

General Terms and Conditions
of RAWTY OG, FN 595812 w

Datum
Jan. 2023

1. Validity

- 1.1 RAWTY OG (in the following referred to as the "agency") provides its services exclusively on the basis of the following General Terms and Conditions (GTC). These shall apply to all legal relationships between the agency and the clients, even if no explicit reference is made to them.
- 1.2 The version valid at the time of contract conclusion shall apply in each case. Deviations from these as well as other supplementary agreements with the clients, shall only be effective if they are confirmed in writing by the agency.
- 1.3 Terms and conditions of the contracting party that conflict with or deviate from these terms and conditions shall only become effective, even if they are known, if they are expressly acknowledged by the agency in writing.
- 1.4 Should individual provisions of these general terms and conditions of business be invalid, this shall not affect the binding nature of the remaining provisions and the contracts concluded on the basis of them. The invalid provision shall be replaced by a valid one that comes as close as possible to the meaning and purpose of the original one.

2. Conclusion of contract

- 2.1 The basis for the conclusion of the contract shall be the respective offer of the agency or the order of the clients, in which the scope of services and the remuneration are specified. The agency's offers are subject to change and non-binding.
 - 2.2 If the clients place an order, they shall be bound to it for two weeks from receipt by the agency. The contract shall be concluded by the agency's acceptance of the order. Acceptance shall be in writing (e.g. by order confirmation), unless the agency indicates beyond doubt (e.g. by acting on the basis of the order) that it accepts the order.
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3. Scope of services, order processing and the client's duty to cooperate

- 3.1 The scope of the services to be provided shall be determined by the service description in the agency agreement or any order confirmation by the agency, as well as any briefing protocol ("offer documents"). Subsequent changes to the service content shall require written confirmation by the agency. Within the framework specified by the clients, the agency shall have creative freedom in the delivery of the service.
- 3.2 All services provided by the agency (in particular all preliminary drafts, sketches, final artwork, brush prints, blueprints, copies, color prints and electronic files) shall be checked by the clients and approved by the clients within 3 working days. After expiry of this period without feedback from the clients, they shall be deemed to have been approved.
- 3.3 The clients shall provide the agency with all information and documents required for the provision of the service in a timely and complete manner. They shall inform the agency of all circumstances that are of importance for the execution of the order, even if these only become known during the execution of the order. The clients shall bear the costs arising from the fact that work has to be repeated or is delayed by the agency as a result of incorrect, incomplete or subsequently changed information.
- 3.4 Errors in the manuscript or the client's documents shall be corrected to the best of the agency's ability, but the agency shall accept no liability for them. Proofs must be checked by the clients and returned with a note of approval. After a period of 3 days, the proof is automatically considered approved. Changes made orally and/or by telephone must be repeated in writing. The agency shall not be responsible for any defects resulting from a delivery time too short, requested by the clients.
- 3.5 The clients shall furthermore be obliged to check the documents provided for the execution of the order (photos, logos, etc.) for any existing copyrights, trademark rights or other rights of third parties. The agency shall not be liable for any infringement of such rights. If a claim is made against the agency due to such an infringement of rights, the clients shall indemnify and hold the agency unscathed and without complaint; they shall compensate the agency for all disadvantages incurred by it due to a claim by a third party

4. Third-party services / commissioning of third parties

- 4.1 The agency shall be entitled, at its own judgment, to perform the service itself, to make use of competent third parties as vicarious agents in the performance of services that are the subject matter of the contract and/or to substitute such services ("Third Party Services").

- 4.2 The commissioning of third parties within the framework of an external service shall be carried out either in the agency's own name or in the name of the clients, but in any case for the account of the clients. The agency shall carefully select this third party and ensure that it has the necessary professional qualifications. The general terms and conditions of the commissioned subcontractors shall always apply - even if the processing work is charged to the clients via the agency. The full invoice amount shall be paid in due time, a reduction of the invoice amount shall only be permissible as soon as the agency has received a credit note from the subcontractors. In case the invoice has already been transferred, the agency shall refund the difference.
 - 4.3 The clients shall assume obligations towards third parties which have been named to the clients that extend beyond the term of the contract. This shall also apply expressly in the event of termination of the agency contract due to an important reason.
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5. Deadlines

