

# GENERAL TERMS AND CONDITIONS

## 1. Subject of the contract

1.1. The following General Terms and Conditions apply to all contracts of Explain GmbH & Co. KG, hereinafter referred to as "Agency," with its contractual partners, hereinafter referred to as "Customer." Any terms and conditions of the Customer which differ from these General Terms and Conditions are accepted by the Agency only after separate and written acknowledgment.

1.2. All agreements made between the Agency and the Customer for the purpose of executing an order must be agreed in writing. Changes, supplements, and additional agreements must be made in writing in order to be effective.

1.3. These terms and conditions apply to all future business relationships with the Customer, even if they are not expressly agreed on again.

1.4. The Agency provides services in the areas of presentation (PowerPoint, eLearning, teasers, etc.), PowerPoint corporate equipment, consulting, and corporate design (media agency). The detailed description of the services to be provided will be laid out in the quotation (tender) documents, briefings, project contracts, their attachments and service descriptions of the Agency.

## 2. Components of the contract and changes to the contract

2.1. The basis for the Agency's work and part of the contract, apart from the project contract and its attachments, is the briefing to be delivered by the Customer to the Agency. If the briefing is communicated verbally or by telephone by the Customer to the Agency, the Agency will draw up a re-briefing covering the content of the briefing, which will be handed over to the Customer within 5 working days after the verbal or telephone communication. This re-briefing becomes a binding part of the contract if the Customer does not object to this re-briefing within 5 working days.

2.2. Any change and/or supplement to the contract and/or its components must be in writing. The Customer has to bear the resulting additional costs.

2.3. Events of force majeure entitle the Agency to postpone the project commissioned by the Customer for the duration of the hindrance and a reasonable start-up time. The Customer is not entitled to claim for damages from the Agency in this case. This also applies if dates and/or events important for the Customer cannot be met and/or do not occur.

2.4. If a service contract has been concluded between the customer and the agency, the service contract ends automatically upon complete fulfillment of the performance obligations from the contract. An ordinary termination during the contract period according to § 621 BGB is excluded in this case.

## 3. Copyright and usage rights

3.1. The Customer acquires a simple, temporally and locally unrestricted right to use the contractual presentation publicly after the full payment of the agreed fees. Use here means the public reproduction of the presentation and its duplication and distribution. No separate fee may be charged by the Customer to third parties for the above-mentioned types of use.

In this case, an extended license is required, which includes the public reproduction, distribution and duplication for a fee. In addition, the Customer is entitled to a processing right for the contractual presentation.

3.2. The services developed within the scope of the order are protected as personal intellectual creations under copyright law. This provision shall also be deemed agreed on if the amount of creation required by the Copyright Act has not been attained.

3.3. The Agency may sign the advertising material developed by it appropriately and in line with industry standards, only after consultation and Customer approval.

## Special case media use

(Videos, music, sounds, etc.):

The photographs and other media (videos, music, sounds, tones, etc.) used in the presentations / websites / print / and all other products are part of the contractual service. The Customer is therefore entitled to use the photographs and media within the contractual scope of the presentation. Use of the photographs and media outside the contractual service is not permitted, since the Agency does not acquire any rights in this respect. If the Customer wishes further use, the Agency may acquire further rights of use for the Customer. The Agency may charge a fee for this activity.

3.4. The agency usually uses media material which doesn't involve additional fees. If the customer asks for different media material, which must be purchased, the customer will cover the costs for the purchase (licensing) of the media.

## 4. Remuneration

4.1. The remuneration agreed in the contract applies. Unless otherwise agreed in the contract, payments are due within 14 days of invoice receipt without any deductions.

4.2. The Agency is entitled to demand an advance payment of up to 50% before commencing the service. In addition, the Agency is entitled to submit partial and interim invoices during the provision of services.

4.3. For changes or cancellation of orders, work, etc., by the Customer and/or if the conditions for the provision of services change, the Agency shall be reimbursed for any costs incurred therefrom and the Agency shall be exempted from any liabilities to third parties. In the course of the project, the Agency will inform the Customer in good time about any author corrections and the associated additional costs.

