

Terms and Conditions of deyhle & löwe Werbeagentur GmbH

1) Scope

The following Terms and Conditions apply to all quotations and contracts of deyhle & löwe Werbeagentur GmbH (agency). Divergent agreements or contradictory terms and conditions shall only be valid subject to the agency's explicit written confirmation.

2) Services and Deliverables

- The agency provides creative services.
- Unless expressly agreed otherwise, all deadlines and dates for the performance of services, dispatch or delivery of products are of a non-binding nature. On expiry of a non-binding deadline for the performance of services, the agency shall only be default once the client has requested the agency in writing to perform the services within a period of grace of at least three weeks, or if the statutory deadline has expired, and in addition the client has fulfilled all cooperation obligations (supplying of required documents, approval of drafts, delivery of data records etc.).
- The agency shall only be liable with regard to punctual delivery and performance in the event of it, or its agents being at fault. The agency declines responsibility for any faults on the part of pre-suppliers. However the agency shall pledge to transfer to the client any compensation claims against pre-suppliers.
- If the agency be in default of delivery or services, the client may withdraw from the agreement or demand compensation for non-fulfillment pursuant to the following provisions. However the client must notify a period of grace of two weeks, commencing on the latter's receipt by the agency. The client may only demand compensation for non-fulfillment if the agency or its agents have caused the damage willfully or through gross negligence. If the client does not avail themselves of the aforementioned rights, they shall not be entitled to any compensation claims arising from the non-observance of any delivery dates.
- Acts of God or unforeseeable serious interruptions for which the agency cannot be held responsible shall extend the delivery period accordingly. The client shall be notified immediately of such a delay.
- The risk of the accidental loss of a deliverable shall be transferred to the client as soon as the deliverable has been properly entrusted to the person responsible for shipping.

3) Quotations and Prices

- Agency quotations itemize services according to actual outlay and preliminary estimates, unless the quotation is expressly marked up as a flat-rate offer.
- Prices are always based on the price list valid when the agreement was concluded, provided that the services are rendered within four months of the agreement being concluded. Price changes are only permissible if more than four months elapse between the agreement being concluded and the service performed.
- The agency shall be entitled to request commensurate advance payments for production costs, should it have to commission third parties such as printers or bookbinders with production jobs. Advance payment is commensurate when of the same amount and due date as that required from the agency.
- The client shall accept additional hours of up to 15% in relation to the present quotation, and shall pay without further ado. Hours in excess of this shall be notified immediately by the agency. The parties shall then pledge to reach an agreement on the matter within two weeks. If no agreement can be reached, the client shall be at liberty to withdraw from the agreement. The agency shall be entitled to bill the client for any services rendered to date.
- The customer shall pledge to acknowledge, accept and pay for excess deliveries or shortfalls on production orders of up to 10%.
- The client shall provide all documents required for order fulfillment free of charge. The client's suggestions, participation in the creative process and execution of the job and any other cooperation shall have no influence on the amount of the agreed fee. It does not constitute a right to joint copyright.

4) Checking of Agency Services – Corrections

- The client shall immediately examine all services on submission, if necessary test the latter for their contracted function, and immediately notify any shortcomings in writing. If the client fails to notify the agency, the service shall be regarded as accepted and approved, unless the shortcoming in question was not openly identifiable on examination. In the case of a justified complaint the agency may choose to remedy the shortcoming or provide a replacement within an appropriate period of grace. Should subsequent fulfillment or replacement delivery be defective for the same reason, the client may withdraw from the agreement or reduce payment by agreement with the agency.
- The client shall check proofs, prints, master tapes, raw cuts and interim results etc. carefully. Approval shall generally be submitted in writing. The agency declines any liability for defects for which no complaint was lodged. If the client transfers the right of approval to the agency, any warranty claims shall lapse. Minor color variations – also between color proofs and the print run – as well as bleed and size shifts are common and shall not constitute grounds for complaint. In the case of color reproductions in any reproduction processes, deviations from the original cannot be cited as grounds for complaint. Only shortcomings that impair the contracted utility and useful value of an advertising item or contract subject shall constitute grounds for complaint.
- One correction run and one only is included in the service scope, provided the correction did not have to be executed due to non-observance of prior explicitly expressed execution instructions for which the agency is to be held responsible. Further corrections or subsequent amendments required shall be billed separately.

5) Rights of Use

- On settlement of all invoices relevant to the order the agency shall transfer to the client all necessary rights of use for its products and services to the extent stipulated in the agreement. In cases of doubt the agency shall fulfill its duties by temporarily granting non-exclusive rights of use within the bounds of the Federal Republic of Germany for the period the advertising material is implemented, however for one year at the most. Any further use, in particular that of processing and amendment, shall be subject to the agency's consent.
- Rights of use to work that is not fully paid on termination of the agreement, or in the case of billing on commission basis for work that has not yet been published, are reserved by the agency unless agreed otherwise. Promises regarding the transfer of rights and rights of use shall lapse if the client defaults on payment. The client is then no longer entitled to any copyright or rights of use. The latter must stop all publication of agency services and their circulation.
- Products supplied for test purposes remain the property of the agency. In the case of software the agency reserves the right to design the latter so that on expiry of the agreed trial or usage period, it shall no longer be fully usable.

d) In the event of any documents or data to be procured by the client the latter shall be solely responsible should their use breach the copyright of third parties. The client shall release the agency of all claims by third parties due to such a legal infringement, and by the latter's request shall provide an adequate advance to cover the costs of legal proceedings.

