

## **General Terms and Conditions of Business of K-MB Agentur für Markenkommunikation GmbH**

Version: July 1st 2010

### **1. Applicability**

1.1. These terms and conditions apply to all declarations of intent, contracts and contractual acts or acts similar to contracts of K-MB Agentur für Markenkommunikation GmbH, Am Nordbahnhof 3, 10115 Berlin (hereinafter called "K-MB"), with its clients (hereinafter called the "client").

1.2. The client's general terms and conditions of business are hereby rejected. These shall not form part of any agreement unless the terms and conditions are expressly confirmed in writing by K-MB.

### **2. Quotations and content of the contract**

2.1. The scope and content of the services to be provided by K-MB shall be stipulated in each case by individual contract. The applicable document in this regard, insofar as it has been signed by both parties, shall be the contract entered into in writing between K-MB and the client and in the absence of such a contract, the quotation submitted by K-MB, insofar as this has not been rejected.

2.2. The services to be provided by K-MB in accordance with 2.1. shall be hereinafter uniformly referred to as the "object of performance". If nothing to the contrary is expressly agreed K-MB is not responsible for achieving a particular economic result as a consequence of its services.

2.3. Along with the services to be provided as per 2.1. K-MB shall periodically commission contractors such as artists, musicians or craftsmen in its own name but for the account of the client to provide services to the client. Insofar as nothing has already been agreed by contract or unopposed quotation, the commissioning of such contractors shall be agreed with the client and approved by the client in advance in writing or by e-mail.

### **3. Object of performance**

3.1. Insofar as nothing to the contrary is expressly agreed by individual contract the object of performance to be provided by K-MB is the agreed supply of services. Performance outcome is, on the other hand, neither agreed nor owed. Accordingly, in relation to, for instance, arranging media contacts, K-MB guarantees neither the publication of an article nor its content. K-MB is, on the other hand, responsible for the content of articles that have been provided or created by K-MB itself.

3.2. If K-MB has agreed a monthly flat rate fee with the client, in principle there is an obligation to deploy suitable staff for the agreed number of hours per month. K-MB is, however, entitled to carry over hours that have not accrued and extra hours not worked to a reasonable extent to subsequent months.

3.3. At the client's request K-MB shall provide information at any time on the status of the services. The provision of comprehensive written reports, in particular for presentation to third parties, shall be the subject of individual agreement.

3.4. K-MB is entitled to use subcontractors for the performance of its services. K-MB is responsible for selecting the employees to be entrusted with the performance of the services. This includes the right, subject to taking the legitimate interests of the client into account, to replace individual employees or an entire team in the course of a project.

3.5. If the agreed object of performance involves handing over part of K-MB's showroom, K-MB is obliged to display the exhibits requested by the client on rack space hired by the client.

3.6. Each party shall advise the other party of the name of a project manager who is authorized to provide and receive information and declarations of intent and who also assumes full responsibility for the orderly performance of the contractual services.

#### **4. Prices / price changes**

4.1. The prices stipulated in the contract or unopposed quotation shall be deemed to be agreed between the contracting parties. All prices quoted are subject to turnover tax at the rate applicable at the date of performance.

4.2. K-MB agrees regular monthly flat rate fees with clients. These are composed of a basic fee and a flat rate charge for office costs. To calculate the basic monthly fee the current hourly rate of the employees deployed on the project is multiplied by the anticipated number of hours required. K-MB and the client undertake if applicable to adjust the flat rate fee after a reasonable period of time if the number of hours calculated proves not to be appropriate. The office costs shall initially be determined collectively by K-MB and estimated using the anticipated employee hours.

4.3. In relation to project-specific services where K-MB is not commissioned on a continuous basis, the expected number of hours together with the hourly rates will be communicated in a quotation by K-MB to the client. If the estimated hours do not correspond to the hours actually required for undertaking the project, both parties undertake to adjust the fee accordingly.

4.4. The price for provision of the showroom depends on the rack space used and the price for this stipulated and agreed by K-MB.

