

Translation from German

AGENCY AGREEMENT

by and between

(Name, Company, Address, Contact, Date of Birth)

hereinafter referred to as "Customer"

and

the Communications Agency

(Name, Address)

hereinafter referred to as "Agency"

as follows:

PREAMBLE

The objective of co-operation between the Customer and the Agency is to optimise and enhance the appearance of the Customer's business, his products and/or services in the market in advertising and communications. To achieve this objective both parties to this Agreement consider themselves related by a relationship of mutual trust, which they want to express by the following agreement. The Agreement is intended to help avoiding misunderstandings about mutual rights and obligations of the parties and to establish legal clarity.

A. INSTRUCTION

1. The Customer instructs the Agency to render comprehensive support in advertising and communications regarding

- the products:

- the services:

- the business itself (image promotion, corporate design and the like)

in the Republic of Austria (Note: here the territory should be defined: e.g. Austria, EU, worldwide). The above products and services and the business will hereinafter be jointly referred to as "Products".

Applicability of the Agency's General Terms and Conditions, which are attached to this Agreement as Annex 1 and can be viewed on the Agency's website is acknowledged and approved and shall form the basis of this contractual relationship.

2. The Agency accepts this instruction and warrants that it will most closely cooperate with the Customer and that it will safeguard the Customer's interests at all times.

B. SERVICES OF THE AGENCY (Note: the following is merely a non-exhaustive list and may/shall therefore always be adjusted to specific needs. Services that will not be rendered shall be deleted; services that are not included in the list shall be added)

1. Preparation for advertising

- 1.1 Analysis of the market position and competition regarding the Products to be supported.
- 1.2 Investigate the structure and behaviour of the target group on the basis of available studies or other publicly accessible ...
- 1.3 Drafting of proposals for supplementary market surveys, product surveys and consumer surveys and recommendations ...

2. Advertising consulting

- 2.1 Advice on market strategy, advertising-specific advice and advice on technical aspects of advertising with respect to all issues of business communications and product advertising.

- 2.2 Definition of advertising objectives ...
- 2.3 Development of a communications strategy and advertising concepts.
- 2.4 Evaluation of advertising materials and advertising media for optimum utilisation of means of advertising.

3. Advertising design (creation)

- 3.1 Drafting texts and designing concepts (rough layouts) for all print media (advertisements, posters, brochures, catalogues, folders, etc.)
- 3.2 Developing storyboards / treatments for film, radio and television advertising.
- 3.3 Developing claims, slogans and jingles.

4. Finalisation (final artwork, final layouts)

Production of all final artwork / final layouts and/or illustrations required for production of means of advertising including DTP typesetting.

5. Production of means of advertising (award of contracts, co-ordination, supervision)

- 5.1 Identification of the most economical production processes and methods.
- 5.2 Selection of suitable specialists and/or suppliers, such as graphic designers, photographers, printshops, reprographics printers, film producers, recording studios, narrators, models, dummy manufacturers, etc.

- 5.3 Awarding of contracts after approval from the Customer; co-ordination and supervision of proper and timely execution or direction and production in the case of shootings and recordings and of post production in the film, radio and television sector; controlling and payment processing.

C. OTHER SERVICES OF THE AGENCY (PROJECT CONTRACTS, MEDIA)

1. At the Customer's special request the Agency shall, in addition to the services listed in Part B, on the basis of a separate contract (e.g. project contract, media contract) render the following services for a fee to be agreed separately:

1.1 Media

Media planning and media placement

1.2 Digital media

Conception, development, design, production and project management for advertising measures in digital media including the internet and intranet.

1.3 Research

Carrying out all research measures, such as, e.g., copy tests, pre-tests and post-tests, recall surveys.

1.4 Brands, packaging designs

Development of trademarks, brand names and marks and signs, layouts and designs of packaging.

1.5 Corporate design

Development and editing of *signets*, logos and office or shop furniture and fixtures.

