



General Terms and Conditions

1. Applicability and Formation of Contract

- 1.1 NIO design studio (hereinafter «the Agency») provides its services exclusively on the basis of the following General Terms and Conditions (GTC). These apply to all legal relationships between the Agency and the client, even if no express reference is made to them. The GTC apply exclusively to legal relationships between businesses, i.e. B2B.
- 1.2 The version in force at the time of conclusion of the contract shall be authoritative in each case. Deviations from these conditions, as well as other supplementary agreements with the client, are only valid if confirmed in writing by the Agency.
- 1.3 The client's general terms and conditions will not be accepted, even if the Agency is aware of them, unless otherwise expressly agreed in writing on a case-by-case basis. The Agency expressly objects to the client's GTC. No further objection by the Agency to the client's GTC is required.
- 1.4 Amendments to the GTC will be communicated to the client and shall be deemed agreed if the client does not reject them in writing within 14 days; the communication will expressly indicate the significance of silence as well as the specific clauses that have been amended. This deemed consent does not apply to amendments to essential service content or remuneration.
- 1.5 Should any individual provisions of these General Terms and Conditions be invalid, this shall not affect the binding nature of the remaining provisions or of contracts concluded on their basis. The invalid provision shall be replaced by a valid provision that comes closest to its meaning and purpose.
- 1.6 The Agency's offers are non-binding and without obligation.

2. Social Media Channels

Prior to acceptance of the order, the Agency expressly informs the client that providers of «social media channels» (e.g. Facebook, hereinafter «providers») reserve the right in their terms of use to reject or remove advertisements and profiles for any reason. Providers are therefore not obliged to transmit content and information to users. There is accordingly a risk, which the Agency cannot calculate, that advertisements and profiles may be removed without justification. In the event of a complaint by another user, providers do offer the possibility of a counter-statement, but content is removed immediately in that case as well. Restoration of the original, lawful state may take some time. The Agency works on the basis of these providers' terms of use, over which it has no influence, and applies them to the client's order as well. By placing the order, the client expressly acknowledges that these terms of use (co-)determine the rights and obligations of any contractual relationship. The Agency intends to carry out the client's order to the best of its knowledge and belief and to comply with the guidelines of the «social media channels». However, given the currently applicable terms of use and the ease with which any user can assert infringements and thereby achieve removal of content, the Agency cannot guarantee that the commissioned campaign will be accessible at all times.

3. Protection of Concepts and Ideas

If the prospective client has already invited the Agency to develop a concept prior to the order, and the Agency accepts this invitation before conclusion of the main contract, the following provisions shall apply:

- 3.1 The invitation and its acceptance by the Agency already establish a contractual relationship between the prospective client and the Agency («pitching contract»). This contract is also governed by the GTC.
- 3.2 The prospective client acknowledges that the Agency already incurs costly preliminary work in developing the concept, even though the client itself has not yet assumed any obligations.
- 3.3 The concept, in its linguistic and graphic parts insofar as these attain the level of a work, is protected by copyright law. Use and processing of these parts without the Agency's consent is not permitted to the prospective client, already by virtue of copyright law.
- 3.4 The concept also contains advertising-relevant ideas that do not attain the level of a work and therefore do not enjoy

the protection of copyright law. These ideas stand at the beginning of every creative process and can be defined as the spark behind everything subsequently created, and thus as the origin of the marketing strategy. Accordingly, those elements of the concept that are distinctive and give the marketing concept its characteristic identity are protected. Ideas within the meaning of this agreement include in particular advertising slogans, advertising copy, graphics and illustrations, advertising materials, etc., even if they do not attain the level of a work.

- 3.5 The prospective client undertakes to refrain from economically exploiting, or permitting the exploitation of, or using, or permitting the use of, the creative advertising ideas presented by the Agency within the framework of the concept, outside of a main contract to be concluded subsequently.
- 3.6 If the prospective client is of the opinion that ideas presented by the Agency had already occurred to them prior to the presentation, they must notify the Agency of this by email within 14 days of the date of the presentation, citing evidence that allows a temporal attribution.
- 3.7 In the contrary case, the contracting parties shall assume that the Agency has presented the prospective client with an idea that is new to them. If the client makes use of the idea, it shall be presumed that the Agency contributed meritoriously to this.
- 3.8 The prospective client may release itself from its obligations under this clause by payment of an appropriate compensation plus 20% VAT. The release shall only take effect upon full receipt of the compensation payment by the Agency.

