

**GENERAL TERMS AND CONDITIONS BLACKBIRD FOR SERVICES AND DELIVERIES**

**May 15<sup>st</sup> 2016**

**§ 1 General Remarks, Scope**

1. The following General Terms and Conditions (hereinafter "GTC") shall apply as between blackbird/berlin, Katharina Schnäcker (hereinafter the "Agency") and its contractual partner (hereinafter the "Client") for professional services of the Agency in all areas relating to marketing, public relations and event management.

The details of the service are set forth in the concept developed by the Agency, in the offer and in the individual assignments.

2. The GTC, as amended from time to time, shall also apply as a framework agreement to future contracts, without any requirement on the part of the Agency to make additional future reference to the GTC in each individual case. These GTC shall be exclusively applicable.

Any general terms and conditions of the Client that conflict with or supplement the GTC shall form part of the contract only if and to the extent that the Agency has expressly consented to the validity of such in writing. This requirement of consent shall apply in all cases, including, without limitation, in cases where the Agency unconditionally performs the service for the Client in the knowledge of the Client's general terms and conditions.

**§ 2 Offer and Conclusion of the Contract**

1. In cases of doubt, the presentation of the services to be performed and/or the preparation of a cost calculation by the Agency shall not constitute a binding offer of the Agency. The same applies to those offers that are expressly designated as non-binding.
2. Only an expressly binding award of the assignment by the Client to the Agency shall be deemed to constitute an offer to enter into a contract, which the Agency can accept – by implication resp. by tacit behavior, in particular through performance of the service.

**§ 3 Subject Matter of the Service, Client's Duty to Assist**

1. The assignment shall be aimed at the agreed service set forth in the contract, but not at the achievement of any specific economic result. Any subsequent amendments to the scope of the service must be made in writing. In case of subsequent amendments to the scope of the service, possible deadlines,

acceptance modalities, payment and reimbursement of expenses shall be adjusted according to the amendments.

2. In the event that the Client provides the Agency with samples, the Client must ensure that an adequate number of duplicate samples remain in possession of the Client or Clients' business, as is necessary to continue production without the use of the samples in question.
3. The Client shall, without delay, provide the Agency with all information and documentation required for the performance of the service. It shall notify the Agency without delay of all acts and occurrences that are of relevance for the performance of the assignment, also where such circumstances only come to light in the course of performing the assignment. The Client shall bear the costs incurred as a result of work having to be repeated by the Agency or being delayed owing to the Client's incorrect, incomplete or subsequently modified information.
4. The Client shall be required to review the documents (photographs, logos etc.) supplied in connection with the performance of the assignment to check for any copyright and trademark rights or other third-party rights. The Agency shall not be liable for the infringement of such rights. If a claim is asserted against the Agency on grounds of such infringement of rights, the Client shall indemnify the Agency in respect thereof; the Client shall compensate the Agency for all disadvantages that the latter suffers as a result of third-party claims.
5. Unless expressly agreed otherwise, the Client shall, in a timely fashion and at its own expense, obtain all government authorizations and licenses that may be required in connection with the contractual services. The Client shall bear the responsibility of complying with such authorizations and licenses and with all other administrative and statutory provisions relating to the event.

#### **§ 4 Date / Time Appointments**

1. Any deadlines or appointments proposed by the Agency for deliveries and services shall not constitute fixed appointments unless the parties have expressly in writing that these are to constitute such.
2. If a service by the Agency is delayed in performing the service for reasons beyond its control or reasons for which it is not responsible, e.g. force majeure and other unforeseeable events that cannot be averted by reasonable means, the Agency's duties to perform services shall be suspended for the duration of the impediment. The time periods for the performance of the service shall be extended accordingly. In the event that such delays continue for more than two

months, the Client and the Agency shall be entitled to rescind the contract.

3. In the event that the Agency should default on the performance of services, the Client may rescind the contract only after first having set the Agency a reasonable deadline within to make performance and such deadline lapsing without such performance.

