

GENERAL TERMS AND CONDITIONS (GTC)

LUX FUX Media GmbH

Saint-Julien-Straße 9, 5020 Salzburg

hello@luxfux.at | www.luxfux.at

1 Validity, conclusion of contract

1.1 The advertising agency LUX FUX Media GmbH (hereinafter referred to as "Agency") shall provide its services exclusively on the basis of the following General Terms and Conditions (GTC). These shall apply to all legal relationships between the Agency and the customer, even if no express reference is made to them. The GTC shall apply exclusively to legal relationships with contractors, i.e. B2B.

1.2 The version valid at the time the contract is concluded shall apply. Deviations from these and other supplementary agreements with the customer shall only be effective if they are confirmed in writing by the Agency.

1.3 Any terms and conditions of the customer shall not be accepted, even if known, unless expressly agreed otherwise in writing in individual cases. The Agency expressly objects to the Client's GTC. No further objection to the client's GTC by the agency is required.

1.4 Amendments to the GTC shall be notified to the customer and shall be deemed to have been agreed if the customer does not object to the amended GTC in writing within 14 days; the customer shall be expressly informed of the significance of silence in the notification.

1.5 Should individual provisions of these General Terms and Conditions be invalid, this shall not affect the binding nature of the remaining provisions and the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid provision that comes closest to the meaning and purpose of the invalid provision.

1.6 The Agency's offers are subject to change and non-binding.

2. Social media channels

Before placing an order, the agency expressly points out to the customer that the providers of "social media channels" (e.g. Facebook, Instagram, TikTok, hereinafter referred to as "providers") reserve the right in their terms of use to reject or remove advertisements and appearances for any reason. The

providers are therefore not obliged to forward content and information to users. There is therefore a risk, which cannot be calculated by the agency, that advertisements and appearances may be removed for no reason. In the event of a complaint from another user, the providers are granted the option of a counterstatement, but even in this case the content will be removed immediately. In this case, it may take some time to restore the original, lawful status. The agency works on the basis of these terms of use of the providers, over which it has no influence, and also bases the customer's order on them. By placing the order, the customer expressly acknowledges that these terms of use (co-)determine the rights and obligations of any contractual relationship. The agency intends to carry out the customer's order to the best of its knowledge and belief and to comply with the guidelines of "social media channels". However, due to the currently valid conditions of use and the simple possibility for any user to claim legal violations and thus achieve removal of the content, the agency cannot guarantee that the commissioned campaign will be available at all times.

3. Protection of concepts and ideas

If the potential client has already invited the agency to create a concept in advance and the agency complies with this invitation before the main contract is concluded, the following provision shall apply:

3.1 The potential client and the agency enter into a contractual relationship ("pitching contract") as a result of the invitation and the agency's acceptance of the invitation. This contract is also based on the GTC.

3.2 The potential client acknowledges that the agency already provides cost-intensive preliminary services with the concept development, although the client has not yet assumed any performance obligations.

3.3 The concept is protected by copyright law in its linguistic and graphic parts, insofar as these reach the level of a work. The potential client is not permitted to use or edit these parts without the consent of the agency, if only on the basis of copyright law.

3.4 The concept also contains ideas relevant to advertising that do not reach the level of a work and therefore do not enjoy the protection of copyright law. These ideas are at the beginning of every creative process and can be defined as the spark that ignites everything that is produced later and thus as the origin of the marketing strategy. Therefore, those elements of the concept that are unique and give the marketing strategy its characteristic character are protected. In particular, advertising slogans, advertising texts, graphics and illustrations, advertising materials, etc. are regarded as ideas within the meaning of this agreement, even if they do not reach the level of a work.

3.5 The potential client undertakes to refrain from commercially exploiting or having exploited or using or having used the creative advertising ideas presented by the agency as part of the concept outside the corrective of a main contract to be concluded at a later date.

3.6 If the potential client is of the opinion that ideas were presented to him by the agency which he had already come up with before the presentation, he must inform the agency of this by e-mail within 14 days of the day of the presentation, citing evidence which permits a chronological allocation.

3.7 In the opposite case, the contracting parties shall assume that the Agency has presented the potential Client with an idea that is new to him. If the idea is used by the client, it shall be assumed that the agency has made a profit.

3.8 The potential client may release itself from its obligations under this point by paying appropriate compensation plus 20% VAT (if applicable). The exemption shall only take effect after the Agency has received full payment of the compensation.