- 5.1 Agreements on deadlines and dates shall be recorded or confirmed in writing. The agency shall endeavor to meet the agreed deadlines. However, failure to meet deadlines shall not entitle the clients to assert their legal rights until they have granted the agency a reasonable extension period of at least 14 days. This extension period shall begin with the receipt of a reminder by the agency.
 - 5.2 After the unsuccessful expiry of the extension period, the clients may withdraw from the contract. An obligation to pay damages on the grounds of default shall only exist in the event of intent or gross negligence on the part of the agency.
 - 5.3 Unavoidable or unforeseeable events – in particular delays on the part of the agency's contractors – shall in any case release the agency from compliance with the agreed delivery date. The same shall apply if the clients are behind schedule with their obligations necessary for the execution of the order (e.g. provision of documents or information). In this case, the agreed date shall be postponed at least to the extent of the delay.
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6. Withdrawal from the contract

- 6.1 The agency shall be entitled to terminate the contract with immediate effect due to an important reason. An important reason shall be deemed to exist in particular if
 - a. the performance of the service becomes impossible for reasons for which the clients are responsible or is further delayed despite an extension period of 14 days being set;

- b. the clients continues to breach material obligations under this contract, e.g. payment of a due amount or duties to cooperate, despite a written warning with an extension period of 14 days;
 - c. there are justified doubts about the creditworthiness of the clients and the clients do not make advance payments at the agency's request or provide suitable security before the agency has performed;
 - d. the values of the agency are grossly violated by the work or communication of the clients. This includes violations of human rights, environmental pollution and the communication of racist, sexist or otherwise discriminating content;
- 6.2 The clients shall be entitled to terminate the contract due to an important reason without granting an extension period. An important reason shall be deemed to exist in particular if the agency continues to violate essential provisions of this contract despite a written warning with a reasonable extension period of at least 14 days to remedy the breach of contract.
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7. Fee

- 7.1 Unless otherwise agreed, the agency's fee claim shall arise for each individual service as soon as it has been rendered. The agency shall be entitled to demand advance payments to cover its expenses.
- 7.2 The fee shall be understood as a net fee plus VAT at the statutory rate. In the absence of an agreement in an individual case, the agency shall be entitled to a fee for the services rendered and the transfer of the rights of use under copyright and trademark law in the amount customary in the market.
- 7.3 All services of the agency that are not expressly covered by the agreed fee shall be remunerated separately. This applies in particular to any editing rights to designs created by RAWTY OG, including the transfer of „open data“. All cash expenses incurred by the agency shall be reimbursed by the client.
- 7.4 Cost estimates by the agency are in principle non-binding. If it is foreseeable that the actual costs will exceed the agency's written estimate by more than 20%, the agency shall inform the clients of the higher costs. The cost overrun shall be deemed to have been approved by the clients if the clients do not object in writing within 3 days of such notification and at the same time inform the agency of less expensive alternatives.

- 7.5 If the clients unilaterally change or discontinue work commissioned without the involvement of the agency - irrespective of the agency's other ongoing support - they shall compensate the agency for the services rendered up to that point in accordance with the fee agreement and reimburse all costs incurred. Unless the termination is due to a grossly negligent or intentional breach of duty on the part of the agency, the clients shall also reimburse the agency for the entire fee agreed for this order (commission), whereby the imputation remuneration of § 1168 ABGB shall be excluded. Furthermore, the agency shall be indemnified and held unscathed and without complaint against any claims by third parties, in particular by the agency's contractors. Upon payment of the fee, the clients shall not acquire any rights of use to work already performed; rather, concepts, drafts and other documents that have not been executed shall be returned to the agency without delay and may under no circumstances be passed on to third parties or used.

8. Payment, Reservation of Ownership

- 8.1 The fee shall be due for payment immediately upon receipt of the invoice and without deduction, unless special payment terms have been agreed upon in writing in individual cases. This shall also apply to the charging on of all cash expenses and other expenses. The services and products delivered by the agency shall remain the property of the agency until full payment of the remuneration including all ancillary liabilities.
- 8.2 In the event of delay in payment on the part of the clients, the statutory default interest shall apply at the rate applicable to business transactions. Furthermore, in the event of default in payment, the clients undertake to reimburse the Agency for any reminder and collection costs incurred, insofar as they are necessary for appropriate legal action. The assertion of further rights and claims shall remain unaffected.
- 8.3 In the event of default in payment on the part of the clients, the agency shall be entitled to demand immediate payment for all services and partial services rendered under other contracts concluded with the clients.
- 8.4 Furthermore, the agency shall not be obliged to provide further services until the outstanding amount has been paid (right of retention). The obligation to pay remuneration shall remain unaffected.
- 8.5 If payment in installments has been agreed upon, the agency reserves the right to demand immediate payment of the entire outstanding debt in the event that partial amounts or ancillary claims are not paid on time (loss of deadline).
- 8.6 Clients shall not be entitled to set off their own claims against claims of the agency, unless the client's claims have been recognized by the agency in writing or have been established by a court of law.

