



# General Terms and Conditions

## Myrga

### 1. General Provisions, Scope, Formation of Contract

- 1.1. **Parties.** These are the general terms and conditions (hereinafter: "GTC") of Myrga Media Lab GmbH, Grötzing Strasse 26a, 76227 Karlsruhe; Commercial Register Number: HRB 756100 (Amtsgericht Mannheim), (hereinafter: "**myrga**" or "**the Agency**"). The GTC apply exclusively to entrepreneurs within the meaning of § 14 BGB who have entered into a contract with the Agency (hereinafter: "**Client**", together with myrga hereinafter "**Parties**").
- 1.2. **Scope.** The Client's general terms and conditions shall not apply. If an agreement is concluded between the Parties, these GTC shall apply exclusively. This also applies if myrga does not expressly object to the Client's general terms and conditions or if myrga performs services without reservation in the knowledge of terms and conditions that conflict with or deviate from these GTC.
- 1.3. **Formation of Contract.** An agreement for marketing services (the "Agreement") between the Parties is concluded by an individual offer from myrga (the "Offer") and the Client's acceptance thereof by way of order confirmation. These GTC form part of the Agreement.

### 2. Services by myrga

- 2.1. **Subject Matter of Services.** The subject matter of the Agreement is conceptual consulting in the areas of media planning, marketing and communications ("Services") in accordance with these GTC and the respective agreed Offer. This includes in particular the development of individual media plans, booking of advertising space (media placements) in various channels (e.g. online, social, print, TV, radio, out-of-home), the optimisation of the Client's ongoing campaigns, the conclusion of minimum purchase or volume agreements with media or publishers ("Commitments") as well as the analysis and reporting of results and support in the submissions of campaigns or projects for industry awards.
- 2.2. **Scope of Services.** The Parties shall specify in the respective agreed Offer the scope, form, period, objective, costs and payment terms of the Services, volume agreements and a binding payment framework ("Budget Caps" or "Caps") for the respective Services. Exceeding the Budget Caps requires the Client's consent. The individual service description in the Offer shall be exclusively authoritative for the content and scope.
- 2.3. **Additional Services.** Services not expressly included in the Offer shall be deemed additional services and shall be charged separately.
- 2.4. **Commitments.** Where the conclusion of Commitments has been agreed, the Agency shall conclude these in its own name and for its own account for the purpose of carrying out the Services commissioned by the Client. The Parties shall agree on the relevant framework.
- 2.5. **Vicarious Agents.** The Agency may engage third parties to fulfil its contractual obligations.
- 2.6. **Availability.** The Agency shall be available to the Client during normal business hours from Monday to Friday between 9 a.m. and 6 p.m. and will respond to enquiries regularly within one business day. The Agency is free to choose the place, time and manner of service delivery. Where service failures due to downtime cannot be avoided, such services shall be made up, unless the Parties agree otherwise individually.