4 Scope of services, order processing and the customer's duty to cooperate

4.1 The scope of the services to be provided is set out in the service description in the agency contract or any order confirmation by the agency, as well as any briefing protocol ("offer documents"). Subsequent changes to the service content shall require written confirmation by the Agency. Within the framework specified by the client, the agency shall have freedom of design in the fulfillment of the order.

4.2 All services provided by the Agency (in particular all preliminary drafts, sketches, final artwork, brush proofs, blueprints, copies, color prints and electronic files) must be checked by the Client and approved by the Client within three working days of receipt by the Client. After this period has elapsed without feedback from the client, they shall be deemed to have been approved by the client.

4.3 The Client shall provide the Agency with all information and documents required for the provision of the service in a timely and complete manner. He shall inform the Agency of all circumstances that are of significance for the execution of the order, even if these only become known during the execution of the order. The customer shall bear the costs incurred if work has to be repeated or delayed by the agency as a result of incorrect, incomplete or subsequently changed information provided by the customer.

4.4 The customer shall also be obliged to check the documents (photos, logos, etc.) provided for the execution of the order for any copyrights, trademark rights, labeling rights or other third-party rights

(rights clearing) and guarantees that the documents are free of third-party rights and can therefore be used for the intended purpose. In the event of merely slight negligence or after fulfilling its duty to warn, the Agency shall not be liable - at least in its internal relationship with the customer - for any infringement of such third-party rights by the documents provided. If a claim is made against the Agency by a third party due to such an infringement of rights, the Client shall indemnify and hold the Agency harmless; the Client shall reimburse the Agency for all disadvantages incurred by the Agency as a result of a claim by a third party, in particular the costs of appropriate legal representation. The customer undertakes to support the agency in the defense against any third-party claims. The customer shall provide the agency with all documents for this purpose without being requested to do so.

5 External services / commissioning of third parties

5.1 The Agency shall be entitled at its own discretion to perform the service itself, to make use of competent third parties as vicarious agents in the provision of contractual services and/or to substitute such services ("third-party service").

5.2 The commissioning of third parties within the scope of a third-party service shall be carried out either in the Agency's own name or in the name of the Client. The Agency shall select this third party carefully and ensure that it has the necessary professional qualifications.

5.3 Insofar as the Agency commissions necessary or agreed third-party services, the respective contractors shall not be vicarious agents of the Agency.

5.4 The customer shall enter into obligations towards third parties that extend beyond the term of the contract. This shall also expressly apply in the event of termination of the agency contract for good cause.

6 Deadlines

6.1 Unless expressly agreed as binding, stated delivery or performance deadlines shall only be approximate and non-binding. Binding deadline agreements must be recorded in writing or confirmed in writing by the Agency.

6.2 If the Agency's delivery/service is delayed for reasons for which it is not responsible, such as events of force majeure and other unforeseeable events that cannot be averted by reasonable means, the service obligations shall be suspended for the duration and to the extent of the hindrance and the dead-

lines shall be extended accordingly. If such delays last for more than two months, the client and the agency shall be entitled to withdraw from the contract.

6.3 If the Agency is in default, the Client may only withdraw from the contract after having granted the Agency a reasonable grace period of at least 14 days in writing, which has expired without result. Claims for damages by the customer due to non-fulfillment or delay are excluded, except in the case of proof of intent or gross negligence.

7 Premature termination

7.1 The Agency shall be entitled to terminate the contract with immediate effect for good cause. Good cause shall be deemed to exist in particular if

- a) the performance of the service becomes impossible for reasons for which the client is responsible or is further delayed despite the setting of a grace period of 14 days;
- b) the customer continues to breach material obligations under this contract, such as payment of a due amount 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 customer and the customer neither makes advance payments at the request of the agency nor provides suitable security prior to the agency's performance;

7.2 The customer shall be entitled to terminate the contract for good cause without setting a grace period. Good cause shall be deemed to exist in particular if the Agency continues to violate material provisions of this contract despite a written warning with a reasonable grace period of at least 14 days to remedy the breach of contract.

8 Fee

8.1 Unless otherwise agreed, the Agency shall be entitled to a fee for each individual service as soon as it has been provided. The Agency shall be entitled to demand advance payments to cover its expenses. From an order volume with an (annual) budget of € 5,000, or those that extend over a longer period of time, the Agency shall be entitled to issue interim invoices or advance invoices or to request payments on account.

