

# GENERAL TERMS AND CONDITIONS

## 1. Applicability

(a) These terms and conditions for services (these "Terms") are the only terms that govern the provision of services by WIN CREATING IMAGES INC. ("Company"), a Delaware corporation.

(b) Any accompanying order confirmation (the "Order Confirmation") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the Order Confirmation, the Order Confirmation shall govern.

(c) These Terms prevail over any of Customer's general terms and conditions regardless of whether or when Customer has submitted its request for proposal, order, or such terms. The provision of services to the Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

## 2. Services.

Company shall provide design works and related services to Customer (together, the "Services"), as can be further specified in the Order Confirmation, in accordance with these Terms.

## 3. Performance Dates.

The Company shall use reasonable efforts to meet any performance dates specified in the Order Confirmation, and any such dates shall be estimates only.

## 4. Customer's Obligations

Customer shall:

- (a) cooperate with Company in all matters relating to the Services;
- (b) respond promptly to any Company request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Company to perform Services in accordance with the requirements of this Agreement;
- (c) provide such Customer materials or information as Company may reasonably request and Customer considers reasonably necessary to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects;
- (d) ensure that any Customer materials or information Company receives to carry out the Services do not infringe upon the intellectual property rights of third parties, including copyrights, trademarks, trade dresses, design patents, service marks, internet domain names, web addresses, web pages, website, works of authorship, expressions, designs, and design registrations, including copyrightable works, software, and firmware, data, data files, and databases and other specifications and documentation, trade secrets, and all industrial and other intellectual property rights, and all rights, interests, and protections that are associated therewith ("Intellectual Property Rights").
- (e) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start;
- (f) mention Company's name, or a brand name designated by Company, in close proximity to the duplication pieces of the Deliverables and/or in conjunction with the public announcement of the performance of Company, to the extent that such mention is not totally unusual in Customer's industry;
- (g) inspect all designs and final artworks for any defects (correctness of images, text, numbers, etc.) and release if applicable;
- (h) provide the Company with ten (10) perfect sample copies of all reproduced work, free of charge, unless otherwise agreed or other circumstances result from the contractual relationship, and Customer shall permit Company to use these sample copies and any work which has been created during the fulfillment of the Agreement for promotional purposes in any media, and to refer to its activities for the Customer in any other fashion, unless the Company has been informed about a conflict of interest by the Customer in written form; and (i) not refuse payment of the fees based on reasons associated with the artistic character of the Services.

## 5. Customer's Acts or Omissions.

If Company's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Company shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

## 6. Change Orders

- (a) If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing and Company shall, within a reasonable time after such request, provide a written proposal to Customer of the likely effect of the change on the Services and the additional costs associated therewith as well as any other impact the change might have on the performance of this Agreement.
- (b) Promptly after receipt of the written estimate, the Company shall, within a reasonable time, agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless Customer agreed upon the written proposal or terms individually negotiated by the parties in writing in accordance with Section 26.
- (c) Notwithstanding Section 6(a) and Section 6(b), Company may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any

performance dates set forth in the Order Confirmation.

(d) The Company may charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis in accordance with the Order Confirmation.

## 7. Fees and Expenses; Payment Terms; Interest on Late Payments

- (a) In consideration of the provision of the Services by the Company and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the Order Confirmation.
- (b) Customer agrees to reimburse Company for all reasonable travel and expenses incurred by Company in connection with the performance of the Services, including but not limited to, ancillary technical costs, costs for special materials, the construction of models, photographs, progress records, reproduction, typesetting, and printing provided they have been authorized by the Customer.
- (c) Customer shall pay all invoiced amounts due to the Company within fourteen (14) days from the date of the Company's invoice. Customer shall make all payments hereunder in US dollars.
- (d) Unless otherwise agreed to in writing by the Company, Company may invoice twenty-five percent (25%) of the total fees under this Agreement upon conclusion of the Agreement, an additional fifty percent (50%) of the total fees upon completion of the work, and the final twenty-five percent (25%) upon delivery of the work.
- (e) In the event payments are not received by Company within fourteen (14) days after becoming due, Company may:
  - (i) charge interest on any such unpaid amounts at a rate of one point five percent (1.5%) per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and
  - (ii) suspend performance for all Services until payment has been made in full.

## 8. Taxes

Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer hereunder.

## 9. Intellectual Property; Licensing

- (a) All intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Company in the course of performing the Services, including any items identified as such in the Order Confirmation (collectively, the "Deliverables") except for any Confidential Information of Customer or Customer materials shall be owned by Company.
- (b) As part of the Services under the Agreement, Customer is granted a license limited in terms of time, geographic scope, and content, to use the Deliverables, details of which shall be set forth in the Order Confirmation ("Basic License"). If the Order Confirmation is silent about the scope of the Basic License or if Customer wishes to use the Deliverables beyond the scope of the Basic License, Company shall grant Customer a separate license to use all Intellectual Property Rights on a non-exclusive, non-transferable, non-sublicensable, non-perpetual basis, the royalty fees and details of which shall be defined in a written licensing agreement to be entered separately by the Parties.
- (c) In no event an alteration of Intellectual Property Rights shall be permitted without Company's explicit written consent.
- (d) For purposes of this Section 9., before Customer creates any duplicates of Deliverables provided by Company, Company shall receive drafts of such duplicates. Any production of duplicates is subject to Company's written consent notwithstanding the scope of the Basic License or any other license agreement between the Parties.
- (e) The Company may choose to use generative artificial intelligence programs ("A.I. Services"), media databases, and other third-party providers to provide the Services or in preparation thereof. If the use of a third-party provider including A.I. Services requires the retention of any Intellectual Property Rights, or portions thereof, by any third party, or if any third party is granted a license back, the scope of Sections 9 (a) and (b) shall be correspondingly reduced. Moreover, if the terms and conditions of third-party providers, including A.I. Services, regarding licensing limitations and the reservation of third-party Intellectual Property Rights, conflict with these Terms or any Order Confirmation, the terms and conditions of the A.I. Services shall take precedence and govern the Customer's rights and obligations. Information on the third-party providers including A.I. Services used by Company can be provided upon Customer's prior written request. In addition, the Customer may request that Company will not use the services of A.I. Services or other third parties that may limit Section 9. (a) and (b) or that increase the risk of liability for infringement of intellectual property.