- 1.6 International co-ordination
Integration of advertising measures into an international concept and co-ordination with agencies abroad; taking on a lead agency function.
- 1.7 Direct marketing
Drafting of texts and layouts for direct marketing campaigns and customer relationship measures.
- 1.8 Sales promotion
Advice, planning and implementation in the field of sales promotion, field service conferences, specialist conferences, symposiums and design of display material, leaflets and other sales aids.
- 1.9 Trade fairs and event marketing
Conception, development, implementation, co-ordination and supervision of trade fairs and events.
- 1.10 Sponsoring
Development and implementation of sponsoring concepts.
- 1.11 Special texts
Drafting of technical texts and foreign-language texts.
- 1.12 Interactive media
Conception, development, design, production and project management for interactive media.
- 1.13 Database management
Generating addresses; archiving digital data; set-up and administration of a database for access by the Customer.

2. If the above services are awarded to the Agency under a separate contract, the regulations of the contract shall prevail and alternatively the provisions of this Agency Agreement shall apply, i.e. in addition.

D. EXTERNAL SERVICES/COMMISSIONING OF THIRD PARTIES

1. The Agency shall be entitled at its own discretion to render the services itself, to employ expert third parties as agents [*Erfüllungsgehilfen* as defined by Section 1313a of the Austrian General Civil Code [*ABGB*]] and/or to commission a third party with such services ("External Services").
2. Commissioning third parties with External Services shall either be in the name of the Agency or in the name of the Customer but in any case for the Customer's account. The Agency shall select the relevant third party with care and ensure that it is appropriately qualified.
3. If the Agency commissions necessary or agreed External Services, the relevant contractors shall not be considered agents [*Erfüllungsgehilfen*] of the Agency.

E. TASKS OF THE CUSTOMER

1. Information about advertising activities and budget

- 1.1 The Customer shall inform the Agency about the expected business volume of planned advertising activities and the available budget before any new business year. The Customer shall immediately inform the Agency about changes in those submitted plans.

1.2 The Customer shall provide the Agency with all data, information and documents on marketing objectives, markets and Products which the Agency needs for its work completely and timely in advance. The Agency undertakes to treat such information as strictly confidential.

2. Approvals and duty to co-operate

The Customer shall give approvals provided for in the Agreement, if any, so timely in advance that the workflow of the Agency and its suppliers and, thus, the jointly defined targets will not be impaired; failure to give approvals and late approvals may cause additional costs. With respect to approval of services rendered by the Agency see Clause 4.2. of the GTC.

F. CONSIDERATION FOR THE AGENCY (Note: the consideration shall always be agreed according to the (Customer's) situation. Therefore, it is not possible to recommend a specific form of consideration. The following are merely suggestions as to what points should be regulated).

The consideration shall always be agreed individually (e.g. as a defined percentage of an agreed advertising budget, graded, if necessary; or as a fee based on hours worked). In addition, expenses that may be incurred in connection with provision of services that should also be reimbursed have to be identified. Those elements should then be listed here (e.g. third-party costs, fee for intellectual property rights of use (e.g. under copyright law or design right law), cash expenses, fees, travel expenses). Another important point that should be regulated in the Agreement is whether the price is stated inclusive or exclusive of value added tax. Regulation of due dates is also of particular importance (for instance, it may be provided that the Customer has to pay the invoice immediately upon receipt or after a defined period of time;

in the case of large contract volumes it should be considered whether to include a regulation on an option to issue interim invoices. See also Clause 6. "Fee" of the GTC.

G. Modification or cancellation of work

If the Customer unilaterally modifies or cancels work ordered without involving the Agency and notwithstanding other regular support by the same, the Customer shall pay the Agency for the services provided by then according to the agreement on fees and shall reimburse all costs incurred. Unless the services are cancelled on the ground of a violation of the Agency's obligations by gross negligence or wilful intent, the Customer shall, in addition, pay the Agency the total fee (commission) agreed for that contract and the allowance [*Anrechnungsvergütung*] as defined in Section 1168 of the Austrian General Civil Code [*ABGB*] shall be excluded. Furthermore, the Agency shall be indemnified and held harmless from and against any third-party claims, in particular of the Agency's contractors.