8.2 The fee shall be understood as a net fee plus VAT at the statutory rate. In the absence of an agreement in individual cases, the Agency shall be entitled to a fee at the usual market rate for the services rendered and the transfer of copyright and trademark rights of use.

8.3 All services provided by the Agency that are not expressly covered by the agreed fee shall be remunerated separately. All cash expenses incurred by the Agency shall be reimbursed by the Client.

8.4 The Agency's cost estimates are non-binding. If it is foreseeable that the actual costs will exceed the Agency's written estimate by more than 15%, the Agency shall inform the Client of the higher costs. The cost overrun shall be deemed to have been approved by the customer if the customer does not object in writing within three working days of this notification and at the same time announces more cost-effective alternatives. In the case of a cost overrun of up to 15%, a separate notification is not required. This cost estimate overrun shall be deemed to have been approved by the client from the outset.

8.5 If the Client unilaterally changes or cancels work commissioned without involving the Agency - without prejudice to the Agency's other ongoing support - the Client shall remunerate the Agency for the services rendered up to that point in accordance with the fee agreement and reimburse all costs incurred. If the termination is not due to a grossly negligent or intentional breach of duty by the Agency, the Client shall also reimburse the Agency for the entire fee (commission) agreed for this order, whereby the offsetting remuneration of § 1168 AGBG is excluded. Furthermore, the Agency shall be indemnified and held harmless against any claims by third parties, in particular by the Agency's contractors. Upon payment of the fee, the customer shall not acquire any rights of use to work already performed; concepts, drafts and other documents that have not been executed must be returned to the agency immediately.

9 Payment, retention of title

9.1 The fee shall be due for payment immediately upon receipt of the invoice and without deduction, unless special terms of payment have been agreed in writing in individual cases. This shall also apply to the invoicing of all cash outlays and other expenses. The goods delivered by the Agency shall remain the property of the Agency until full payment of the remuneration including all ancillary liabilities.

9.2 If the customer is in default of payment, statutory default interest shall apply at the rate applicable to business transactions. Furthermore, in the event of default of payment, the customer undertakes to reimburse the Agency for any reminder and collection expenses incurred, insofar as they are necessary for appropriate legal prosecution. This shall in any case include the costs of two reminder letters in the usual market amount of currently at least € 20 per reminder as well as a reminder letter from a lawyer commissioned with the collection. The assertion of further rights and claims shall remain unaffected.

9.3 In the event of default of payment by the customer, the agency may demand immediate payment of all services and partial services provided under other contracts concluded with the customer.

9.4 Furthermore, the Agency shall not be obliged to provide further services until the outstanding amount has been paid (right of retention). The obligation to pay remuneration shall remain unaffected.

9.5 If payment in installments has been agreed, the Agency reserves the right to demand immediate payment of the entire outstanding debt in the event that partial amounts or ancillary claims are not paid on time (loss of deadline).

9.6 The customer shall not be entitled to set off its own claims against claims of the agency unless the customer's claim has been recognized by the agency in writing or established by a court of law.

10 Property rights and copyright

10.1 All services of the Agency, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final artwork, concepts, negatives, slides), including individual parts thereof, shall remain the property of the Agency, as shall the individual workpieces and design originals, and may be reclaimed by the Agency at any time - in particular upon termination of the contractual relationship. By paying the fee, the client acquires the right of use for the agreed purpose. Unless otherwise agreed, however, the client may only use the agency's services in Austria. The acquisition of rights of use and exploitation of the Agency's services shall in any case require full payment of the fees invoiced by the Agency. If the customer already uses the Agency's services before this time, this use shall be based on a loan relationship that can be revoked at any time.

10.2 Changes or processing of the Agency's services, in particular their further development by the Client or by third parties working for the Client, shall only be permitted with the express consent of the Agency and - insofar as the services are protected by copyright - of the author.

10.3 The Agency's consent is required for the use of the Agency's services beyond the originally agreed purpose and scope of use, irrespective of whether these services are protected by copyright. The Agency and the author shall be entitled to a separate appropriate remuneration for this.

10.4 The Agency's consent shall also be required for the use of the Agency's services or advertising material for which the Agency has developed conceptual or design templates after the expiry of the Agency Agreement, irrespective of whether this service is protected by copyright or not.

10.5 In the first year after the end of the contract, the agency shall be entitled to the full agency fee agreed in the expired contract for use in accordance with paragraph 4. In the 2nd or 3rd year after expiry of

the contract, only half or a quarter of the remuneration agreed in the contract. From the 4th year after the end of the contract, no more agency remuneration shall be payable.