9. Presentations

- 9.1 The agency shall be entitled to an appropriate fee for participation in presentations, which, in the absence of an agreement, shall at least cover the agency's entire personnel and material expenses for the presentation as well as the costs of all external services.
- 9.2 If the agency does not receive an order after the presentation, all services provided by the agency, in particular the presentation documents and their content, shall remain the property of the agency; the clients shall not be entitled to use them further in any form whatsoever; the documents shall rather be returned to the agency without delay. The transfer of presentation documents to third parties as well as their publication, duplication, dissemination or other exploitation shall not be permitted without the expressed written consent of the agency.
- 9.3 The clients shall also be prohibited from further use of the ideas and concepts submitted in the course of the presentation, irrespective of whether the ideas and concepts are protected by copyright. Upon payment of the presentation fee, the clients shall not acquire any exploitation rights or rights of use to the services presented.
- 9.4 If the ideas and concepts contributed in the course of a presentation for the solution of communication tasks are not utilized in advertising material designed by the agency, the agency shall be entitled to use the ideas and concepts presented elsewhere.

10. Property rights and copyright

- 10.1 All services provided by the agency, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final artwork, concepts, negatives, slides), including individual parts thereof, shall remain the property of the agency, as shall the individual workpieces and design originals, and may be reclaimed by the agency at any time. By paying the fee, the clients shall only acquire the right of use (including reproduction) for the agreed purpose and to the agreed extent of use. In the absence of an agreement to the contrary with the agency, the clients may only use the agency's services themselves for a period of 5 years for the home market. The acquisition of rights of use and utilization of the agency's services shall in any case require full payment of the fees invoiced by the agency.
- 10.2 Changes to the agency's services, such as in particular their further development by the clients or by third parties acting on the client's behalf, shall only be permitted with the agency's expressed consent and payment of the fee for a buy-out as per the offer and – insofar as the services are protected by copyright – of the author.

- 10.3 The agency's consent shall be required for the use of the agency's services that goes beyond the originally agreed purpose and scope and period of use, irrespective of whether this service is protected by copyright. The agency and the authors shall be entitled to a separate appropriate remuneration for this. Unless otherwise agreed, this shall amount to 50% of the original offer amount if the period of use exceeds 5 years and shall be automatically extended to a further 5 years (with the exception of photography, see section 10.4).
- 10.4 If the service of the agency also includes the creation of photography, it should also be noted that RAWTY OG can only ever pass on the rights to the photographic design to the clients, but not the rights to photographed persons or objects – these must be agreed and observed separately.

By paying the fee, the clients acquire the right to use the photos for the purpose agreed in the offer and within the agreed temporary and geographical scope of use. In the absence of an agreement to the contrary with the agency, the clients may only use these services of the agency themselves and only for the duration of the agency contract. The acquisition of rights of use and of services of the agency with regard to photographic rights shall in any case require full payment of the fees invoiced by the agency for this purpose

The images, photographs, animations, sound recordings, audiovisual files and illustrations used in agency services are protected by copyright and may not be used by the clients without licensing.

It should be noted that images, graphics, text or other files may be subject in whole or in part to the copyright of third parties.

- 10.5 The Agency's consent shall also be required for the use of the Agency's services or advertising materials for which the Agency has prepared conceptual or design templates after the expiry of the Agency Agreement, irrespective of whether this service is protected by copyright or not.
- 10.6 The Client shall be liable to the Agency for any unlawful use in the double amount of the fee appropriate for such use.
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11. Social Media

11.1 Before placing an order, the agency expressly points out to the clients that the providers of "social media" (e.g. Facebook, hereinafter referred to as "providers") reserve the right in their terms of use to reject or remove advertisements and appearances for any reason. The providers are therefore not obliged to forward content and information to the users. Therefore, there is a risk, which cannot be calculated by the agency, that advertisements and appearances might be removed for no reason. In the event of a complaint from other users, the provider will grant the user the opportunity to make a counter-statement, but in this case the content will also be removed immediately. In this case, it may take some time to restore the original, lawful status. The agency works on the basis of these terms of use of the providers, over which it has no influence, and also bases the order of the clients on these. By placing an order, the clients expressly acknowledge that these terms of use (also) determine the rights and obligations of a possible contractual relationship. The agency intends to execute the client's order to the best of its knowledge and belief and to comply with the guidelines of "social media". However, due to the currently valid terms of use and the simple possibility for users to claim violations of the law and thus achieve the removal of the content, the agency cannot guarantee that the commissioned campaign will be available at all times.