## 10. Confidential Information

(a) All non-public, confidential or proprietary information of Company, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, "Confidential Information"), disclosed by Company to Customer, whether disclosed orally or disclosed or accessed in written, electronic

or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by Customer without the prior written consent of Company. Confidential Information does not include information that is:

- (i) in the public domain;
  - (ii) known to Customer at the time of disclosure; or
  - (iii) rightfully obtained by Customer on a non-confidential basis from a third party.
- (b) Customer agrees to use the Confidential Information only to make use of the Services and Deliverables.
- (c) Customer acknowledges that breach of this Section 10 would cause Company irreparable harm for which monetary damages would not provide an adequate remedy and Company will, in addition to any other available remedies, be entitled to temporary and permanent injunctive relief with respect to such breach without proof of actual damages or the posting of bond or other security.

#### **11. Representation and Warranty**

(a) Company represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. Company may outsource/subcontract any of the Services to be provided under the Agreement as long as the aforementioned standards are met.

(b) The Company shall not be liable for a breach of the warranty set forth in Section 11(a) unless Customer gives written notice of any defects in the provision of the Services, reasonably described, to Company within ten (10) days of the time when Customer discovers or ought to have discovered that the Services were defective.

(c) Subject to Section 11(b), Company shall, in its sole discretion, credit or refund the price of such defective Services at the pro rata contract rate.

(d) the remedy set forth in section 11(c) shall be the customer's sole and exclusive remedy and company's entire liability for any breach of the limited warranty set forth in section 11(a).

#### **12. Indemnification**

Subject to the terms and conditions set forth in Section 4(d), Customer shall indemnify, hold harmless, and defend Company and its officers, directors, and employees (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are awarded against Indemnified Party (collectively, "Losses"), arising out of any third-party claim alleging that any of the Customer's materials or information infringes any Intellectual Property Rights of a third party in any jurisdiction whatsoever.

#### **13. Disclaimer of Warranties**

Except for the warranty set forth in section 11(a) above, company makes no warranty whatsoever with respect to the services, including any (a) warranty of merchantability; or (b) warranty of fitness for a particular purpose; or (c) warranty of title; or (d) warranty against infringement of intellectual property rights of a third party, may it be caused by Company or third party including A.I. Services; whether express or implied by law, course of dealing, course of performance, usage of trade, or otherwise.

#### **14. Limitation of Liability**

(a) in no event shall company be liable to customer or to any third party for any loss of use, revenue or profit, or for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including negligence), the use of A.I. Services or otherwise, regardless of whether such damages were foreseeable and whether or not service provider has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

(b) in no event shall company's aggregate liability arising out of or related to this agreement, whether arising out of or related to breach of contract, tort (including negligence) or otherwise, exceed the total of the amounts paid to company under this agreement over the past six (6) month period preceding the event giving rise to the claim or fifty thousand u.s. Dollars (\$50,000.00), whichever is less. The foregoing limitations apply even if the company's remedies under this agreement fail of their essential purpose.

(c) the limitation of liability set forth in section 14(b) above shall not apply to (i) liability resulting from company's gross negligence or willful misconduct and (ii) death or bodily injury resulting from company's negligent acts or omissions.

#### **15. Termination**

In addition to any remedies that may be provided under this Agreement, Company may terminate this Agreement with immediate effect upon written notice to Customer, if Customer:

(a) fails to pay any amount when due under this Agreement and such failure continues for fourteen (14) days after Customer's receipt of written notice of nonpayment;

(b) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or

(c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

#### **16. Waiver**

No waiver by Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Company. No failure to exercise, or delay

in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

#### **17. Force Majeure**

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Company hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) pandemics, national or regional emergency; and (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within three (3) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of forty-five (45) consecutive days following written notice given by it under this Section 17, either party may thereafter terminate this Agreement upon seven (7) days' written notice.

#### **18. Assignment**

Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Company. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

#### **19. Relationship of the Parties**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### **20. Governing Law**

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York.

#### **21. Arbitration**

Any controversy or claim arising out of or relating to this Agreement, or the negotiation or breach thereof, except for (a) actions seeking injunctive relief and (b) disputes related to intellectual property, shall be exclusively settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA"). The award shall be final and binding. Judgment upon the award rendered by the arbitrator or the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in New York, New York, shall be conducted in the English language, and shall be conducted (i) if the amount in dispute is less than one hundred fifty thousand U.S. Dollars (\$150,000), before a single arbitrator mutually agreeable to Company and Customer, or if no agreement can be reached, then selected by the AAA, or (ii) if the amount in dispute is one hundred fifty thousand U.S. Dollars (\$150,000) or more, before three (3) arbitrators. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his, her or their decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate. In addition, the losing party shall reimburse the prevailing party for reasonable attorneys' fees and disbursements, the costs of the arbitration (including but not limited to the fees and expenses of the arbitrator and expert witnesses) and the costs incurred by the prevailing party in successfully seeking any preliminary equitable relief or judicially enforcing any arbitration award.