### 3. Client Obligations and Approval Processes

- 3.1. **Provision of Content by the Client.** The Client shall provide myrga with all information, data, documents, content for advertising materials, as well as technical specifications and access credentials (collectively “**Client Content**”) in digital form (PDF, PPT, XLS or similar, where possible) no later than two weeks after conclusion of the Agreement or as otherwise agreed, as required for the proper performance of the Services. This constitutes a primary obligation. The Client warrants that the Client Content is free from third-party rights or that the necessary rights of use have been duly granted. The specific Client Content to be provided is set out in particular in the catalogue attached as **Annex A**.
- 3.2. **Approval by the Client.** The Client is obliged to review the Work Results submitted by myrga in the course of service delivery without undue delay and to provide written approval or communicate any requests for changes no later than seven (7) days after provision.
- 3.3. **Revision Rounds.** Unless otherwise provided in the Offer, one (1) revision round is owed per Work Result (**cf. clause 5.1.1 of these GTC**). **The Agency owes a maximum of three revision rounds per submitted Work Result.** Each revision provided within an agreed revision round is subject to the provisions of clause 3.2 of these GTC.
- 3.4. **Failure to Cooperate.** If the Client fails to perform required acts of cooperation, performs them incompletely or delays them, and this impairs or prevents service delivery, the Agency's entitlement to remuneration shall remain unaffected. Agreed service deadlines shall be extended by the period of the delay. The Agency shall not be liable for delays, late campaign launches or resulting economic disadvantages to the extent that these are attributable to the Client's failure to cooperate or delayed cooperation. Myrga reserves the right to subsequently adjust strategies and media plans created on the basis of incomplete information; any additional expenditure resulting from this shall be charged separately.
- 3.5. **Contact Details.** The Client shall notify myrga of any changes to its contact details and/or billing details without undue delay.
- 3.6. **Indemnification.** The Client shall indemnify the Agency against all third-party claims asserted against the Agency due to an infringement of third-party rights attributable to the Client in connection with the Client Content or the approval of the created content. This includes in particular claims arising from the infringement of copyright, trademark, designation, personality and data protection rights. The Agency shall notify the Client without undue delay of any such claims being asserted and shall, to the extent possible and reasonable, give the Client the opportunity to defend against such claims.

### 4. Remuneration and Payment Terms

- 4.1. **Remuneration.** The Client owes the remuneration agreed in the Offer in accordance with the fee model stipulated in the Offer. To the extent that the Services are subject to VAT, all prices are quoted exclusive of the applicable statutory VAT. Invoicing shall be carried out via PDF to the e-mail address specified in the Offer, unless the Client notifies a different invoicing address in text form in advance.
- 4.2. **Advertising Space and Commitments.** The Client shall bear all payment obligations arising from bookings of media placements made by the Agency in accordance with instructions and from concluded Commitments. This shall also apply if the campaign is not carried out or if booked Services are not utilised in whole or in part due to the Client's failure to cooperate or delayed cooperation.
- 4.3. **Invoicing.** Invoices shall be transmitted to the Client in electronic form (e.g. by e-mail as PDF). The Client shall ensure that the email addresses designated by the Client for receipt of invoices are suitable for receiving electronic invoices and that invoices can be properly retrieved. Electronically transmitted invoices shall be deemed received upon delivery to the receiving address specified by the Client.



- 4.4. **Due Date.** The Client undertakes to pay the amount specified in the Offer in full within fourteen (14) days of receipt of the invoice. The relevant date for timely payment is receipt of payment to the account specified in the invoice.
- 4.5. **Advance Payments.** Where media providers or publishers require advance payment for the booking of media placements or the fulfilment of Commitments, the Agency shall be entitled to demand a corresponding advance payment from the Client in the amount of the media costs incurred. The Agency shall notify the Client of the amount of the required advance payment prior to the planned campaign launch and shall issue a corresponding advance payment invoice. The booking of the relevant media placements shall only take place after full payment has been received.
- 4.6. **Payment Default.** If payment is not received by myrga by the due date, the Client shall be in default. In the event of default, the Client shall owe the statutory default interest. The Agency shall be entitled to suspend its Services until all outstanding claims have been settled in full or to defer Services not yet commenced. Any agreed service, project or implementation deadlines shall in such case be extended by the period of the payment delay or suspension of Services plus a reasonable restart period. The extension of the service and implementation deadlines shall not affect myrga's agreed remuneration claims. Further statutory claims of the Agency shall remain unaffected.
- 4.7. **Expenses.** Necessary and documented expenses (e.g. production costs, travel expenses, fees for external service providers, licence costs) shall be reimbursable to the extent that the Client has given prior consent. The expenses shall be itemised in the invoices by the Agency and submitted with copies of the relevant receipts.

## 5. Rights of Use

### 5.1. Definitions.

5.1.1. **"Work Results"** means all strategy concepts, media plans, reports, presentations, analyses, recommendations for action and comparable project-related results created exclusively and individually for the Client within the scope of the respective project by myrga.