12. References

- 12.1 The agency shall be entitled to refer to the agency and, if applicable, to the authors on all advertising media and in all advertising measures, without the clients being entitled to any remuneration for this.
- 12.2 The agency shall be entitled to refer to the existing business relationship with the clients by name and company logo on its own advertising media and in particular on the website.

The agency may refer to the cooperation with the client in analogue and digital publications, at exhibitions and in its own printed matter in a suitable form. In this context, the agency may photographically and/or illustratively depict all work designed and/or implemented by it and publish it as a reference.

13. Warranty

13.1 The clients shall assert and substantiate any complaints in writing without delay, but in any case within 3 days of the agency's performance. In the event of justified and timely complaints, the clients shall only be entitled to improvement or replacement of the service by the agency. Minor color deviations (5%) of the printouts from the result in the production run shall not be recognized as complaints.

- 13.2 In the event of justified and timely notification of defects, the client shall be entitled to improvement or replacement of the delivery/service by the agency. The agency shall remedy the defects within a reasonable period of time, whereby the clients shall allow the agency to take all measures necessary to examine and remedy the defects. The agency shall be entitled to refuse to improve the service if this is impossible or involves a disproportionately high effort for the agency.
- 13.3 The reversal of the burden of proof pursuant to Section 924 of the Austrian Civil Code (ABGB) at the agency's expense shall be excluded. The existence of the defect at the time of handover, the time of discovery of the defect and the timeliness of the complaint shall be proven by the clients.
- 13.4 It shall also be incumbent on the clients to check the service for its legal admissibility, in particular under competition, trademark, copyright and administrative law. The agency shall only be obliged to carry out a rough check of legal admissibility. The agency shall not be liable for the legal admissibility of content in the event of slight negligence or after fulfillment of any duty to warn the clients if the content was specified or approved by the clients.
- 13.5 Claims for damages by the clients, in particular due to delay, impossibility of performance, positive breach of contract, culpa in contrahendo, defective or incomplete performance, consequential harm caused by a defect or tortious acts shall be excluded, unless they are based on intent or gross negligence on the part of the agency. Lost profit or contribution margin cannot be claimed.
- 13.6 Any claim for damages may only be asserted within 6 months of knowledge of the damage.
- 13.7 Claims for damages shall be limited to the order value excluding taxes.

14. Liability

- 14.1 The agency shall carry out the work assigned to it in compliance with generally recognized legal principles and shall inform the clients timely of any risks recognizable to it. Any liability on the part of the agency for claims made against the clients on the basis of the advertising measure (use of a trademark) shall be expressly excluded if the agency has fulfilled its obligation to inform the clients; in particular, the agency shall not be liable for legal costs, the client's own legal costs or the costs of publishing judgements, or for any claims for damages or similar claims by third parties.
- 14.2 The agency shall only be liable for damages within the framework of the statutory provisions if it can be proven to have acted with intent or gross negligence. Liability for slight negligence shall be excluded. The existence of gross negligence shall be proven by the injured party.

14.3 Claims for damages on the part of the clients shall expire 6 months after knowledge of the damage; in any case, however, 3 years after the agency's infringement. The amount of claims for damages shall be limited to the net order value.

15. Applicable law

15.1 The contract and all mutual rights and obligations derived therefrom as well as claims between the agency and the clients shall be governed by Austrian substantive law.

16. Place of performance and jurisdiction

16.1 The place of performance shall be the agency's registered office. In the case of shipment, the risk shall pass to the clients as soon as the agency has handed over the goods to the carrier selected by it.

16.2 The place of jurisdiction for all disputes arising directly between the agency and the clients shall be the Austrian court with local and subject-matter jurisdiction for the agency's registered office.

The General Terms and Conditions in this version shall apply from January 2023.