

General Terms and Conditions of Business for the pacoön Group
(pacoön GmbH, pacoön Hamburg GmbH and pacoön Sustainability und Concepts GmbH)

1. Scope of Validity

- 1.1 pacoön is a communications agency and a consulting enterprise specializing in the fields of strategy, design and packaging design, as well as in sustainability consulting and packaging material development. pacoön develops, shapes and produces communication in all relevant media and on all relevant packaging materials.
- 1.2 The following General Terms and Conditions of Business (“GTCB”) are valid for all legal transactions conducted by the pacoön Group with its clients, including future legal transactions. The pacoön Group is referred to hereinafter as “pacoön”.
- 1.3 Deviating terms and conditions on the part of clients will not be accepted unless pacoön expressly agrees to their validity.

2. Presentation

- 2.1 Provided that no other agreement has been reached, the development of conceptual and design-related ideas by pacoön along with the presentation thereof in the presence of the client occurs in return for payment of the agreed professional fee and/or the agreed pitch fee.
- 2.2 In particular, the acceptance of a presentation fee does not constitute any form of consent to the utilization of work activities by pacoön and of services and deliverables from pacoön.
- 2.3 If no awarding of a contract or commission ensues, pacoön remains at liberty to utilize the presented ideas, drafts, concepts, etc. for other clients/projects.
- 2.4 The disclosure of presentation documents and tendered proposals to third parties as well as the publication, reproduction, dissemination or other use thereof by the client or by third parties obligate the client to pay the fee for the respective deliverables. This fee is assessed in alignment with the proposal tendered by pacoön or, to the extent that a proposal of this nature is not available, according to the terms customary on the market. Unless agreed otherwise, all rights of authorship and copyrights for the work activities presented by pacoön remain with pacoön. The assignment of usage rights is regulated in clause 12.

3. Conclusion of Contract, Termination

- 3.1 The basis for the conclusion of contract is the respective proposal tendered by pacoön and/or the work commissioned by the client in which scope of performance and remuneration are specified.
- 3.2 The contract enters into force via the written or verbal acceptance of the tendered proposal by the client or via implied conclusive actions.
- 3.3 The contract can be terminated prematurely by both parties without observing a period of notice solely due to good cause. Appreciable conduct contrary to the contract despite being warned thereof is deemed to be good cause. If the client terminates prematurely for good cause without pacoön bearing the responsibility for said cause, pacoön is entitled to the contractually agreed remuneration without deduction for possibly saved services, deliverables and expenses. If the client terminates prematurely for good cause and if pacoön bears the responsibility for said cause, pacoön is entitled to the agreed remuneration solely for the percentage of performance rendered heretofore.

4. Remuneration, Cost Estimates

- 4.1 Provided that it is not expressly agreed otherwise, the invoicing of deliverables occurs in accordance with the factual expense of efforts rendered on the basis of the agreed hourly rates at pacoön.
- 4.2 All expenditures arising for pacoön (e.g. for couriers, dummies/mock-ups/models, digital images/digital recordings, stock images, layout illustrations, color prints, scans, data storage media, transfer prints, “KSK-Abgabe” [social security insurance contribution levied in Germany on remuneration received by artists, writers and other creative professions], external costs, etc.) are to be reimbursed by the contractual partner plus an additional 15 % handling fee.
- 4.3 The client reimburses pacoön for travel expenses and the costs of overnight accommodations plus an additional 15 % handling fee.
- 4.4 Cost estimates and costings can be exceeded in exceptional cases if and when objective reasons exist for this. The client must be notified in writing of overruns amounting to more than 10 %. Overruns of this nature must be approved by the client.

5. Invoice, Offsetting, Reservation of Title

- 5.1 Agreed prices are net prices subject to addition of the respectively applicable sales tax or value-added tax. The “Künstlersozialabgabe” (see explanation for “KSK-Abgabe” in subclause 4.2), customs duties or other charges levied, including subsequently arising charges levied, will be passed on to the client.
- 5.2 pacoön is entitled to invoice the client for payments on account regarding partial performance or partial deliverables rendered. The settlements of accounts for partial performance or partial deliverables that has/have taken place occurs in each case respectively at the end of a calendar month.
- 5.3 Provided that it has not been agreed otherwise, invoices are due for payment without any deduction (discount) 14 days after the date of the invoice.

- 5.4 Interest on arrears will be charged at a rate of 9 % above the respective base interest rate per annum. The right to assertion of greater damage(s) caused by delay remains reserved.
- 5.5 Objections to invoices are to be lodged promptly in writing, however at the latest 14 days after the date of the invoice, without the due date being affected as a consequence thereof. The failure to lodge timely objections is deemed to constitute approval.
- 5.6 The offsetting against counterclaims or the assertion of a right of retention is permissible only if and when the claims on the part of the client are not being disputed or said claims have been established to be legally binding.
- 5.7 pacocon reserves title to all documents and means of advertising provided until all invoices pertaining to the commissioned work have been paid in full. The rights to deliverables from pacocon, in particular usage rights in conjunction with copyrights, do not devolve upon the client until all invoices pertaining to the commissioned work and the remuneration agreed for the assignment of usage rights have been paid in full.