H. RIGHTS AND DUTIES TO CO-OPERATE; LIABILITY

1. The annual and regular activities of the Agency shall be based on briefing by the Customer.

2. Cost estimates

The Agency shall advise the Customer of the budget required for every single advertising activity in writing in advance and obtain the Customer's approval. No cost estimates and prior approval from the Customer shall be required for minor contracts of up to a maximum net amount of EUR _____ and contracts arising in the course of regular work, such as, e.g. interim shootings/recordings, typesetting costs, retouching and the like.

3. After approval from the Customer the Agency shall award production contracts to third parties, usually in the name and for the account of the Customer. The

Agency shall supervise production and examine the production result if it is instructed to do so by the Customer.

4. Confidentiality

The Agency shall treat any and all information and documents that are not intended to be passed on to third parties of which it obtains knowledge in the course of co-operation with the Customer as strictly confidential. The Agency shall impose the same secrecy obligation on employees and third parties who receive such information or documents to render work under this Agreement. This confidentiality obligation shall survive termination of this Agreement.

5. Liability

- 5.1 In cases of slight negligence any liability of the Agency or its employees, contractors or other agents [translator's note: Erfüllungsgehilfen as defined by Section 1313a ABGB] ("People") for damage to property or pecuniary loss suffered by the Customer shall be excluded, be it indirect or direct damage, lost profit or consequential damage resulting from a defect, damage due to default, impossibility, breach of obligation, culpa in contrahendo or due to defective or incomplete performance. Negligence shall be proved by the harmed party. To the extent that the Agency's liability is excluded or limited this shall also apply to personal liability of its People.
- 5.2 The Agency shall notify the Customer in time of any legal risks it is able to identify in connection with the content or design of planned advertising measures. If the Agency deems a legal review (e.g. according to competition law) by a specialist necessary prior to realisation of a measure, it shall advise the Customer thereof. If the Agency expressed its concerns and the Customer

insists that the advertising measure be implemented nevertheless, the Agency shall not be liable for any resulting disadvantages or risks. The Customer shall indemnify and hold harmless the Agency from and against any third-party claims.

Irrespective thereof, the Agency shall not be liable for technical information relating to customers' products included in the advertising measures, nor for the legal copyright, registered design, trademark, brand or registration protectability pertaining to ideas, concepts, drafts etc. delivered in the frame of this agreement (see clause 10 and 13 GTC) unless the protectability is explicitly part of the contract.

- 5.3 Claims of the Customer for damages shall be forfeited six months after knowledge of the damage and in any case three years after the Agency's violation. Claims for damages shall be limited to the net contract value.

6. RETENTION, ARCHIVING AND SURRENDER OF DATA AND DOCUMENTS

- 6.1 All reports, materials for printing, films and illustrations shall be properly kept by the Agency at no extra charge for a period of one year commencing upon conclusion of the relevant communications measure and shall be handed over to the Customer upon his request during that period. After expiry of the retention period or in the case of termination of the Agreement prior to expiry of that period the documents shall be handed over to the Customer upon his request; otherwise they shall be destroyed. The documents stated above may also be kept in digital format.

The costs of data compilation, shipping, packaging, retention beyond the agreed period and, if applicable, the costs of removal and destruction as well as relating activities and insurance shall be borne by the Customer.

- 6.2 The Agency shall be authorised to immediately destroy any documents that are no longer required, such as manuscripts, sketches, drafts of advertising measures that were not implemented or the like.

- 6.3 If the Agency was instructed as laid down in Part C paragraph 1.13 of this Agreement to archive digital data against payment, the Agency shall archive such data and surrender the same upon the Customer's request at any time during the term of Agreement or upon termination of the Agreement, respectively.
- 6.4 Data shall be surrendered by delivery of a customary data carrier which contains the data and in such a form that the Customer or his agents will be able to edit the data for the purpose of updating the communications measure embodied by the data at the time of delivery.