#### **§ 5 External Services / Appointment of Third Parties**

1. The Agency may, at its free discretion, elect to perform the service itself or appoint professional third parties as sub-contractors for the performance of the contractual services.
2. The Client may independently appoint third parties in connection with the contractual service solely after prior agreement with the Agency and at the Client's own expense. Where the Client avails itself of third-party services, the respective contractors shall be deemed to constitute the Client's vicarious agents (*Erfüllungsgehilfen*).

#### **§ 6 Remuneration; Expenses**

1. The remuneration of Agency for the contractual service shall be governed by a separate contractual agreement.
2. Where performances of the Agency could not be finalized or remain incomplete for reasons not legally attributable to the Agency so that the Agency is not entitled to the complete contractual remuneration, the Client nonetheless owes an appropriate fee for the performed services. The sum shall be determined according to the ratio of the performed services to the complete performance under the contract. The enforcement of further claims, claims for damages in particular, shall remain unaffected.
3. Unless expressly agreed otherwise, expenses incurred by the Agency in connection with the respective service shall be reimbursed by the Client separately. Expenses within the meaning of this subsection shall include, without limitation, external costs resulting from the appointment of third parties, travel and transportation costs, venue hire costs, etc. All third-party costs will be charged with a 15% handling fee. The expenses shall be invoiced separately and the invoice shall contain a breakdown of the respective costs.
4. The Agency shall be entitled to demand reasonable advance payments.
5. The Client hereby acknowledges that the amount of the Agency's projected expenses may deviate from the amount of expenses actually incurred. If it becomes clear that the Agency's actual expenses will exceed those projected by

the Agency, the Agency shall notify the Client of the additional expense. In the event of a deviation of 10% or less, the actual expenses shall be deemed as having been approved by the Client. Any expenses incurred in excess thereof shall be reimbursed by the Client solely where it has expressly approved such expenses. The Client shall be deemed as having given its approval insofar as the Client does not object thereto in writing within three working days of such notification and simultaneously presents more cost effective alternatives.

6. Unless stated otherwise, any amounts invoiced shall not include the statutory turnover tax (*Umsatzsteuer*); the corresponding sales tax must be added on top of the invoice amount.

### **§ 7 Due Payments; Set-off**

1. The remuneration and the reimbursement of expenses shall become due and payable in full and without any deductions following issuance of an invoice; in the case of long-term assignments, this shall be at the end of each month, or in all other cases, no later than following the performance of the service by the Agency.
2. The Client shall be in default of payment directly with receipt of a payment reminder, at the latest 30 days following receipt of the invoice. The default interest shall amount to five percentage points above the base interest rate pursuant to Section 247 of the German Civil Code; this shall not apply where the Client is a business within the meaning of Section §10 (3), in which case the default interest shall amount to ten percentage points above the base interest rate pursuant to Section 247 of the German Civil Code. Any right of the Agency to assert more extensive damages claims shall remain unaffected.
3. Where the Client has failed to make the due payments, the Agency shall be entitled to assert a right of retention over any services yet to be performed resp. to refuse further performance. Further rights of the Agency, especially the right to withdraw shall remain unaffected.
4. The Client shall have a right to offset against claims (*Aufrechnung*) only if its own claim has been established by a final and binding decision or is undisputed. The same shall apply to the right of retention, the valid exercise of which shall further require that the counterclaim of the Client must arise under the same contractual relationship.
5. The Agency is entitled to credit payments made by the Client against previous claims against the Client. The deduction shall be calculated as follows: If expenses and interest already have been incurred, the Agency will set-off the Client's payment against the expenses first, then against any possible interest

and eventually against the main claim for remuneration. Within each category of claims the set-off depends on the age of the claim (which is to be determined according to the due date) and settlement of the oldest claims shall be made first.