6. Scope of Performance, Handling and Execution of Commissioned Work

- 6.1 The scope of deliverables to be rendered by pacocon ensues from the work commissioned by the client or the performance specifications and/or the particulars within the contract. Subsequent amendments to the specified subject matter of performance require the written form in order for them to be effective.
- 6.2 Pursuant to a project plan and according to work progress, pacocon obligates itself to report to the client at appropriate intervals regarding ongoing activity, the outcomes thereof and the work progress due to said activity.
- 6.3 Minutes of meetings submitted by pacocon are binding if and when the client does not promptly object upon receipt thereof.
- 6.4 pacocon is obliged to carry out subsequent requests for changes made by the client, provided that they do not lead to additional costs or time delays. Otherwise pacocon prepares a supplementary proposal within 14 days which sets out the scope of the necessary additional work effort along with the additional costs associated with said effort in concrete terms. If the client does not confirm the terms of the supplementary proposal within an additional 7 days via written approval, said changes will not become a constituent element of the work commissioned.
- 6.5 All deliverables from pacocon are to be vetted by the client and promptly – at the latest within 24 hours after receipt thereof – approved for acceptance. If substantial deviations from the contractually agreed specifications exist, pacocon has to remediate these deviations within a reasonable period of time. If the contract partner does not subsequently affirm acceptance approval within 3 days without stating any reasons why, the work product or deliverable is deemed as approved for acceptance once said period of time has elapsed.

7. Client's Obligations to Cooperate

- 7.1 The client is to provide pacocon with all information and documents required for rendering the deliverable. The client will notify pacocon of all occurrences that are of significance for execution of the work commissioned, even if and when these circumstances first become known during execution of the work commissioned. The client bears the expense that arises due to work activities having to be modified or delayed as a consequence of incorrect, incomplete or subsequently amended details or data supplied by the client.
- 7.2 The client is obligated to vet the documents made available for execution of a contract or commission in terms of possibly existing copyrights, trademark rights or other protective rights held by third parties.
- 7.3 The client assures that it is authorized to have the information and documents and personal data regarding third parties which have been supplied by the client stored and processed toward attainment of the work product.
- 7.4 pacocon is authorized to destroy the client's documents which have been made available for execution of a contract or commission two years after acceptance approval of the performance outcome, provided that the client does not lay claim to the surrendering of said documents beforehand.

8. External Services and Labor

- 8.1 pacocon is authorized to carry out the commissioned work activities itself or to engage third parties for this purpose.
- 8.2 Provided that it has not been expressly agreed otherwise, external services and labor as well as ancillary costs are to be remunerated separately in return for proof thereof.
- 8.3 pacocon is authorized to assign all external services and labor required toward fulfillment of the commissioned work on behalf of and for the account of the client. In this case pacocon is merely a proxy and, upon verification of invoices received, passes them on to the client for payment thereof.
- 8.4 Provided that it has not been agreed otherwise, for the coordination of external services and labor pacocon charges a 15 % handling fee for all external services and labor.

9. Delivery, Delivery Deadlines

- 9.1 The delivery commitments on the part of pacocon are fulfilled once the work activities and deliverables have been readied for shipment and consigned by pacocon. The risk posed by conveyance (e.g. damage, loss, delay), regardless of by which means, is borne by the client.
- 9.2 Processing times and deadlines pursuant to the jointly drawn up project plan will be adhered to by pacocon whenever possible. In the event of delays caused by the commissioning party or upon the occurrence of force majeure, labor disputes

or delays at suppliers contracted by pacocon, processing times and deadlines are postponed commensurately. pacocon will notify the client of the occurrence and anticipated end of delays/measures of this nature without undue delay. A claim for damages on the part of the client against pacocon is not substantiated thereby.

9.3 If the client falls behind schedule with acceptance approval for a deliverable or if the client neglects and/or defers a form of cooperation incumbent upon the client, pacocon can charge for the failure of performance incurred according to the respectively applicable hourly rates.

10. **Warranty, Notification of Defects, Liability**

10.1 The client must inspect work activities and deliverables supplied by pacocon promptly upon receipt thereof and must promptly notify of defects or deficiencies as a complaint. If the prompt inspection or notification of defects or deficiencies does not occur, no claims exist on the part of the client.

10.2 In the event of the existence of defects or deficiencies, pacocon is entitled to the right to two attempts toward rectification within a reasonable period of time.

