

1—GENERAL

- 1—1 The following GTCs apply exclusively to all contracts for consulting and design services between Berghoff & Koupantsis Partnerschaftsgesellschaft Unternehmensberater und Designer, hereinafter referred to as „Betty und Betty“, and the Client. This shall apply in particular also if the Client uses General Terms and Conditions of Business and these contain terms and conditions that contradict or deviate from the GTCs listed here.
- 1—2 The GTCs listed here also apply if Betty und Betty executes the order without reservation in the knowledge that the Client's terms and conditions are contrary to or deviate from those listed here.
- 1—3 Deviations from the conditions listed here are only valid if Betty und Betty expressly agrees to them in a written form.
- 1—4 As far as individual contractual agreements have been made between the contracting parties, these take precedence over the provisions of these general terms and conditions. These general terms and conditions are then only valid in addition, if and to the extent that the individual contract does not or does not deviate from them.
- 1—5 The Client is obligated to support Betty und Betty to the best of his ability, namely to provide Betty und Betty with all information and documents necessary for the execution of the order, and to create in his business sphere all the conditions necessary for the proper execution of the order. The Client is further obliged to name Betty und Betty one or more persons who are authorized to make all declarations necessary for the performance of the service owed in a binding manner.

2—SUBJECT OF THE CONTRACT; COPYRIGHT AND RIGHTS OF USE

- 2—1 For design contracts
 - 2—1.1 Every design contract assigned to Betty und Betty is a copyright contract for work, which is aimed at granting rights of use to the work performances. The contract is not intended to review the admissibility of Betty und Betty's work under competition law. Nor does it include an examination of the registrability or usability of Betty und Betty's works under trademark or other protection law. The Client is responsible for research.
 - 2—1.2 All drafts and final artwork are subject to copyright law. The provisions of this law apply between the parties even if the necessary conditions for protection, e.g. the so-called level of creation, should not be given in individual cases. Thus, in such a case the copyright contract law rules of §§31 ff. UrhG (German Copyright Act) apply in such a case; in addition, the parties are entitled in particular to the copyright claims under §§ 97 et seq. UrhG are entitled in such a case.
 - 2—1.3 The drafts and final artwork may not be changed or passed on to third parties, either in the original or in reproduction, without the express consent of Betty und Betty. Any imitation - even of parts - is not permitted. A violation of paragraph 2.1.3 sentence 1 and 2 entitles Betty und Betty to demand a contractual penalty in the amount of 100% of the agreed or according to the AGD Collective Agreement on Fees for Design Services (latest version) usual remuneration in addition to the remuneration to be paid anyway.
 - 2—1.4 Betty und Betty grants the Client the rights of use required for the respective purpose. Unless otherwise agreed, only the simple right of use is granted in each case. A transfer of the rights of use to third parties requires a written agreement and must be paid for separately by the Client.
 - 2—1.5 The rights of use shall not be transferred to the Client until the remuneration has been paid in full.
 - 2—1.6 Betty und Betty is to be named as the author on the copies, if requested by Betty und Betty. A violation of this provision entitles Betty und Betty to demand a contractual penalty of 100% of the agreed or, according to the AGD Collective Agreement on Fees for Design Services (latest version), customary remuneration in addition to this.
 - 2—1.7 Proposals of the Client or his employees or his or their other cooperation have no influence on the amount of the remuneration. They do not constitute a co-author's right.

2—1.8 The drafts and final artwork may only be used for the agreed scope of use (in terms of time, space and content). If no express period of use is agreed, the right of use shall be deemed to be unlimited in time. Any use beyond the agreed scope of use (in terms of time, space and content) is not permitted and entitles Betty und Betty to demand a contractual penalty amounting to 100% of the agreed or, according to the AGD Collective Agreement on Fees for Design Services (latest version), usual remuneration for this extended use in addition to the remuneration to be paid anyway.

2—2 For all other contracts which are not design contracts

2—2.1 Unless it is explicitly a design contract, the parties agree that Betty und Betty shall only owe the provision of services and not the production of a work or the achievement of a particular result. The contracting parties further agree that the exclusively service-contractual nature of Betty und Betty's obligation to perform does not change even if Betty und Betty undertakes to record the results of its services in writing and to prepare and submit corresponding reports, studies and the like. Such written reports, studies and the like do not represent - unless expressly agreed otherwise - in particular no expert opinions, but only reflect the essential content of the course and result of the services.

2—2.2 Within the scope of consulting services, the parties to the contract agree that Betty und Betty does not owe or provide any legal advice, tax advice, or activities belonging to the activities of auditors. To the extent that Betty und Betty provides for the performance of such activities by engaging appropriate professionals, Betty und Betty shall act only as an intermediary, without itself becoming a debtor/contractual partner of such activities.

2—2.3 Betty und Betty is not obligated to check information, data or documents provided in writing or orally for their factual or mathematical accuracy, completeness or correctness. However, if Betty und Betty recognizes that the information, data or documents provided to it in writing or orally are obviously incorrect, incomplete or not correct, Betty und Betty will point this out.