## **§ 8 Contractual Term and Termination**

1. Unless agreed otherwise, the contract shall run until the assignment has come to an end.
2. The contract may be terminated without notice solely on important grounds (*aus wichtigem Grund*). This shall include, without limitation, cases in which one party
  - a) violates a fundamental contractual obligation (*wesentliche Vertragspflicht*),  
or
  - b) breaches confidentiality, contrary to Section §12, or
  - c) fails to take receipt of the service, where a prior reminder has been issued,  
or
  - d) files a petition for its own insolvency, insofar as insolvency is declared or a petition for the declaration of insolvency is refused on grounds of a lack of assets.
3. Any notice of termination must be served in writing.
4. In the event of a termination pursuant to subsection 2, the Agency shall be entitled to 80 % of the agreed remuneration as liquidated damages for the outstanding part of the assignment insofar as the circumstance giving rise to the termination is based upon the Client's negligent or intentional conduct. The Client shall be permitted to adduce evidence demonstrating that the Agency suffered no, or significantly less, damage; the Agency reserves the right to adduce evidence demonstrating that it suffered more extensive damage.
5. Unless expressly agreed otherwise in writing, the Client shall, immediately after the contract has come to an end, return to the Agency all materials supplied by the Agency, including, without limitation, documents, data storage media, etc.

## **§ 9 Work Products; Intellectual Property**

1. All work products created through the Agency's activities in the course of the assignment, including, without limitation, documents, presentations and drafts (outlines, proposals, film clips) as well as the rights thereto remain the sole property of the Agency and may be used by the Client only for the agreed

purpose and solely during the agreed period of utilization. Unless expressly agreed otherwise in writing, the Client is not entitled to any use exceeding the aforementioned restrictions.

2. The Client shall, upon full payment, acquire the right to use all services performed by the Agency for the agreed purpose, insofar as the granting of such right is permissible under applicable law.
3. Unless expressly agreed otherwise in writing, the intended purpose of “clippings” created by the Agency only extends to use for the Client’s internal documentation. Publication of the clippings (especially in the context of presentations, social media or websites) is not permitted.
4. The transferred rights of use are non-exclusive and restricted to the territory of the Federal Republic of Germany. Any transfer of rights of use and exercise beyond the limits set by subsection 1 and 2 requires a separate written agreement between the parties; this shall also apply to ideas, concepts and drafts.
5. Any amendment or adaptation of the Agency’s work products, including, without limitation, their further development by the Client or by third parties acting on the Client’s behalf, shall require the express written consent of the Agency unless a refusal of consent would not be in good faith constituting a breach of Section 242 of the German Civil Code. Thus, the Agency’s consent is not needed for necessary actualizations required under the contract.
6. The Agency’s prior written consent is also required for any partial or complete, explicit or implied transfer of any rights of use by the Client to third parties. This also applies to any de facto disclosure equaling a transfer of a right of use. Consent to a transfer of rights of use to any company directly affiliated with the Client may only be refused on important grounds. If a license fee for the granting of rights is not agreed, this will, in any case, constitute important grounds for the Agency’s refusal.

## **§ 10 Warranty**

1. In cases of doubt, the Agency shall not be required to bring about any work result (*Erfolg*) within the legal sense.
2. To the extent to which the individual agreement between the parties expressly affords the Client a right to demand a work result in exceptional cases, a claim for remedy of defects will only be given insofar as the Client is not predominantly responsible for the Agency’s defective performance.
3. The Client shall be required to give notice of any obvious defects within a week

of delivery. Where the Client is a business (Unternehmer) within the meaning of Section 14 of the German Civil Code, it shall be required to give notice of any non-obvious defects within two weeks of their discovery. Where the Client is a consumer (Verbraucher) pursuant to Section 13 of the German Civil Code, it shall be required to give notice of non-obvious defects within the statutory limitation period. Delayed notices of defects shall result in the exclusion of warranty rights.

4. Claims resulting from quality defects shall lapse within one year of the respective party becoming aware of the circumstances giving rise to the claim. Statutory rules governing the commencement, suspension and recommencement of the limitation period shall remain unaffected.

