



LOOPING GROUP

GENERAL TERMS AND CONDITIONS OF OLANDO GMBH

§ 1 Subject matter and scope of application

(1) The following General Terms and Conditions (“GTC”) apply to all legal transactions entered into by Orlando GmbH, hereinafter referred to in short as “Editorial House”, with its contractual partners, hereinafter referred to in short as “Client”, in particular for services and/or works in the field of advertising, publishing services, and strategic or communication consulting. The specific type of services and/or works and/or other deliverables is in each instance as presented in the concept developed by Editorial House, its offer, campaign proposals, or project-related orders.

(2) Unless otherwise agreed, these GTC constitute part of every contract entered into.

(3) These GTC apply also to all future business relations with Client without need of their express re-inclusion.

(4) Client’s terms and conditions of business, when different from these GTC as well as alterations and amendments to these GTC are applicable only if acknowledged in writing by Editorial House. This applies also if Client’s terms and conditions of business and/or of delivery are not expressly disagreed to.

§ 2 Presentations

(1) Unless otherwise agreed, conceptual and design proposals are developed and presented by Editorial House are carried out for payment of a separate presentation fee.

(2) If no order is placed following a presentation, then all deliverables, in particular the presentation documents and the designs, works, ideas, etc. contained therein, remain the property of Editorial House. Client is not entitled to exploit or edit this material, in whatever manner, be it protected by copyright or not, or to use it as a basis for the production of its own materials. In the event that no order is placed, Client must immediately return all presentation documents in its possession to Editorial House.

(3) In the event that no order is placed, Editorial House remains at liberty to use the presented ideas, works, designs, etc. for other projects and clients.

(4) Transfer of presentation documents and offers to third parties as well as publication, duplication, distribution, or other use by Client or its authorised agents oblige Client to pay a fee in the amount required for the service concerned. This is based on Editorial House’s offer or, if one is not present, on customary market terms. Unless the Parties have agreed otherwise in writing, Editorial House retains all copyrights and exploitation rights in the work presented by Editorial House in a presentation.

§ 3 Remuneration, cost estimates

- (1) Unless otherwise expressly agreed, charges are made according to actual cost based on Editorial House's hourly rates, which are shown in the applicable price schedule in effect.
- (2) Cost estimates and calculations are not binding. Client will be notified if the preliminary calculation or cost estimate is exceeded by more than 15%.

§ 4 Third-party services

- (1) Unless otherwise expressly agreed, third-party services and incidental costs, such as the costs of engaging photographers, stylists, designers and the like as well as telephone, fax, courier, travel and like expenses, must be paid for separately upon documentation.
- (2) Editorial House is entitled to order on behalf of and for the account of Client all third-party services necessary to fulfil an order. Editorial House is, in such a case, merely the representative and will refer the invoices to Client for payment after auditing them for factual and accounting accuracy.
- (3) For coordinating third-party services within the meaning of section 4, Editorial House charges, unless otherwise agreed, a commission of 15% on all third-party services.

§ 5 Duty of loyalty

- (1) Editorial House's duty of loyalty towards Client obliges Editorial House to give advice that is objective and conducive to Client's objectives and to select third-party companies accordingly, e.g. for production processes. Unless Client has expressly reserved a consultation right, third parties will be selected subject to the principle that economic efficiency must be balanced against the best possible outcome in Client's interest.
- (2) Freelance workers engaged by Editorial House or by third parties are performing or vicarious agents of Editorial House. Client agrees to engage these workers neither directly nor indirectly for projects during the 12 months following completion of the project without the participation of Editorial House.
- (3) Editorial House is obliged to maintain the secrecy of all trade secrets of Client that become known to it during the collaboration.

§ 6 Copyrights and exploitation rights, ownership

- (1) All designs, drawings, print layouts, concepts, ideas, articles, editorial contributions, etc. produced by Editorial House, are copyright-protected works within the meaning of § 2 UrhG [*Urheberrechtsgesetz*, German Copyright Act], even if they do not satisfy the requirements of § 2 UrhG. Therefore, no deliverables from Editorial House may be used, edited, or altered without the prior permission of Editorial House. Any imitation, including that of parts of designs, drawings, print layouts, concepts, ideas, etc., is prohibited. In the event of a violation, Client agrees to pay Editorial House a fee according to customary industry rates. Further claims remain unaffected.

