

GENERAL TERMS AND CONDITIONS

OF

SC SALES CONSULTING – SABRINA CICIONE



1. General provisions

1.1 The following terms and conditions apply to all offers, services and deliveries of SC Sales Consulting – Sabrina Cicione, hereinafter referred to as “SC”, to its clients as entrepreneurs within the meaning of section 14 of the German Civil Code (BGB). Conflicting GTC or divergent conditions of the Client shall not be recognised unless SC has agreed to their validity in writing.

1.2 The provisions of the contractual partners which are set out in writing in the order or in other agreements shall take precedence over the GTC.

1.3 The GTC shall also apply to all future orders of the Client following the first inclusion of these GTC, even if the validity of the GTC is not expressly referred to again in these subsequent orders.

2. Principles of cooperation

2.1 SC shall employ qualified and reliable personnel to fulfil its performance obligations. SC shall decide at its own dutiful discretion which employees shall be deployed or replaced for the purpose of contractual performance. SC reserves the right to replace an employee with another employee with the necessary qualifications for an important or justified reason. Only SC is authorised to give instructions to SC’s employees, regardless of their place of work. They shall not be integrated into the Client’s business and shall not enter into an employment relationship with the Client.

2.2 SC is basically free with regard to the type of performance of the commissioned services in terms of time and place.

2.3 SC has the right to use subcontractors or freelancers (service providers) to fulfil the commissioned performance obligations. These are considered proxies (section 278 BGB) of SC. The service providers engaged by SC shall likewise comply with and observe the obligations described in this contract that apply to SC, in particular confidentiality and data protection.

2.4 The contractual partners shall communicate at regular intervals on progress and obstacles in the implementation of the commissioned services. In the event of deviations from the agreed procedure or doubts about the correctness of the other’s procedure, they shall inform each other immediately.

2.5 The Client shall only award contracts to other agencies or service providers in connection with a commissioned project in consultation with SC.

3. Conclusion of contract

3.1 SC shall conclude a contract with the Client concerning the services to be provided, which shall govern the details of the business relationship with the Client.

The commissioning shall occur in writing, by fax, e-mail or in any other electronic form. If SC is commissioned verbally or by telephone, the commissioning shall only become valid upon a confirmation in writing or text form by SC.

3.2 The contract shall only come into effect upon confirmation of the order or provision of the services specified by the Client in the order form or communicated by telephone. Offers made by SC are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period.

4. Scope of services, order processing

4.1 The scope of the services arises from the product or service description current at the time of conclusion of the contract. Additional and/or subsequent changes to the product/service descriptions must be made in writing. The additional costs arising from the change/addition shall be borne by the Client.

4.2 Minutes of a meeting or briefing transmitted by SC are binding if the Client does not object within 7 working days after receipt.

4.3 SC shall inform the Client in good time of any legal risks, which are recognisable to the Client, of the content or design of planned advertising activities. SC does not undertake its own legal review of the services it provides. If the agency deems a legal (for example, under competition or trademark law) examination by a particularly competent person or institution to be necessary for the implementation of the activities, the Client shall bear the costs after consultation.

Liability on the part of SC shall be excluded if and insofar as SC has informed the Client in writing, stating the reasons, of concerns regarding the compatibility of the advertising activity with applicable law and the Client

decides against a change to the relevant contractual services despite the information. In such cases, the Client shall indemnify SC against third-party claims upon first request.

This shall also include the necessary legal costs.

4.4 In the event of force majeure, SC shall be entitled to postpone the commissioned project by the duration of the hindrance and a reasonable start-up time.

In such cases, the Client shall not be entitled to claim damages from SC, even if the Client is unable to meet deadlines due to the delay.

5. Client's cooperation obligations

5.1 Compliance with the delivery and service obligations by SC requires the timely and proper fulfilment of the Client's cooperation obligations.

5.2 The Client is obliged to promptly provide SC with the data, information and documents necessary for the execution of its order in a suitable form after the order has been placed and to support the execution of the deliveries and/or services by all necessary measures from within its own corporate sphere of influence.

Otherwise, SC is entitled to complete the services at its own discretion and to request the Client to accept them. If SC is unable to perform the services or can only perform them at additional expense due to a lack of or insufficient cooperation or provision of materials, it shall be entitled to claim any necessary additional expenses from the Client, with the additional expenses being calculated according to SC's usual rates of remuneration.

5.3 The Client shall ensure that the data, information and documents it provides to SC do not violate criminal law or other public law, that the input or forwarding of data with immoral content does not occur and that the content or designations (including domains/brands/designs) do not violate the personal rights or property rights (rights to names, trademarks and copyrights) of third parties, competition law provisions or other rights of third parties. The content provided also includes such content and its sources that the Client recommends or suggests to SC with regard to the performance of the commissioned services. Should claims be made against SC by third parties on the basis of such content originating from the Client, the Client shall indemnify SC against such claims (including the necessary legal costs) upon first request.