### **§ 11 Liability; Damages**

1. The Agency shall incur liability - irrespective of their legal grounds - in the event of intent or gross negligence, for death, personal injury or damage to health, in the event of a violation of a fundamental contractual obligation (obligation whose fulfilment mainly facilitates the proper performance and the observance the contractual partner relies on, and may rely on, regularly) resulting from slight negligence (*leichte Fahrlässigkeit*), the Agency's liability shall be limited in amount to damage that is foreseeable and common for the type of the transaction in question.
2. The duty of care in the course of the possession of the samples does not constitute a fundamental contractual obligation pursuant to § 11 (1). The Agency shall incur liability for damage, destruction, or loss only in the event of intent or gross negligence. If the Client fails to comply with the duty pursuant to § 3 (6), resulting damages that may adversely affect the Client's production process because of his dependency on the samples are not deemed foreseeable, common or otherwise eligible for compensation.
3. The Agency is not liable for faulty deliveries resp. performances of third parties commissioned by the Client excluding a possible selection failure or a failure to appropriately supervise unlawful acts.
4. The Agency is not liable for accuracy of factual allegations about goods and services of the Client which are subject resp. part of the means of communication to be created. Factual allegations are made solely on the basis of information provided by the Client to the Agency.
5. Furthermore the Agency is not liable for the legal protection and registration capability of ideas, concepts, drafts or other material created in the context of

the contract.

## **§ 12 Confidentiality**

1. All information and documents of the other party that are identified as confidential or must be regarded as such based on the circumstances, including, without limitation, information regarding business processes, business relations and know-how, shall be held in the strictest confidence and protected against access by, or disclosure to, unauthorized persons.
2. The parties hereby agree to maintain secrecy with respect to such confidential information (with the exception of publicly available information). This duty shall continue to apply for a period of two years from the time the contract comes to an end.
3. This obligation shall not apply to such confidential information that
  - a) can be shown to have already been known to the recipient at the time of entering into the contract or is subsequently made known by a third party, without this violating any confidentiality agreement, statutory provision or administrative order;
  - b) is publicly known at the time of entering into the contract or is subsequently made publicly known, insofar as this does not result from a violation of this contract;
  - c) is subject to disclosure on the basis of statutory requirements or upon the order of a court or authority.

Insofar as permissible and possible, the recipient obliged to make disclosure shall give advance notice thereof to the other party, and afford the latter an opportunity to challenge such disclosure.

## **§ 13 Data Protection and Data Security**

1. The contractual parties shall comply with the relevant data protection laws. In particular, the Agency shall, insofar as it comes into contact with personal data, collect, process or use such data within the meaning of Section 11 (3) of the German Federal Data Protection Act (*Bundesdatenschutzgesetz, BDSG*) solely in accordance with the Client's instructions. Pursuant to Section 5 of the German Federal Data Protection Act, the contractual parties shall place their employees under an obligation to maintain data secrecy, unless such an obligation is already in place.
2. The Agency shall be entitled to have the data processed by third parties insofar as such third parties are, as with employees, subject to the provisions under

subsection 1.

3. The Agency shall be permitted to publish the Client's identity for reference purposes.

#### **§ 14 Miscellaneous**

1. No ancillary oral agreements have been entered into. Any additions or amendments to the contract must be made in writing. This shall also apply to any purported exclusion of this requirement of written form.
2. The invalidity of individual provisions shall be without prejudice to the validity of all remaining provisions. In place of the invalid provision, a provision whose substance is most consistent with the economic interests of both parties shall be applicable.
3. The respective contract and these General Terms and Conditions shall be governed exclusively by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. Unless provided otherwise in the Agency's confirmation of an assignment, the location of the Agency's registered business address shall be the place of performance (Erfüllungsort).
5. Insofar as permissible, all disputes arising under and in connection with the respective contract shall be subject, also internationally, to the exclusive place of jurisdiction at the Agency's registered business address. The Agency shall be entitled to take legal action at the place of performance even where this does not constitute the location of the Agency's registered business address.