

General Terms and Conditions (Terms) of Scholz & Friends Wien GmbH („Agency“) for Clients

I. Scope, Conclusion of agreement

- 1.1 Scholz & Friends Wien GmbH (hereinafter the “Agency”) provides its services exclusively on the basis of the following General Terms and Conditions (GTC). These shall apply to all legal relationships between the Agency and the Client, even if no specific reference is made to them. These GTCs apply exclusively to legal relationships with entrepreneurs, in other words in B2B relations.
- 1.2 The version applicable at the time the agreement is signed shall be the definitive version. Deviations from these and other supplementary agreements with the Client shall be effective only if they are confirmed by the Agency in writing or in text form.
- 1.3 The Client’s terms and conditions will not be accepted, even if these have been made known, unless otherwise explicitly agreed in writing in a particular case. The Agency expressly objects to the Client’s terms and conditions. The Agency need not make any further objections to the Client’s terms and conditions.
- 1.4 The Client shall be notified of amendments to these terms and conditions, and these shall be deemed to be agreed if no objection to the amended terms and conditions is received from the Client in writing within 14 days; the Client is expressly reminded of the consequences of not objecting to the terms and conditions in the communication. This fictitious consent shall not apply to the change of essential service contents and fees.
- 1.5 If any provision of these General Terms and Conditions is not effective, this shall not affect the validity of the remaining provisions and the agreements concluded on the basis thereof. The ineffective provision shall be replaced by one that comes closest to it in sense and purpose.
- 1.6 The Agency’s quotations are non-binding and without obligation.

II. Social Media channels

Before placing an order, the Agency expressly informs the Client that the providers of “social media channels” (e.g., Facebook, hereinafter referred to as the “Providers”) reserve the right to reject or remove advertisements and appearances for any reason according to their terms of use. Providers are therefore not obliged to forward content and information to users. There is therefore the risk, which the Agency cannot calculate, that advertisements and images are removed for no particular reason. In the event of a complaint from another user, Providers allow a rebuttal, although the content is also immediately removed in this case. In this situation, it may take some time to regain the original, lawful state. The Agency works on the basis of the terms of use of the Providers, over which it has no influence, and also bases the Client’s order on them. By placing the order, the Client expressly acknowledges that these terms of use (also) determine the rights and obligations of any contractual relationship. The Agency undertakes to carry out the Client’s order to the best of its knowledge and belief and to adhere to the guidelines of social media channels. Given the current terms of use and the simple possibility of every user to claim a legal violation and thus to have the content removed, the Agency cannot guarantee that the campaign which is the subject of the order can be accessed at any time.

III. Protection of concepts and creatives ideas

If the potential client has already invited the Agency in advance to create a concept and if the Agency accepts such invitation before the main agreement is concluded, the following provision shall apply:

- 3.1 The potential client and the Agency enter into a contractual relationship as soon as the invitation is received and is accepted by the Agency (“pitching agreement”). This agreement is also subject to these general terms and conditions.
- 3.2 Although it has not yet assumed any performance obligations, the potential client acknowledges that the Agency is already carrying out costly preliminary work with the concept development.
- 3.3 The concept is subject to the protection of copyright law in its linguistic and graphic parts, as far as these achieve the status of creative work. Potential clients may not use or process these parts without the consent of the Agency in accordance with the Austrian Copyright Act.
- 3.4 The concept also contains ad-related ideas that do not reach status of creative work and thus do not enjoy the protection of copyright law. These ideas are at the beginning of every creative process and can be defined as the spark that ignited everything later on, and thus as the origin of the marketing strategy. Therefore, those elements of the concept that are unique and give the marketing strategy its characteristic features are protected. In particular advertising slogans, advertising texts, graphics and illustrations, advertising material, etc. shall be considered to be an idea in the sense of this agreement, even if they do not reach the status of a creative work.



- 3.5 The potential client agrees to refrain from commercially exploiting or allowing commercial exploitation or making use of these creative advertising ideas presented by the Agency within the scope of the concept or allowing them to be used or made use of outside the corrective impact of a master agreement to be concluded later.
- 3.6 If the potential client believes that the Agency has presented it with ideas with which it was already familiar before the presentation, the potential client shall inform the Agency thereof by email within 14 days of the date of the presentation together with proof from which the time at which it obtained such knowledge can be ascertained.
- 3.7 In the absence of such notification, the Contracting Parties shall assume that the Agency has presented the potential client with a new idea. If the idea is used by the Client, then it shall be assumed that the Agency's performance was meritorious.
- 3.8 The potential client may be released of their obligations under this item by paying an appropriate amount in compensation plus 20% VAT. Such Client shall only be released after the payment in full of compensation has been received by the Agency.

