

TERMS AND CONDITIONS

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1. Validity and terms of contract

- 1.1 Nina Wolf e.U. modern life services on demand (hereafter "Agency") provides its services based on the following Terms and Conditions (T&Cs). Even if not explicitly indicated, these T&Cs apply to all legal relations between the Agency and the client(s). The T&Cs are applicable in legal relations with businesses only, hence B2B.
- 1.2 The terms and conditions valid at the time of conclusion of contract apply. Modifications or additional agreements with the client only come into effect once they are confirmed in writing by the Agency.
- 1.3 Any further terms and conditions supplied from the client are not accepted, even with knowledge thereof, unless in exception, agreed expressly and in writing. Any terms and conditions of the client are hereby explicitly rejected, and no further objection thereto required.
- 1.4 Modifications to the T&Cs shall be announced to the client and deemed to have been accepted if the client does not object in writing within 14 days; the consequences of silence on the client's part will be clarified in the notification.
- 1.5 Should individual terms of these T&Cs be rendered ineffective, the validity of other terms and contract(s) concluded upon them are not affected. Any invalid term shall be duly replaced by a valid one with similar spirit and purpose.
- 1.6 Any offers made by the Agency are non-binding and subject to change.

2. Social media

Prior to concluding a contract, the Agency expressly informs the client that the providers of social media channels (i.e. Facebook, hereafter "Providers"), as stated in their respective terms of use, reserve the right to reject or remove advertisements and promotional campaigns for any reason. Since the Providers are not obliged to communicate content or information to its users, there exists an incalculable risk for the Agency that advertisements or promotional campaigns are removed without due cause. In the event of a complaint from another user the Providers allow for a right-of-reply, but even in this case any related content may be removed immediately. The restoration of the original, rightful condition may cost some time. The Agency operates subject to the Providers' terms of use, which it cannot shape, and takes these as a basis for its cooperation with the client. With conclusion of contract, the client expressly accepts that these terms of use may influence the legal rights and duties of any contract agreed between him/her and the Agency. The Agency aims to carry out client commissions to the best of its knowledge and judgement, and in full compliance with the terms of use of social media channels. Due to the terms of use currently in effect, and the opportunity for legal objection extended to any user with the goal of removing any offending content, the Agency cannot guarantee that a commissioned campaign remains available at any time.

3. Creative and intellectual property

If the potential client requests the Agency to create a concept and the Agency delivers this prior to conclusion of contract between the two parties, the following terms apply:

- 3.1 The potential client recognises that by producing a concept, the Agency has invested and delivered costly preliminary work, without any contractual obligation on part of the client in return.
- 3.2 The concept, in part or its entirety, is protected by copyright. The use and alteration of any aspect of a concept developed by the Agency without consent is not allowed due to copyright law.
- 3.3 Outside of a subsequent conclusion of contract with the Agency, the potential client agrees to refrain from using, sharing or passing on the ideas outlined in the preliminary concept for profit or economical use.
- 3.4 The contractual parties agree that the idea or concept presented by the Agency to the potential client is an original and bespoke offer. If the client wishes to implement any part of the concept, it is understood that he/she will commission the Agency to do so.
- 3.5 The potential client may be exempted of the obligations regarding the use of creative and intellectual property through payment of fair compensation including 20% VAT. The exemption will only come into effect once the full sum of the compensation payment has been received by the Agency.

4. Scope of service, project execution and the client's obligations to cooperate

- 4.1 The scope of service arises from the service description in the Agency contract or an order confirmation, where applicable, as well as any documents related to the offer. Subsequent alterations to the scope of service require a written confirmation from the Agency. The Agency has the right to exercise creative freedom to meet the requirements specified by the client within the prescribed framework.

- 4.2 Upon receipt, all services of the Agency are to be reviewed by the client and confirmed within three business days. If the client remains unresponsive on expiry of this period, the delivered services are deemed to be approved by the client.
- 4.3 Any information and documents required by the Agency to deliver the agreed services shall be made available by the client in their entirety and in a timely manner. The client shall inform the Agency of any important issues related to the successful implementation of the contract, even if they arise once the commission is in progress. The client is held responsible for any expenses or delays resulting from incorrect, incomplete or subsequently altered information which might necessitate the replication or delay of services delivered by the Agency.