- Drafts, concepts and ideas presented by the agency at calls or pitches may neither be used in part or entirely by the company issuing the call or pitch if the agency does not win the contract.
- Rights of use and ownership to work and material submitted by the agency for a presentation shall remain the property of the agency even if a presentation fee is paid to the agency. Presented materials, slides, films, cardboard displays, and all other tangible property produced by the agency in the course of presentation execution remain the latter's property and their return by the customer may be requested at any time. If work submitted for the presentation is used by the client in its entirety or parts thereof, also modified or elaborated versions, the agency shall be entitled to invoice full recompense for its use, at least however 10,000 euros net. The agency shall not be obliged to tolerate further use if no agreement is reached on the recompense for the right of use.

6) Client Liability

- The client shall be solely responsible for the content of the advertising. The advertising must be lawful, and must not offend common decency. The agency may stop publicizing of the advertising from the moment reservations arise in connection with its legality or violation of moral principles without loss of recompense, and may demand that the advertising be redesigned at the client's expense.
- If the client breaches the contract albeit only through negligence, in particular with regard to the rights of the agency to advertising, or the obligation to observe the rights of third parties, the latter shall be liable for any damage incurred by the agency including the costs of legal proceedings, and shall release the agency from indemnity claims by third parties.

7) Payment Terms

- All agency invoices shall be paid within 14 days of the invoice date without discount and free of charges. The agency may invoice according to percentage-of-completion. Media services may be invoiced in advance and shall be due net without discount and free of charges up to seven days prior to publication/run date. The agency may cancel media runs if payment is not rendered in full or in part by this date.
- The client may only make set-offs with legally confirmed or acknowledged receivables. The client shall not be entitled to any right of retention unless legally stipulated or acknowledged by the agency.
- If fulfillment of payment claims is jeopardized by a deterioration in the client's financial circumstances arising or revealed after conclusion of contract, or if the agency receives discouraging information on the client's creditworthiness, the agency may demand advance payment and immediate payment of all outstanding invoices, also of those that are not yet due, and may retain goods not yet delivered and stop any ongoing orders. The agency shall be entitled to these rights even if the client does not render payment despite a justified reminder on the grounds of default.
- Ownership of all contractual products shall only be transferred to the client on full payment of all receivables arising from the business association, in the case of checks or bills of exchange, only on the latter's final redemption.
- Production items used and drafted by the agency, in particular roughs, layouts, sketches, artwork and blueprints, interim stages of all kinds, print media in film or file format, text and image files, software programs, fonts, films, lithographic work, negatives and slides, prints, blocks, printing plates, proofs, samples and the like, even if billed separately, shall remain the property of the agency and shall not be delivered to the client.

8) Warranty and Liability

- Compensation claims against the agency due to default, impracticality, breach of contract, culpability on conclusion of contract arising from impermissible conduct are excluded insofar as the damage was not caused by willful or grossly negligent behavior on the part of senior personnel or the gross negligence of ordinary agents. The client's approval, even when of a tacit nature, of individual steps, precludes the client from lodging any complaints about the said steps.
- The agency's liability is limited to the order value of the individual order, in the case of current flat-rate agreements to that of the monthly flat rate amount.
- The agency declines liability for the admissibility of advertising and its contents under competition and trademark law.
- Danger arising from any errors shall be transferred to the client on the latter's approval, unless the errors only arise after approval is granted during the subsequent production process. No liability is assumed for reproductions and publication of approved drafts or artwork by the client.
- The agency declines responsibility for the compatibility of supplied ideas and work under design, copyright, trademark protection and registering law. Nor does the agency accept responsibility for any copies, duplicates or parallel works. The agency declines liability for documents, samples and other items supplied by the client for order processing.

9) Contractual Amendments

Amendments and additions to the agreement shall be executed by the management or persons specially authorized by the agency. Verbal agreements or declarations by other persons shall only be effective if confirmed in writing by the agency management.

10) Written Form

All declarations and notices to be issue in related to the agreement or its provision require the written form.

11) Jurisdiction and Legal Venue

- This agreement is subject to German law under exclusion of UN sales law (CISG).
- It is agreed that the place of performance is the agency's headquarters, i.e. Gauting.
- The legal venue shall be determined according to statutory regulations. If the client is a businessman, legal person or special fund under public law the agency's headquarters, i.e. Gauting shall be the sole venue for all disputes arising directly or indirectly from the contractual relationship. The agency's headquarters, i.e. Gauting is also legal venue insofar as the client does not have a general legal venue in the country. This shall not apply if the client is a consumer resident within the sovereign territory of a member country pursuant to the EU regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [EUGVVO].