

General Terms and Conditions ("GTCs") Basis KG

Trappelgasse 4/20,
1040 Wien,
FN291036w

Effective from November 1st 2010

1. General Terms

- 1.1. These GTCs contain the entire agreement between the Customer and Basis KG. They shall also be effective for all future business relations between the parties, even without further explicit reference to them.
- 1.2. No terms opposing to these GTCs shall be effective unless explicitly accepted in writing and signed by Basis KG. No amendment to these GTCs shall be effective unless the same shall be in writing and signed by the parties.
- 1.3. Basis KG is granted the right to modify these GTCs. Unless the Customer does not contradict within 2 weeks, all modifications to these GTCs shall be effective after notification to the Customer.

2. Conclusion of Agreements

- 2.1. Offers by Basis KG are - in particular regarding the scope of services and price, amount, respites, terms of delivery and side services - sine obligo and shall be seen as invitation to make an offer. The Customer shall be committed to his offer (order or request) for two weeks. An agreement shall be concluded by a confirmation of order in writing by Basis KG or by actual fulfillment of the agreement by Basis KG. Only if Basis KG explicitly refers to it as binding, an offer by Basis KG shall be binding, in which case the Customer shall accept the offer within two weeks in writing.

3. Goods and Services

- 3.1. Basis KG provides services in the area of 3D-animation, graphic design for computers, computer generated animated graphical contents, computer-assisted reworking of films and videos, pipeline development, etc.
- 3.2. The Customer determines the extent of the services in his offer, therein agreed terms and descriptions and separately agreed conditions. The Customer shall be responsible and liable for the adequacy of the services for his purposes.
- 3.3. Accordingly the Customer is responsible for all plans, outlines, proposals etc, that are the subject matter of an agreement, even though Basis KG provided them. The Customer is obliged to review the plans, outlines, proposals etc. Unless he does not disagree in writing within three days, they shall be considered as approved as subject matter of the agreement.
- 3.4. Except for the technical requirements and specifications there is latitude of possibilities to realize the agreed service resulting from its nature. If the Customer determines the subject matter of the contract precisely, there is a smaller range of realization of the agreed project for Basis KG. Accordingly it will be easier to evaluate the conformance of the service with the agreement. Therefore, it is in the interest of the Customer to specify the desired services as precisely as possible, whereas these specifications shall only become effective and subject matter to the agreement, if they are agreed on in writing and signed by the parties.

4. Services and Presentations precedent to Conclusion of the Agreement

- 4.1. All services precedent to the conclusion of an agreement, in particular for participation in presentations, shall be remunerated appropriately. Basis KG shall at least receive all personnel and material costs for the services, presentations and costs for all external services.

- 4.2. If proposals and presentations do not lead to the conclusion of an agreement, all services provided by Basis KG, furthermore all presentations files and proposals shall remain in the ownership of Basis KG. The Costumer must not use information and files received in this phase, unless an agreement is concluded. All files must be returned to Basis KG immediately.
- 4.3. If the presentation leads to the conclusion of an agreement, the remuneration mentioned above shall be deducted from the total remuneration for all services after fulfillment of the contract.
- 4.4. Basis KG shall have the right to use elaborated proposals, ideas and concepts beyond the single project.
- 4.5. Unless Basis KG explicitly agrees in writing, the Costumer must not circulate, copy, publish, otherwise divulge or use any information received in the presentations.

5. Fulfillment and Obligations to cooperate

- 5.1. During the fulfillment of the contract, Basis KG and the Costumer stay in mutual contact. Basis KG has the right to make use of the services of third parties (subcontractors, freelancers) for the fulfillment of its obligations. The subcontracting of a third party may be realized on behalf of the Costumer or in the name of Basis KG. In both cases the subcontracting is made for account of the Costumer. Basis KG is obliged to carefully select any third party and to ensure, that they have the essential professional qualifications.
- 5.2. The Costumer will provide all information and documents necessary to fulfill the agreement. He will inform Basis KG about all procedures that may be important for the realization of the agreement, even though the information emerges during the fulfillment. The Costumer bears all costs caused by works that have to be repeated, that turn useless or delayed as consequence of incorrect, incomplete, late or subsequently changed information provided by the Costumer.
- 5.3. The Costumer shall have the obligation to scrutinize all material provided to Basis KG, with respect to copyrights or rights of third parties (e.g. photos, logos, models). Basis KG is not liable for any infringement of such rights. If there is a claim against Basis KG based on the infringement of any such rights, the Costumer shall indemnify and hold Basis KG harmless. He shall compensate all damages and expenses incurred by filings of third-party claims.