5. Third party service / External service

- 5.1 The Agency is free to render a service on its own or to enlist the contribution of competent third parties for services agreed by contract and/or to substitute such achievements ("external service").
- 5.2 Subcontractors shall be assigned either on the Agency's own behalf or on behalf of the client. Any third parties shall be carefully selected by the Agency, ensuring he or she has the necessary professional qualifications.
- 5.3 If the Agency commissions any necessary external services, these external parties are not vicarious agents of the Agency.
- 5.4 The client must stand for any obligations to third parties extending beyond the period of contract. This expressly also applies in the event of a contract termination of good cause.

6. Deadlines

- 6.1 Delivery terms and deadlines, unless explicitly indicated, are always only approximate and not binding. Definite delivery times and deadlines must be specified and confirmed by the Agency in the written form.
- 6.2 Should the delivery/services of the Agency be delayed by reasons beyond its control, for example due to force majeure or other unforeseeable events, which it could not avoid by reasonable means, the contractual obligation of the Agency is suspended for the duration of the impediment and within the limits of its effect. Delivery terms and deadlines will be extended accordingly. In the event that such a delay lasts longer than two months, both the client and the Agency are within their rights to withdraw their contractual agreement.
- 6.3 Should the Agency be in default, the client may only withdraw from the contract once he/she has given the Agency a reasonable grace period of at least 14 days, and said period has elapsed unsuccessfully. Claims for compensation by the client due to non-fulfillment or delay are excluded, unless there is evidence of wilful intent or gross negligence.

7. Early termination

- 7.1 The Agency has the right to dissolve the contract with immediate effect with good cause. Good cause is deemed to exist if
- impediments on behalf of the client render the delivery of services impossible, or if delays continue in spite of a grace period of 14 days;
 - the client continuously acts in breach of an essential obligation, such as due payment or obligation to cooperate, and in spite of a written reminder and a grace period of 14 days fails to rectify said breach;
 - there is cause for legitimate doubt concerning the client's creditworthiness and the client fails to produce, upon request, advance payment or provide a financial guarantee;
- 7.2 The client has the right to dissolve the contract without offering a grace period with good cause. Good cause is deemed to exist if the Agency continuously, in spite of a written reminder and a grace period of 14 days, acts in breach of any of the significant terms detailed in these terms and conditions.

8. Remuneration

- 8.1 Unless otherwise agreed, the fee claim for each individual service is created once it is rendered. The Agency is entitled to request advance payments in order to cover its expenses.
- 8.2 Remuneration is a net fee and shall be subject to value added tax at the applicable rate. Unless otherwise agreed, the Agency has the right to remuneration at the current market rate for its services and the granting of copyright and trademark rights.
- 8.3 Any services of the Agency not expressly covered in the agreed fee are payable separately. Any cash expenses incurred by the agency are to be settled by the client and paid in advance.
- 8.4 Cost estimates made by the agency are non-binding. Should it become foreseeable that the actual costs will exceed the written cost estimate provided by the Agency by more than 15 %, the Agency will notify the client of the cost increase. The cost overrun is deemed approved by the client unless he or she objects in writing within three business days after receipt of the notification and offers more cost effective alternatives. Should a cost overrun of up to 15 % prove unavoidable, a separate notification is not required. A cost overrun of this amount is deemed approved from the client from the outset.
- 8.5 Should the client cancel or alter commissioned services without involving the Agency – irrespective of other ongoing services he or she has entrusted the Agency with – the client is required to settle the fees for any services rendered up to that date accordingly, and reimburse the Agency for any incurred expenses. Provided the cancellation is not justified by wilful breach of duty or gross negligence on part of the Agency, the full fee (commission) is payable by the client as agreed in advance, whereas the deduction of services not yet rendered, as outlined in § 1168 of the Austrian General Terms and Conditions Act (AGBG), shall be excluded. Furthermore, the client shall indemnify the Agency and hold it against any third-party claims.

Payment of the fee does not entitle the client to rights of use for any services already rendered by the Agency; unimplemented concepts, designs or other documents are to be returned to the Agency immediately.

9. Payment / Right of retention

- 9.1 With the exception of special payment conditions previously agreed in writing, all payments are due without deductions upon receipt of the invoice. Any cash expenses and third-party fees shall be invoiced by the Agency in advance and passed on to the client without surcharge. Any product or services provided by the Agency remains in its property until full payment of all monies due has been received.
- 9.2 In case of default of payment, statutory default interest for businesses applies. Further, the client is required to settle any additional reminder and collection costs incurred by appropriate legal action. This includes the cost of two written reminders at market rate of currently at least € 20.00 per reminder as well as a written reminder of an attorney entrusted with the collection. The assertion of further claims and rights shall remain unaffected.
- 9.3 In case of default of payment the Agency has the right to demand immediate payment on any and all debts of previously completed and invoiced services for the client, as well as any and all rendered and partially rendered services.
- 9.4 The Agency is not required to provide any further services until payment of the outstanding amount has been received in full (right of retention). The obligation to pay outstanding accounts remains unaffected thereby.
- 9.5 If payment in instalments was agreed and partial payments or additional charges are not settled in due time, the Agency reserves the right to demand payment of the outstanding amount immediately and in full (immediate maturity).
- 9.6 The client does not have the right to set off its claims against claims of the Agency unless the claims of the client have been acknowledged in writing by the Agency or established in a court of law.

