

# General Terms and Conditions

effective as of 01/04/2019

**LINKING  
BRANDS**  
*by team4tourism*

## 1. Applicability

- 1.1. The company TEAM4TOURISM E.U. hereinafter referred to as agency – renders its services inclusively on basis of the General Terms and Conditions (GTC) below. This also applies to all future business relations, even if they are not expressly referred to.
- 1.2. Ancillary agreements, caveats, amendments or additions to these General Terms and Conditions must be in writing to be effective; this also applies to forgoing the requirement for the written form.
- 1.3. Conflicting terms and conditions or those deviating from these General Terms and Conditions as provided by the contractual partner shall not become part of the contract even when acknowledged, and only become effective when they have been expressly excepted in writing by the agency.
- 1.4. If individual provisions of these GTC should be void, the bindingness of the other provisions and contract concluded on the basis of them shall not be affected by this. The void provision is to be replaced by one that is valid and which gets as close to the intent and purpose of the void provision as possible.

## 2. Conclusion of contract

- 2.1. The basis for the conclusion of contract is the respective offer by the agency or the order by the customer, in which the scope of services and remuneration is recorded. All offers by the agency are subject to change and non-binding.
- 2.2. Reasonable changes remain reserved. Likewise, the offers are subject to the availability of the advertising platforms and advertising partners offered.
- 2.3. If the customer places an order, the customer will be bound to it for two weeks from the agency having received it. Orders by the customer shall only be deemed accepted following written order confirmation by the agency, unless the agency makes it clear that it accepts the order by acting on the order.
- 2.4. The written order confirmation can only take place with legal effect via the persons mentioned by name (see offer sheets below).
- 2.5. All contractual amendments or changes to the GTC are to be made in writing. This also by means of signing or written confirmation by management or institutions/agencies with the power to represent. Employees/staff of the agency without power to represent or agents cannot issue any legally effective statements vis-a-vis the customer. Acceptance via suppliers.

## 3. Scope of service and duty of cooperation by the customer

- 3.1. The scope of the services to be rendered results from the customer's order or the specification of services or the particulars in the contract. Subsequent changes to the service content must be in writing.
- 3.2. All services by the agency (in particular all preliminary designs, drafts, final artwork, proofs, blueprints, colour prints, banners and Internet presences) are to be checked by the customer and approved within two days. In case of approval being made not in time, they shall be deemed as approved by the customer.
- 3.3. The customer will promptly provide the agency with all information and documents required for rendering the service. Photo, audio, text and similar materials are to be provided without delay and in a customary, immediately usable, if possible digital format. If the material provided by the customer needs to be converted to another format, the customer shall bear the costs for this.
- 3.4. Furthermore, the customer will inform the agency of all processes that are of significance for performance of the order, even if these circumstances become known only during performance of the order. The customer shall bear the costs that arise as a result of the agency having to repeat or delay work due

to the customer's incorrect, incomplete or subsequently changed particulars.

- 3.5. The customer is furthermore obligated to check the documents (photos, logos, etc.) made available for performance of the order for any existing copyrights and trademark rights or other third-party rights. The agency shall not be liable for any infringements of such rights. In the event that any such claim is raised against the agency, the customer shall indemnify and hold harmless the agency; the customer is to compensate the agency for all financial and other losses the agency may suffer due to such third-party claims.
- 3.6. The customer must not offend legal prohibitions or common decency in terms of form, content and objective pursued with his advertising measure. The customer ensures that no discriminating, racist, violence-glorifying, erotic, pornographic as well as radical right- or left-wing content is spread by means of the services provided by the agency, nor such content referred to. The agency shall not be liable to carry out any checks in this regard. In case the customer's advertising measures are in breach of legal prohibitions or common decency, the customer shall be liable.
- 3.7. The customer is to provide digitally transferred documents and records free of so-called computer viruses or other sources of harm. He is in particular obligated to use commercially available protection programmes for this purpose, which shall be strictly state-of-the-art. If any sources of harm exist on a transferred file, the agency will not make use of this and will, insofar as required in order to avoid or limit any damage, delete it without the customer being authorised to claim for damages in this respect. The customer shall be liable to the agency for all damages that arise from these sources of harm infiltrated by the customer.