(2) In the event that rights are transferred, the scope thereof in terms of place, time, and content will be governed exclusively by the contractual agreements or the contractual purpose; § 31(5) UrhG applies mutatis mutandis. The rights pass to Client only upon payment in full for the entire order. The transfer of granted rights to third parties and/or multiple uses are, when otherwise provided for, subject to a fee and the consent of Editorial House.

(3) If Client intends to use abroad the content designed by Editorial House, then Client will arrange with Editorial House a special fee for such use. If such an agreement does not come about, then a copyright fee of 15% of the net placement costs or of the usage value of the advertising materials, whichever is higher, will be deemed agreed.

(4) A separate fee agreement likewise must be made if Client uses outside of, or subsequent to termination of, this Agreement advertising ideas that constitute or contain an intellectual, artistic, or other advertising-related creation of Editorial House or of a third party engaged by it. If such an agreement does not come about, then an additional copyright fee of 15% of the net placement costs or of the usage value of the advertising materials, whichever is higher, will be deemed agreed.

(5) If Client intends to use the articles, editorial contributions, or other deliverables created by Editorial House within the meaning of the preceding provisions in paragraph 3 and 4, a prior separate agreement with Editorial House, in particular one concerning an additional fee, is likewise required.

(6) Editorial House has a right to be informed of the scope of such use.

(7) When such materials are published, Editorial House will be identified in the customary manner as the author. Editorial House may appropriately sign, in the manner that is customary in the industry, the advertising materials it develops and publicise the placed order for self-advertising purposes.

(8) Ownership of the results of Editorial House's work passes to Client only upon full payment of the order.

§ 7 Copyright collecting societies and artists' social insurance contributions

(1) Client is obliged to defray any existing claims of copyright collecting societies (e.g. GEMA). If Editorial House pays these claims for Client, then Client must reimburse Editorial House for the advanced payments.

(2) Client has been informed that, when a contract is awarded to a not juristic person in an artistic, conceptual, or advertising consultancy field, an artist's social insurance contribution must be paid to the Artists' Social Insurance Fund [*Künstlersozialkasse*]. This contribution will be paid by Client. It may not be deducted from Editorial House's invoice. Client is itself liable and responsible for compliance with the declaration and contribution requirements. Should Editorial House nevertheless pay the contribution for Client, Client will be subject to a corresponding claim for refund.

§ 8 Binding force of contact and discussion reports; approvals

(1) Editorial House agrees to draw up a written contact report concerning discussions with Client within three business days thereafter. The content of this contact report is binding on the contracting Parties if Client does not contradict it within a further three business days after receiving it.

(2) The contact persons to which Client refers Editorial House must have signatory authority for, in particular, the approval of budgets, cost estimates, texts, and other consultative transactions. Client must give timely written notice of restrictions on such signatory authority.

§ 9 Exclusion of competition

(1) Editorial House agrees to inform Client of potential competitive conflicts with other clients and will on request grant an exclusion of competition for particular product or service segments to be specified.

(2) For the grant by Editorial House of an exclusion of competition, Client will be under a corresponding obligation, during the term of its untermiated contract with Editorial House, not to simultaneously entrust any agencies or other third parties for advertising with consulting for, planning, design, and/or realisation of, the contractual project in the field of the contractual subject matter.

§ 10 Invoices, set-offs

(1) Editorial House is entitled to invoice Client for part payments for part performance already rendered, irrespective of whether the results of such part performance are available to Client in usable form.

(2) If Client rescinds an order before the project begins, §§ 615, 649 BGB apply mutatis mutandis.

(3) The agreed prices are to be understood as plus statutory value-added tax at the current rate.

(4) Invoices are due and payable, with no discount, within 14 days after the invoice date. Companies will be charged interest at the statutory rate once 14 days have elapsed since the invoice date. The assertion of claims for damage caused by default is not affected by this provision.