4.5. Third party costs incurred by K-MB for subcontractors used in agreement with the client shall be refunded by the client in full but without any surcharge.

4.6. Travel expenses for employees deployed by K-MB shall be refunded by the client. Travel expenses in this context include in particular transport costs (airplanes, taxis, hire cars or trains) and accommodation costs. Only the following costs are refundable: economy class flights, first class rail travel and accommodation in four star hotels if the employee is not put up in a hotel belonging to the client.

## **5. Due date for performance and counter-performance**

5.1. The due date for accomplishment of the services by K-MB shall be determined by joint agreement between K-MB and the client, who, as far as possible, shall draw up and if necessary adjust a joint timetable.

5.2. Any foreseeable delays and required amendments to the timetable shall be immediately notified to the client by K-MB.

5.3. If K-MB is responsible for any delays in performance of the services, the grace period to be set by the client by law is hereby fixed at four weeks, commencing upon receipt of notification of the grace period by K-MB.

5.4. Insofar as there is no individual agreement to the contrary, K-MB's remuneration claim falls due in each case at the end of a month, but not, however, until two weeks after the invoice is issued.

## **6. Duty to cooperate**

6.1. The client is obliged to supply K-MB with the information necessary for providing the services. In the event of any delays for which the client is responsible, K-MB is entitled to extend the continuous services or the scope of performance by the number of fee hours incurred.

6.2. The information provided by the client shall serve as the material basis for the consultancy and planning services by K-MB. The provision of inaccurate or incomplete information shall be at the client's expense.

6.3. With the exception of concepts, texts and other services the information shall be deemed to have been provided in full and accurately. If a concept or other service has to be amended on the basis of the correction of information that has already been provided or as a consequence of the provision of additional information, this shall always be regarded as an extension to the scope of performance.

6.4. If the client does not comply with its duty to provide information K-MB must invite the client to do so by a reasonable deadline. If, despite the setting of a deadline, the client does not comply with its duty to provide information, K-MB is entitled to provide its services on the basis of the information it already has or to withdraw from the contract. In addition, K-MB may demand the refund of all expenses that it has made within the context of the contractual relationship and that as a consequence of the client's breach of duty were to no purpose or had to be incurred additionally. Any further claims for compensation for breach of duty or under section 642 BGB [German Civil Code] is unaffected.

6.5. If K-MB discovers that the object of performance must be modified in view of requirements and features identified during the production, the client will be advised without delay and presented with alternative proposals.

6.6. The same notification obligation exists if K-MB discovers that the client's statements or requirements are inaccurate, incomplete or ambiguous or are objectively incapable of being realized.

## **7. Freedom from third party rights**

7.1. K-MB makes no representation that the object of performance is free from third party industrial property rights. This applies particularly in the case where, in providing the object of performance, K-MB creates or disseminates descriptions, texts, pictures, names etc.

7.2. If the client provides K-MB with materials for the execution of the contract, the client is responsible for ensuring that such materials are free from industrial property rights or other rights of third parties which would restrict or exclude their use in conformity with contract. The client shall indemnify K-MB against all claims by third parties asserted against K-MB on account of existing rights in the materials provided. The client shall, in particular, assume all obligations towards copyright collection societies.

7.3. The parties shall notify each other in writing without delay if any claims are asserted against them on account of the infringement of industrial property rights.

## **8. Rescission of contracts**

8.1. If, prior to its performance, a contract is terminated or validly contested by the client or if the client withdraws from the contract for reasons for which K-MB is not responsible, K-MB shall charge a flat rate sum of 25% of the contract amount for incurred expenses unless the client proves that no damage or significantly lower damage was incurred.

8.2. If, after commencement of performance, a contract is terminated or validly contested by the client or if the client withdraws from the contract for reasons for which K-MB is not responsible, K-MB is entitled to demand the agreed remuneration.