I. ASSIGNMENT AND CONSIDERATION OF RIGHTS TO USE

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1. Right to use the Agency's work results

All rights to use the Agency's work results paid for and approved of by the Customer for use in advertising, be they protected by copyright or not, shall exclusively pass to the Customer for the territory and for all types of use required for the agreed designated purpose for the term of this contractual relationship. Unless otherwise provided for, the term of use shall be one (business) year.

The assignment shall not include the right that services of the Agency be modified or edited by the Customer or a third party who works for the Customer.

2. Right to use work results of third parties

The rights to use work results of third parties that have been approved of and paid for, e.g. photos, illustrations, music and proprietary rights of third parties, e.g. of actors, narrators or models, shall be assigned by the Agency to the Customer to the extent required in order to implement the advertising measures agreed under this Agreement in the territory. If such rights are restricted as to time, territory, contents or with respect to types of use (advertising media) and for that reason assignment of the same is not possible to the extent defined above, the Agency shall advise the Customer accordingly and act in accordance with the Customer's further instructions.

3. Further assignment by the Customer

Further assignment or licensing of the rights to use by the Customer to third parties shall be subject to the Agency's prior written consent in order to be effective.

II. CONSIDERATION OF RIGHTS TO USE

Note: Unless the fee for use of a creation that is protected by an intellectual property right has already been exhaustively regulated in Part E (e.g. under copyright law or design right law), such a regulation should be included here.

III. SELF-ADVERTISING; COPYRIGHT NOTICE

1. The Agency shall be authorised to use its work results or parts thereof for its own advertising purposes/as reference free of charge, also after the term of the Agreement.
2. The Agency or, to the extent the services are protected by copyright, the author shall have the right to be stated as the author; the Agency shall be

entitled to place its company name or logo or any other name customary in business on the Customer's means of advertising in a subtle manner in agreement with the Customer if the Agency intends to make use of such right.

J. TERM OF AGREEMENT

The Agreement shall commence on _____. The Agreement shall be concluded for an indefinite period of time and may be terminated as of the last day of a month by giving ____ notice. The first possible date of termination shall be _____. Notice of termination shall be given in writing. The right to terminate the Agreement with immediate effect for cause (see Clause 5 of the GTC) shall remain unaffected. Termination by notice by the Customer shall not affect the calculation of fees in the current business year.

K. REGULATIONS ON THE TIME AFTER TERMINATION OF THE AGREEMENT

1. To the extent the Agency has assumed obligations vis-à-vis third parties under this Agreement (fixed contracts), the Customer agrees to fulfil such obligations also after termination of the Agreement by involving the Agency.

L. NON-COMPETITION CLAUSE

The Customer undertakes not to instruct any other advertising agency / communications agency for the Products in the territory for the term of this Agreement. However, in the case of termination of the Agreement the Customer shall be entitled to order services from a new agency during the last two months of the period of notice if that is necessary to be able to smoothly continue open projects after termination of the Agreement.

M. FINAL PROVISIONS

1. Modifications of or amendments to this Agreement shall be made in writing in order to be effective.
2. If any provision of this Agreement is or becomes ineffective, the validity of the remaining provisions of this Agreement shall not be affected. The ineffective provision shall be replaced by a regulation which comes as close as possible to the parties' will to the extent permitted by law.
3. **Applicable law**

The Agreement and all mutual rights and obligations resulting therefrom as well as any claims between the Agency and the Customer shall be subject to Austrian substantive law and UN Sales Law shall be excluded.

4. Place of performance and place of jurisdiction

- 4.1 The place of performance shall be the registered office of the Agency. In the case of shipping the risk shall pass to the Customer after the Agency has delivered the goods to the transport company chosen by it.
- 4.2 The agreed **place of jurisdiction** for all legal disputes between the Agency and the Customer arising in connection with this contractual relationship shall be the court having subject-matter jurisdiction over the place of the Agency's registered office. Notwithstanding the foregoing the Agency shall be entitled to sue the Customer at his general place of jurisdiction.

(Place, date)

(Customer)

(Agency)

Annex:
General Terms and Conditions of the Agency