4. Scope of Services, Order Processing and Client's Obligations to Cooperate

- 4.1 The scope of services to be provided is determined by the service description in the agency contract or any order confirmation issued by the Agency, as well as any briefing protocol («offer documents»). Subsequent changes to the scope of services require written confirmation by the Agency. Within the framework set by the client, the Agency has creative freedom in fulfilling the order.
- 4.2 All of the Agency's work product (in particular all preliminary drafts, sketches, finished artwork, press proofs, blueprints, copies, colour proofs and electronic files) must be reviewed by the client and approved within five working days of receipt. If no response is received within this period, they shall be deemed approved by the client.
- 4.3 The client shall make all information and documents required for the performance of the services available to the Agency in a timely and complete manner. The client shall inform the Agency of all circumstances relevant to the execution of the order, even if these only become known during the course of the order. The client shall bear the costs arising from the Agency having to repeat or delay work due to incorrect, incomplete or subsequently amended information provided by the client.
- 4.4 The client is further obliged to check any materials provided for the execution of the order (photos, logos, etc.) for possible copyright, trademark, identification rights or other third-party rights (rights clearance), and warrants that said materials are free of third-party rights and can therefore be used for the intended purpose. In cases of mere slight negligence or after fulfilment of its duty to warn, the Agency shall not be liable — at least in the internal relationship with the client — for infringement of such third-party rights through materials provided. If the Agency is subject to claims by third parties due to such an infringement, the client shall indemnify and hold the Agency harmless; the client shall compensate the Agency for all disadvantages arising from third-party claims, in particular the costs of appropriate legal representation. The client undertakes to support the Agency in defending against any third-party claims and shall provide the Agency with all necessary documents without being requested to do so.



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5. Third-Party Services / Subcontracting

- 5.1 The Agency is entitled, at its own discretion, to perform the services itself, to engage qualified third parties as subcontractors in the provision of contractual services and/or to substitute such services («third-party service»).
- 5.2 The engagement of third parties within the framework of a subcontracted service shall be carried out either in the Agency's own name or in the name of the client, the latter following prior notification to the client. The Agency shall select such third parties with due care and ensure that they possess the required professional qualifications.
- 5.3 The client shall assume obligations towards third parties who have been named to the client and which extend beyond the term of the contract. This applies expressly also in the event of termination of the agency contract for good cause.

6. Deadlines

- 6.1 Stated delivery or performance deadlines shall, unless expressly agreed as binding, be considered approximate and non-binding only. Binding deadline agreements must be recorded in writing or confirmed in writing by the Agency.
- 6.2 If the Agency's delivery/performance is delayed for reasons beyond its control, such as force majeure or other unforeseeable events that cannot be averted by reasonable means, the performance obligations shall be suspended for the duration and to the extent of the obstacle, and the deadlines shall be extended accordingly. If such delays persist for more than two months, both the client and the Agency shall be entitled to withdraw from the contract.
- 6.3 If the Agency is in default, the client may only withdraw from the contract after having set the Agency a reasonable additional period in writing of at least 14 days and this period has elapsed without result. Claims for damages by the client due to non-performance or default are excluded, except upon proof of intent or gross negligence.

7. Early Termination

- 7.1 The Agency is entitled to terminate the contract for good cause with immediate effect. Good cause exists in particular when:
 - a) performance of the service becomes impossible for reasons attributable to the client, or continues to be delayed despite the setting of an additional period of 14 days;
 - b) the client repeatedly breaches, despite written warning with a further period of 14 days, essential obligations under this contract, such as payment of an amount due or obligations to cooperate;
 - c) there are justified concerns regarding the client's creditworthiness and the client neither makes advance payments nor provides adequate security at the Agency's request prior to the Agency's performance.
- 7.2 The client is entitled to terminate the contract for good cause without setting an additional period. Good cause exists in particular when the Agency repeatedly breaches, despite written warning with a reasonable additional period of at least 14 days to remedy the breach, essential provisions of this contract.

