

## GENERAL TERMS AND CONDITIONS OF BUSINESS OF FOOB GMBH

### Article 1

#### General, Scope

(1) These general terms and conditions of business (hereinafter: "Terms and Conditions") are valid for all business relations of FOOB with Customers, contractors (14 German Civil Code), legal entities under public law and public-law special funds.

(2) The Terms and Conditions are valid in their respective version as Framework Agreement, also for future contracts with the same Customer without FOOB having to refer to these Terms in each case; FOOB will notify its Customers without delay about amendments to the Terms.

(3) The Terms and Conditions of FOOB apply exclusively. Divergent, contrary or supplementary general terms and conditions of the Customer will then only be an integral part of the contract to the extent that FOOB explicitly approves them. This requirement for approval applies in every case, also for example if FOOB completes the service to the customer without reservation although being fully aware of the Terms of the Customer.

(4) Individual agreements reached in individual cases with the Customer (including collateral agreements, supplements and amendments) have in each case priority over these Terms. A written contract or a written confirmation is decisive for the content of such agreements.

(5) Legally-relevant declarations and notifications made by the Customer to FOOB after the signing of the contract (e.g., set deadlines or complaints) require the written form.

(6) Any references to the application of statutory provisions are for the purposes of clarification only. Therefore, the statutory regulations shall also apply without such a clarification insofar as they are not directly changed or are explicitly excluded in these Terms.

(7) The FOOB GmbH (hereinafter: "FOOB") provides services in the areas of design, development and design of advertising media, as well as concept, development and implementation of photo productions. The detailed description of the services results from the tender documents, briefings (2, paragraph 4), project contracts and their equipment or service descriptions of FOOB.

### Article 2

#### Conclusion of Contract

(1) Our offers are not-binding and without obligation. This also applies to catalogues, performance descriptions and other documents furnished to the Customer by FOOB - also in electronic form. For such documents, FOOB reserves the title and copyright.

(2) The order placed by the Customer is considered a binding contract offer. Unless otherwise stated in the order placement, FOOB is entitled to accept this offer of contract within two weeks of its receipt.

(3) Acceptance can be declared either in written form, or pursuant to section 126b German Civil Code (BGB) (for example, by confirmation of order), or by rendering the service to the Customer. A contract between the Customer and FOOB comes into existence as a result.

(4) Apart from the contract and its appendices, the description of the order to be provided to FOOB by the Customer representing the requirements of the Customer (hereinafter referred to as "Briefing") are the basis for the work of the agency. In the event the Customer informs FOOB of the briefing verbally or by telephone, FOOB will prepare a written summary of the contents of the briefing (hereinafter referred to as "Re-briefing"). This re-briefing is a mandatory part of the contract, if the Customer does not object to this re-briefing within 5 working days.

(5) The Customer provides all the information and documents required for the implementation of the contract free of charge. All working documents will be handled with diligence, protected from unauthorized access, used only for preparing the respective order and will be returned to the Customer after completion of the order.

(6) In connection with a commissioned project, the Customer undertakes to award contracts to other agencies or service

providers only after prior consultation and in agreement with FOOB.

### **Article 3**

#### **Copyright and Rights of Use**

(1) Upon complete payment of the agreed remuneration for the contractually agreed term and extent of the contract, the Customer acquires the rights of use to all text, image and photo work produced by FOOB within the context of this contract. The granting of the rights of use applies to the use within the area of the Federal Republic of Germany exclusively. Any use beyond this area will require a written agreement within the context of the contract, or a separate written collateral agreement. Rights of use of text, image or photo work for which the agreed remuneration has not been paid in full will remain with FOOB, subject to other agreements.

(2) The Customer is aware of the fact that the texts, images or photo work produced within the scope of the contract are protected by the Copyright Act (Urheberrechtsgesetz) as personal intellectual property, if the level of creation required pursuant to the Copyright Act has been reached.