4.4. If the cancellation is made less than four weeks before the training date, 25 % of the training fee specified in the respective individual contract shall be due. If the cancellation is made less than two weeks before the training date, 50% of the training fee specified in the respective individual contract shall be due. If the cancellation is made less than seven days before the training date, 100 % of the training fee specified in the respective individual contract shall be due.

4.5. If the Agency charges as a lump sum, this does not entitle the Agency to increase its expenses as part of recalculation. In case of cost reductions, the lump sum does not entitle the Customer to demand a discount.

4.6. If the Agency charges at cost, the Agency will provide an estimate of the expected cost, but this estimate is only a non-binding communication to the Customer. The Agency will inform the Customer once 50% and 100% of the estimate has been reached. The Agency is entitled to render and bill for services that exceed 25% of the estimate.

When reaching 125% according to the estimate, the agency will inform the customer and discuss further steps. The costs given by the agency, hourly rates and expenses calculations are always based on the services carried out during the core business hours between 08.00AM and 05.00PM. If the parties agree on carrying out services outside this time frame, the agency will be permitted to charge additional fees according to the price list.

4.7. All prices stated in quotations and orders, and the resulting amounts to be paid, exclude statutory value added tax at the applicable rate.

4.8. Any work which was not part of the quotation will be priced in accordance with the Agency's price list, which you can request in writing or email.

## 5. Additional services

5.1. If the Customer requires additional services, the Agency is entitled to bill for these according to the currently valid price list.

## 6. Confidentiality obligation of the agency

6.1. The Agency is obligated to treat all knowledge that it receives from the Customer in the course of fulfilling a contract with strict confidentiality and to obligate both its employees and any third parties it uses to keep any such information completely confidential.

## 7. Obligations of the customer

7.1. The Customer shall provide the Agency with all data and documents required for the execution of the project, free of charge and on time. The Customer shall answer any of the Agency's requests immediately, the same applies to decisions to be made. These obligations are a major obligation for the Customer. If the Customer culpably does not comply with these obligations, this may result in additional expenses for the Agency, which may be charged for separately.

7.2. After provision of the contractual services, the Customer has the duty to check the contents (data, numbers, texts, information, etc.) of the contractual services once again for accuracy and correctness.

7.3 The project shall start after the client has commissioned it in consultation with your Presentation Consultant. No later than 4 weeks after the start of the project, the obligations to cooperate owed by the customer must be fulfilled regularly and promptly, in particular the necessary provision of information, documents and records. Queries from explain must be answered promptly, and decisions within the scope of the project must also be made promptly and explain must be notified of the result. If this is not the case, explain is entitled to invoice the full agreed remuneration (or the estimated costs) and to resume the provision of services if the customer fulfils his obligations to cooperate.

## 8. Guarantee and liability of the agency

8.1. The risk of legal admissibility of contractual services provided by the Agency is borne by the Customer. This applies in particular in the event that the contractual services violate competition law, copyright, or other laws. The Agency points out that according to the applicable laws it is not allowed to consult on legal risks, as the Agency may not act as a legal advisor. The Agency therefore recommends that the Customer commission an attorney with the legal examination. The Customer indemnifies the Agency against any claims of third parties, including the costs of legal defense (limited to the statutory amount of fees and costs), if the Agency was required to make use of the contractual service due to illegal content and if the Customer acted culpably. The photographs and other media executed by the Agency as part of the contractual service are excluded from the regulation of 8.1.

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8.2. The Agency is not liable in any case for the statements contained in the advertising of the Customer's products and services. The Agency is also not liable for the patent, copyright and trademark protection or registration obligations for the ideas, suggestions, concepts, and designs provided in the context of the order.

8.3. Damage claims by the Customer are ruled out, unless otherwise stated below. The above disclaimer of liability also applies in favor of the legal representatives and vicarious agents of the Agency if the Customer asserts claims against them. Excluded from the disclaimer under 8.2 are claims for damages due to injury to life, limb, health and claims for damages resulting from the violation of essential contractual obligations. Essential contractual obligations are those whose fulfillment is necessary to achieve the objective of the contract. Liability for damages that are based on an intentional or grossly negligent breach of duty by the Agency, its legal representatives or vicarious agents are excluded from the disclaimer as well. Provisions of the Product Liability Act (ProdHaftG) remain unaffected.