10. Guarantee

- 10.1 The client must notify the Agency of any deficiency – including a detailed description and in writing – immediately or within eight days after a product or service from the Agency was received or accepted, and in the case of hidden faults, within eight days of their detection; otherwise the service or product is deemed approved. In this case, any and all warranty claims, compensation for damages and avoidance on the ground of error are excluded.
- 10.2 In the event of justified and timely claims of deficiency, the client has the right for rectification or exchange of the product or services from the Agency. Defects are to be remedied within an appropriate period of time, whereas the client must provide the Agency with access to all and any documents and measures necessary to investigate and rectify the deficiency. The Agency has the right to refuse the rectification or exchange of its product or services if this is impossible or if it would involve a disproportionately high effort or expense for the Agency. In this case, the client has the legal right to change the original order or to request a reduction in price. In case the deficiency can be rectified the client is to return the deficient (physical) product to the Agency on his or her own expense.
- 10.3 The client shall be responsible for checking for and clearing any legal permissions or licensing connected to the services, especially in regards to competition law, trademark law, copyright and administrative law. The Agency is under no obligation to give warning if any permissions were approved or released by the client.
- 10.4 The warranty period lasts six months after delivery/service. The right to recourse against the Agency as outlined in § 933b of the Austrian General Terms and Conditions Act (AGBG) shall expire one year after delivery/service. The client does not hold the right to withhold payment due to deficiencies. The presumption detailed in § 924 of the Austrian General Terms and Conditions Act (ABGB) is excluded.

11. Liability and product liability

- 11.1 In cases of slight negligence, the Agency and its employees, contractors and other vicarious agents (“people”) are not liable for any property damage or financial losses on behalf of the client. This encompasses direct or indirect damages, loss of profit or consequential damages, damage due to delay, impossibility, positive breach of an obligation, fault in conclusion of a contract (culpa in contrahendo), and deficient or incomplete services. Gross negligence must be proved by the aggrieved party. Insofar as the liability of the Agency is excluded or limited, this also extends to the personal liability of its “people”.
- 11.2 The Agency cannot be held liable for claims raised against the client on grounds of services provided by the Agency (for example: advertising campaigns), as long as it has complied with its legal duty to notify or such a requirement was not discernible for the Agency, whereas slight negligence is not deemed harmful. In particular, the Agency is not liable for the cost of proceedings, the client’s attorney fees, fees for publication of court decisions or any other third party claims. The client shall indemnify and hold harmless the Agency against any of the above.
- 11.3 Claims for damages on behalf of the client expire three months after discovery of the damage. All compensation claims against the Agency are limited to the invoice amount (net) of the service.

12. Data protection

The client agrees that relevant personal data provided to the Agency by the client, such as name/company name, profession, date of birth, company registration number, representatives, contacts, company address and other addresses, telephone number, fax number, e-mail address, bank details, credit card information, VAT number, may be retained, automatically processed and used for purposes of fulfilling contractual obligations and providing support to the client.

Further, the Agency may contact the client for advertising purposes such as the sending of offers, leaflets or newsletters (in print and electronic media), and to contact the client in connection with the present or past business relationship.

The client agrees to receive electronic mail from the Agency for promotional purposes until further notice. This agreement can be revoked at any time by writing an e-mail, fax or letter using the contact details given in the header of these terms and conditions.

13. Applicable law

The contract and all arising mutual rights, obligations and claims between the Agency and the client are subject to Austrian substantive law, excluding reference norms of private international law and the UN Sales Convention.

14. Place of performance and jurisdiction

14.1 The place of performance is the location of the Agency – Vienna, Austria. Shipping or delivery is at risk of the client as soon as the Agency has handed over the goods to its chosen carrier.

14.2 It is agreed that the place of jurisdiction for any legal disputes arising from the contractual relationship between the Agency and the client is the competent Austrian court local to the agency's registered office. Notwithstanding this, the Agency is authorized to sue the client at his or her place of general jurisdiction.

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