

Status: January 2012

## § 1 General Terms / Scope

(1) These General Terms & Conditions (hereinafter referred to as "GTC") shall form an integral part of all contractual agreements entered into, unless otherwise agreed in detail. The basis of a contract is the offer undersigned by us (LA RED GmbH, hereinafter also referred to as "LA RED") and the Client (hereinafter also referred to as the "Client"), which shall be referred to in the following as the "Agreement". The following GTC shall be solely valid for this Agreement; conflicting or deviating terms and conditions shall only be applicable if we have provided express written approval in advance.

(2) The subject of the offer is the service described herein. We shall undertake to execute the Agreement with the requisite care.

## § 2 Presentations

The development of conceptual and design-related proposals and their presentation by LA RED, as requested or commissioned by the Client, shall be carried out in return for payment of a separate presentation fee.

## § 3 Acceptance of Job Commissions, Remuneration/Costs

(1) Any job commissions shall also be deemed as accepted once LA RED has provided confirmation of this in written form.

(2) The prices quoted by LA RED in price offers shall apply under the condition that the information regarding the job commission, upon which the price offer was based, remains unaltered.

(3) Improvements, or insignificant or necessary changes in the execution of the services rendered shall remain reserved. Any exceedance of the total remuneration sum as quoted in the Agreement of up to 10% shall be deemed as authorised and shall not be subject to any further approval. Any changes to the scope of the job commission that go beyond this shall require a re-calculation of costs. A displacement of costs between the individual remuneration positions is permitted, provided the total remuneration sum as quoted in the Agreement is not exceeded.

(4) Any subsequent changes to the scope of the job commission at the instigation of the Client, including the additional expenses brought about as a result, shall be billed separately according to the respective LA RED price list.

(5) Cost estimates and other offer-related documentation such as concepts shall remain the property of LA RED. LA RED shall be the sole owner of copyrights and rights of reproduction pertaining to this documentation. It may not be reproduced or distributed without the authorisation of LA RED. The prices quoted by LA RED do not include any statutory value-added tax and net prices, unless expressly stated that the prices quoted are inclusive prices.

(6) Expenses incurred by LA RED relating to the purpose of realising the Agreement, or created as a necessary consequence of this realisation, must be reimbursed by the Client in all cases. This shall include all out-of-pocket expenses incurred, e.g. travel costs, subsistence expenses, couriers, fax and photocopying costs, etc.

(7) Should services be interrupted or cancelled prematurely at the request of the contractual partner, or should requests from the contractual partner be subsequently retracted, LA RED shall

reserve the right to charge the partner for all expenses already incurred (work time, travel costs, costs of procuring information, etc.).

(8) For the selection, commission and supervision of external services, LA RED shall receive a handling surcharge, to be agreed on an individual basis, for all external services commissioned by LA RED on behalf of the Client. External services shall be commissioned in the name of the Client and at the expense of the Client. Moreover, LA RED shall be entitled to demand advanced payment from the Client for external services.

#### **§ 4 Terms of Payment**

(1) The prices, remunerations, costs and expenses listed on the invoice shall be due for payment upon receipt with immediate effect and without any deduction to our bank account as detailed on the invoice. After expiry of 14 days after the invoicing date, the statutory interest on arrears shall apply and be charged. Our services shall, in the majority of cases, be charged in the form of a monthly invoice.

(2) An offset against our claims shall only be permitted with uncontested claims, claims deemed to be legally binding, or claims acknowledged by us. Any enforcement of a right to retention resulting from counterclaims that are not acknowledged or legally binding shall be excluded, except in cases where claims do not relate to the same contractual Agreement.

#### **§ 5 Cooperation and disclosure obligations**

(1) The Client shall be obliged to carry out all of the necessary acts of cooperation for the realisation of this Agreement and to provide us with support. This obligation to cooperate shall apply in particular to projects subject to deadlines, in which the cooperation of the Client is vital for ensuring the observance of deadlines. The Client shall ensure that we have been provided with all the documentation required for the realisation of the Agreement in good time and without any repeated prompting, and that we are informed without delay about all events that could be significant for the realisation of the Agreement.

(2) We shall be entitled to terminate the Agreement with a reasonable period of notice and after issuing a threat of termination, if the Client gets behind with acts of cooperation or the acceptance of the service rendered. Reimbursement of the additional expenses and damages incurred here shall remain unaffected.

(3) Delivery and completion deadlines, as well as milestones and timelines, shall be approximate indications, unless LA RED has provided express written confirmation that they are binding dates.