IV. Scope of services, order processing and co-operation duties of the Client

- 4.1 The scope of the services to be provided shall derive from the service description in the Agency agreement or an order confirmation by the Agency, as well as the briefing protocol ("offer documents"). Subsequent changes to the service scope require written confirmation by the Agency. Within the framework specified by the Client, the Agency shall have freedom of design when fulfilling the order.
- 4.2 All services provided by the Agency (in particular all preliminary designs, sketches, final artwork, brush prints, blueprints, copies, color prints and electronic files) shall be reviewed by the Client and released by the Client within four working days from receipt by the same. If there is no feedback within this period, the changes shall be deemed to be approved by the Client.
- 4.3 The Client shall make all information and documents necessary for the provision of the service available to the Agency in a timely manner and in full. The Client shall provide information of all circumstances that are of importance for the execution of the order, even if these only become known during the execution of the order. The Client shall bear any costs that arise if work is delayed or has to be repeated by the Agency due to incorrect, incomplete, or subsequently amended information.
- 4.4 The Client undertakes to verify documents made available for the implementation of the order (photos, logos, etc.) with respect to any copyrights, trademark or labeling rights or other rights of third parties (clearing rights) and guarantees that the documents are free from rights of third parties and can, therefore, be used for the intended purpose. The Agency shall not be held liable in the event of minor negligence or after fulfilling its duty to warn - at least in the internal relationship with the Client - of any violation of such rights of third parties by means of documentation made available. If a claim is brought against the Agency for such a violation by a third party, the Client shall indemnify and hold the Agency harmless from such claims; it shall compensate all losses incurred as a result of a claim by a third party, in particular the costs of appropriate legal representation. The Client undertakes to assist the Agency in warding off any claims from third parties. For this purpose, the Client shall provide the Agency with all documents without prompting.

V. External services/commissioning of third parties

- 5.1 The Agency is entitled, at their sole discretion, to provide the service or parts thereof itself, to make use of competent third parties to perform their obligations in the course of providing contractual services, and/or to substitute such services ("External Service").
- 5.2 Third parties shall be commissioned in the context of an External Service either in the Agency's own right or in the name of the Client, the latter after prior notification to the Client. The Agency shall select such third parties carefully and make sure that they possess the required professional qualifications.
- 5.3 Obligations to third parties that have been made known to the Client and that go beyond the term of the Agreement shall be assumed by the Client. This shall also apply in the case of a termination of the Agency agreement for good cause.

VI. Dates or deadlines

- 6.1 Specified delivery or performance periods shall, unless expressly agreed as binding, only be considered as approximate and non-binding. Binding deadlines shall be made in writing or confirmed in writing by the Agency.
- 6.2 If the delivery/service of the Agency is delayed for reasons for which it is not responsible, such as events of force majeure and other unforeseeable events that cannot be prevented by reasonable means, the service obligations for the duration and extent of the obstacle shall be suspended and the deadlines extended



accordingly. If such delays exceed two months, both the Client and the Agency shall be entitled to withdraw from the agreement.

- 6.3 If the Agency is in default, the Client may only withdraw from the agreement after giving the Agency a reasonable grace period in writing of at least 14 days, and this has expired without results. The Client may not claim damages due to non-performance or default, except in case of intent or gross negligence.

VII. Premature termination

- 7.1 An agreement is generally concluded for an indefinite period and may be terminated by either party in writing with a notice period of six months to take effect [at the end of a] calendar quarter. A statement of reasons for the termination is not required.
- 7.2 The Agency may terminate the agreement for good cause with immediate effect. Good cause means, in particular, if:
- a) the performance of the service is rendered impossible for reasons for which the Client is responsible, or is delayed further despite a grace period of 14 days;
 - b) the Client continues, in spite of a written warning with a grace period of 14 days, in violation of essential obligations arising under this agreement, such as payment of a due amount or the duty to co-operate.
 - c) there are legitimate concerns as to the creditworthiness of the Client and the Client does not make advance payments or provide adequate security at the request of the Agency and before performance by the Agency;
- 7.3 The Client may terminate the agreement for good cause without offering a grace period. A good cause exists in particular if, despite a written warning, the Agency continues to violate essential provisions of this agreement with a reasonable grace period of at least 14 days for remediation of the breach of agreement.
- 7.4 If the Agency has commissioned services from a third party before termination which relate to a period after the expiry of the agreement (in particular bookings and reservations of media), the Agency shall transfer all rights and obligations therefrom to the Client when the agreement expires the Client shall assume all rights and obligations therefrom and shall indemnify and hold the Agency harmless with regard to any claims asserted by such a business. The aforementioned shall apply without prejudice to any claims for the payment of fees to which the Agency is entitled under the agreement, in particular the production fee.