(3) FOOB is entitled to sign the advertising material developed by it adequately and as customary in the industry, and to publish the order placed for self-advertising. The signing and use for advertising purposes can be excluded by a respective separate agreement between FOOB and the Customer.

(4) Any use of texts, images or photographs is only permitted in the original version. Each modification or redesign (for example, photo-assembly, photo-alienation or colouring) and each change of the image reproduction (for example, publication in sections) will require the prior consent of FOOB. Each imitation, also of parts of a piece of work, is inadmissible.

(5) Unless governed by separate agreement, the transfer of awarded rights of use to third parties and/or multiple use by the Customer is subject to fees and requires the prior consent of FOOB.

(6) In case of unauthorised use, modification, redesign or transfer of text, image or photo work, FOOB will be entitled to demand a contractual penalty to the amount of the fee, which would usually be agreed between two parties for the respective use, modification, redesign or transfer of the work in question. However, FOOB still reserves the right to further claims for damages.

(7) FOOB will be entitled to receive information regarding the scope of the use.

(8) All working papers, electronic data and records produced by FOOB within the scope of the implementation of the order will remain with FOOB. The Customer is not entitled to demand the surrender of such documents and data. With the payment of the agreed remuneration, FOOB only owes the agreed services, however, not the intermediate steps leading to the result, in the form of sketches, drafts, production data, or the like.

### **Article 4**

#### **Digital Photo Processing**

(1) The digitalisation of analogue images and the circulation of digital images by means of data communication or on data carriers is only permitted insofar as the exercising of the granted usage rights requires this form of duplication and distribution

(2) Photo data may only be digitally archived for the Customer's own purposes and only for the period of the usage right. The saving of image data in online databases or other digital archives that are accessible to third parties requires a separate agreement between the Customer and FOOB.

(3) In digital recording of images, the name "FOOB" must be electronically linked with the image data. In addition, the Customer must ensure by means of suitable technical precautions that this link is maintained during every transfer of data, during the transmission of image data to other data carriers, during reproduction on a monitor and during every public reproduction and that FOOB can be identified at any time as the originator of the images.

## Article 5

### Transfer of Sample or Example Photos

- (1) Photos made available to the Customer are provided for inspection and selection for a period of one month from the date of dispatch, unless otherwise agreed. If no licence agreement is reached within one month, analogue photo material and photo data carriers must be returned within one additional week and all image data stored on the Customer's own data carriers must be deleted.
- (2) No usage rights are transferred together with the transfer of images for viewing and selecting. Every usage requires the prior written consent of FOOB.
- (3) The use of the photo material as a model for sketches or for layout purposes and also the presentation to third parties shall constitute a usage liable to charge.
- (4) For the composition of the photo selection, FOOB shall be entitled to charge a handling fee which shall be based on the nature and extent of the effort incurred and shall amount to at least € 30. Shipping costs (packaging, postal charges) including the costs for special delivery types (taxi, air freight, express messenger) shall also be borne by the Customer.

## Article 6

### Deadline for the provision of services

- (1) A specific deadline for the provision of the commissioned service must be agreed upon individually.
- (2) Provided FOOB is not able to comply with binding deadlines for reasons FOOB is not responsible for, FOOB shall inform the Customer without delay and at the same time give a prospective, new deadline for the provision of the service. If the service still remains unavailable within the new deadline for which FOOB is not responsible, FOOB shall be entitled to terminate the contract with immediate effect; FOOB shall reimburse the Customer without delay for any consideration received.
- (3) Events of force majeure entitles FOOB us to postpone the services ordered by the Customer for the period of obstruction and for a reasonable start-up period. In such cases, FOOB will notify the Customer immediately about the delay. Such a postponement will not assert a claim for damages by the Customer against FOOB. This applies also and especially if a postponement resulting from events of force majeure results in the Customer being unable to meet agreed deadlines or missing events that are of significance for him. The Customer's right of cancellation for good cause remains unaffected.
- (4) The Customer's rights according to Article 8 of these Terms and Conditions and FOOB's statutory rights, especially upon exclusion of the obligation to perform (because the service is, for example, impossible or unreasonable), remain unaffected.