#### **22. Security Interest in Accounts Receivable**

As collateral security for the payment of the total fees for the Services, including the Deliverables, and performance in full of all the obligations of the Customer under this Agreement, the Customer hereby grants to the Company, a lien on and security interest in and to all of the right, title, and interest of the Customer in all of the Customer's accounts receivable, and all cash and noncash proceeds thereof, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof. Before provision of the Deliverables by the Company, the Customer or its affiliates shall execute, acknowledge, seal and deliver such number of financing statements and in such form and substance as shall be required by the Company or its affiliates to perfect its security interest in the accounts receivable ("Financing Statements").

#### **23. Notices**

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Order Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all

fees pre-paid), facsimile (with confirmation of transmission) or email or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**24. Severability**

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**25. Survival**

Provisions of these Terms, which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Confidentiality, Governing Law, Submission to Jurisdiction, and Survival.

**26. Amendment and Modification**

This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

# ALLGEMEINE GESCHÄFTSBEDINGUNGEN

## 1. Allgemeines

1.1 Für alle Verträge über Design-Leistungen zwischen der WINcommunication, Inhaberin Cathrin Jo Ann Wind, der Windesign GmbH, der WINCOM PgmBH (Belgien), WIN CREATING IMAGES AG (Schweiz), WIN CI GmbH [WIN] und dem Auftraggeber gelten ausschließlich die nachfolgenden Allgemeinen Vertragsgrundlagen ("AVG"). Sie gelten auch dann, wenn der Auftraggeber Allgemeine Geschäftsbedingungen verwendet und diese entgegenstehende oder von den hier aufgeführten AVG abweichende Bedingungen enthalten.

1.2 Die AVG von WIN gelten auch, wenn WIN in Kenntnis entgegenstehender oder von den hier aufgeführten Bedingungen abweichender Bedingungen des Auftraggebers den Auftrag vorbehaltlos ausführt.

1.3 Abweichungen von den hier aufgeführten Bedingungen sind nur dann gültig, wenn ihnen WIN ausdrücklich schriftlich zustimmt.

## 2. Vertragsgegenstand

Der Gegenstand des Vertrages richtet sich nach den Individualvereinbarungen der Parteien. WIN schuldet keine Leistungen, die nicht ausdrücklich individuell vereinbart wurden. Geschuldet ist die Übergabe der Entwürfe in einer Art und Weise, die die Herstellung der sich aus dem Vertrags-/Auftragszweck ergebenden Produkte ermöglicht; die Übergabe sogenannter »offener« Dateien ist grundsätzlich nicht geschuldet.

## 3. Vergütung

3.1 Sämtliche Leistungen, die WIN für den Auftraggeber erbringt, sind kostenpflichtig, sofern nicht ausdrücklich etwas anderes vereinbart wird. Wünscht der Auftraggeber während oder nach Leistungserbringung durch WIN Sonder- und/oder Mehrleistungen von WIN, so folgt daraus eine ergänzende Vergütungspflicht.

Verzögert sich die Durchführung des Auftrags aus Gründen, die der Auftraggeber zu vertreten hat, so kann WIN eine angemessene Erhöhung der Vergütung verlangen. Bei Vorsatz oder grober Fahrlässigkeit kann WIN auch Schadenersatzansprüche geltend machen. Die Geltendmachung eines weitergehenden Verzugschadens bleibt davon unberührt.

3.2 Die Vergütung setzt sich vorbehaltlich anderweitiger Vereinbarungen aus einem Entwurfshonorar und – soweit eine Nutzung der Leistungen vertraglich vorgesehen ist – einem Nutzungshonorar zusammen. Das Nutzungshonorar wird nach dem vertraglich vereinbarten Nutzungsumfang bestimmt. Weitergehende Nutzungen müssen ergänzend bezahlt werden. Vorbehaltlich anderweitiger Vereinbarungen wird die Vergütung des Entwurfs- und Nutzungshonorars nach dem jeweils aktuellen AGD Vergütungstarif Design berechnet, wie er zwischen der Allianz deutscher Designer [AGD] und der Vereinigung Selbstständige Design-Studios [SDSt] beschlossen wurde. Der AGD Vergütungstarif Design kann jederzeit beim Auftragnehmer angefordert werden.

3.3 Vorschläge des Auftraggebers bzw. seiner Mitarbeiter oder seine bzw. deren sonstige Mitarbeit haben keinen Einfluss auf die Höhe der Vergütung.

## 4. Fälligkeit der Vergütung, Abnahme, Verzug

4.1 Die Vergütung ist bei Ablieferung des Werkes fällig. Werden die bestellten Arbeiten in Teilen abgenommen, so ist eine entsprechende Teilvergütung jeweils bei einer solchen Teilabnahme fällig. Erstreckt sich ein Auftrag über einen Zeitraum von mehr als zwei Monaten oder erfordert er von WIN angelegene Vorleistungen, die 25 % des vereinbarten Honorars übersteigen, so sind angemessene Abschlagszahlungen zu leisten, und zwar 1/4 der Gesamtvergütung bei Auftragserteilung, 1/4 nach Fertigstellung von 50 % der Arbeiten, 1/2 nach Ablieferung.

4.2 Die Abnahme darf nicht aus gestalterisch-künstlerischen Gründen verweigert werden. Im Rahmen des Auftrags besteht Gestaltungsfreiheit. Mängelansprüche hinsichtlich der künstlerischen Gestaltung sind ausgeschlossen.

4.3 Bei Zahlungsverzug kann WIN bei Rechtsgeschäften, an denen ein Verbraucher nicht beteiligt ist, Verzugszinsen in Höhe von 8 % über dem jeweiligen Basiszinssatz der Europäischen Zentralbank p.a., bei Rechtsgeschäften, an denen ein Verbraucher beteiligt ist, in Höhe von 5% über dem jeweiligen Basiszinssatz der Europäischen Zentralbank verlangen. Die Geltendmachung eines nachgewiesenen höheren Schadens bleibt vorbehalten.

