

General terms and conditions of antoni GmbH ("Agency") for the purchasing of goods and ordering of services

I. Definitions, area of applicability, creation of orders

1. These general terms and conditions apply to all companies of antoni GmbH. The terms "order" and "Contractor" are to be understood in a commercial sense. "Order" refers to the contractual relationship without reference to the respective type of contract; "Contractor" refers to the party providing the principal service. antoni shall hereinafter be referred to as "Agency" or "Client". "Customers" refer to persons who are contractual partners of the Agency and who ultimately benefit from the goods and services provided by the Contractor.
2. These terms and conditions apply to all declarations of intent, contracts and legal dealings or similar legal dealings of the Agency and the Customer with the Contractor, regardless of whether the Agency concludes the contract in its own name for its own account, in its own name for account of a third party or when acting as Agent for account of a third party.
3. Any of the Contractor's terms of business that deviate from these terms and conditions shall not apply. Any confirmations to the contrary from the Contractor that refer to its own terms of business are expressly rejected; these shall not be incorporated into any agreements unless the Agency has confirmed such conditions in writing.
4. Verbally agreed orders, order confirmations, changes to orders or other types of agreement must be confirmed in writing for evidence purposes.

II. Dates, delivery deadlines, place of performance

1. Agreed dates and delivery deadlines are binding. The Contractor shall immediately notify the Agency of any potential delays to delivery.
2. The Contractor shall send deliveries at its own expense and risk to the stated delivery address, which is also the place of performance.
3. If the Contractor is delayed, the Agency shall be entitled to claim a contractual penalty of 0.1% of the net order value for each working day that goes beyond the missed deadline. If the missed deadline concerns only a portion of the service that does not impair the usability of the parts that have already been delivered, the contractual penalty shall only be calculated on the basis of this part of the delivery. The contractual penalty is limited to a sum of 5% of the net order value. The Contractor is entitled to prove that no or lesser damages were caused as a result of the delay. The Agency reserves the right to other legal rights, especially rights to a withdrawal or to compensation. The contractual penalty shall however be credited to compensation claims. The Agency can claim the contractual penalty up until the final statement of account, even if it has not expressly reserved such a right when accepting performance of the service.

III. Scope of the order

1. The quantitative scope defined in the order is binding. Any surpluses shall not be compensated, even if they are necessary for technical production purposes. Samples, especially for alternative solutions, are covered under the scope of the order.
2. The Client is also entitled to request changes to the construction and design of the delivery items after concluding the contract, provided that this is reasonable for the Contractor. Appropriate provisions shall be agreed for any exceeding effects relating to excess or reduced costs and the delivery date. If no agreement can be reached within an appropriate period of time, the Client shall reach a decision at its own reasonable discretion, which must be verifiable by a court.

IV. Liability

1. The Contractor's liability is based on the statutory provisions.
2. The Agency and its vicarious agents and assistants shall only be liable for minor negligence if a fundamental contractual duty (cardinal duty) is breached or in the event of a delay or impossibility. In the event of liability due to minor negligence, the liability of the Agency and its vicarious agents and assistants on grounds of breached obligations, impermissible acts and claims for futile expenditure shall be limited to the typical, foreseeable damages. The above-mentioned liability limitations do not apply to a lack of assured qualities, for cases of malice, for claims arising from a loss of life, physical injury or damage to health, for legal defects and for liability according to the German Product Liability Act (Produkthaftungsgesetz).
3. The Contractor shall not be entitled to claim compensation as a consequence of a complaint due to errors and printing or transfer failures that the Agency is entitled to contest.

V. Acceptance, notification of defects, warranty

1. Deliveries relating to the design or production of advertising materials must solve the task in hand and, if applicable, must comply with the provided templates or issued instructions. They must also meet the state of the art technology and the applicable legal provisions; they must be consistent with the technical, marketing and artistic level of the samples provided by the Contractor before order confirmation. Furthermore, the Contractor shall be responsible for notifying the Agency of any recognisable legal concerns regarding proposed advertising measures.
2. Where a contractual duty states that a specific performance is due, such as an individualised creation (e.g. advertising material, sample), the Agency is obligated to accept this performance. Acceptance shall be deemed as granted if it has not been declared or rejected within two weeks after the Contractor has presented the work for acceptance, demonstrated the acceptability of the work and pointed out this consequence in the notification.
3. Defects must be notified within 10 working days following discovery of the defect during the Agency's usual course of business; this also applies to obvious defects. Payment does not constitute a waiver of the right to complain.
4. The Agency is entitled to the full statutory warranty claims.
5. The Agency reserves the right to choose the form of a subsequent performance, also with respect to the works contract. Section 439 of the German Civil Code (hereinafter: BGB) applies.
6. A subsequent performance shall be deemed to have failed after an unsuccessful first attempt.
7. In the event of a defect to a provided item or created work, the Agency may – after fruitless expiry of a reasonable deadline set by the Agency for a subsequent performance – rectify the defect itself and demand reimbursement for the expenses incurred, unless the Contractor justly refuses subsequent performance. In this respect, the statutory provision for self-help in a works contract (Section 637 BGB) shall respectively apply to the purchase contract. The deadline for the subsequent performance shall be set in such a way that the Agency can still award the order to another contractor and keep to follow-up deadlines in the event that the subsequent performance fails.