5.1.2. **"Background IP"** means all know-how, methods, models, structures, algorithms, workflows, templates, tools, processes, design principles, software components, data models and other reusable materials already belonging to the Agency prior to conclusion of the Agreement or developed during the performance of the Agreement independently of the respective project.

5.1.3. **"Third-Party Material"** means content, software, data, media, platforms, tools or other services originating from third parties and not developed by the Agency.

5.2. **Rights to Background IP.** All rights to the Background IP shall remain exclusively with the Agency. The Agency shall be entitled to use, further develop, exploit and deploy the Background IP without restriction for other clients. No transfer of rights to the Background IP shall take place. Irrespective of the granting of rights of use set out below, all general know-how, experiential knowledge, methodological knowledge and conceptual knowledge acquired during service delivery shall remain with the Agency. The Agency shall be entitled to continue using this without restriction.

5.3. **Rights of Use in Work Results.** Subject to full payment of the remuneration owed, the Agency grants the Client a non-exclusive, transferable, geographically and temporally unlimited right to use the Work Results. The right of use entitles the Client to use, reproduce and store the Work Results for its own purposes. The Client shall have the right to edit, adapt, further develop or otherwise modify the content. To the extent that Work Results contain elements of the Background IP, the right of use includes the right to co-use such



elements permanently in the context of using the respective Work Results. The Client shall, however, not be entitled to extract the Background IP contained therein and use it in isolation, disclose it, reproduce it or deploy it for other purposes or projects.

- 5.4. **Rights of Use in Background IP.** Where elements of the Background IP are made available to the Client separately in the course of service delivery (e.g. templates, tools, models), the Agency grants the Client a non-exclusive, non-transferable right of use limited to the duration of the contract term. The use is exclusively limited to the fulfillment of the respective contractual purpose. The right of use does not include the right to disclose, reproduce, edit, further develop, copy beyond the necessary extent, decompile or use the Background IP for other purposes or projects.
- 5.5. **Third-Party Material.** To the extent that Work Results or Services contain Third-Party Material, the respective licence and usage terms of the third-party provider shall apply exclusively to the Third-Party Material. The Agency shall only transfer rights to Third-Party Material to the extent the Agency has been granted transferable rights thereto and to the extent required for the respective contractual purpose.

## 6. Warranty and Exclusion of Warranty

- 6.1. **Advisory Services.** The Agency owes advisory and consulting services. The Agency does not owe any particular economic outcome or measurable result, in particular with regard to reach or other performance indicators.
- 6.2. **Due Care.** The Agency shall perform its Services, in particular the editorial preparation and provision of content, in accordance with the principles of proper professional practice, with the care customary in the consulting and agency environment, taking into account current market conditions and technical standards and on the basis of the information and documents provided by the Client. The Agency shall take due care regarding the completeness, timeliness and quality of the information provided.
- 6.3. **Exclusion of Warranty.** Subject to the provisions of clause 7 of these GTC (*Liability*), further liability claims against the Agency, in particular claims for damages due to the use or non-use of the content, shall be excluded to the extent they are not based on intent or gross negligence. The Agency shall furthermore not be liable for delays attributable to late feedback, insufficient cooperation or lack of input from the Client.
- 6.4. **Technical Disruptions.** Technical disruptions within the Agency's area of responsibility shall be remedied without undue delay to the extent reasonable. The Agency shall not be liable for technical disruptions or failures of third-party platforms over which myrga has no influence (in particular social media platforms, hosting services or other IT infrastructure of the Client).
- 6.5. **Limitation Period.** The Client's claims for damages or reimbursement of wasted expenditure shall become statute-barred within one year of the commencement of the statutory limitation period. This shall not apply in the cases regulated in clause 7.1 of these GTC or in the case of fraudulently concealed defects. In such cases, the statutory limitation periods shall apply.

