

General Terms and Conditions of ADWORK Designagentur GmbH

1. Scope of application
 - a. These General Terms and Conditions apply exclusively. Other terms and conditions apply only to the extent that ADWORK Designagentur GmbH has explicitly agreed to this in writing. Orders are performed within the framework of a corresponding contract in accordance with the following provisions. Deviating terms always require the written form.
 - b. These General Terms and Conditions apply only to merchants within the meaning of Section 14 of the German Civil Code (BGB).
2. Offer, conclusion of contract
 - a. Our offer is subject to change, unless otherwise stipulated in the order confirmation.
 - b. A contract between the parties is concluded when the customer accepts the offer from ADWORK Designagentur GmbH, verbally, in writing or conclusively through the utilisation of services by ADWORK Designagentur GmbH. ADWORK Designagentur GmbH generally confirms concluded agreements in writing.
3. Services, performance period, third-party commissioning, reclamations
 - a. The scope and content of the services are taken, in particular, from the order confirmation by ADWORK Designagentur GmbH.
 - b. The commencement of the performance period stated by ADWORK Designagentur GmbH is dependent on the clarification of all technical and artistic questions.
 - c. Compliance with the performance obligations of ADWORK Designagentur GmbH is also dependent on the timely and proper fulfilment of the customer's obligations. The customer must ensure, in particular, that ADWORK Designagentur GmbH receives in good time all documentation necessary for the performance of the contract and that it is notified of all procedures and circumstances which may be important for the performance of the contract.
 - d. If the customer is in default of acceptance or culpably breaches another duty to cooperate, ADWORK Designagentur GmbH is entitled to demand reparation for damages incurred in this respect, including any additional expenditure. Rights to assert further claims are reserved.
 - e. Provided that the conditions of sub-section d. are fulfilled, the risk of accidental loss or accidental deterioration of performance is transferred to the customer at the point at which the customer is in default of acceptance or payment.
 - f. ADWORK Designagentur GmbH is entitled to commission external services necessary for the fulfilment of the order, in the name of and on the account of the customer. The customer hereby grants the corresponding power of attorney. If contracts for external services are concluded in individual cases in the name of and on the account of ADWORK Designagentur GmbH, the customer is obligated to indemnify ADWORK Designagentur GmbH with respect to their internal relationship for all liabilities arising from the conclusion of the contract. This includes, in particular, the assumption of costs.
 - g. We reserve the right to supply against invoice excess or short deliveries (due to production factors) of up to 10% of the ordered amount, as is usual in the industry.
 - h. Partial delivery is permissible to a reasonable extent.
 - i. Reclamations in the case of delivered printed products must be made immediately in writing, at the latest within three days of receipt of the goods.
4. Prices, terms of payment
 - a. Unless otherwise stipulated in our order confirmation, our prices apply as from our office, excluding transportation costs (e.g. dispatch or courier services); these will be invoiced separately.
 - b. Statutory VAT is not included in our prices; it will be added separately to the invoice in the statutory amount applicable on the day of invoicing. Utilisation of the artistic services of ADWORK Designagentur GmbH may be subject to social security contributions. For this, the artists' social security contribution must be paid separately.
 - c. The deduction of discounts requires separate, written agreement.
 - a. Unless otherwise stipulated in the order confirmation, our invoices are payable immediately without deductions. We are entitled to claim default interest in the amount of 9% above the applicable base rate from the date payment becomes due in the case of outstanding remuneration. If the ordered work is accepted in instalments, the corresponding partial fee becomes due upon acceptance of that instalment and the receipt of the corresponding invoice.
 - e. If an order extends over a longer term or if it requires a high financial outlay by ADWORK Designagentur GmbH, appropriate instalment payments must be made, i.e. one third of the total remuneration upon placing the order and one third after the production of half of the work.
 - f. Subsequent amendments at the behest of the customer are invoiced separately (author correction).
 - g. Special services such as the reworking or alteration of work drawings, text work, print and litho monitoring or proof approval will be invoiced separately according to time requirements.
 - h. Expenditure for technical ancillary costs, in particular for special materials, the production of hand samples, photos, interim copies, reproductions, photostetting, printing, etc., are borne by the client.
 - i. Costs and expenses for travel associated with the order will only be invoiced if the travel has been agreed with the client.
5. Defect warranty, offsetting rights, retention rights
 - a. Upon approval of drafts, final designs or work drawings by the customer, the customer assumes responsibility for the correctness of images and text. ADWORK Designagentur GmbH is released from all liability for the drafts, final designs or work drawings released by the customer.
 - b. ADWORK Designagentur GmbH is not liable for the permissibility of drafts under competition and trademark law or for their eligibility for registration. ADWORK Designagentur GmbH does not undertake any legal checks – in particular with regard to competition law – in connection with its services. The documentation transferred by the customer (e.g. photos, text, models, samples, etc.) is used by ADWORK Designagentur GmbH under the condition that the customer is entitled to their use.