VI. Invoicing, price, payment terms, retention right, offsetting

1. The invoice shall be sent to the Agency immediately after delivery.
2. The agreed price may not be exceeded and it must cover all charges, costs and fees incurred to the Contractor (e.g. transport and packaging costs, social insurance for artists (Künstlersozialkasse) and customs).
3. No fees shall be paid for showings, presentations, negotiations and/or for the preparation of offers and projects, unless agreed otherwise.
4. Unless other payment terms are agreed, payment shall be due within 14 days from the invoice date with 3% discount or within 30 days without any deduction.
5. In the event of delayed payment, the Agency shall only be obligated to pay interest of 3% above the applicable basic rate of interest.
6. The Contractor may only exercise a retention right if its counter-claim is based on the same contractual relationship. Offsetting against due claims of the Contractor is excluded, unless this is recognised as uncontested in writing by the Client or based on legally effective claims.

VII. Special conditions for photographers

1. In order to achieve the best results for the advertising concept approved by the Customer, the Agency may, on behalf of the Customer, decide on which persons should feature in the photographs (especially the models, make-up artists, stylists and their outfits), on props, specific technical effects (especially specific lighting) as well as on the location for the photo shoot. The Contractor shall conclude the necessary service, purchase and lease agreements on behalf of and for the account of the Agency within the scope of the cost estimates as approved by the Agency.
2. The Contractor shall otherwise provide the required personnel and items for the photographs that have been booked, purchased or leased under its own name at its own expense and risk.
3. If a photo shoot cannot take place because a model booked by the Contractor (paragraph 2) does not appear on the scheduled date or if any items to be provided by the Contractor are unavailable, the additional costs incurred for the model's fee, props and ancillary costs shall be borne by the Contractor.