6. Due Days and Terms

- 6.1. Basis KG is anxious to keep the appointments and meet the deadlines. Delivery dates can only be met, if the Costumer provides all necessary documents and information and fulfills all obligations to cooperate during the realization of the project.
- 6.2. All agreements about time limits and due dates shall only be effective if agreed on in writing and signed by both parties. The Costumer has no rights out of non-fulfillment of the agreement at the agreed dates unless he gives Basis KG the opportunity within an appropriate respite, but at least 14 days, to fulfill the agreement. The respite begins when Basis KG receives a dunning letter.
- 6.3. In case Basis KG does not fulfill the agreement within above-mentioned limits, the Costumer shall have the right to rescind the contract. The Costumer shall only receive damages under the title of delay if Basis KG breaches the contract intentionally or grossly negligent.
- 6.4. Inevitable and unpredictable events, in particular delays of third parties in order to fulfill the agreement, discharge Basis KG from the dates fixed. Basis KG is also discharged from dates fixed, if the Costumer delays to fulfill his obligations

mentioned in the agreement or in these GTCs. The dates fixed shall be rescheduled taking into account the delay caused by the Costumer.

- 6.5. If the reasons for the delay are caused by the Costumer, time limits will be rescheduled at least by the duration of the delay caused by the Customer.
- 6.6. Services are fulfilled in due time, if Basis KG sends the service by 12 pm of the closing date. If the Costumer requires changes or adjustments in the fulfilled service, Basis KG will take all efforts to change or adjust the services within the agreed time. If those changes cannot be realized within the agreed time, this shall not be regarded as a delay on the part of Basis KG.

7. Remuneration

- 7.1. For the rendering of services and as compensation for the usage rights Basis KG shall receive the remuneration agreed with the Costumer. Basis KG charges the expenditure of time with the actual rates of remuneration by Basis KG, unless the parties agree on a fixed price. The prices stated by Basis KG shall be seen as estimates of the costs.
- 7.2. If parts of the agreed services are fulfilled, Basis KG is entitled to a remuneration for each part of the agreed services. Basis KG shall have the right to claim an advance of 50% of the agreed remuneration.
- 7.3. All services of Basis KG that are not covered by the agreed remuneration shall be remunerated separately by the Costumer, in particular all side services and cash expenditures (e.g. overnight stays, travelling expenses, extraordinary forwarding expenses etc.). Changes or adjustments to the fulfilled service requested by the Costumer are charged at the actual rates of Basis KG, in any event in an appropriate way.
- 7.4. Estimates of the costs shall be sine obligo. If in a particular case the actual costs exceed the estimated costs by more than 20%, Basis KG will notify the Costumer about the excess. The costs exceeding the estimates shall be deemed approved by the Costumer, if the Costumer does not contradict and offer a cost-saving alternative within 3 days after notification in writing.
- 7.5. If services cannot be (entirely) fulfilled for reasons independent from Basis KG, Basis KG shall receive an appropriate remuneration and a compensation for expenditures. The Costumer shall not acquire any rights in the results of these services. Not accomplished concepts, blueprints etc. shall be returned immediately to Basis KG.

8. Payment

- 8.1. The currency for all prices is EURO. They are net prices, that means without the value added tax/ sales tax.
- 8.2. Invoices become due with the invoice date net cash. The Costumer shall pay for delayed payments default interests as required by section 352 UGB.
- 8.3. The Costumer is not entitled to set off counterclaims and has no right of retention as consequence of claims by reason of breach of representations or damages unless Basis KG recognizes the incompleteness of the service fulfilled or admits the existence of mentioned claims in writing.
- 8.4. Neither party shall be entitled to the assignment of claims unless Basis KG authorizes the assignment in writing.
- 8.5. Effectuated payments shall be used to clear the oldest debt. New orders are accepted under the reserve of the complete payment of all invoices. Fulfilled services shall be remunerated in any event. New orders can only be defaulted, if the Costumer has paid all other outstanding debts.

8.6. The Costumer shall have the obligation to pay all costs incurred from the collection of debts, in particular expenses of collection or other adequate costs incurred in asserting legal rights.