8. Fees

- 8.1 Unless otherwise agreed, the Agency's entitlement to fees for each individual service arises as soon as that service has been performed. The Agency is entitled to demand advance payments to cover its expenses. For order volumes with an (annual) budget of € 5,000 or more, or for orders extending over a longer period, the Agency is entitled to issue interim invoices or advance invoices, or to call for payments on account.
- 8.2 Fees are understood as net fees plus VAT at the statutory rate. In the absence of a specific agreement, the Agency shall be entitled to fees at market rates for the services rendered and for the granting of intellectual property and trademark usage rights.
- 8.3 All services of the Agency that are not expressly covered by the agreed fee shall be remunerated separately. All out-of-pocket expenses incurred by the Agency shall be reimbursed by the client.
- 8.4 The Agency's estimates are non-binding. If it is foreseeable that actual costs will exceed those estimated in writing by the Agency by more than 20%, the Agency will notify the

client of the higher costs. The cost overrun shall be deemed approved by the client if the client does not object in writing within three working days of such notification and simultaneously indicates more cost-effective alternatives. If the cost overrun is up to 20%, no separate notification is required. Such a cost overrun shall be deemed approved by the client from the outset.

- 8.5 If the client unilaterally modifies or discontinues commissioned work without the Agency's involvement — notwithstanding the Agency's ongoing general support — the client shall remunerate the Agency for the services rendered up to that point in accordance with the fee agreement and reimburse all costs incurred. Unless the discontinuation is caused by a grossly negligent or intentional breach of duty by the Agency, the client shall additionally pay the Agency the full fee (commission) agreed for that order, with the set-off for saved expenses under § 1168 ABGB being excluded. Furthermore, the Agency shall be indemnified and held harmless in respect of any claims by third parties, in particular by the Agency's subcontractors. Payment of the remuneration does not grant the client any rights of use in work already produced; concepts, drafts and other documents not yet executed must be returned to the Agency without delay.

9. Payment and Retention of Title

- 9.1 Fees are due for payment immediately upon receipt of invoice and without deduction, unless special payment terms are agreed in writing on a case-by-case basis. This also applies to the passing on of all out-of-pocket expenses and other costs. Goods delivered by the Agency remain the property of the Agency until full payment of the remuneration including all ancillary obligations.
- 9.2 In the event of late payment by the client, statutory default interest at the rate applicable to commercial transactions shall apply. Furthermore, in the event of late payment, the client undertakes to reimburse the Agency for the reminder and collection costs to the extent necessary for appropriate enforcement of the claim. This includes in any case the costs of two reminder letters at the current market rate of at least € 20 per reminder, as well as a reminder letter from a lawyer engaged for collection. The assertion of further rights and claims remains unaffected.
- 9.3 In the event of late payment by the client, the Agency may declare all services and partial services rendered under other contracts concluded with the client immediately due and payable.
- 9.4 Furthermore, the Agency shall not be obliged to render further services until the outstanding amount has been settled (right of retention). The obligation to pay the remuneration remains unaffected.
- 9.5 If payment by instalments has been agreed, the Agency reserves the right, in the event of failure to pay partial amounts or ancillary claims on time, to demand immediate payment of the entire outstanding debt (acceleration clause).
- 9.6 The client is not entitled to offset its own claims against claims of the Agency, unless the client's claim has been acknowledged in writing by the Agency or established by court order.

10. Ownership and Copyright

- 10.1 All services of the Agency, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, finished artwork, concepts, negatives, slides), as well as individual parts thereof, remain the property of the Agency, as do the individual work pieces and draft originals, and may be reclaimed by the Agency at any time — in particular upon termination of the contractual relationship. By paying the fee, the client acquires the right to use the work product for the agreed purpose. Unless otherwise agreed, the client may only use the Agency's services within Austria. The acquisition of rights of use and exploitation of the Agency's services is in all cases conditional upon full payment of the fees invoiced by the Agency. If the client uses the Agency's services prior to that time, such use is based on a loan relationship revocable at any time.



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- 10.2 Modifications or adaptations of the Agency's services — in particular their further development by the client or by third parties acting on the client's behalf — are only permissible with the express consent of the Agency and, insofar as the services are protected by copyright, of the author. The delivery of so-called «open files» is expressly not part of the contract. The Agency is not obliged to deliver such files. This means that without a contractual assignment of usage rights, including for «electronic works», the client has no legal entitlement to them.
- 10.3 Use of the Agency's services beyond the originally agreed purpose and scope of use requires the Agency's consent — regardless of whether the service in question is protected by copyright. The Agency and the author are entitled to a separate appropriate additional remuneration for this.
- 10.4 Use of the Agency's services or advertising materials for which the Agency has developed conceptual or design templates also requires the Agency's consent after expiry of the agency contract, regardless of whether the service is protected by copyright or not.
- 10.5 For uses pursuant to clause 4, the Agency is entitled, in the 1st year after the end of the contract, to the full agency remuneration agreed in the expired contract. In the 2nd and 3rd year after the end of the contract, only to half or one quarter of the remuneration agreed in the contract respectively. From the 4th year after the end of the contract, no agency remuneration is payable.
- 10.6 The client shall be liable to the Agency for any unauthorised use in the amount of twice the appropriate fee for such use.