VIII. Usage rights under copyright law/performance rights

1. The Contractor and the Agency agree that the Agency and/or third parties (such as the Agency's customers) must be able to comprehensively use and exploit the services and work results provided by the Contractor (hereinafter jointly referred to as "work results"). With the created work, the Contractor therefore grants the Agency the exclusive usage and exploitation rights to the work results that are unrestricted in terms of time, content and space for all known and unknown types of use, as well as the right to use the images of the model as defined in the object of the agreement. Purpose of use: promotional and non-promotional, initial and multiple uses; types of use: all printed advertising (advertisements, posters, inserts, catalogues, brochures, packaging, other forms of printed advertising), compilations, films (TV, cinema, internet), magnetic tapes (cassettes, audio and video cassettes), online and offline use of electronic storage mediums (databases, CD-ROM, CD-I, MO drives, DAT, discs, internet, multimedia); duplication techniques: printing, film copying, magnetic tape copying, machine-readable copy, electronic duplication; distribution: distribution to the public, broadcasting, performance, exhibition, (remote) data transmission; other authorisations: use of parts of the object of the agreement (also use of cuts, photo composition, film composition), modification rights, full or partial transfer of exclusive usage rights to third parties, especially customers. The Agency may use the service provided by the Contractor as part of the advertising material prepared by it for its own promotional purposes on its website as well on the regularly prepared CD-ROM for its own promotional purposes, as well as for participating in competitions.
2. The Contractor must inform the Client in its offer whether and which, if any, of the transferable usage rights according to paragraph 1 have been transferred to collecting societies.
3. The Contractor must immediately inform the Agency in writing of any changes to its address to which notification of an intended inclusion of a new type of work use is to be sent.
4. Where usage rights are not transferred – as deviation from paragraph 1 on the basis of a separate written agreement – the Client shall be entitled to subsequently request the full or partial transfer of these rights in exchange for an appropriate fee. Where possible, the fee shall be based on the rates already agreed with the Contractor or otherwise on the rates of the collecting societies; if these do not apply, the fee shall be determined by the Client at its reasonable discretion, which must be verifiable by a court.
5. The Contractor acknowledges that the enforcement of claims in ordinary proceedings to assess the rights of use of the Agency or the Customer, as well as to assess the discretionary decision of the Agency as defined in the above paragraph 4 constitutes sufficient procedural legal protection. The Contractor therefore hereby waives the claiming of interim legal measures (interim injunction, seizure) for the case that the Agency has fixed the fee and made respective payment to the Contractor.
6. In the event that the Contractor employs staff, sub-contractors and/or third parties for the purposes of completing the order, it is obligated to acquire their usage rights and transfer these to the Client as agreed in paragraph 1 as an own service by the Contractor. The Contractor shall also impose the same obligations on these persons for their services towards the Agency that it also assumes for its own services.
7. The Contractor guarantees that no third-party rights apply to its contractually owed services that could impair the transfer of rights and/or the agreed use of its services (such as the personal rights of the persons shown in the images). In the event of any justifiable third-party claims against the Agency or the Customer on grounds of a violation of their rights with respect to the work results provided by the Contractor, the Contractor shall modify or create new work results within a reasonable deadline to be set by the Agency so that the third-party rights are no longer violated, or it shall obtain the necessary third-party rights at its own expense. After expiry of the deadline, the Agency shall be entitled to make the changes itself or have the changes made by a third party at the expense of the Contractor, or obtain the necessary permission from the respective authorised party. The Contractor shall indemnify the Agency from any third-party claims arising from any possible infringements of protective rights that the Contractor is responsible for. The Contractor shall also assume the costs of any legal defence that it is responsible for.
8. The Contractor shall offer the usage rights to be transferred by it both fully, as defined in paragraph 1, but also limited to the type of advertising means as requested for the object of the agreement – and otherwise as defined in paragraph 1. Any further restrictions must be defined in an extra alternative offer. The fee for the work and fee for the granting of rights must be shown separately. If this is not the case, both are covered under the agreed fee.
9. The Contractor shall obtain a signed declaration from the models about the transfer of the usage rights and submit this to the Agency before acceptance.
10. The Contractor acknowledges that there is no obligation to name the author, unless this is customary in the branch.

IX. Acquisition of ownership to illustrations and reproduced material, storage, back-up, retention rights

1. The Agency shall acquire ownership of the illustrations and reproduced material produced or created by the Contractor as part of the order (e.g. printed materials such as typesetting, photos, cutting dies, lithographs, films, tools, electronic files etc., including non-delivered samples and back-up copies) upon payment of the fee. The Contractor shall store these items for the Agency from this time up until publication. When employing sub-contractors, the Contractor shall ensure the transfer of ownership to the Agency by way of a respective contractual agreement. The Agency must take on the above-mentioned items after expiry of six months from acceptance, if this is offered by the Contractor.
2. The Contractor shall create a back-up copy of all electronic files on a separate storage medium and store this separately from the primary storage medium.
3. The Contractor shall not obtain ownership of the items received from the Customer or Agency. These may only be used for processing the order, must be carefully stored and must be returned upon first request.
4. The Contractor has no retention rights to the items provided to it.

X. Confidentiality

1. Even if the order is not completed, all information and documents made available to the Contractor as part of the order, as well as the advertising material and items defined in paragraph IX must be treated as strictly confidential, also after completion of the order.
2. The Contractor shall impose this confidentiality obligation on all of its staff, sub-contractors, models etc. who are involved in completing the order, provided that this is necessary for ensuring confidentiality.
3. The Contractor may only use examples of the contractual service for its own advertising purposes with prior written consent from the Agency.

XI. Transfer of rights

The Contractor's rights arising from the order, particularly the right to a fee, cannot be assigned.

XII. Orders on behalf of customers

If the Agency places an order on behalf of a third party, the order shall also be handled by the Agency. In such a case, the Agency shall neither be liable for the completion of the contract by the customer nor for its credit rating, which will not be checked by the Agency.

XIII. Final provisions

1. The invalidity of individual provisions shall not affect the validity of the remaining provisions. In such an event, the parties shall agree on a provision which most closely approximates the economic purpose of the original provision.
2. The place of jurisdiction for all disputes between the Client and a Contractor who is a merchant is the registered office of the Agency.
3. The laws of the Federal Republic of Germany apply exclusively, excluding German international private law.