- c. If ADWORK Designagentur GmbH commissions necessary third-party services for the customer in the latter's name and for its account, the respective contractor/contractual partner is not considered a vicarious agent. Liability for the services or work results of such contractors/contractual partners is excluded, unless this is contradicted by the statutory provisions.
- d. ADWORK Designagentur GmbH is liable for compensation for damages and for restitution for futile expenses within the meaning of Section 284 BGB due to defective or delayed delivery or performance, as well as for violation of other contractual and non-contractual obligations, especially based on tortious acts, only in the case of intent or gross negligence. The aforementioned liability limitations do not apply in the case of injury to life, limb or health, if a warranty or procurement risk is assumed, in the case of violation of essential contractual obligations, or in the case of liability pursuant to the Product Liability Act (Produkthaftungsgesetz). Compensation for damages due to the violation of essential contractual obligations is limited to compensation for those damages that ADWORK Designagentur GmbH should have foreseen at conclusion of the contract as a possible consequence based on circumstances recognisable to it, provided there is no intent or gross negligence or that liability is based on injury to life, limb or health or due to the assumption of a warranty or procurement risk. Wherever the liability of ADWORK Designagentur GmbH for damages is excluded or limited, this also applies with respect to the personal liability of our employees, workers, representatives and vicarious agents.
- e. ADWORK Designagentur GmbH reserves the right to rectification and/or replacement in the case of defective performance.
- f. The customer is entitled of offset only if his counterclaims are legally established, undisputed or are recognised by ADWORK Designagentur GmbH. The customer may exercise rights of retention only insofar as his counterclaim relates to the same contractual relationship.
6. Ownership, rights of use
 - a. ADWORK Designagentur GmbH reserves ownership of the delivered goods until all payments from the supply contract have been made. In the case of conduct by the customer contrary to the terms of the contract, in particular in the case of default of payment, ADWORK Designagentur GmbH is entitled to repossess the delivered goods. Repossession of the delivered goods constitutes withdrawal from the contract. ADWORK Designagentur GmbH is entitled to exploit the purchased goods after their repossession.
 - b. The operational items, particularly data, negatives, lithos, etc., used by the customer for the manufacture of the contractual goods remain the property of ADWORK Designagentur GmbH, even if these have been invoiced, and can only be used by the latter. All drafts, designs, drawings, print templates, concepts, samples, etc. must be returned to ADWORK Designagentur GmbH, even if these are not implemented. Any other further use, even if this use is partial or in the form of extracts, requires the written approval of ADWORK Designagentur GmbH.
 - c. All drafts, designs, drawings, print templates, concepts, samples, ideas, etc. prepared by ADWORK Designagentur GmbH are copyright protected works, even if these do not meet the requirements of Section 2 of the German Copyright Act (UrhG). Any drafts and designs provided in the context of presentations or otherwise must be handled confidentially, unless otherwise agreed in writing. If no contract is awarded after a presentation, all services remain the property of ADWORK Designagentur GmbH. The customer is not entitled to use or edit this material in any way or form, nor to use it as the basis for the production of its own materials. In the case that a contract is not awarded, the customer must immediately hand back to ADWORK Designagentur GmbH all presentation documents in its possession. If no contract is awarded, ADWORK Designagentur GmbH reserves the right to use the presented ideas, works, drafts, etc. for other projects and customers.
 - d. The copyright and rights of use are retained by ADWORK Designagentur GmbH. ADWORK Designagentur GmbH retains the ownership rights and copyright to illustrations, drafts and work drawings and other documentation. These may not be altered, including the authorship attribution, in the original or in reproduction. All imitation, even of parts or details, is prohibited. The customer requires the explicit, written permission of ADWORK Designagentur GmbH before passing them on to third parties. The design process and the compensation thereof is not associated in any way with the transfer of rights of use. This requires a separate agreement. An additional fee for the purposes of issuance of these rights is a prerequisite for transfer. ADWORK Designagentur GmbH can use drafts for further interested parties without limitation. Transfer of the rights of use by the customer to third parties requires written consent.
7. Storage and surrender of documentation
ADWORK Designagentur GmbH stores the documents it creates and those submitted to it in connection with the fulfilment of the contract, as well as communication undertaken with regard to the contract, for a period of 2 years. After settlement of all claims arising from the contract, ADWORK Designagentur GmbH must surrender all documents to the customer which it received in connection with the order from the customer or on its behalf, upon the latter's request.
8. Confidentiality
ADWORK Designagentur GmbH is obligated by law to keep confidential all facts that have become known in connection with its activities for the customer, irrespective of whether they concern the customer itself or its business connections, unless the customer releases it from this obligation to confidentiality.
9. Final provisions
 - a. Provided that the customer is a merchant, place of jurisdiction is based on the location of the registered office of ADWORK Designagentur GmbH.
 - b. The law of the Federal republic of Germany applies.
 - c. Unless otherwise stipulated in the order confirmation, the registered office of ADWORK Designagentur GmbH is the place of performance.
 - d. If one or more of the above provisions are invalid, the validity of the other provisions is not affected.