VIII. Fees

- 8.1 Unless otherwise agreed, the Agency fee for each individual service shall be due as soon as such service has been provided. The Agency may demand an advance to cover expenses. In the case of orders that extend over a longer period of time, the Agency may prepare interim statements of account or submit advance invoices or request a down payment.
- 8.2 Fees shall be payable as a net fee plus VAT at the statutory rate. In the absence of an agreement in individual cases, the Agency may charge fees at the usual market rate for the services provided and for the granting of the copyright and trademark rights of use.
- 8.3 All services provided by the Agency that are not expressly compensated by the agreed fee shall be remunerated separately. All cash outlays made by the Agency shall be reimbursed by the Client.
- 8.4 The Agency's cost estimates shall be non-binding. If it becomes clear that the actual costs will exceed those quoted in writing by the Agency by more than , the Agency shall alert the Client to the higher costs. The cost overrun shall be deemed to have been approved by the Client if the Client does not object in writing within three working days of receipt of this notice and at the same time announces more cost-effective alternatives. A separate communication is not required if a cost overrun is 15% or less. Such a cost estimate overrun shall be deemed to have been approved by the Client from the outset.
- 8.5 If the Client unilaterally changes or cancels the commissioned work without consulting the Agency, the Client shall reimburse the Agency - without prejudice to any ongoing other services provided by the Agency - for the services provided up to that point in accordance with the fee agreement and shall reimburse all costs incurred. If the cancellation is not caused by a grossly negligent or intentional breach of duty on the part of the Agency, the Client shall also pay the entire fee agreed for this work (commission) to the Agency; in this case, an offset of savings made or compensation or benefits otherwise obtained pursuant to section 1168 of the Austrian Civil Code (ABGB) is excluded. Furthermore, the Agency shall be entitled to indemnification with regard to any claims of third parties, in particular of contractors of the Agency. By paying the fee, the Client shall not acquire any right of use for work already performed; unimplemented concepts, drafts and other documents shall instead be returned without undue delay to the Agency.

IX. Payment, retention of title

- 9.1 Fees shall be due for payment without deduction 14 days after receipt of the invoice unless special terms of payment have been agreed in writing in an individual case. This also applies to the charging of all cash expenses



and other expenses. Any goods delivered by the Agency shall remain the property of the Agency until full payment of fees, including all ancillary liabilities.

- 9.2 In the event of late payment by the Client, the statutory default interest shall be charged at the rate applicable to entrepreneurial business transactions. Furthermore, in the event of late payment, the Client undertakes to reimburse the Agency for the dunning and collection costs incurred, insofar as they are necessary for appropriate legal enforcement. This shall in any case include the costs of two dunning notices at the customary market rate of at least €20.00 per notice as well as a reminder letter from a lawyer commissioned to collect the payment. The assertion of further rights and claims shall remain unaffected.
- 9.3 In the event of late payment by the Client, the Agency may immediately declare payment due for all services and partial services provided under other agreements concluded with the Client.
- 9.4 Furthermore, the Agency is not obliged to provide further services until the outstanding amount (right of retention) is paid. The aforementioned shall not affect the obligation to pay the remuneration.
- 9.5 If the parties have agreed on payment in installments, the Agency reserves the right to demand immediate payment of all outstanding payables in the event of a late payment of any partial or incidental charges (missed deadline).
- 9.6 The Client may not set off their own claims against claims of the Agency, except if the Client's claim has been acknowledged in writing by the Agency or declared to be final and binding by a court of law.