## 7. Liability

- 7.1. **Scope.** The Agency shall be liable for damages based on intent or gross negligence, in the case of assumed guarantees and fraudulently concealed defects, and in the event of injury to life, body or health. Liability under the Product Liability Act shall remain unaffected.
- 7.2. **Cardinal Obligations.** The Agency shall also be liable in the event of the breach of material contractual obligations ("**Cardinal Obligations**"). Cardinal Obligations are those obligations whose fulfilment is essential to the proper performance of the Agreement and upon whose observance the Client regularly relies or may rely. In the event of a slightly negligent breach of Cardinal Obligations, liability shall be limited to the foreseeable damage typical for the type of service.



- 7.3. **Exclusion of Liability.** Otherwise, i.e. subject to clauses 7.1 and 7.2, liability is excluded.
- 7.4. **Liability of Vicarious Agents.** The above limitations of liability shall also apply in favour of the legal representatives, employees and vicarious agents of the Agency.
- 7.5. **Force Majeure.** Neither party shall be liable for the non-performance or delay of its obligations to the extent that these are based on circumstances outside its sphere of influence (force majeure), in particular natural events, governmental or regulatory measures, strikes, failures of telecommunications or IT infrastructure or disruptions of third-party platforms. The affected party shall notify the other party without undue delay and the performance obligations shall be suspended for the duration of the disruption plus a reasonable restart period.

## 8. Term, Termination and Expiry

- 8.1. **Term.** The Agreement is concluded for the term specified in the Offer. The Agreement shall terminate automatically upon expiry of this term without further notice being required..
- 8.2. **Ordinary Termination.** Ordinary termination is excluded during a fixed agreed contract term. If no fixed contract term is specified in the Offer, either party may terminate the Agreement with four (4) weeks' notice to the end of the month.
- 8.3. **Extraordinary Termination.** The right to extraordinary termination for good cause shall remain unaffected. Good cause on the part of the Agency shall exist in particular where payment default persists despite a reminder or the Client is in breach of material contractual obligations (e.g. the provision of acts of cooperation). If the Agency terminates for good cause, the remuneration less any expenses saved for the remaining contract term shall become immediately due as damages. The Client retains the right to demonstrate that the damage suffered was lower.
- 8.4. **Form.** Notices of termination must be in written or text form (e.g. e-mail).
- 8.5. **Return Obligation upon Termination.** Upon termination of the Agreement, the Client shall return or delete the materials provided to it to the extent they contain or are based on Background IP. This shall not apply to materials that have become part of the Work Results.

## 9. Confidentiality

- 9.1. **Subject Matter. "Confidential Information"** means all information, documents, data, content and knowledge obtained in the course of this Agreement that is designated as confidential or is to be regarded as confidential by its nature. Confidential Information includes in particular, but not exclusively:
- Business and trade secrets,
  - Strategies, concepts, plans, calculations, prices,
  - Client data and access credentials to social networks,
  - Contents of advisory discussions as well as other information not generally known.

Confidential Information may exist regardless of the form of transmission (written, oral, electronic or otherwise).

Information shall not be deemed Confidential Information where the receiving party can demonstrate that it

- already knew or had access to it at the time of disclosure, without this being based on a breach of duty by the receiving party,
- independently developed without reference to the disclosing party's information, or
- lawfully received from third parties who are themselves not bound by a duty of confidentiality.