3—RETENTION OF DOCUMENTS

Betty und Betty shall no longer be obliged to keep the documents handed over to it by the Client for the purpose of rendering the services owed by the Client if three years have passed since the date of termination of the contractual relationship or six months have passed since a written request to the Client to collect the documents.

4—REMUNERATION

4—1 Drafts and final artwork, together with the granting of rights of use, form a uniform service. Remuneration shall be based on the AGD Collective Agreement on Fees for Design Services, unless otherwise agreed. The remuneration is a net amount, which is to be paid plus the statutory value added tax.

4—2 If no rights of use are granted and only drafts and/or final artwork is supplied, the remuneration for use shall not apply.

4—3 The production of drafts and all other activities that Betty und Betty performs for the Client are subject to a fee, unless expressly agreed otherwise.

4—4 If the fulfillment of the work is delayed for reasons on the part of the Client, in particular the non-delivery of agreed contents and documents necessary for the performance of the work, Betty und Betty is entitled, after setting a reasonable deadline, to invoice the full project fee. As soon as the missing contents and documents have been provided by the client, the joint project will be continued. The additional expenditure incurred by Betty und Betty due to the interruption and resumption of the project will be invoiced according to the agreed hourly rates or on the basis of the AGD collective agreement for design services.

5—DUE DATE OF REMUNERATION, ACCEPTANCE, DEFAULT

- 5—1 The remuneration is due upon delivery of the work within the scope of design orders and upon provision of the respective service for all orders that do not constitute design orders. It is payable without deduction. If the ordered work is accepted in parts, a corresponding partial remuneration is due in each case of such partial acceptance. If an order extends over a longer period of time or if it requires high financial advance payments from Betty und Betty, appropriate payments on account are to be made, which are determined separately for each project.
- 5—2 Acceptance may not be refused for creative-artistic reasons. Within the scope of the order, there is freedom of design. Betty und Betty is obliged to rectify the defects if the delivered work does not meet the requirements specified in the briefing.
- 5—3 Acceptance shall be deemed to have been granted if no acceptance or objection to the work is made within a period or subsequent deadline.
- 5—4 In the event of late payment, Betty und Betty can demand interest on arrears at a rate of 8% above the respective base rate of the European Central Bank p.a. We reserve the right to assert a proven higher damage.
- 5—5 The client can only offset against the fee claim and the claim for reimbursement of expenses with undisputed or legally binding claims.
- 5—6 Several clients of the same order are jointly and severally liable for the remuneration.
- 5—7 With the payment of invoices from Betty und Betty by the client or third parties commissioned by the client, the claims asserted with the respective invoice are considered accepted. Claims for repayment are excluded.

6—SPECIAL SERVICES, INCIDENTAL EXPENSES AND TRAVEL EXPENSES

- 6—1 Special services such as the reworking or alteration of final artwork, study of manuscripts or supervision of printing shall be invoiced separately according to the time required in accordance with the AGD Collective Agreement on Fees for Design Services (latest version).
- 6—2 Betty und Betty is entitled, after prior agreement with the Client, to order the external services necessary for the fulfilment of the order in the name and for the account of the Client. The Client undertakes to grant Betty und Betty corresponding power of attorney.
- 6—3 If in individual cases contracts for external services are concluded in the name and for the account of Betty und Betty, the Client undertakes to release Betty und Betty in the internal relationship from all liabilities arising from the conclusion of the contract.
- 6—4 Expenses for technical incidental costs, especially for special materials, for the production of models, photos, intermediate shots, reproductions, typesetting and printing etc. are to be reimbursed by the client.
- 6—5 Travel costs and expenses for trips to be undertaken in connection with the order and agreed with the client shall be reimbursed by the client.

7—RIGHTS TO WORK RESULTS

- 7—1 Ownership of drafts and data from design contracts
 - 7—1.1 Only rights of use are granted for drafts and final artwork, but ownership is not transferred.
 - 7—1.2 The originals must be returned undamaged to Betty und Betty after a reasonable period of time, unless otherwise agreed in writing. In the event of damage or loss, the Client must reimburse the costs necessary to restore the originals. The assertion of further damages remains unaffected
 - 7—1.3 Also the data and files created in fulfillment of the contract remain the property of Betty und Betty. Betty und Betty is not obliged to hand over open data and files to the client. If the Client wishes to have them surrendered, this is to be agreed separately and is to be remunerated with the triple of the respective agreed fee of the project within which the data and files were created.

7—1.4 If Betty und Betty has provided the Client with open data and files, these may only be changed with the prior consent of Betty und Betty

7—1.5 The dispatch of all objects mentioned in 7.1.1 to 7.1.4 is at the risk and expense of the Client.

7—2 Rights within the scope of contracts which are not design contracts

7—2.1 All copyrights or rights under supplementary competition law ancillary copyrights in all documents produced by Betty und Betty for the purpose of providing the Services owed are the exclusive property of Betty und Betty.

