



# WUNDERKNABEN

Wunderknaben Kommunikation GmbH • Mettmanner Straße 25 • 40699 Erkrath

## Wunderknaben's General Terms and Conditions

### 1. General matters

- 1.1** The following General Terms and Conditions (T&Cs) apply to all legal transactions of Wunderknaben Kommunikation GmbH, hereinafter referred to as "Agency", with its contractual partners, hereinafter referred to as "Client". Any contradictory T&Cs or varying terms supplied by the Client will not be acknowledged, unless the Agency has acknowledged their validity in writing.
- 1.2** These terms and conditions also apply to all future commercial transactions with the Client, even if they are not expressly agreed again.
- 1.3** The Agency provides services in particular in the fields of advertising, events, promotion, Internet, direct marketing, guerrilla & viral marketing and social media. The detailed description of the services to be rendered can be found in the tender documents, briefings, all contracts entered into in this context, their appendices and the Agency's specifications of services.

### 2. Contractual components and amendments to the contract

- 2.1** Alongside the project contract and its schedules, the briefing supplied by the Client to the Agency forms the basis for the Agency's work and is also a contractual component.
- 2.2** All agreements that are entered into between the Agency and the Client for Agency work and services, for example deadlines, must be set down in writing. Any amendments, addenda and ancillary agreements must be made in writing if they are to acquire legal force.
- 2.3** Events of force majeure entitle the Agency to suspend the work and services commissioned by the Client for the duration of the impediment plus an appropriate lead time. The Client will not accrue any entitlement to claim compensation against the Agency as a result. This also applies if the Client is unable to comply with important deadlines and/or events and/or they do not materialise as a consequence.



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#### 3. Copyright and usage rights

- 3.1** On full payment of the agreed fee, the Client acquires the usage rights to all commissioned work completed by the Agency for the contractually agreed duration and within the contractually agreed scope. If no specific usage duration has been agreed, the usage rights will apply for the duration of the collaboration. Usage rights to works that have not been paid for by the end of the contract or that extend beyond it will remain with the Agency, subject to any other agreements that may have been entered into. Until the agreed fee has been paid in full, the Client may only use the service rendered with the agreement of the Agency and solely subject to a right of revocation.
- 3.2** The services rendered to the Client are protected by the German Copyright Act (*Urheberrechtsgesetz, UrhG*) as author's own intellectual creations. This applies in particular where a website or other services pertaining to software are the subject matter of the services. In this case the special provisions of section 69 UrhG apply.
- 3.3** The Agency may name the Client as a reference client on its website, in other media and on social media channels. Further, the Agency may, subject to prior agreement by the Client, publicly reproduce the services rendered for demonstration purposes unless the Client can demonstrate a conflicting justified interest. The Client may not arbitrarily withhold such consent.
- 3.4** The Client or third parties commissioned by the Client may not modify the works of the Agency either in the original or as reproductions. Any imitation, including of parts of the work, is impermissible. In the event of an infringement, the Agency may claim from the Client an additional fee of at least 2.5 times the fee originally agreed.
- 3.5** Unless otherwise agreed when the work and services were commissioned, the usage rights granted may only be transferred to third parties by way of licences and/or multiple use is subject to a fee and the Agency's written consent.
- 3.6** The Agency has a right to request information about the scope of the use.



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#### 4. Remuneration

- 4.1** The applicable remuneration is agreed in the contract. Unless otherwise contractually agreed, payments are due within 14 days of invoicing with no deductions. If the payment deadlines are missed, the Agency is entitled to claim default interest of 8% above the base rate pursuant to sections 247 and 288 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB) without providing any further warning. This provision is without prejudice to the right to assert a claim for any additional damage.
- 4.2** If the agreed services are performed over a longer period, the Agency may invoice the Client in instalments for the partial services already rendered.
- 4.3** In the event of modifications to or cancellation commissioned services, works and similar by the Client and/or if the requirements for the performance of the services change, the Agency will be reimbursed for all costs arising as a result and the Agency will be indemnified against any liabilities vis-à-vis third parties.
- 4.4** If the Client cancels the requested services prior to the start of the project, the Agency will invoice the Client for the following percentages of the original contractually agreed fee as a cancellation charge: up to six months prior to the start of the project: 10%; less than six months and up to three months prior to the start of the project: 25%; less than three months and up to four weeks prior to the start of the project: 50%; less than four weeks and up to two weeks prior to the start of the project: 80%; less than two weeks prior to the start of the project: 100%. Any varying provisions must be agreed contractually.
- 4.5** All prices set out in quotations and orders and the resulting amounts payable are net of VAT at the statutory amount.



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#### **5. Additional services**

The Agency will provide prompt notice of any unforeseeable additional outlay. This requires mutual agreement and, where relevant, additional payment.

#### **6. Agency's duty of confidentiality**

- 6.1** The Agency is obliged to treat all knowledge that it receives in connection with a Client project in confidence for an indefinite duration, and to impose on both its employees and also any third parties it deploys an equivalent obligation of absolute secrecy.
- 6.2** Press releases, disclosures etc. that refer to the other party are only permissible subject to prior written agreement (e-mail is sufficient).
- 6.3** After the end of the contract, the Client undertakes within 14 days to surrender to the Agency all documents handed to it by the Agency that are still in its possession.