## Article 7

### Payments and Defaults

- (1) The payments agreed in the contract shall apply subject to the following provisions. All prices stated in quotes and orders and the resulting amounts payable are exclusive of sales tax legally due. Payments will be due without deduction and delay upon receipt of the invoice. If the payments are not received on time, FOOB is entitled to a claim for default interest of 8 percentage points above the base rate without further warning. The right to claim additional default damages remains unaffected.
- (2) If the agreed services are performed over a longer period, FOOB is entitled to charge the Customer for payments of the partial services already invoiced. These partial services need not be in a usable form for the Customer and can be availed to FOOB as pure working basis.
- (3) If there is a significant increase in FOOB's expenditure after the conclusion of the work because the Customer later wishes to change the scope of services or because previously unrecognised additional costs are otherwise incurred for which FOOB is not responsible, FOOB can demand a correspondingly higher remuneration proportionate to the overall extra work to be performed. If the time scheduled for photo work is significantly exceeded for reasons FOOB is not responsible for, an agreed flat-rate fee shall be increased accordingly. If a time-based fee is agreed, FOOB will also receive

ve the agreed hourly or daily rate for the additional time spent to complete the photo work.

(4) If the contract is cancelled prior to commencement at the request of the Customer, FOOB can demand 15% of the fee for the costs of processing the order and for lost profit, regardless of the option to actually claim higher damages. The Customer reserves the right to prove that the damages were less.

(5) If, after the signing of the contract, it becomes evident that FOOB's claim to payment is endangered by the Customer's inability to pay (for example, by an application to open insolvency proceedings), FOOB will be entitled under law to withhold its services and to terminate the contract with immediate effect – subject, if necessary, to an appropriate deadline.

(6) The Customer is obliged to inspect the products (for example, photos, presentations or concepts) submitted to it within a reasonable period and to notify FOOB of any defects. Complaints relating to obvious defects must be reported to FOOB within two weeks of delivery of the work; complaints relating to defects that are not obvious must be reported within a period of two weeks after the detection of the defect. To comply with the notice period for complaints, it is sufficient to send the complaint on time. If defects are not reported in good time, the work in question with regard to this defect will be considered approved.

(7) The Customer shall be entitled to retention rights or set-off rights only insofar as its claim is legally established or undisputed.

## **Article 8 Liability**

(1) Unless otherwise provided in these General Terms and Conditions including the following provisions, FOOB's liability shall be subject to the relevant statutory provisions in case of any breach of contractual and extra-contractual provisions

(2) FOOB is liable for damages - for whatever legal reason - in cases of intent and gross negligence. In the event of simple negligence, FOOB only assumes liability

(a) for damages in cases of injury to life, limb or health,

(b) for damages resulting from the breach of a material contractual obligation (obligation the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the Customer regularly relies and may rely); in this case the liability of FOOB is restricted to compensation of typically foreseeable damage.

(3) Regarding goods or work products to be delivered, the limitations of liability set out in paragraph 2 shall not apply in cases of fraudulent concealment of defects by FOOB or of any warranty given by FOOB as to the condition of the goods or the work product. The same shall apply to claims by the Customer under the German Product Liability Act.

## **Article 9 Applicable Law and Place of Jurisdiction**

(1) These General Terms and Conditions and all legal relationships between FOOB and their Customers shall be governed by the law of the Federal Republic of Germany, excluding German International Private Law and the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) Insofar as the Customer is a merchant in terms of the German Commercial Code (Handelsgesetzbuch), or insofar as the Customer is a legal entity under public law or a public asset, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Darmstadt. However, FOOB shall be entitled to take legal action at the place of general jurisdiction of the Customer.