10.6 The client shall be liable to the agency for any unlawful use in double the amount of the appropriate fee for such use.

11 Labeling

11.1 The Agency shall be entitled to refer to the Agency and, if applicable, to the author on all advertising material and in all advertising measures, without the Client being entitled to any remuneration for this.

11.2 Subject to written revocation by the Customer, which is possible at any time, the Agency shall be entitled to refer to the existing or former business relationship with the Customer on its own advertising media and in particular on its Internet website by name and company logo (reference).

12 Warranty

12.1 The customer must report any defects immediately, in any case within eight days of delivery/performance by the agency, hidden defects within eight days of recognizing them, in writing with a description of the defect; otherwise the service shall be deemed approved. In this case, the assertion of warranty claims and claims for damages as well as the right to challenge errors due to defects shall be excluded.

12.2 In the event of justified and timely notification of defects, the customer shall be entitled to improvement or replacement of the delivery/service by the agency. The agency shall rectify the defects within a reasonable period of time, whereby the customer shall enable the agency to take all measures necessary to investigate and rectify the defects. The Agency shall be entitled to refuse to improve the service if this is impossible or involves disproportionately high costs for the Agency. In this case, the customer shall be entitled to the statutory rights of conversion or reduction. In the event of improvement, the client shall be responsible for transferring the defective (physical) item at its own expense.

12.3 The client shall also be responsible for checking the service for its legal admissibility, in particular under competition, trademark, copyright and administrative law. The Agency shall only be obliged to carry out a rough check of legal admissibility. The Agency shall not be liable for the legal admissibility of content in the event of slight negligence or after fulfilling any duty to warn the customer if this was specified or approved by the customer.

12.4 The warranty period shall be six months from delivery/service. The right of recourse against the Agency pursuant to Section 933b (1) ABGB shall expire one year after delivery/service. The customer shall not be entitled to withhold payments due to defects. The presumption rule of § 924 ABGB is excluded.

13 Liability and product liability

13.1 In cases of slight negligence, the Agency and its employees, contractors or other vicarious agents ("people") shall not be liable for property damage or financial loss suffered by the Customer, irrespective of whether this relates to 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. The existence of gross negligence must be proven by the injured party. Insofar as the Agency's liability is excluded or limited, this shall also apply to the personal liability of its "people".

13.2 Any liability of the Agency for claims made against the Client on the basis of the service provided by the Agency (e.g. advertising measure) shall be expressly excluded if the Agency has complied with its duty to inform or if such a duty was not recognizable to it, whereby slight negligence shall not be detrimental. In particular, the Agency shall not be liable for legal costs, the Client's own legal fees or the costs of publishing a judgment or for any claims for damages or other third-party claims; the Client shall indemnify and hold the Agency harmless in this respect.

13.3 The customer's claims for damages shall expire six months after knowledge of the damage; in any case, however, after three years from the Agency's act of infringement. Claims for damages shall be limited to the net order value.

14 Data protection

The customer agrees that his personal data, namely name/company, profession, date of birth, company register number, powers of representation, contact person, business address and other addresses of the customer, telephone number, fax number, e-mail address, bank details, credit card data, VAT number for the purpose of fulfilling the contract and supporting the customer as well as for his own advertising purposes, for example for sending offers, advertising brochures and newsletters (in paper and electronic form), as well as for the purpose of referring to the existing or previous business relationship with the customer (reference).

The client agrees that electronic mail may be sent to him for advertising purposes until revoked.

This consent can be revoked at any time in writing by e-mail or letter to the contact details listed at the top of the GTC.

15 Applicable law

The contract and all reciprocal rights and obligations and claims between the agency and the customer derived from it are subject to Austrian substantive law to the exclusion of its conflict of law rules and to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

16 Place of performance and jurisdiction

16.1 The place of performance shall be the Agency's registered office. In the case of shipment, the risk shall pass to the customer as soon as the agency has handed over the goods to the carrier chosen by it.

16.2 The place of jurisdiction for all legal disputes arising between the Agency and the Customer in connection with this contractual relationship shall be the court having subject-matter jurisdiction for the registered office of the Agency. Notwithstanding this, the Agency shall be entitled to sue the Client at its general place of jurisdiction.

16.3 Insofar as this contract refers to natural persons only in the masculine form, they refer to women and men in the same way. When applying the term to certain natural persons, the respective gender-specific form shall be used.