## 4. Third-party services / Commissioning of third parties

- 4.1. The agency, at its own discretion, is authorised to perform the service itself, to use third parties in performing the services covered by the contract and/or substitute such services ("agent").
- 4.2. Commissioning of agents shall be made either in one's own name or in the name of the customer, for which the customer hereby expressly grants the relevant authorisation. In any case, however, this shall take place at the customer's expense.
- 4.3. The agency shall carefully select agents and pay attention to them having the required professional qualifications. The agency does not assume any liability or guarantee for the functionality and accessibility of products and services by third parties.
- 4.4. The customer is aware that the time for domain name registration or activation cannot be determined or guaranteed by the agency. If the agency is tasked with taking over an already existing domain and this changeover is rejected by the NIC, the customer shall bear the costs incurred. By applying for the domain name change, the agency has fulfilled its obligation for domain name registration.

## 5. Fee

- 5.1. Unless otherwise agreed, the agency's claim to a fee shall arise for each individual service, as soon as this has been rendered. The agency is authorised to demand advance payments in order to cover its expenditures.
- 5.2. For the services rendered and as compensation for the copy and trademark rights, the agency, in the absence of a divergent agreement, shall receive a fee in the amount of 15% of the advertising budget transacted via the agency. The fee is excluding statutory VAT.

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- 5.3. All services of the agency, which have not been expressly compensated with the agreed fee, shall be remunerated separately. This applies in particular to all ancillary services of the agency. All cash expenditures incurred by the agency are to be refunded by the customer.
- 5.4. Quotations by the agency are strictly non-binding. If it can be foreseen that the actual costs exceed the costs estimated by the agency in writing by more than 10%, the agency will notify the customer of the higher costs. The cost overrun shall be deemed as approved by the customer if and when the customer does not object in writing within three days after this notification, announcing more economical alternatives at the same time.
- 5.5. For all work which, for whatever reason, has not been put into effect by the customer, the agency shall be entitled to commensurate remuneration. By paying this remuneration, the customer acquires absolutely no rights to this work; unimplemented concepts, designs and other documentation shall instead be immediately returned to the agency, except for the customer's data, which are to be returned to the same.

### 6. Presentations

- 6.1. For taking part in presentations the agency shall be entitled to a commensurate fee, which in absence of any agreement shall cover at least the full expenditure on personnel and materials by the agency for the presentation, as well as the costs of all third-party services.
- 6.2. If after the presentation the agency does not receive an order, all services of the agency, in particular the presentation documents and their content, shall remain in ownership of the agency. The customer is not authorised to continue using these in whichever form; the documentation shall instead be immediately returned to the agency. Passing on presentation documents to third parties as well as their publication, reproduction, dissemination or other utilisation is not permitted without the express consent of the agency.
- 6.3. Likewise, the customer is prohibited from using ideas and concepts introduced in the course of the presentation, regardless of whether these ideas and concepts become copyrighted. By paying the presentation fee, the customer does not acquire any rights of exploitation and use to the presented services whatsoever.
- 6.4. If ideas and concepts for solving communication tasks introduced during the course of a presentation are not utilised in advertising materials designed by the agency, the agency shall be authorised to use the ideas and concepts presented elsewhere.

### 7. Property right and copyright

- 7.1. All services by the agency, including those from presentations (e.g. suggestions, ideas, drafts, preliminary designs, scribbles, proofs, concepts, negatives, slides) as well as individual parts thereof remain in ownership of the agency as do the individual workpieces and original designs, and can be reclaimed by the agency at any time, in particular upon termination of the contractual relationship. By paying the fee, the customer only acquires the right of use (including reproduction) for the agreed purpose and agreed scope of use. Unless otherwise agreed on with the agency, the customer may only use the agency's services himself, only regionally and only for the duration of the contract. The acquisition of usage and exploitation rights to services by the agency in each instance requires the full payment of the fees invoiced by the agency for this.
- 7.2. Changes to services by the agency, such as in particular their further development by the customer or by third parties acting for the customer, are only permitted with the express consent by

the agency and – if the services are protected by copyright – the creator.

- 7.3. For using the services of the agency, which go beyond the originally agreed purpose and scope of use, the agency's consent is required regardless of whether this service is protected by copyright. For this, the agency and the creator shall be entitled to separate commensurate remuneration.
- 7.4. For using the services of the agency or advertising materials for which the agency has developed conceptual or creative models, the agency's consent is also required after termination of the cooperation, regardless of whether this service is protected by copyright or not.
- 7.5. For this, the agency shall be entitled to, in the first year after expiration of the contract, the full claim for the agency commission agreed on. In the second and third year after expiration of the contract, only half and a quarter, respectively, of the remuneration agreed on in the contract. In the fourth year after expiration of the contract, no more agency commission is to be paid.