(4) Operational disruptions – both to the operation of LA RED and of a supplier or subcontractor – particularly in the case of strikes, lockouts, war, insurrection, official rulings, the breakdown of communication networks and gateways of other operators, disruptions to the phone network, etc., and any other cases of force majeure, shall not constitute any entitlement to termination of the contractual agreement. This shall not constitute any delay in delivery. The principals concerning the frustration of contract shall remain unaffected here nonetheless.

#### **§ 6 Minutes/Meeting Reports**

(1) If minutes and/or a meeting report is to be produced from a meeting, the content of these minutes and/or this report shall serve as the binding basis for our work.

(2) The Client shall undertake to ensure that the contact partners they appoint in writing to LA RED shall be authorised to approve work and documentation submitted, in particular with regard to the approval of budgets, cost estimates, offers, copytexts and other approval processes. Any restriction to respective approval authorisation must be communicated to LA RED by the Client in writing and in good time prior to any activity.

## **§ 7 Liability**

(1) Any client claims against us shall fall under the statute of limitations after one year. In the case of a contractual performance of services this limited term shall begin upon approval.

(2) In the case of slightly negligent breaches of duty, the liability of LA RED shall be limited to the foreseeable, contractually typical, immediate damages incurred. This shall also apply in the case of slightly negligent breaches of duty on the part of representatives or vicarious agents of LA RED. Moreover, LA RED shall not be liable to contractors in the case of slightly negligent breaches of duty for minor contractual obligations.

(3) The Client is hereby also referred to the fact that, in accordance with the current state of technological developments, temporary and non-essential errors in software programs cannot be fully excluded.

(4) All kinds of claim shall be deemed invalid if the Client intervenes with the work results of LA RED on their own initiative, if they modify these in any way, regardless of the scope and scale in which these modifications are or were undertaken, provided they cannot prove that the modifications undertaken have no influence over the error. Translation into another programming language shall also be deemed as a modification in this context.

(5) Client claims pertaining to a breach of duty shall fall under the statute of limitations after one year from the time of submission of the work or provision of the service, unless there is an accusation of fraudulent intent.

(6) A change in the onus of proof to the detriment of the Client is not connected to the aforementioned provisions.

(7) Should any claims for damages be made against LA RED by third parties based on the design and/or content of the work results, the Client shall indemnify LA RED from all liability, provided the claim is not based on a breach of duty by LA RED for which it is not liable according to the content of the Agreement.

(8) The dispatch of documents shall be carried out at the risk of the Client. This shall also apply when consignment takes place within the same location or by employees and/or vehicles of LA RED. LA RED shall be entitled, but not obliged, to insure deliveries on behalf and for account of the Client.

## **§ 8 Copyrights and Rights of Use, Intellectual Property**

(1) All rights on the preliminary work, e.g. drafts, conceptions and other work results by LA RED, in particular copyrights, rights of and intellectual property, shall remain with LA RED, even after submission of the work results to the Client, unless these rights have been expressly transferred in writing and remunerated.

(2) In the event of publication, LA RED shall be named as the author and copyright holder in the customary form. In the case of publications undertaken by LA RED, LA RED shall be entitled to refrain from mentioning the rights held by photographers/designers. The Client shall be enti-

tled to close relevant agreements in this respect with the photographers/designers they commission.

(3) In the case of a transferral of rights, the scope of this transferral shall be based solely on the contractual agreements and/or the purpose of the contract. The rights shall only be transferred to the Client after receipt of full payment for the entire job commission.

## **§ 9 Safekeeping and Insurance**

(1) Contractual services rendered and objects belonging to the Client shall only be kept for safekeeping above and beyond the delivery date after prior agreement and in return for separate remuneration. LA RED shall only be liable in cases of safekeeping for wilful acts of intent and gross negligence.

(2) The aforementioned objects, provided they have been made available by the Client, shall be treated carefully up until the delivery date. In the case of damages caused, LA RED shall only be liable for wilful acts of intent and gross negligence.

(3) If the aforementioned objects are to be insured, the Client shall be responsible for undertaking this insurance themselves.

## **§ 10 Miscellaneous**

The place of performance for delivery and payment is Hamburg, Germany. The place of jurisdiction for all disputes arising between the contractual parties is Hamburg, Germany, insofar as the Client is a business owner, a legal entity under public law or special fund under public law. LA RED shall nevertheless have the right to sue the Client at another place of jurisdiction that is effective for them. The place of jurisdiction shall also apply to others aside from the aforementioned entities if the Client does not hold any general place of jurisdiction in the country, has relocated their place of business and/or residence to outside of the country immediately after closure of the contractual agreement, or if their place of business and/or residence, or usual place of residence, is not known at the time the law suit is filed.

Unless otherwise agreed, German law shall apply to contractual agreements, including those with foreign clients, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG).

The invalidity of any individual provisions shall not affect the validity of the other provisions. Any amendments, addendums or other ancillary agreements must be made in writing.