11. Credit

- 11.1 The Agency is entitled to reference the Agency and, where applicable, the author on all advertising materials and in all advertising measures, without the client being entitled to any remuneration for this.
- 11.2 The Agency is entitled — subject to written revocation by the client at any time — to refer to the existing or former business relationship with the client by name and company logo on its own advertising media and in particular on its website (reference notice).

12. Warranty

- 12.1 The client must notify any defects immediately, in any case within eight days of delivery/performance by the Agency, and hidden defects within eight days of their discovery, in writing with a description of the defect; otherwise the service shall be deemed approved. In such a case, the assertion of warranty and damage claims as well as the right to contest on grounds of error due to defects is excluded.
- 12.2 In the event of a justified and timely notice of defect, the client is entitled to rectification or replacement of the delivery/service by the Agency. The Agency shall remedy the defects within a reasonable period, during which the client shall enable the Agency to take all measures necessary for inspection and remediation. The Agency is entitled to refuse to remedy the defect if this is impossible or would involve a disproportionate effort for the Agency. In that case, the client's statutory rights of rescission or price reduction apply. In the event of rectification, it is the client's responsibility to arrange return of the defective (physical) item at the client's expense.
- 12.3 It is also the client's responsibility to review the legal admissibility of the service, in particular with regard to competition law, trademark law, copyright law and administrative law. The Agency is only obliged to carry out a general review of legal admissibility. The Agency shall not be liable, in cases of slight negligence or after fulfilling any duty to warn, for the legal admissibility of content that has been specified or approved by the client.
- 12.4 The warranty period is six months from delivery/performance. The right of recourse against the Agency pursuant to § 933b para. 1 ABGB expires one year after delivery/performance. The client is not entitled to withhold payments on account of complaints about defects. The presumption rule of § 924 ABGB is excluded.

13. Liability and Product Liability

- 13.1 In cases of slight negligence, the liability of the Agency and its employees, contractors or other vicarious agents («staff») for material or financial damage to the client is excluded, regardless of whether such damage is direct or indirect, loss of profit, consequential loss due to defects, damage due to default, impossibility, positive breach of contract, culpa in contrahendo, or deficient or incomplete performance. The existence of gross negligence must be proven by the injured party. To the extent that the Agency's liability is excluded or limited, this also applies to the personal liability of its «staff».
- 13.2 Any liability of the Agency for claims brought against the client on account of services provided by the Agency (e.g. advertising campaigns) is expressly excluded, provided that the Agency has fulfilled its duty to advise or such duty was not recognisable to it, and provided that slight negligence does not apply. In particular, the Agency shall not be liable for legal costs, the client's own legal fees or costs of publishing judgments, nor for any claims for damages or other third-party claims; the client shall indemnify and hold the Agency harmless in this regard.
- 13.3 The client's claims for damages become time-barred six months after knowledge of the damage; in any event, three years after the Agency's act of infringement. Claims for damages are limited in amount to the net order value.

14. Applicable Law

The contract and all mutual rights, obligations and claims derived therefrom between the Agency and the client are governed by Austrian substantive law, to the exclusion of its conflict-of-law rules and to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

15. Place of Performance and Jurisdiction

- 15.1 The place of performance is the Agency's registered office. In the case of dispatch, the risk passes to the client as soon as the Agency has handed over the goods to the carrier of its choice.
- 15.2 The court having subject-matter jurisdiction at the Agency's registered office is agreed as the place of jurisdiction for all legal disputes arising between the Agency and the client in connection with this contractual relationship. Notwithstanding this, the Agency is entitled to sue the client before the client's general court of jurisdiction.
- 15.3 To the extent that designations referring to natural persons in this contract are given only in masculine form, they refer equally to women and men. When applying such designations to specific natural persons, the gender-specific form shall be used.

iban AT30 2050 3033 0248 7891 — bic SPIHAT22XXX
uid ATU75815548 — fn 538070f

nio design studio og — Gabelsbergerstraße 23/10, 6020 Innsbruck, Austria
Christian 0660-1608460, Corinna 0670-7010702, hello@niostudio.at