5.4 Within one month of its occurrence, the Client is obliged to inform SC of a change in legal form or name and of the suspicion or imminence of insolvency.

5.5 In the event of a breach of the aforementioned cooperation obligations by the Client, SC reserves the right to discontinue the services for the Client and/or to block access to services used. Discontinuation of the services shall not affect the Client's obligation to pay the remuneration and the provisions on the term of the contract.

6. Remuneration and terms of payment

6.1 The remuneration for each contractual service shall be agreed in the relevant order/contract. SC will – depending on the agreement – usually calculate its work either on the basis of fixed amounts or according to time spent. In the case of invoicing according to time spent, SC will provide the Client with an estimate of the expected expenditure.

6.2 If the submitted estimate cannot be adhered to, SC shall immediately inform the Client of this circumstance in order to coordinate subsequent steps.

Any additional expenditure resulting from this must be approved in writing.

6.3 Unless otherwise contractually agreed, payments are immediately due net after invoicing. From the due date, SC shall be entitled to claim default interest at the statutory rate.

6.4 All prices quoted in offers and orders are exclusive of value added tax. This does not include other costs such as for packaging, postage, freight, insurance, etc. Material costs, colour copies, data dispatch, etc. are covered up to €100. Any costs exceeding this shall be borne by the Client.

6.5 If SC's performance extends over several order components or over a longer period of time, SC shall be entitled to invoice the Client at the end of each month for the services/expenses incurred up to that point and/or to demand reasonable advance payments.

6.6 If SC provides services outside its registered office in agreement with the Client, it shall be entitled to reimbursement of travel costs (2nd class rail travel, economy class flights or travel by car at 0.40 euros/km net) including all necessary outlays, expenses and fees in addition to the agreed remuneration. Travel time shall be invoiced at the hourly or daily rate according to actual time spent.

6.7 In the event of cancellation or changes to orders, work and the like by the Client and/or if the preconditions for the provision of services change, SC shall be reimbursed for all costs incurred as a result. SC shall be released from any liability to third parties in this respect.

6.8 If the Client withdraws from an order before the start of the project, SC shall be entitled to demand a

cancellation fee in the amount of a certain percentage of the originally agreed remuneration. This cancellation fee shall be calculated as follows: 20% up to two months before the start of the project, 30% from two months to one month before the start of the project, 50% from four to two weeks before the start of the project, 80% from one week before the start of the project.

6.9 Until all invoices relating to the order have been paid in full, SC shall retain title to all services and rights, in particular rights of use under copyright law, as well as title to files, documents and objects provided to the Client.

6.10 If the Client is in default, SC may demand advance payments for services to be rendered in the future.

7. Special services, additional services

7.1 Special services, such as proofreading of texts, reworking, changes to final artwork, preparatory necessities for order processing, print monitoring, etc., shall be offered and invoiced separately according to time spent.

7.2 If several concepts or designs of advertising material are produced at the request of the Client, these shall be invoiced separately. The number of designs is recorded in the quote and requires the Client to be briefed. As a rule, an offer includes a design for advertising material or an advertising concept.

7.3 Expenses for ancillary technical costs, in particular special material, production of models, photos, intermediate shots, reproductions, printing, etc., shall be reimbursed by the Client.

7.4 Unforeseen additional expenses require mutual agreement and, if necessary, additional remuneration.

7.5 SC shall only undertake production supervision on the basis of a special agreement. When undertaking production supervision, SC is entitled to make the necessary decisions and issue the corresponding instructions at its own discretion, taking into account the Client's vision and target. SC charges a flat rate for this effort, which is shown separately in the offer.

7.6 Prior to execution and reproduction, SC shall submit correction samples to the Client. SC will be given 10–20 flawless, unfolded copies of all reproduced works free of charge for the purpose of self-promotion.

8. Delivery times

8.1 SC's delivery obligation is fulfilled as soon as SC's work and services have been brought to dispatch. The risk of transmission, e.g. damage, loss or delay, shall be borne by the Client.

8.2 Delivery periods and delivery dates are only binding if they have been designated as such in the order and agreed in writing. Performance disruptions on the part of the Client shall release SC from agreed delivery and performance deadlines.

8.3 If SC is in default of performance, a reasonable grace period must first be granted. Upon fruitless expiry of the grace period granted, the Client shall be entitled to withdraw from the contract.

Compensation for damage caused by default can only be claimed up to the amount of the order value.

9. Rights of use

9.1 Upon payment in full, SC shall transfer to the Client – unless otherwise expressly stipulated in the order – the simple rights of use under copyright law to the commissioned work results in the territory of the Federal Republic of Germany for the media provided for in the order by the contractual partners in each case and for the duration of use provided for in each case.