#### **7. Client's obligations**

The Client will support the Agency in the performance of its contractually due services to the necessary extent free of charge. In particular, it will provide the Agency with all documents, information, data-related material required for the performance of the project as well as any hardware and software at no charge. The Agency will treat all working documents with care, protect them against third-party access, only use them for the performance of the work and services commissioned by the Client and will return them to the Client on completion of the project.



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#### 8. Agency's warranty and liability

- 8.1** The Client will bear the risk of legal permissibility of the measures developed and implemented by the Agency. This applies in particular should the actions and measures breach provisions of industrial property law (e.g. German Patent Act, German Trademark Act, German Act Against Unfair Competition, German Copyright Act) or special provisions of IT law (e.g. German Teleservices Act (TDG)). The Client will indemnify the Agency, which will bear no liability for such breaches, against third party claims.
- 8.2** Taking account of the foregoing clause 8.1, the Agency is required to give notice of any legal risks of which it becomes aware during its activities. The Client will indemnify the Agency against third party claims where the Agency acted at the Client's express request despite the Agency having warned the Client of its reservations in relation to the permissibility of the measures. The Agency's notification of such reservations to the Client must be made in writing as soon as they become known. If the Agency considers a measure to require a review under antitrust law by a qualified expert or institution, the Client will bear any associated costs on consultation with the Agency.
- 8.3** Under no circumstances will the Agency be liable for any factual statements about the Client's products and services that may be included in the works. The Agency will further not be liable for the registrability of the ideas, suggestions, proposals, concepts and designs supplied in the context of the commissioned work and services.
- 8.4** The Client will not be entitled to any claims for damages, irrespective of the legal grounds, except in cases of wilful misconduct, gross negligence, death or personal injury, the breach of a warranty under section 444 of the German Civil Code, incapacity or the breach of material contractual duties. Damages for the breach of material contractual duties will, however, be limited to the amount of the agreed remuneration, unless liability for wilful misconduct or gross negligence applies, or liability attaches due to death or personal injury or a warranty under section 444 of the German Civil Code. The foregoing provision also applies to any vicarious agents of the Agency.



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#### 9. Collecting societies

- 9.1 The Client undertakes to pay any fees due to collecting societies, such as GEMA. If these fees are disbursed by the Agency, the Client undertakes to reimburse the Agency accordingly on production of proof. This may also take place after the end of the contractual relationship.
- 9.2 The Client is aware that when artistic, concept development or advertising consultancy work and services are commissioned from a natural person an artist's social levy is payable to the artists' social security fund. The Client may not deduct this levy from the Agency invoice. The Client is solely responsible for complying with the obligation to register and pay any levies due.

#### 10. Third parties / Agency employees

- 10.1 Freelancers or third parties deployed by the Agency are deemed vicarious agents or assistants of the Agency. The Client undertakes not to commission any workers employed in the performance of Agency work or services directly or indirectly for any projects in the 24 months following completion of the project without the involvement of the Agency.
- 10.2 The Client undertakes not to headhunt any employees or freelancers of the Agency or to employ them without the Agency's consent for the duration of the collaboration and for a period of one year thereafter. For each breach of this provision, the Client is required to pay to the Agency liquidated damages of €25,000.00.
- 10.3 The Client bears equivalent liability for any third parties that act at the behest of the Client or under its toleration as it does for vicarious agents.



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#### **11. Working documents and electronic data**

All working documents, electronic files and drawings that are produced by the Agency in the course of the Client project will remain with the Agency. The Client may not demand the surrender of these documents and data. On payment of the agreed fee, the Agency will be liable for the supplying the agreed service, but not any intermediate steps leading to this result in the form of sketches, designs, production data etc.

#### **12. Media planning and media performance**

The Agency will implement any projects in the field of media planning to the best of its ability on the basis of the supplied media documents and the generally accessible market research data. The Agency is not liable to the Client for any specific successful outcome based on these services.

#### **13. Contract term, notice periods**

The contract will enter into force on signing. It is entered into for the term set out in the contract. If the contract is entered into for an indefinite term, it may be terminated by either party with three months' notice to the end of the month. This is without prejudice to the right to a termination without notice for good cause. Any notice must be given in writing. Any varying provisions must be agreed by way of a separate agreement.



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### **14. Closing provisions**

- 14.1** The Client is not entitled to assign any claims under the contract.
- 14.2** The Client may only set off any claims or assert a right of retention of title in the event of counterclaims that have been acknowledged or legally established.
- 14.3** The governing law is the law of the Federal Republic of Germany. The place of fulfilment and jurisdiction is Erkrath.
- 14.4** If a provision of these General Terms and Conditions should be invalid in full or in part, or should lose its legal validity at a later point in time, this will have no bearing on the validity of the remaining provisions. The invalid provision will be replaced by another appropriate provision by way of a contractual amendment that in economic terms most closely resembles what the parties to the contract would have intended had they been aware of the invalidity of the provision.