(5) Objections to invoices issued by Editorial House must be raised immediately upon receipt of the invoices, but no later than two weeks after the invoice date; they do not affect the due date. Failure to raise objections in time constitutes acceptance.

(6) Set-offs against counter-claims and assertion of retention rights are permitted only if Client's claims are not in dispute or have been declared final and absolute.

§ 11 Delivery, delivery period

(1) Delivery periods and delivery dates are binding only if they have been expressly agreed to as such, Client has properly fulfilled its duties of cooperation (e.g. by providing information or documents, drawing up service specifications, issuing approvals), and Editorial House has confirmed the dates in writing.

(2) If Editorial House is late in performing its services, a reasonable grace period must first be set for it. Only after this grace period has expired in vain may Client rescind the contract. Client may demand damages for delay in an amount not greater than the value of the order (its own contributions exclusive of advance performances and materials).

(3) In the event that unforeseen obstacles occur that are beyond the control of Editorial House, the delivery period will be extended if those obstacles have a significant effect on delivery of the deliverables. The delivery period will be extended according to the duration of such measures and obstacles. Editorial House will promptly notify Client of the occurrence and expected end of such obstacles. A cause of action for damages against Editorial House does not accrue to Client as a result thereof.

(4) If Client is late in accepting performance, or if Client omits or delays assistance that it is obliged to provide, then Editorial House may charge for the resulting non-performance in accordance with the price list in effect.

§ 12 Liability and shipping

(1) For breach of contractual or extra-contractual duties, in particular for impossibility of performance, default, culpa in contrahendo, or tortious acts, Editorial House is liable, also liable on behalf of its employees and performing agents, only in cases of wilful misconduct or gross negligence, its liability being limited to such contractually typical damage as is foreseeable when the contract is entered into. These limitations do not apply to faulty breach of material contractual duties (cardinal duties), to the absence of warranted characteristics, in cases of compulsory liability under the German Product Liability Act [*Produkthaftungsgesetz*], or injury to the body, life, or health.

(2) It is not the task of Editorial House to study legal questions, particularly those that arise in the field of copyright, competition, or trademark law. Editorial House is therefore not liable for the legal permissibility of the contents and/or design of the work results. At Client's request, Editorial House will have matters of legal permissibility reviewed, but Editorial House assumes no liability for the result of the legal review. Client will assume the costs incurred as a result of the legal review. Editorial House is also not liable for factual statements contained in the advertising concerning Client's products or services.

(3) If a cease-and-desist claim, a claim for damages, or the like is brought against Editorial House by third parties owing to the design and/or content of the work results, Client will indemnify Editorial House and hold it harmless from such liability.

(4) Documents dispatched by Client are shipped at Client's own risk. This applies also when they are sent within the same place or by employees of, or on vehicles belonging to, Editorial House. Editorial House is entitled, but not obliged, to insure deliveries in the Client's name, and for Client's account, at reasonable costs.

§ 13 Concluding provisions

(1) The place of performance for delivery and payment, and the place of jurisdiction for all disputes between the contracting Parties, is Hamburg if Client is a merchant, a legal entity under public law, or a special fund under public law. The place of jurisdiction applies also to persons other than those just mentioned if Client has no general place of jurisdiction in the country, Client moves its domicile and/or place of business out of the country immediately after the contract is entered into, or its domicile and/or place of business or usual residence is unknown at the time at which an action is brought.

- (2) Alterations and amendments to orders or to these GTC must be in text form. This applies also to removal of this formal requirement.
- (3) Should a provision of these GTC be without effect in whole or in part or lose its legal validity at a later time, the validity of the other provisions will not be affected thereby.
- (4) The contracting Parties will by mutual agreement replace an invalid provision with a provision that approaches in a legally valid manner the economic sense and purpose of the invalid provision. The preceding provision applies mutatis mutandis to gaps in provisions.
- (5) Unless otherwise agreed, German law is applicable also to contractual relationships with foreign clients.
- (6) Editorial House is authorised to process, or to have third parties process, the data entrusted to it for the contractual purposes, subject to observance of the provisions of data protection law.