### 8. Marking

- 8.1. On all advertising materials and all advertising measures, the agency is authorised to indicate the agency and, if necessary also the creator without the customer being entitled to any claim for compensation for this.
- 8.2. The agency, subject to the customer's written revocation possible at any time, may refer to its existing business relationship with the customer on own advertising media and in particular on its Internet website using names and company logo. Furthermore, the agency is authorised to publicly display or refer to the services rendered for demonstration purposes, unless the customer can assert a justified interest to the contrary.

### 9. Dates

- 9.1. Deadline and date arrangements are to be recorded and confirmed in writing. The agency endeavours to meet the agreed deadlines. Failure to comply with the deadlines shall, however, authorise the customer to assert the rights legally due to him only when he has granted the agency reasonable extension period of at least 14 days. This period begins when the agency receives the reminder.
- 9.2. After fruitless expiration of the extension period, the customer can withdraw from the contract. The agency shall be obliged to pay compensation for damages resulting from the delay, only where this has occurred through intent or gross negligence on part of the agency.
- 9.3. Unavoidable or unforeseeable events – particularly delays on part of contractors of the agency – discharge the agency from complying with the agreed delivery date. The same shall apply if the customer is behind schedule with fulfilling his contractual obligations required for the completion of the order (e.g. provision of documents or information). In such cases, the agreed deadline shall be postponed by at least the extent of the delay.
- 9.4. In case of unforeseeable cancellation by a brand partner, the agency shall endeavour to find equivalent replacement as well as notify the customer immediately of the cancellation of the deadline or any changes to the deadline.
- 9.5. The agency's delivery obligations are met as soon as the work and services are dispatched. The risk of conveyance (e.g. damage, loss, delay), regardless of which medium is used for conveyance, shall be borne by the customer.

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### 10. Withdrawing from the contract

- 10.1. The agency shall be authorised to withdraw from the contract in particular if and when
- performance of the service is impossible due to reasons attributable to the customer or is further delayed despite setting a final deadline; legitimate concerns about the creditworthiness of the customer and the customer not making any advance payments nor provide suitable security prior to performance by the agency.
  - Internet services are repeatedly used in violation of the contract or used once in a way that is in gross violation of the contract. Furthermore, this will result in immediate revocation of the access authorisation, and the expenditure for localisation, determination of the extent and rectification of the damage will be charged to the customer.

### 11. Payment, reservation of title

- 11.1. The agency's invoices are due net without any deductions from the invoice date and, unless otherwise agreed on, are payable within ten calendar days starting from the receipt of the invoice. In case of delayed payment, interest on arrears in the amount of 9.2% above the respective discount rate of the Austrian National Bank shall apply as agreed. Delivered goods remain the property of the agency until paid in full.
- 11.2. The customer undertakes to pay all costs and expenditures related to collecting the claim, such as in particular collection expenses or other expenses necessary for appropriate prosecution.
- 11.3. In case of delayed payment on part of the customer, the agency can immediately declare due all services and subservices rendered within the scope of other contracts concluded with the customer.
- 11.4. The customer is not authorised to offset own claims against claims by the agency, unless the customer's claim has been acknowledged by the agency in writing or established by a court. A right of retention on the part of the customer is excluded.
- 11.5. For any third-party costs to be expected (e.g. printing costs, costs for producing advertising materials, advertising media costs, etc.) the agency can invoice these costs in advance in the amount to be expected already after conclusion of contract.
- 11.6. Where the parties have not come to any agreement on the remuneration for a service by the agency where, given the circumstances, the customer can only expect the rendering of that service in exchange for remuneration, the customer must pay the usual remuneration for this service.  
In case of doubt, the rates usually charged by the agency for its services shall apply.

### 12. Data protection

- 12.1. If and when data is transferred to the agency – in whichever form – the customer is obligated to make backup copies of this. In case of data loss, the customer is obligated to send the respective databases to the agency once more at no cost.
- 12.2. The customer will receive a user ID and password for maintaining his virtual hosts/databank CMS, as needed for the campaign. In this regard, the customer is obligated to carefully store the personal password for his access identification and to protect it from access by third parties as well as from being misused and lost. The customer indemnifies the agency from costs and claims by third parties, which arise from reaching the above-mentioned obligations.

- 12.3. The customer is aware that for all participants in the transmission path there is a possibility of the data being transmitted to be intercepted; he accepts this risk. The agency furthermore does not assume any guarantee for the data or files stored on a virtual host/server not being accessible to third parties.