10.3 pacocon is liable on the merits solely for damages

- a) which pacocon or its legal representatives or vicarious agents have brought about willfully or through gross negligence,
- b) which have arisen resulting from injury to life, limb or health due to a breach of duty on the part of pacocon or on the part of one of its legal representatives or vicarious agents, or
- c) which have arisen due to a breach of an obligation on the part of pacocon, the fulfillment of which makes proper execution of the contract possible in the first place, and upon the observance thereof the client regularly relies and may rely on (cardinal obligation).

10.4 pacocon bears unlimited liability in those cases stated in the subclauses 10.3 a) and 10.3 b). Apart from them, the claim to damages is limited to the foreseeable damage typical to the type of contract involved.

10.5 Provided that it has not been agreed otherwise in writing, the assessment of legal issues, in particular stemming from the areas of copyright, competition and trademark law, is not the responsibility of pacocon. pacocon is therefore not liable for the legal permissibility of the content and/or design composition of the work products. At the client's request pacocon arranges for the legal assessment of permissibility, however pacocon assumes no liability whatsoever for the outcome. The costs for an assessment initiated by the client are borne by the client.

10.6 If a claim for injunctive relief or compensation and similar legal remedies is made against pacocon by third parties due to the design composition and/or content of the work products, the client indemnifies pacocon against liability.

11. **“Künstlersozialabgabe”**

The client is aware that in the event of the awarding of a contract or commission in the artistic/creative, conceptual and advertising consultancy sector to a natural person, a social security insurance contribution, the “Künstlersozialabgabe” (see explanation for “KSK-Abgabe” in subclause 4.2), is payable to the German social security insurance fund for artists, the “Künstlersozialkasse” (“KSK”). This contribution is to be borne by the client. The client is equally responsible for the observance of compulsory registration and the obligation to pay said social security insurance contribution. Notwithstanding the foregoing, if pacocon has paid the “Künstlersozialabgabe”, a corresponding entitlement to reimbursement exists toward the client.

12. **Rights of Authorship, Copyrights and Usage Rights**

12.1 All drafts, concepts, ideas, designs, printing templates, artwork masters, etc. produced by pacocon are works of authorship protected by copyright law within the meaning of § 2 of the German Copyright Act (“Urheberrechtsgesetz”), even if and when they do not satisfy the requirements of § 2 of the German Copyright Act (abbreviated “UrhG”). All deliverables from pacocon are thus not allowed to be used, edited or modified without the express consent of pacocon. Any – even partial – replication of drafts, concepts, ideas, designs, printing templates, artwork masters, etc. is not permissible. In the event of non-compliance, the client obligates itself to pay pacocon a fee in line with industry standards. Claims extending beyond the above remain unaffected thereby.

12.2 In the case of an assignment of rights, the spatial, temporal and content-related scope thereof conforms exclusively in compliance with the contractual agreements and/or the purpose of the contract; § 31 para. 5 of the German Copyright Act (“UrhG”) applies accordingly. The rights do not devolve upon the client until payment for the entire contract or commission has been made in full. The assignment of granted usage rights to third parties and/or multiple usages are, insofar as not regulated otherwise, subject to a fee and require consent on the part of pacocon.

12.3 If the client intends to utilize the work activities designed by pacocon in other countries, this is subject to an extra, separate fee.

12.4 pacocon is entitled to a right vis-à-vis the client to be informed regarding the type and scope of usage.

13. Data Protection, Confidentiality

- 13.1 Both parties obligate themselves to comply with the provisions of the German Federal Data Protection Act ("BDSG").
- 13.2 Both parties obligate themselves to confidentiality. All data, content and information that will become known and/or has become known within the scope of this contract are deemed to be confidential and subject to the obligation to maintain secrecy. This confidentiality agreement retains its validity even after conclusion of the cooperation.

14. Final Provisions

- 14.1 No ancillary agreements exist.
- 14.2 Amendments and supplements to these General Terms and Conditions of Business must be made in writing. This equally applies to a revocation of this clause requiring the written form.
- 14.3 The laws of the Federal Republic of Germany apply for all disputes arising from these General Terms and Conditions of Business.
- 14.4 Insofar as the client is a businessperson, a legal entity under public law, a separate estate under public law or has no general venue of jurisdiction in Germany, the venue of jurisdiction for all disputes is Munich, Germany.
- 14.5 If a provision within these General Terms and Conditions of Business is ineffective or impracticable or becomes ineffective or impracticable in future, the remaining stipulations will not be affected thereby. The parties readily obligate themselves at this time to agree to an effective stipulation in place of the ineffective or impracticable stipulation which, legally and commercially, comes as close as possible to the object and purpose of the ineffective or impracticable stipulation. The same applies accordingly to the closing of loopholes within these General Terms and Conditions of Business.
- 14.6 pacoon is authorized to process the data entrusted to pacoon within the scope of the intended purpose of cooperation in compliance with data protection regulations or to have said data entrusted to pacoon processed by third parties in compliance with data protection regulations.

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