## 5. Nutzungsrechte

5.1 Die Arbeiten von WIN, insbesondere Entwürfe, Konzeptionen, sonstige Werbevorschlüsse, Reinzeichnungen sowie das in Auftrag gegebene Werk, sind als persönliche geistige Schöpfungen durch das Urheberrechtsgesetz geschützt. Sie dürfen nur für die vereinbarte Nutzungsart und den vereinbarten Vertragszweck im vereinbarten Umfang [zeitlich, räumlich und inhaltlich] verwendet werden. Ohne schriftliche Zustimmung von WIN dürfen die Arbeiten von WIN einschließlich der Urheberbezeichnung weder im Original, noch bei der Reproduktion geändert werden. Insbesondere dürfen die Entwürfe, Konzeptionen und sonstigen Werbevorschlüsse von WIN ohne schriftliche Zustimmung nicht durch Dritte genutzt und bearbeitet werden. Jede Nachahmung der Arbeiten von WIN oder von Teilen davon ist unzulässig. Für Nutzungsrechte an Fremdleistungen finden vorrangig die für diese geltenden Drittanbieter-Bedingungen Anwendung (siehe Ziffer 7.2).

5.2 Vorstehende Ziffer 5.1 gilt entsprechend für urheberrechtlich [z.B. wegen fehlender Schöpfungshöhe] nicht geschützte Arbeiten von WIN. Diese Arbeiten werden dem Auftraggeber von WIN als Geschäftsgeheimnis anvertraut. Eine unbefugte Nutzung oder Offenlegung außerhalb der vertraglichen Vereinbarung der Parteien ist unzulässig. Von dieser Ziffer 5.2 ausgenommen bleiben

urheberrechtlich nicht geschützte Arbeiten von WIN, für die der Auftraggeber nachweist, dass sie ohne Verletzung einer Geheimhaltungspflicht bereits öffentlich bekannt oder allgemein zugänglich sind oder ihm diese von einem Dritten ohne Verletzung einer Geheimhaltungspflicht bekannt gemacht wurden oder er sie bereits vor dem Vertragsschluss mit WIN besessen oder diese unabhängig entwickelt hat.

5.3 WIN räumt dem Auftraggeber die für den jeweiligen Vertragszweck erforderlichen Nutzungsrechte ein. Mangels ausdrücklicher schriftlicher Vereinbarung gilt als vereinbarter Vertragszweck nur der von dem Auftraggeber bei Auftragserteilung erkennbar gemachte Zweck und es wird jeweils nur das einfache (nicht exklusive) Nutzungsrecht eingeräumt.

5.4 Jede Übertragung oder Teilübertragung von Nutzungsrechten und jede Einräumung von Unterlizenzen bedarf der vorherigen schriftlichen Zustimmung von WIN.

5.5 Die Nutzungsrechte werden dem Auftraggeber erst mit der vollständigen Bezahlung der Vergütung eingeräumt.

## 6. Namensnennungspflicht

WIN ist auf oder in unmittelbarer Nähe zu den Vervielfältigungsstücken und/oder in unmittelbarem Zusammenhang mit der öffentlichen Wiedergabe der Leistungen von WIN namentlich zu nennen, soweit eine Nennung nicht gänzlich branchenunüblich ist.

## 7. Sonder- und Fremdleistungen, Neben- und Reisekosten

7.1 Sonderleistungen wie die Umarbeitung oder Änderung von abnahmefähigen Entwürfen, Reinzeichnungen, Konzeptionen, das Manuskriptstudium, die Drucküberwachung oder zusätzliche Korrekturläufe werden nach dem Zeitaufwand entsprechend AGD Vergütungstarif Design in der jeweils aktuellen Fassung gesondert berechnet.

7.2 WIN ist berechtigt, für ihre Leistungen, die im Rahmen des Vertrages zu erbringen sind, Drittanbieter einzusetzen, z.B. für Druckaufträge, Einsatz professioneller Fotografen, Erwerb von Bildern aus Bilddatenbanken oder KI-Lösungen Dritter (Künstliche Intelligenz), und der Auftraggeber erklärt sich mit dem Einsatz dieser Drittanbieter einverstanden. WIN ist dabei nach vorheriger Abstimmung mit dem Auftraggeber berechtigt, die zur Auftragserteilung notwendigen Fremdleistungen von Drittanbietern im Namen und für Rechnung des Auftraggebers zu bestellen. In diesem Fall kommt ein Vertrag unmittelbar zwischen dem Drittanbieter und dem Auftraggeber zustande. Der Auftraggeber verpflichtet sich, WIN entsprechende Vollmacht zu erteilen. Andernfalls wird WIN Vertragspartner des Auftraggebers und der Auftraggeber hat seine Ansprüche aus oder im Zusammenhang mit den Fremdleistungen gegenüber WIN geltend zu machen. Einzelheiten zum Vertragsschluss und zu den jeweils geltenden Drittanbieter-Bedingungen ergeben sich aus der Auftragsbestätigung von WIN oder einer anderweitigen Vereinbarung hierzu.