8.3. K-MB reserves the right to assert for further damages claims or remuneration claims.

## **9. Warranty**

If a particular performance outcome is agreed and due on the basis of an individual contractual agreement the following provisions shall apply:

9.1. The client must notify any defects in the service in writing without delay. If subsequent improvement is possible and can be carried out at reasonable cost, K-MB has the right to remedy the defects for which it bears responsibility.

9.2. If subsequent improvement is refused, impossible, fails or is unreasonably delayed, the client has the choice of cancelling the contract or demanding a reduction in the remuneration.

9.3. The client's warranty claims become time barred within a period of six months after completion of the services in question.

9.4. K-MB is only liable for damage consequential to a defect in accordance with No. 10 below. This exemption from liability shall not apply, however, if a warranty of assured quality was given which covers the particular damage consequential to the defect and if the damage which occurred is based on the absence of this quality.

## **10. Liability**

10.1. Unless otherwise stipulated in other provisions, K-MB shall be liable for damages for the breach of contractual and non-contractual obligations only in case of intent or gross negligence by its statutory representatives, its key personnel or persons employed by it in the performance of its obligations for whom it is vicariously liable.

10.2. In cases of slight negligence K-MB is liable for the breach of material contractual obligations.

10.3. Liability existing hereunder is limited in the case of intent or gross negligence by persons employed in the performance of obligations for whom K-MB is vicariously liable and in all cases of slight negligence to foreseeable losses typical of the contract. In addition, liability for each individual loss event is limited overall to 30% of total net fee volume and a maximum of €150,000.00.

10.4. Contractual claims for damages by the client become time barred two years after the date on which they arise.

## **11. Rights to work results**

11.1. The client may only use the results of K-MB's services for the contractually agreed purposes and may not publish them without the prior express approval of K-MB. Any publication is subject to mentioning the full designation of K-MB by name; any change to K-MB's original documents requires express prior written consent. The transmission of the results of the services to third parties likewise requires express prior written consent.

## **12. Force majeure**

12.1. Force majeure or other unforeseeable events for which K-MB is not responsible that significantly hamper provision of the contractual services or temporarily render such provision impossible, which also includes strikes, lock-outs, official orders, entitle K-MB to postpone fulfilment of its services for the duration of the hindrance plus a reasonable start-up period. K-MB shall inform the client without delay of the occurrence of performance impediments of this type. If the delays resulting from an event within the meaning of sentence 1 above exceed a period of six weeks, both parties are entitled to withdraw from the contract to the extent of the performance in question. Damages claims in such a case are excluded.

## **13. Duration of contract; termination**

13.1. The duration of contract and the timetable for the services to be provided by K-MB are specified in the relevant individual contract.

13.2. The notice period is also specified in the individual contract. Notice of termination must be given in writing.

13.3. In the case of contracts for a specific term, if the contract is terminated prematurely by the client under paragraph 2 above due to circumstances for which K-MB is not responsible, the following remuneration provision shall apply: the full remuneration is payable for the services provided up until the termination of the contract. In respect of the services that are no longer to be performed following the termination, the remuneration shall no longer apply insofar as K-MB saves on expenditure and/or has generated income through alternative use of the capacity made available as a result or has willfully refrained from generating income in such circumstances.

#### **14. Applicable law**

14.1. The contractual relationship between K-MB and the client is subject exclusively to the law of the Federal Republic of Germany.

14.2. If the client is a merchant, a legal entity under public law or a special fund under public law the place of jurisdiction for all claims arising under the contract is the registered office of K-MB. The right of K-MB to institute proceedings against the client at the client's place of general jurisdiction is unaffected.

#### **15. Final provisions**

15.1. Amendments and additions to the contract, including this clause requiring the written form, must be in writing.

15.2. If individual provisions of the contract or these conditions should be invalid or if there are gaps in the contract this shall not affect the validity of the remaining provisions. A valid provision shall be agreed in place of the invalid provision that corresponds to the meaning and purpose of the invalid provision. In the case of contractual gaps a provision shall be agreed that, in accordance with the meaning and purpose of this contract, would reasonably have been agreed if the matter had been considered from the outset.