8.7. In case of default of payment by the Costumer all obligations of the Costumer shall become due immediately.

9. Proprietary Rights and Copyright Protection

9.1. All services fulfilled including presentations (e.g. concepts, suggestions, ideas, drafts, preliminary drafts, scribbles, final drawings, slides etc.) and single parts thereof, shall remain in the sole property of Basis KG. They may be reclaimed by Basis KG, in particular after termination of the business connection.

9.2. After payment of the remuneration the Costumer shall only acquire the non-exclusive right of use (including the right of reproduction) in the agreed way and for the agreed purpose. The Costumer shall use the services fulfilled by Basis KG only for himself, in Austria and only for the agreed duration unless there is a contrary agreement in writing and signed by both parties. All services remain in sole ownership of Basis KG until payment of all invoices. The concession of licenses, rights of use and exploitation shall also remain in sole ownership of Basis KG until payment of all active debts.

9.3. Services must not be changed by the Costumer unless Basis KG or - if there is an other originator - the originator explicitly agree to those changes.

9.4. The use of services fulfilled by Basis KG must not exceed the agreed purpose and agreed range of temporal and regional use unless Basis KG, independently from copyright protection, explicitly agrees to those modifications. Basis KG shall receive an appropriate remuneration in return for these particular cases that will be agreed separately.

9.5. If the services are protected by copyright, the Costumer must use the services under the designation of the copyright owner. Furthermore, the Austrian laws concerning copyright protection and protection of works shall be applied.

10. Representations, Notice of Defects

10.1. Basis KG represents that services will be realized in consideration of standards customary within its business. The Costumer is aware, that there is a great scope and discretion in the realization of the services by Basis KG, which accordingly is not subject to any representation. Because of the aspects of aesthetics and taste in realization of graphical works, Basis KG is not able to warrant any specific quality of its works regarding these aspects.

10.2. 10.2 All services shall be scrutinized by the Costumer and possible defects shall be contested within three days. If defects are not contested within this time, services shall be considered approved. If the notice of defect is justified and delivered within time, the Costumer has the right of rectification of defects by Basis KG. If there is a defect, the rectification of defects takes priority over reduction of price or cancellation of contract. If the notice of defect is justified, defects will be rectified within an appropriate time. Basis KG is not liable for costs of execution by substitution. If the notice of defect is not made in time, the Costumer loses above-mentioned rights.

10.3. 10.3 There is no reversal of the burden of proof in accordance to § 924 ABGB. The Costumer shall prove that there was a defect at the time the services were delivered.

10.4. 10.4 Basis KG is not liable, if the Costumer himself or via a third party arbitrarily changes the services fulfilled, unless there is an approval by Basis KG in writing.

11. Indemnification

- 11.1. 11.1 Basis KG undertakes to indemnify the Costumer against any expenses reasonably incurred and costs and loss incurred as direct consequence of any default by Basis KG in the performance of the obligations under the agreement, if the default is caused by willfully or grossly negligent acts. Basis KG shall not be liable for damages caused by negligence. The Costumer has the burden of proof. There is no compensation for consequential damages, pecuniary detriment, loss of profit, non-fulfilled savings and damages out of claims from third parties.
- 11.2. The Costumer is liable for abidance by the law - in particular for abidance by the competition law, criminal law, advertising law and trademark legislation - during the realization of services fulfilled or recommended by Basis KG. The Costumer shall only approve all measures proposed by Basis KG, once he has verified the legal admissibility or is willing to bear the risks of the realization of a measure.
- 11.3. Damages are limited to the amount of the remuneration agreed, without value added tax/sales tax.

12. Miscellaneous

- 12.1. All claims of the Costumer prescribe within 12 months. Damages in consequence of willful acts prescribe within respites regulated by law.
- 12.2. Basis KG shall have the right to allude to business relations to the Costumer including fulfilled services with their names and company symbols in the Internet or in own media unless the Costumer contradicts in writing.
- 12.3. The laws of the Republic of Austria shall apply to all legal relations arising in connection with this contract, with exception of the conflict of law rules and CISG.
- 12.4. The place of performance is Vienna. Vienna, Innere Stadt, shall be the venue for all legal disputes arising from this contract.
- 12.5. If individual terms of this contract are or become ineffective and/or void, either as a whole or in part, this fact shall have no effect on the validity of the remainder of the contract. Ineffective/void terms shall be replaced by such terms which best serve the purpose of this contract.
- 12.6. Modifications of and amendments to this contract shall only be effective if they have been agreed on in writing.
- 12.7. Deliveries will be effectuated to the last named postal address, e-mail or via facsimile.