- 9.2. **Confidentiality Obligations.** The receiving party undertakes to (i) treat Confidential Information in strict confidence, (ii) use it exclusively for the performance of this Agreement, (iii) disclose it only to those employees, affiliated companies or vicarious agents who require it for the performance of the Agreement (need-to-know principle), and (iv) protect it against unauthorised access by means of appropriate technical and organisational measures. The receiving party shall protect Confidential Information with at least the same care it applies to matters of comparable significance of its own, and at least with the care customary in the course of business.
- 9.3. **Exceptions.** Exempt from the confidentiality obligation is the disclosure of Confidential Information to the extent that it must be disclosed pursuant to a statutory obligation or an official or judicial order, or to the extent that the disclosure is made within the scope of the reference and publication rights pursuant to clause 10.2 of these GTC. In such case, the receiving party shall – to the extent legally permissible – notify the other party of the disclosure without undue delay.
- 9.4. **Duration of Confidentiality.** The confidentiality obligation shall apply for the duration of this Agreement and for a period of two (2) years after its termination. For trade secrets within the meaning of the Act on the Protection of Trade Secrets (*GeschGehG*) the confidentiality obligation shall apply without time limit for as long as the respective information meets the statutory requirements of a trade secret.
- 9.5. **Return Obligations.** All Confidential Information, including any copies, data storage devices or other reproductions, shall be returned or – where technically possible – permanently deleted without undue delay upon request by the disclosing party after termination of this Agreement, unless there is a statutory obligation to retain such information. Deletion shall be confirmed in writing upon request.

## 10. Data Protection; Reference

- 10.1. **Data Protection.** To the extent that personal data is processed in connection with this Agreement, the Agency undertakes to comply with the applicable data protection regulations. Further information on data processing can be found in the Agency's privacy policy at <https://myrga.de/privacypolicy>.
- 10.2. **Reference.** The Agency shall be entitled to name the Client as a reference, citing the Client's name, company name and logo and providing a general description of the Services rendered, and to list the Client in this context on its own website, in presentations and in marketing and advertising materials. The Client may object to such use at any time by written notice. Furthermore, the Agency shall be entitled to use and publish general, aggregated or anonymised results from the collaboration in trade media and at trade events (e.g. articles, interviews, presentations). Publications that allow Work Results or client-specific content to be identified shall require the Client's prior consent in text form. Such consent must not be unreasonably withheld. Clause 9 of these GTC shall otherwise remain unaffected.

## 11. Final Provisions

- 11.1. **Entire Agreement; Amendments.** The Agreement is exclusively governed by the Offer and these General Terms and Conditions. There are no oral collateral agreements. The conclusion of, and any amendments and supplements to the Agreement must be in written form. Written form may also be satisfied by the use of a qualified electronic signature within the meaning of the eIDAS Regulation (Regulation (EU) No 910/2014). This also applies to amendments to this clause, which shall only be effective if made expressly in written form or using a qualified electronic signature.
- 11.2. **Order of Precedence.** In the event of conflicts between the Offer and these GTC, the provisions of the Offer shall prevail.



- 11.3. **Notices and Declarations.** Unless otherwise provided, notices and declarations under this Agreement may be made in text form (e.g. by e-mail). The Agency may use the e-mail address specified by the Client in the Offer for this purpose.
- 11.4. **Set-Off and Retention.** The Client may only set off or assert a right of retention with claims other than its contractual counterclaims arising from the respective transaction if such claim has been established by a final court judgment or is undisputed by the Agency.
- 11.5. **Assignment.** The assignment of rights under this Agreement requires the prior written consent of the other party. This shall not apply to the assignment of payment claims.
- 11.6. **Severability.** Should individual provisions of these General Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions. The same shall apply in the event of any gaps in the provisions.
- 11.7. **Governing Law.** These GTC and their performance shall be governed exclusively by German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 11.8. **Jurisdiction.** The place of performance for all Services is the registered office of the Agency. The registered office of the Agency shall be the exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement. The Agency shall, however, also be entitled to bring proceedings against the Client at the Client's general place of jurisdiction.

Annex A – Client Content

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## **Annex A: Client Content**

The Client Content referred to in clause 3.1 of the GTC includes in particular:

- Company and market insights (e.g. positioning, competitive environment, previous campaign experience)
- Media budget (total budget and, if applicable, breakdown by channels/periods)
- Media period (planned start, duration, seasonal specifics)
- Target audience (demographic, psychographic and behavioural characteristics)
- Media objectives (e.g. reach, awareness, performance KPIs, conversions)
- Creatives to be used in the media plan.