9.2 The Client is only entitled to transfer the rights of use in whole or in part to third parties and/or to process or modify SC's work results with SC's written consent.

9.3 If SC uses third parties for the performance of the contract, it shall acquire the rights of use to their services to the extent of the above provision for the Client at the Client's expense and transfer them to the Client upon full settlement of the invoice(s) relating to the order by the Client.

9.4 Should the rights not be available in the aforementioned scope in an individual case or their acquisition only be possible at disproportionately high costs, SC shall inform the Client of this and proceed according to the Client's instructions.

Any additional costs incurred as a result shall be borne by the Client.

9.5 Original/basic data such as negatives, "open" layout data, original illustrations, Photoshop layer montages, source data, open 3D data, film data and raw material together with the associated documentation are generally not part of the scope of services SC is obligated to perform or the transfer of rights of use, but remain the property of SC. Unless expressly agreed otherwise, the scope of services shall exclusively include the rights to use the result (e.g. printed flyer, advertisement, website) and, if applicable, ready-to-print PDF files for the agreed purpose of use.

9.6 Work, services, concepts and ideas (including presentations/pitches) presented or submitted by SC that are not part of SC's directly commissioned work results – regardless of whether they are protected by copyright or not – may not be used in whole or in part without express consent. The acceptance of a presentation or pitch fee shall

not be deemed as granting the Client consent to use.

9.7 All working documents, electronic data and records that are produced on the part of SC within the scope of placing the order and do not directly belong to the performance result due hereunder shall remain with SC. The Client cannot demand that these documents and data be handed over. Upon payment of the agreed remuneration, SC shall be obliged to provide the agreed service, but not the intermediate steps leading to this result in the form of sketches, designs, production data, etc.

10. References/self-promotion

10.1 SC is entitled – even if the transfer of exclusive rights of use to the Client has been agreed in individual contracts – to use the work results and the Client’s name free of charge as part of self-promotion, even after the end of the contract, in all media including the Internet and social media and as part of competitions and presentations.

10.2 SC is entitled to refer to the business relationship on its Internet web pages using the name and company logo.

11. Confidentiality

SC shall maintain confidentiality over all information it receives about the Client in connection with the contract, the knowledge gained or derived from such information and the documents drawn up on the basis thereof or containing such information (hereinafter: “confidential information”) even beyond the end of the contractual relationship and use it only within the framework of the contractual relationship. It shall protect the confidential information from access by third parties and – unless this is necessary to achieve the purpose of the contract – shall neither record it nor make it accessible to third parties nor exploit it.

The duty of confidentiality does not apply to such information:

- which are publicly known or publicly available at the time of disclosure or which become publicly known or publicly available at a later time without SC being responsible for this;
- of which SC becomes aware by means other than through the Client and without breaching contractual or statutory confidentiality obligations; or
- which SC has developed independently without recourse to confidential information of the Client. Furthermore, it shall not apply insofar as SC is obliged to disclose confidential information on the basis of a statutory obligation or on the basis of a final or non-appealable order of a state agency or court; to the extent permissible and possible, it shall inform the Client of this in good time before passing it on. SC may only release the confidential information to the extent necessary and shall, to the extent possible, ensure its confidentiality by the respective recipient.

Furthermore, SC may only disclose confidential information to third parties with the prior consent of the Client. SC’s consultants and service providers who are either professionally bound to secrecy or who have previously made a written undertaking to SC to maintain secrecy shall not be deemed third parties.

12. Liability

12.1 SC shall be liable without limitation for intentional or grossly negligent acts, for damage to health, limb or life, in the event of assumption of a guarantee and for claims under the German Product Liability Act.

12.2 In the event of a slightly negligent breach of a cardinal obligation (i.e. such obligations that are of particular importance for achieving the purpose of the contract), the amount of liability shall be limited to the damage that is foreseeable and typical according to the nature of the transaction in question.

12.3 There shall be no further liability.

12.4 In particular, SC shall not be responsible for delays in performance due to force majeure or due to circumstances within the Client’s sphere of influence (untimely provision of content etc.); they shall entitle SC to postpone the performance of the affected service by the duration of the hindrance/delay plus a reasonable period of time. In return, SC undertakes to notify the Client of any delays in performance due to force majeure.

12.5 The above limitation of liability shall also apply to the personal liability of SC’s employees, representatives and governing bodies.

13. Material defects in programming services

Insofar as SC is commissioned with programming software and these services are to be assessed as work performance, the following regulations on claims in the event of material defects shall apply:

a) If there is only an insignificant deviation between the programming service provided by SC and the agreed or assumed programming service, there is no material defect. Likewise, there is no material defect in the case of only insignificant impairment of the usability of the programming service. The contents of the order or service description shall not be deemed a guarantee without a separate written agreement.