7—2.2 The use, duplication and publication of such documents produced by Betty und Betty for the purpose of providing the services owed is only permitted to the Client for his own business and for the purposes stipulated in the contract.

7—2.3 The passing on of the work results of Betty und Betty to third parties requires the written consent of Betty und Betty, unless the consent for passing on is already evident from the content of the order.

8—CORRECTION, PRODUCTION MONITORING, SAMPLE COPIES AND SELF-PROMOTION

8—1 Before the duplication is made, Betty und Betty must be provided with correction samples.

8—2 Production monitoring by Betty und Betty is only carried out by special agreement. If Betty und Betty takes over the supervision of production, Betty und Betty is entitled to make the necessary decisions and give appropriate instructions at its own discretion.

8—3 Of all duplicated work, the client shall provide Betty und Betty with an appropriate number of error-free sample exemplars free of charge. Betty und Betty is entitled to use these samples and all the work arising in fulfillment of the contract for the purpose of self-promotion in all media and otherwise to refer to the action for the client.

9—LIABILITY

9—1 Betty und Betty shall only be liable for damages incurred, e.g. to templates, films, displays, layouts, etc. provided to Betty und Betty, in the event of intent and gross negligence; liability shall be limited to EUR 300,000.00 per case of damage. Betty und Betty shall also be liable for damages resulting from injury to life, body or health in the event of slight negligence. Otherwise Betty und Betty shall only be liable for slight negligence if a duty is violated, the observance of which is of particular importance for the achievement of the purpose of the contract (cardinal duty).

9—2 Betty und Betty assumes no liability to the Client for orders placed with third parties in the name and for the account of the Client, unless Betty und Betty is at fault in the selection. Betty und Betty acts in these cases only as an intermediary.

9—3 With the release of drafts or final artwork by the client, the client assumes responsibility for the technical, content and functional accuracy of product, text and image.

9—4 For such drafts or final artwork released by the Client, Betty und Betty shall not be liable.

9—5 Complaints about obvious defects must be made in writing to Betty und Betty immediately, but at least within 14 days after delivery of the work. To meet the deadline, it is sufficient to send the complaint in time.

10—FREEDOM OF DESIGN, ORDER EXECUTION AND TEMPLATES

- 10—1 Within the scope of the contract there is freedom of design. Complaints regarding the creative design are excluded. If the client wishes changes during or after the production, he has to bear the additional costs caused thereby.
- 10—2 If the execution of the order is delayed for reasons for which the client is responsible, Betty und Betty can demand an appropriate increase in the remuneration. In case of intent or gross negligence, Betty und Betty can also claim damages. The assertion of a further damage caused by delay remains unaffected.
- 10—3 The Client affirms that he is entitled to use all templates handed over to Betty und Betty. If, contrary to this insurance, he is not authorized to use them, the Client shall indemnify Betty und Betty from all claims for compensation by third parties.

11—SECRECY

Betty und Betty undertakes to maintain secrecy about all facts that come to its knowledge in connection with the execution of the order, unless the client releases it from this obligation. The obligation of secrecy does not apply insofar as disclosure is necessary to protect the legitimate interests of Betty und Betty. Betty und Betty is also released from the obligation of secrecy to the extent that it is obligated to inform and cooperate under the terms of its professional liability insurance. The obligation of secrecy does not apply to the client's lending banks.

12—LIMITATION PERIOD

All claims of the client against Betty und Betty resulting from the contractual relationship expire after 2 years. Deviating from this, the legal period of limitation of 3 years applies if Betty und Betty is charged with intent.

13—TERMINATION OF CONTRACT

Should the client terminate the contract prematurely, Betty und Betty will receive the agreed remuneration, but must allow for saved expenses or completed or maliciously omitted replacement orders (§ 649 BGB). However, the parties agree on a lump sum for the services and expenses performed up to the termination as follows: In case of termination before commencement of work: 50% of the agreed remuneration. In the event of termination after commencement of work: 75% of the agreed remuneration. In addition, deviating individual agreements are of course possible. The client reserves the right to provide evidence of actually lower services or higher expenses.

14—ARTISTS' SOCIAL SECURITY PAYMENTS

For services provided by independent designers, the client may be required to pay contributions to the artists' social insurance fund on the basis of the Artists' Social Insurance Act (KSVG). As designers or agencies are not entitled to check or determine the due date or amount of these fees or to show them in their own invoices, the Client alone is responsible for checking and, if necessary, reporting to the artists' social security fund and paying these statutory fees.

15—FINAL PROVISIONS

15—1 If the Client is a registered trader, the place of performance and jurisdiction is the registered office of Betty und Betty.

15—2 The law of the Federal Republic of Germany applies.

15—3 Should individual provisions of these terms and conditions be or become invalid, this shall not affect the validity of the remaining provisions. The parties to the contract are then obliged to find a replacement provision that comes as close as possible to the economic purpose of the invalid clause.