Die Drittanbieter-Bedingungen zum Leistungsumfang der Fremdleistungen, zur Sach- und Rechtsmängelhaftung, zur Haftung, zu Nutzungsrechten sowie der darin getroffenen Rechtswahl haben Vorrang und gelten insbesondere auch, wenn WIN der Vertragspartner des Auftraggebers ist, im Verhältnis zwischen WIN und dem Auftraggeber, wobei WIN im Hinblick auf die darin geregelten Rechte und Pflichten an die Stelle des Drittanbieters tritt. Soweit keine wirksamen Drittanbieter-Bedingungen im Sinne des vorstehenden Satzes bestehen, gelten die Bestimmungen dieser AVG. Der Auftraggeber wird auf Anforderung von WIN in dem Fall, dass die Drittprodukte die Rechte Dritter verletzen, mangelhaft sind oder Schäden verursachen, die hieraus resultierenden Freistellungs-, Mängel- und Schadenersatzansprüche vorrangig gegenüber dem Drittanbieter geltend machen. WIN wird zu diesem Zweck die entsprechenden eigenen Ansprüche gegenüber dem Drittanbieter an den Auftraggeber abtreten. Der Auftraggeber kann WIN nachrangig in Anspruch nehmen, wenn eine gerichtliche Durchsetzung der Ansprüche gegenüber dem Drittanbieter erfolglos geblieben ist. Eine gerichtliche Auseinandersetzung des Auftraggebers mit dem Drittanbieter ist jedoch entbehrlich, soweit dies nicht zumutbar ist, z.B. weil keine Aussicht auf Erfolg besteht.

7.3 Soweit im Einzelfall nach vorheriger Abstimmung Verträge über notwendige Fremdleistungen im Namen und für Rechnung von WIN abgeschlossen werden, verpflichtet sich der Auftraggeber, WIN im Innenverhältnis von sämtlichen Vergütungsansprüchen freizustellen, die sich aus dem Vertragsabschluss ergeben. WIN ist in Abweichung zu Ziffer 4.1 berechtigt, diese Kosten in Rechnung zu stellen, sobald sie von dem Dritten in Rechnung gestellt werden.

7.4 Auslagen für notwendige technische Nebenkosten, insbesondere für spezielle Materialien, für die Anfertigung von Modellen, Fotos, Zwischenaufnahmen, Reproduktionen, Satz und Druck etc. sind nach vorheriger Abstimmung vom Auftraggeber zu erstatten.

7.5 Reisekosten und Spesen für Reisen, die im Zusammenhang mit dem Auftrag zu unternehmen und mit dem Auftraggeber abgesprochen sind, sind vom Auftraggeber zu erstatten.

## 8. Eigentum an Entwürfen und Daten

8.1 An Entwürfen und Reinzeichnungen werden nur Nutzungsrechte eingeräumt, nicht jedoch das Eigentum übertragen, falls nicht etwas anderes vereinbart wurde oder sich aus dem Vertragszweck etwas anderes ergibt.

8.2 Die Originale sind WIN nach angemessener Frist unbeschädigt zurückzugeben, falls nicht etwas anderes vereinbart wurde oder aus dem Vertragszweck sich etwas anderes ergibt. Bei Beschädigung

8.3 Die in Erfüllung des Vertrages entstehenden Daten und Dateien verbleiben im Eigentum von WIN. WIN ist nicht verpflichtet, Daten und Dateien an den Auftraggeber herauszugeben. Wünscht der Auftraggeber deren Herausgabe, so ist dies gesondert zu vereinbaren und zu vergüten.

8.4 Hat WIN dem Auftraggeber Daten und Dateien, insbesondere sogenannte »offene« Dateien zur Verfügung gestellt, dürfen diese nur mit vorheriger Zustimmung von WIN geändert werden, es sei denn, aus dem Vertragszweck ergibt sich etwas anderes.

8.5 Die Versendung sämtlicher in Ziffer 8.1 bis 8.4 genannten Gegenstände erfolgt für Rechnung des Auftraggebers und, sofern der Auftraggeber kein Verbraucher ist, auf Gefahr des Auftraggebers.

#### **9. Korrektur, Produktionsüberwachung, Belegexemplare und Eigenwerbung**

9.1 Vor Ausführung einer Vervielfältigung sind WIN Korrekturmuster vorzulegen.

9.2 Die Produktionsüberwachung durch WIN erfolgt nur aufgrund besonderer Vereinbarung.

9.3 Von allen vervielfältigten Arbeiten überlässt der Auftraggeber WIN bis zu zehn einwandfreie Belegexemplare unentgeltlich, falls nicht etwas anderes vereinbart wurde oder aus dem Vertragszweck sich etwas anderes ergibt.

9.4 WIN ist berechtigt, diese Muster und sämtliche in Erfüllung des Vertrages entstehenden Arbeiten zum Zwecke der Eigenwerbung in sämtlichen Medien unter namentlicher Nennung des Auftraggebers zu verwenden und im übrigen auf das Tätigwerden für den Auftraggeber hinzuweisen, sofern WIN nicht über ein etwaiges entgegenstehendes Geheimhaltungsinteresse des Auftraggebers schriftlich in Kenntnis gesetzt wurde. Etwaige Rechte Dritter muss WIN für seine Werbezwecke selbst einholen.

#### **10. Haftung**

10.1 Für die Haftung von WIN sowie für die eigene Haftung ihrer Mitarbeiter, Erfüllungs- und Verrichtungsgehilfen – gleich aus welchem Rechtsgrund – gelten die nachfolgenden Regelungen.

Die Haftung von WIN für Schadensersatz wird wie folgt beschränkt:

- WIN haftet der Höhe nach begrenzt auf den bei Vertragsschluss typischerweise vorhersehbaren Schaden für die leicht fahrlässige Verletzung von Kardinalpflichten (d. h. von wesentlichen Pflichten, deren Erfüllung die ordnungsgemäße Vertragsdurchführung erst ermöglicht und auf deren Einhaltung der Auftraggeber vertrauen darf);
- WIN haftet nicht für die leicht fahrlässige Verletzung sonstiger Pflichten.