### 13. Warranty and compensation for damages

- 13.1. The customer is to assert any claims immediately in writing and with reasoning, but in any event within three days after performance by the agency. In the event of justified and timely claims, the customer shall be entitled only to rectification or replacement of the service by the agency.
- 13.2. If the notice of defects is justified, the defects are to be remedied within an appropriate period of time, whereby the customer shall enable the agency to take all measures necessary for examination and remedy of the defects. The agency is authorised to refuse improvement of the service, if this is impossible or associated with unreasonably high effort and expenditures for the agency.
- 13.3. The agency accepts no liability whatsoever for any documentation given to it by the customer for processing.
- 13.4. In the online segment, the agency, within the scope of the foreseeable requirements, guarantees the best possible reproduction of the advertising material in accordance with the respective customary technical standard. The customer is, however, aware of that it is not possible to create a program completely free of errors with the current state of technology. For this reason, the warranty does not apply to insignificant errors. Insignificant errors in displaying the advertising materials include in particular when they are caused by the use of unsuitable display software and/or hardware (e.g. browser) by faults in the communication networks of other operators - incomplete and/or not updated offers on so-called proxies (intermediate storage).
- 13.5. To measure the click, response and conversion rates, TEAM4TOURISM\_internal systems as well as the tracking systems of the booked media are used. All and any claims for damages can only be asserted on basis of the TEAM4TOURISM\_ systems.
- 13.6. A reversal of the burden of proof pursuant to Section 924 of the Austrian Civil Code (ABGB) to the detriment of the agency is excluded. The existence of a defect at the time of delivery, the time of detecting the defect and the timeliness of the notice of defect are to be proven by the customer.
- 13.7. Claims for compensation of damages by the customer, including but not limited to delay, impossibility of performance of services, defective performance, fault in the conclusion of contract, defective or incomplete performance, consequential damages caused by a defect, or due to unlawful acts, shall be excluded unless they are caused by intent or gross negligence on part of the agency. All claims are limited to the amount of the contract value, excluding taxes.
- 13.8. Any claim for compensation of damages can be asserted only within six months of discovery of the damage. All claims from this contractual relationship further expire after one year, starting at the end of the year in which the claim arose and the creditor learned about circumstances causing the claim or the year in which, bar gross neglect, it should have come to his notice.

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### 14. Liability

- 14.1. The agency will carry out the work assigned to it in compliance with generally recognised legal principles and will notify the client in good time of any risks detectable to it. The agency herewith explicitly excludes and rejects any liability for claims made against the customer due to advertising measures (the use of a mark).
- 14.2. In particular, the agency shall accept no liability for process costs, the customer's own legal counsel costs or costs from the publication of verdicts as well as for all and any claims for damages or similar claims by third parties.
- 14.3. The agency shall only be liable within the scope of the legal provisions for damages, 2.2 if it can be proven to have acted with intent or gross negligence. Liability for slight negligence is excluded. The existence of gross negligence must be proven by the damaged party.
- 14.4. The liability is limited to own culpability that of its vicarious agents and staff.
- 14.5. Any liability is limited to the material costs and gratuitous restoration of the work (provided this is at all possible). The customer is not entitled to any further claims; the agency is in particular not liable for any travel and subsistence expenses as well as for third-party costs or loss of profit and consequential damages.
- 14.6. The agency is strictly not liable for the advertising success of the distribution of the advertising goods.

### 15. Changes to the General Terms and Conditions

- 15.1. The agency is authorised to at any time change or amend these General Terms and Conditions. If the customer does not object to the modified terms and conditions within a period of four weeks upon receipt of the notification of modification, the new General Terms and Conditions shall become effective for existing contractual relationships as well, according to such notification. Should the customer object to the new terms and conditions within the set period of time, the agency shall have the right to terminate the contract as of the time the modified terms and conditions are to take effect.

### 16. Applicable law

- 16.1. The legal relations between the customer and the agency shall be subject exclusively to Austrian law, excluding the international conflict of law rules. The provisions of the UN Convention on Contracts for the International Sale of Goods do not apply.

### 17. Place of performance and jurisdiction

- 17.1. The office of the agency is the place of performance.
- 17.2. Place of jurisdiction for all disputes arising directly between the agency and the customer shall be the Austrian court Vienna, which is the local court with subject matter jurisdiction for the headquarters of the agency.

### 18. Awarding of contracts at TEAM4TOURISM

- 18.1. Contracts awarded by TEAM4TOURISM are only legally effective if they have been signed by persons authorised to sign.

### 19. Authority to sign

The following members of staff have signatory authority:  
Astrid Steharnig-Staudinger, CEO/owner  
Sonja Prettenthaler, CFO

Vienna, April 2019

#### Linking Brands

team4tourism e.U.

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