8.4. The Agency uses file transfer services and email to transmit data. In addition, documents are recorded on storage media. The data exchange takes place both between the Customer and the Agency (and vice versa) and between the Agency and third parties (10.2). The Customer is aware that data security cannot be guaranteed. If the Customer wants to exchange highly sensitive data in other ways, he has to inform the Agency. The Agency is entitled to charge extra for any resulting additional expenses.

## 9. Collecting societies

9.1. The Customer undertakes to pay any applicable fees to collecting societies such as Gema. If these fees are paid by the Agency, the Customer agrees to refund them to the Agency against proof. This can also be done after termination of the contract.

## 10. Services provided by third parties

10.1. Freelancers or third parties employed by the Agency are vicarious agents of the Agency. The Customer undertakes not to commission these employees, who are employed by the Agency within the scope of the contract execution, directly or indirectly with projects during the 24 months following the completion of the contract without the Agency's involvement.

10.2. The Agency is entitled to commission third parties with the provision of the contractual services.

## 11. Working documents and electronic data

11.1. All working documents, electronic data and records, which are produced in the context of order processing on the part of the Agency, can be readily provided to the Customer upon request.

## 12. Use of the customer's brands, names and logos as a reference and use of the contractual services as a reference

12.1. The Customer grants the Agency the right to use company logos, name, brands and marks of the Customer ("marks") for reference purposes.

12.2. The Agency is entitled to use these marks for its own advertising and presentation purposes. In particular, the Agency may use the marks for presentation and advertising purposes on the company website, in brochures, flyers, newspapers, magazines, at trade fairs, and at events of all types.

12.3. The Customer grants this right to the Agency free of charge.

12.4. The Customer may revoke the rights granted in writing at any time, provided that he asserts a legitimate interest. A legitimate interest exists in particular in the event of insolvency, going out of business, sale of business or if a third party claims an injunction against the Customer with respect to the use of the marks.

12.5. The Agency is entitled to use the contract services for advertising and reference purposes. The right to do so is granted to the Agency free of charge. However, the Agency may use the contractual services only if they are intended for publication (in this case one day after publication) or after it has been made available to the public. If the contractual services are only used internally by the Customer, the Agency will not use the contractual services for advertising and reference purposes.

## 13. Hourly quota

The agreed scope of the hourly quota can be utilised for all services specified by Explain from the current product portfolio at the time the contract is concluded. This includes, for example, conception, design development, slide design and the associated consulting services/quality assurance. Please note that the agreed hourly quota does not include ad hoc work. We would like to point out that, depending on capacity utilisation, you can expect corresponding waiting times for the provision of services. At the end of each month, you will receive a transparent breakdown of the hours worked and the hours still outstanding.

Please note that the agreed hourly quota includes work in accordance with the current price list. This corresponds to our hourly rate between Monday and Friday from 8.00 am to 5.00 pm (core working hours). For work outside this time window, on Saturdays or on Sundays and public holidays, higher hourly rates apply in accordance with our price list. For work outside the core working hours, the amount exceeding the net hourly rate per hour will be deducted from the value of the remaining budget. The contingent agreed here must be utilised by the end of the current calendar year at the latest (commissioning of services). Thereafter, the quota expires without Explain being obliged to provide subsequent fulfilment.

## 14. Final provisions

14.1. The Customer is not entitled to assign claims from the contract.

14.2. Off-setting or the assertion of a right of retention by the Customer is only permitted in case of recognized or legally established counterclaims.

14.3. The law of the Federal Republic of Germany applies. Place of fulfillment and jurisdiction is the seat of the Agency.

14.4. Should a provision of these General Terms and Conditions be wholly or partially invalid or lose its legal validity at a later date, this shall not affect the validity of the remaining provisions. Another appropriate provision should be mutually agreed on in place of the ineffective provision, which is economically closest to what the contracting parties would have wanted had they been aware of the ineffectiveness of the provision.

You can find our privacy policy here:  
<https://www.explain-presentations.com/datenschutz/>

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