Für die Fälle der anfänglichen Unmöglichkeit haftet WIN, wenn ihr das Leistungshindernis bekannt war oder die Unkenntnis auf grober Fahrlässigkeit beruht.

Die Verjährungsfrist für Ansprüche auf Schadensersatz gegen WIN beträgt ein (1) Jahr gerechnet ab dem gesetzlichen Verjährungsbeginn.

Werden Schadensersatzansprüche erhoben, so müssen sie innerhalb von sechs (6) Monaten nach schriftlicher Ablehnung durch WIN klageweise geltend gemacht werden. Eine spätere Geltendmachung ist ausgeschlossen, es sei denn, dass innerhalb der Frist ein selbständiges Beweisverfahren eingeleitet wurde.

Die Regelungen gemäß dieser Ziffer 10.1 gelten nicht für Ansprüche nach dem Produkthaftungsgesetz sowie bei Schäden aus der Verletzung des Lebens, des Körpers oder der Gesundheit, bei vorsätzlicher oder grob fahrlässiger Pflichtverletzung oder soweit WIN einen Mangel arglistig verschwiegen oder eine Garantie für die Beschaffenheit des Liefergegenstandes übernommen hat. Die Haftung von WIN ist in Fällen grober Fahrlässigkeit jedoch auf den vertragstypischen, vorhersehbaren Schaden begrenzt, soweit nicht zugleich ein anderer der in vorstehendem Satz aufgeführten Ausnahmefälle vorliegt.

10.2 Für Aufträge, die im Namen und auf Rechnung des Auftraggebers an Dritte erteilt werden, übernimmt WIN gegenüber dem Auftraggeber keinerlei Haftung, es sei denn, WIN trifft gerade bei der Auswahl des Dritten ein Verschulden. WIN tritt in diesen Fällen lediglich als Vermittler auf.

10.3 Der Auftraggeber versichert, dass er zur Verwendung aller an WIN übergebenen Vorlagen berechtigt ist. Sollte er entgegen dieser Versicherung nicht zur Verwendung berechtigt sein, stellt der Auftraggeber WIN von allen Ersatzansprüchen Dritter frei.

10.4 Der Auftraggeber hat Entwürfe oder Reinzeichnungen auf etwaige Mängel [Richtigkeit von Bild, Text, Zahlen etc.] zu überprüfen und gegebenenfalls freizugeben. Für solchermaßen vom Auftraggeber freigegebene Entwürfe oder Reinzeichnungen entfällt jede Haftung von WIN für erkennbare Mängel. Dies gilt nicht, wenn der Auftraggeber ein Verbraucher ist.

10.5 Beanstandungen offensichtlicher Mängel sind innerhalb von 14 Tagen nach Ablieferung des Werks schriftlich bei WIN geltend zu machen. Zur Wahrung der Frist genügt die rechtzeitige Absendung der Mängelrüge.

10.6 Der Auftraggeber ist verpflichtet, die rechtliche Zulässigkeit der Entwürfe und sonstigen Arbeiten selbstständig und gewissenhaft prüfen zu lassen, bevor er die Entwürfe und sonstigen Arbeiten im geschäftlichen Verkehr verwendet. WIN haftet außer bei Vorsatz und grober Fahrlässigkeit nicht für die rechtliche Zulässigkeit seiner Entwürfe und sonstigen Arbeiten. Er wird den Auftraggeber auf rechtliche Bedenken hinweisen, soweit sie ihm bekannt sind. Für die vom Auftraggeber zu vervielfältigenden und freigegebenen Arbeiten entfällt jede weitergehende Haftung von WIN.

10.7 Die von WIN ausgelieferten Daten sind nicht für die unterschiedlichen Druckverfahren aufbereitet. Das bedeutet, dass alle technisch notwendigen Anpassungen wie z. B. Über- und Unterfüllungen nicht enthalten sind und vor Drucklegung seitens Druckerei angelegt werden müssen.

#### **11. Vertragsauflösung**

Sollte der Auftraggeber den Vertrag vorzeitig kündigen, erhält WIN die vereinbarte Vergütung, muss sich jedoch ersparte Aufwendungen oder durchgeführte oder böswillig unterlassene Ersatzaufträge anrechnen lassen [§ 648 BGB].

#### **12. Schlussbestimmungen**

12.1 Erfüllungsort und Gerichtsstand ist, sofern zulässig vereinbart, Aachen.

12.2 Es gilt das Recht der Bundesrepublik Deutschland.

12.3 Bei Widersprüchen zwischen unterschiedlichen Sprachfassungen dieser AVG ist die deutsche Fassung verbindlich.

# GENERAL TERMS AND CONDITIONS

## 1. General

1.1 The following General Contractual Terms apply exclusively to all agreements regarding design work between WINcommunication, owner Cathrin Jo Ann Wind, WINCOM PgmBH (Belgium), Windesign GmbH, WIN CREATING IMAGES AG (Switzerland), WIN CI GmbH (hereinafter to be called Designer) and the Principal. This provision is to be upheld even if the Principal utilises 'Allgemeine Geschäftsbedingungen' (general terms and conditions of trade) as established in German law and these contravene or deviate from the General Contractual Terms set out here.

1.2 The General Contractual Terms outlined here also apply if the Designer agrees without reservation to perform the commission of the Principal in the knowledge that it contains conditions which contravene or deviate from the conditions set out here.

1.3 Deviations from the conditions set out here are only valid if the Designer agrees to them expressly in writing.

## 2. Object of contract

The object of contract follows the individual agreements of the parties. The Designer owes no services which are not expressly agreed on an individual basis. The Designer owes the handover of the designs in a manner which enables the production of products based on this contract. The handover of 'open' data files is generally not owed.