~~b) Unless separately agreed, SC shall be deemed to have fulfilled its performance obligation if the programming~~

services are executable on industry-standard browsers and resolutions (Safari, Firefox, Internet Explorer, Microsoft Edge and Google Chrome incl. the last two update versions).

c) If SC's services are based on existing programming services (e.g. in programming updates, upgrades and new versions), the claims for defects shall be limited to the new features compared to the previous version status. The same applies to the use of third-party products.

d) If the Client demands supplementary performance from SC due to a defect, the supplementary performance can also occur by creating a new version or a workaround.

e) Defects must be communicated by the Client immediately and in writing and must be presented using a detailed and comprehensible description of the error symptoms. Statutory obligations of the Client to inspect and give notice of defects shall remain unaffected.

f) Claims for defects shall not apply if the Client itself modifies or expands SC's programming services or has them modified or expanded by third parties and does not prove that the modification is not the cause of the defect. Improper operation as well as inadequate operating conditions or the use of unsuitable operating materials by the Client shall also not constitute grounds for liability for defects.

g) Should a Client's notice of defect prove to be unjustified because the defect complained of either does not exist or is based on reasons for which SC is not responsible, SC shall be entitled to charge the Client for the time required for the inspection.

h) Claims for defects shall lapse within 12 months from acceptance of the service.

14. Use of third-party products

14.1 The following regulations apply to the use of third-party products (e.g. online platforms, open-source software or plug-ins) by SC within the scope of service performance vis-à-vis the Client.

14.2 If material defects or defects of title are due to a defective product of a third party that is not a proxy of SC and SC passes the product on to the Client, the Client's claims for defects shall be limited to the assignment of SC's claims for defects against the third party (e.g. when using open source software).

However, SC is responsible for the defect if the cause of the defect was set by SC, i.e. the defect is based on an improper modification, integration or other treatment of the third-party products for which SC is responsible.

14.3 SC is not responsible if third party products are restricted or discontinued altogether by the third party. If the third party introduces a fee for the provision of third-party products, SC shall have the right to adjust the remuneration agreed with the Client accordingly if the Client wishes to continue the use of the third-party products after consultation and the remuneration would be charged to SC.

14.4 SC shall not be liable for delays in deadlines and additional costs that arise after completion of an order by the Client due to the fact that the provider of the third-party products changes them (e.g. change of software core/API) without this being or having to have been apparent to SC when the order was placed.

14.5 The disclosure of third-party products shall be deemed to be clearly recognisable to the Client if SC refers to them within the scope of the order description or order processing, if this results from the order or should have been recognizable to the Client on the basis of its own expertise.

15. Collecting societies/KSK

15.1. The Client undertakes to pay any fees to collecting societies such as GEMA. If SC pays these fees in advance, the Client undertakes to reimburse them to SC on the presentation of proof.

15.2 If a social security contribution for artists is payable by the Client, the Client shall be informed that they are responsible for calculating and paying the social security contribution for artists. This applies accordingly to the fulfilment of his/her reporting obligations to the Social Insurance Fund for German Artists (Künstlersozialkasse). Deducting this contribution from the corresponding fee invoice is not permitted.

16. Media planning and media implementation

16.1. SC shall procure commissioned projects in the area of media planning in good conscience on the basis of the media documents available to it and the generally accessible market research data. SC does not owe the Client a particular advertising outcome as a result of these services.

16.2 In the case of media services, SC is entitled to invoice the Client for the external costs and to make the booking for the relevant media only after receipt of payment. A handling fee will be charged for this. SC is not liable for any failure to meet the deadline for the advertisement's initial run due to late receipt of payment. This shall not give rise to a claim for damages by the Client against SC.

17. Final clauses

17.1 Amendments, extensions and other ancillary agreements must be in writing in order to be valid; if they do not satisfy this requirement, they shall be null and void.

This shall also apply to amending the written form requirement.

17.2 The validity of the Client's general terms and conditions (GTC) is excluded.

17.3 The Client may only transfer or assign to third parties claims against SC arising from this contract with SC's written consent.

17.4 This contract and all orders concluded on its basis shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

17.5 The exclusive place of jurisdiction for all disputes arising from or in connection with this contract or an order concluded on the basis thereof shall be Stuttgart, provided that each party is a merchant or a legal entity under public law.

17.6 Should any provision of this contract or of an order concluded on its basis be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. Rather, the parties shall cooperate to replace the invalid or unenforceable provision with a legally permissible, valid and enforceable provision that is suited to achieving the outcome intended by the invalid and unenforceable provision. The same shall apply to filling contractual loopholes.

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