the presentation has taken place, ARTINA shall be entitled to an advance payment determined in advance.

4.5. The presentation fee (advance payment) does not include the granting of rights of use.

5. Performance, third-party services and production monitoring

5.1. In the abscence of any agreement to the contrary, the standard service specified in the fee guidelines, including the transfer of production data, shall be deemed to have been agreed for the provision of the desired service. The delivery of development data is only part of the service if it has been agreed in writing and for a corresponding additional fee.

5.2. ARTINA is authorized at its own discretion to perform the service itself, to use competent third parties as vicarious agents in the provision of contractual services and/or to substitute such services („external service').

5.3. The coordination as well as the supervision oft he duplication/production (as well as color matching or print supervision) can be assigned by the client to external producer experts or by ARTINA. They require a separate order and are carried out for a fee.

6. Return and storage

6.1. The client shall receive all documents, interim results, drafts, concept descriptions and elaborations in trust. Until the rights of use have been acquired and in the event of refusal (waiver of use), the client is not permitted to make copies of them, store them in computer systems or make them available to third parties for viewing or further processing, except for the purpose of decisionmaking by opinion research institutes or after prior consultation with ARTINA.

6.2. Design originals and computer data shall be returned or handed over to ARTINA undamaged at the risk and expense oft he client as soon as they are no longer required for the agreed use.

7. Liability

7.1. In cases of slight negligence, ARTINA and ist employees, contractors or other vicarious agents (‚people') shall not be liable for material or financial damage to the customer, regardless of whether it concerns direct or indirect damage, loss of profit or consequential damage, damage due to delay, impossibility, positive breach of contract, culpa in contrahendo, defective or incomplete performance. In the case of gross negligence, the burden of proof lies with the injured party. Insofar as ARTINA's liability is excluded or limited, this also applies to the personal liability of its ‚people'.
If ARTINA is found to be grossly negligent, claims for damages are limited to the net order value.

7.2. Defects must be reported to ARTINA within a reasonable period of time after receipt of the services, with a request to remedy them. Costs incurred by the use of third parties despite ARTINA's willingness to remedy defects shall be borne by the customer A claim for rectification expires after six months.

7.3. ARTINA assumes no liability for the legal admissibility of the drafts and elaborations, in particular with regard to competition, trademark and administrative law. Likewise, it is not liable for the accuracy of text and images if work has been approved by the client or a template has at least been offered to the client for review.

7.4. Insofar as ARTINA commissions necessary or agreed external services to third parties in the name and for the account of the client, the respective contractors are not vicarious agents of ARTINA.

7.5. The documents provided by the client (photos, texts, models, samples, etc.) are used by ARTINA under the assumption that the client is authorized to use them and that no rights of third parties are violated during processing or use. The customer is liable to ARTINA according to § 86 UrhG for any kind of unlawful use in double the amount of the appropriate fee for this use, as far as such use was at least negligently enabled or tolerated by him.

8. Attribution and specimen

8.1. ARTINA is entitled to use ist name or pseudonym, company name or logo on any work/product designed by it as well as advertising material for it or publications about it in accordance with § 20 UrhG. This authorization exists without the client being entitled to any remuneration. The form and duration of the labeling can be agreed with the client.

8.2. In any case, ARTINA retains the right to use images of the works/products designed by it for the purpose of self-promotion in printed form or to make them available for this purpose on the worldwide Internet in accordance with § 26 UrhG.

8.3. In the case of printed works, ARTINA is entitled to at least two copies of the works it has designed.

9. Competition clause

Unless otherwise agreed, ARTINA is not subject to any kind of restriction in the processing of identical or similar projects of different clients.

10. Employee clause

The client and all companies associated with the client shall refrain from commissioning or employing former employees of ARTINA for a period of one year after completion of a project (date of last invoice).

11. Withdrawal and Cancellation

11.1. ARTINA is entitled to terminate the contract with immediate effect for good cause. An important reason exists in particular if

a. the performance of the service becomes impossible for reasons for which the contractor is responsible or is further delayed despite the setting of a grace period of 14 days.

b. the Contractor continues to breach material obligations under this contract, such as payment of an amount due or obligations to cooperate, despite a written warning with a grace period of 14 days.
c. there are justified concerns regarding the creditworthiness of the client and the client neither makes advance payments nor provides suitable security prior to ARTINA's performance.

11.2. If the client cancels the order during the design or execution phase or within a valid framework agreement for reasons for which ARTINA is not responsible, or if he reduces the scope of the order, he undertakes to pay the design fee plus the ancillary services and costs incurred up to that point.

11.3. Irrespective of this, ARTINA is entitled to charge the customer a fee for provided and unused working capacity and any damage suffered as a result. The charging of a usage fee is not applicable, all rights remain with ARTINA.

12. Terms of Payment and Late Payment

12.1. The fee is to be paid in accordance with the terms of payment specified on the invoice. Until full payment has been received, both the rights of use and the goods delivered by ARTINA and its subcontractors remain the property of ARTINA and the delivering parties.

12.2. In the event of late payment by the client, ARTINA may demand immediate payment of all services and partial services provided under other contracts concluded with the client.

12.3. In the event of late payment, ARTINA may initially send a complimentary payment reminder. If payment remains outstanding, ARTINA may issue a formal written payment notice (First Reminder) and claim the statutory flat-rate compensation for recovery costs in the amount of EUR 40.00.

12.4. If the outstanding amounts remain unpaid within the specified payment period despite a further written payment notice (Second Reminder), ARTINA is entitled to refer the outstanding claim, without further notice, to a debt collection agency or legal counsel for further recovery. Any additional costs incurred as a result are charged to the client to the extent permitted by applicable law.

12.5. ARTINA expressly reserves the right to assert any further statutory claims, in particular statutory default interest and additional necessary and reasonable debt recovery costs.

13. Final Provisions

13.1. Any agreement deviating from or supplementing these GTC and all framework agreements must be made in writing.

13.2. Austrian law shall apply exclusively. Place of fullfilment and jurisdiction is the registered office of ARTINA.

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