## 3. Fee

3.1 The production of designs, together with all other activities that the Designer performs for the Principal are to be charged to the Principal unless it has been expressly agreed otherwise. If the Principal wishes to make changes or further services during or after production, he/she must bear the additional costs.

Should the execution of the commission be delayed due to reasons for which the Principal is responsible, the Designer is entitled to demand an appropriate increase in payment. In the event of intent or gross negligence, the Designer is also entitled to claim compensation. Further claims for compensation for delay shall remain unaffected by this provision.

3.2 In the absence of contrary agreements, the compensation consists of a design fee and – if the use of the design is intended – a royalty fee. The royalty fee is related to the contractually agreed scope of use. Every further use has to be paid additionally. Unless otherwise agreed, the compensation of the design fee and the royalty fee will be calculated in accordance with the stipulations of the AGD Collective Agreement on Fees for Design Services, as issued by the Alliance of German Designers (AGD) and the Selbständige Design-Studios e.V. (SDST – alliance of independent design studios). The AGD payment tariff can be requested any time from the contractor.

3.3 Proposals, instructions and other contributions of the Principal or the Principal's employees and agents shall not influence the fee.

## 4. Due date for payment, acceptance and delay

4.1 Payment is due upon delivery of the work. If the work which has been commissioned is accepted in parts, then a proportionate partial payment is due upon the acceptance of each part. Should the commission extend over two months or require high financial outlay on the part of the Designer which exceed 25% of the agreed fee, then payment of the fee shall be in appropriate instalments, i.e. 1/4 of the total fee when the commission is awarded, 1/4 after completion of 50% of the work and 1/2 upon delivery.

4.2 Acceptance may not be withheld for reasons associated with the artistic character of the work. It is understood that the Designer is granted artistic freedom in executing the commission. Complaints on the basis of artistic expression are excluded.

4.3 Should payment not be effected on the due date for legal transactions in which no consumer is involved, then the Designer is entitled to demand interest as compensation at the rate of 8% over the current base rate of the European Central Bank p.a., for legal transactions with a consumer in the amount of 5% above the current base rate of the European Central Bank. This shall not affect the assertion of any further damage.

## 5. Ownership of designs and data

5.1 All designs and final artwork may only be used to the extent agreed upon (in terms of time, territory and content). Use of the work outside these restrictions (in terms of time, territory and content) in each case has to be compensated by a separate royalty fee. This is not permitted by legally protected designs and the Designer is entitled – beside the claim for a separate royalty fee – to assert claims for compliance and damages. Any imitation, also of parts, of the work, of a legally protected design or a legally protected final artwork is forbidden. All designs, final artworks, concepts or other services by the Designer are given in trust to the Principal in accordance with the terms of Section 18 of the Act Against Unfair Competition. Outside the contractual agreement, an unauthorised use or disclosure to third parties is not allowed. For rights of use to third party services, the third party terms and conditions applicable to such services shall apply with priority (see Section 7.2).

5.2 The Designer grants the Principal the necessary rights of use for the relevant purpose of the work. Unless otherwise agreed, in each case only simple (non-exclusive) rights of use are granted.

5.3 Transfer of rights of use to any third party or granting of sublicenses requires a separate written agreement.

5.4 The rights of use shall not be deemed to have passed to the Principal until the agreed fee has been paid in full.

5.5 Protected designs and final artworks may not be altered, either in original form or as reproductions, without the express agreement of the Designer.

## 6. Right to mention the name

The Designer is to be mentioned in close proximity to the duplication pieces and/or in conjunction with the public announcement of the performance from the Designer, so far as a naming is not totally unusual in the trade.

## 7. Additional and third party services, ancillary and travel expenses

7.1 Additional services, such as the revision or alteration of final artworks, concepts, manuscript proofreading, supervision of printing or additional corrections shall be invoiced on the basis of the time involved, in accordance with the AGD Collective Agreement on Fees for Design Services (latest version).

7.2 The Designer is entitled to use third party supplier for its services to be provided under the contract, e.g. for print jobs, use of professional photographers, acquisition of images from image databases or third party AI solutions (artificial intelligence), and the Customer agrees to the use of such third party suppliers. The Designer is – in such a case – entitled, after reaching prior agreement with the Principal, to subcontract any work necessary for the fulfilment of the commission on behalf of and for the account of the Principal. In this case, a contract is concluded directly between the third party supplier and the Principal. The Principal undertakes to provide the Designer with the necessary authorization for this purpose. Otherwise, the Designer shall become the contractual partner of the Principal and the Principal shall assert its claims arising from or in connection with the third party services against the Designer. Details on the conclusion of the contract and on the applicable third party terms and conditions are set forth in the Designer's order confirmation or any other agreement to this effect.

The third party terms and conditions regarding the scope of performance of the third party services, liability for defects in quality and title, liability, rights of use as well as the choice of law made therein shall have priority and shall apply in particular also if the Designer is the contractual partner of the Principal in the relationship between the Designer and the Principal, whereby the Designer shall take the place of the third party supplier with regard to the rights and obligations regulated therein. To the extent that there are no effective third party supplier terms and conditions within the meaning of the preceding sentence, the provisions of these General Contractual Terms shall apply. Upon the Designer's request, the Principal shall, in the event that the third party products infringe the rights of third persons, are defective or cause damage, assert the resulting claims for indemnification, defects and damages primarily against the third party supplier. For this purpose, the Designer shall assign its own corresponding claims against the third party supplier to the Principal. The Principal may assert claims against the Designer in a subordinate manner if a judicial enforcement of the claims against the third party supplier has been unsuccessful. However, a legal dispute of the Principal with the third party supplier is dispensable if this is not reasonable, e.g. because there is no prospect of success.

7.3 Should individual agreements for subcontracted work be concluded on behalf of and for the account of the Designer, the Principal undertakes for the purposes of their internal relationship to hold the Designer free from all obligations which result from the conclusion of such agreements. Contrary to Section 4.1, the Designer is entitled to charge the Principal for those costs, as soon as the costs are invoiced by the subcontractor.

7.4 Expenses incurred by the Designer for ancillary technical costs, and in particular for special materials, the construction of models, photographs, progress records, reproduction, typesetting and printing, etc., with the prior agreement of the Principal are to be refunded by the Principal.

7.5 Travel costs and expenses for travel undertaken in connection with the commission and within prior agreement with the Principal are to be refunded by the Principal.

## 8. Copyright and right of use

8.1 The rights to all designs and final artworks hereby granted are rights of use, not ownership rights, unless otherwise agreed or other circumstances result from the contractual relationship.

8.2 The originals are to be returned undamaged to the Designer after a reasonable period of time, unless otherwise agreed in writing. In the event of loss or damage, the Principal is to bear the costs incurred in replacing the originals. Any further claims for compensation remain unaffected by this provision.

8.3 Any data which is created during the fulfilment of this contract remain the property of the Designer. The Designer is not obliged to provide the Principal with such data. Should the Principal require such data, a separate agreement is to be reached regarding the provision of this data to the Principal and payment for such data.

8.4 If the Designer provides the Principal with such data, this may only be modified with the prior consent of the Designer or other circumstances result from the contractual relationship.

8.5 The dispatch of all work as outlined in Sections 8.1 to 8.4 is at the risk of and for the account of the Principal, to the extent that the Principal is not a consumer.

## 9. Checking, supervision of production, free copies and personal promotion

9.1 Samples for checking must be made available to the Designer before reproductions are made.

9.2 The supervision of production by the Designer is only to proceed on the basis of a separate agreement.

9.3 The Principal is to provide the Designer with ten perfect sample copies of all reproduced work, free of charge, unless otherwise agreed or other circumstances result from the contractual relationship.

9.4 The Designer is entitled to use these samples and any work which has been created during the fulfilment of the contract for personal promotional purposes in any media, and to refer to his/her activities for the Principal in any other fashion, unless the Designer has been informed about a conflict of interest by the Principal in written form. Any third party rights have to be obtained by the Designer himself/herself.

#### **10. Liability**

10.1 The following provisions shall apply to the liability of the Designer as well as to the own liability of its employees, vicarious agents and assistants - irrespective of the legal grounds.

The Designer's liability for damages shall be limited as follows:

- The Designer's liability shall be limited to the amount of damages typically foreseeable at the time of the conclusion of the contract for the slightly negligent breach of cardinal obligations (i.e. essential obligations, the fulfillment of which is a prerequisite for the proper performance of the contract and on the observance of which the customer may rely);
- The Designer shall not be liable for the slightly negligent breach of other obligations.

In cases of initial impossibility, the Designer shall be liable if it was aware of the impediment to performance or if the lack of knowledge is due to gross negligence.

The limitation period for claims for damages against the Designer shall be one (1) year calculated from the statutory commencement of the limitation period.

If claims for damages are raised, they must be asserted by legal action within six (6) months after written rejection by the Designer. A later assertion is excluded, unless independent proceedings for the taking of evidence have been initiated within the period.

The provisions according to this Section 10.1 shall not apply to claims under the German Product Liability Act (Produkthaftungsgesetz) as well as to damages resulting from injury to life, body or health, in case of intentional or grossly negligent breach of duty or insofar as the Designer has fraudulently concealed a defect or has assumed a guarantee for the quality of the delivery item. In cases of gross negligence, however, the Designer's liability shall be limited to the foreseeable damage typical for the contract, unless another of the exceptional cases listed in the preceding sentence applies at the same time.

10.2 The Designer shall not accept any liability towards the Principal for work which is subcontracted to third parties on behalf of and for the account of the Principal, unless the Designer is at fault in the selection of said subcontractor. In such cases, the Designer is to be regarded solely as an agent.

10.3 The Principal warrants that he/she is authorised to use any original documents which he/she provides to the Designer. Should it emerge that he/she is not authorised to do so in contravention of this provision, the Principal holds the Designer free from any claims for compensation by third parties.

10.4 The Principal has to inspect all designs and final artworks for any defects (correctness of images, text, numbers, etc.) and release if applicable. The Designer bears no liability for obvious defects on designs and final artworks released by the Principal. This shall not apply if the customer is a consumer.

10.5 Complaints regarding apparent defects are to be brought to the attention of the Designer in writing within 14 days of delivery. For keeping the deadline, the complaint should be sent by letter or email in good time.

10.6 The Principal is obliged to have the legal admissibility of the design and of the other work audited independently and conscientiously before using the design and/or other work in the commercial business. The Designer is - except in cases of gross negligence or intent - not liable for the legal admissibility of his drafts or other work products. He will inform the Principal about legal doubts if he has knowledge of them. For any work products which were accepted or reproduced by the Principal, further liability of the Designer ceases.

10.7 The delivered data by the Designer are not prepared for different printing processes. That means that all necessary technical amendments such as under- or overfilling are not included and have to be arranged by the print shop before printing.

#### **11. Termination of contract**

Should the Principal terminate the contract before the due date, the Designer is to receive the agreed fee, with any deductions necessitated by any expenses which have been saved and by any executed or deliberately omitted substitute contracts (according to Section 648 of German Civil Code).

#### **12. Final provisions**

12.1 Place of performance and jurisdiction, to the extent permitted by law, Aachen.

12.2 The laws of the Federal Republic of Germany apply.

12.3 In case of discrepancies of different language versions of these General Contractual Terms, the German version is binding.