X. Property and copyright

- 10.1 All services of the Agency, including those in presentations (for example suggestions, ideas, sketches, preliminary drafts, scribbles, final artworks, concepts, negatives, and slides), as well as individual parts thereof, shall remain the property of the Agency, as much as the individual work pieces and design originals, and may be reclaimed by the Agency at any time, in particular upon termination of the contractual relationship. By paying the fee, the Client acquires the right of use for the agreed purpose. However, unless otherwise agreed, the Client may use the services of the Agency exclusively in Austria. The acquisition of rights of use and exploitation of the services by the Agency is in any event contingent on full payment of the fees charged by the Agency. If the Client makes use of the services of the Agency before this date, then this use shall be based on a loan that is revocable at any time.
- 10.2 Changes or processing of the Agency's services, in particular their further development by the Client or by third parties working for them, shall only be permitted with the express consent of the Agency and of the author if the services are protected by copyright. The surrender of any so-called "open data" is therefore expressly not part of this agreement. The Agency is not obliged to surrender them. This means that in the absence of a contractual assignment of the rights of use for "electronic works" as well, the Client shall have no legal claim to them.
- 10.3 The Agency's consent is required for the use of agency services that go beyond the originally agreed purpose and scope of use, regardless of whether this service is protected by copyright. In this case, there shall be a separate appropriate remuneration for the Agency and the author.
- 10.4 After the expiration of the agreement, Agency services or advertising materials for which Agency has developed conceptual or design templates may only be used subject to the prior written consent of the Agency, whether or not that service is protected by copyright.
- 10.5 In the first year after the termination of the agreement, the Agency is entitled to the full agency fee agreed in the expired agreement for uses pursuant to paragraph 4. In the second or third year after the end of the agreement, respectively only half or one quarter of the remuneration agreed in the agreement. As of the fourth year after the end of the agreement, no remuneration is payable to the Agency.
- 10.6 In the event of any unlawful use, the Client shall be liable to the Agency for twice the amount of the appropriate fee for such use.

XI. Labeling

- 11.1 The Agency may reference the Agency and the author, if appropriate, the author in all advertising materials and all advertising, and the Client shall not be entitled to any claim for remuneration for such reference.
- 11.2 Subject to the written revocation of the Client, which may be expressed at any time, the Agency may make mention of the current or former business relationship with the Client with the name and company logo (reference) on its own advertising media and in particular on its Internet website.

XII. Warranty

- 12.1 The Client shall report any defects immediately, in any event within eight days after delivery/performance by the Agency, hidden defects within eight days after detection thereof, in writing and describing the defect; otherwise, the performance is deemed to have been approved. In this case, the Client may not assert warranty claims or claims for damages, or the right to contest errors due to defects.



- 12.2 In the case of justified and timely notice of defects, the Client has the right to a repair or replacement of the delivery/service by the Agency. The Agency shall remedy the deficiencies within a reasonable period of time, for which purpose the Client shall enable the Agency to take all measures necessary for investigation and remedial action. The Agency may refuse to improve the service if this is impossible or involves a disproportionately high effort on the part of the Agency. In this case, the Client is legally entitled to amend the order or to request a reduction in price. In the case of an improvement, the Client shall deliver the defective (physical) item at their own expense.
- 12.3 The Client shall verify the Agency's performance to determine whether it is in accordance with the law, in particular pursuant to competition, trademark, copyright and administrative law. The Agency is only required to conduct a rough review of whether the matter is in accordance with the law. In the event of slight negligence or the fulfillment of any obligation to warn the Client, the Agency shall not be liable for compliance with the law of contents if these have been specified or approved by the Client.
- 12.4 The warranty period is six months from delivery/performance. The right of recourse against the Agency in accordance with section 933b(1) ABGB shall expire one year after delivery/performance. The Client may not withhold payment on account of defects. The presumption provided for in section 924 ABGB may not be invoked.

XIII. Liability and product liability

- 13.1 In cases of slight negligence, the Agency and its employees, contractors or other vicarious agents shall not be liable for the Client's property or financial damages, regardless of whether these involve direct or indirect damage, lost profits or consequential losses, or losses due to delay, impossibility, positive breach of obligation, negligence when entering into an agreement, or defective or incomplete performance. The existence of gross negligence shall be proved by the injured party. Insofar as the Agency's liability is excluded or limited, this also applies to the personal liability of its employees and workers.
- 13.2 Any liability on the part of the Agency for claims asserted by the Client derived from the performance provided by the Agency (e.g., advertising measures) is expressly excluded if the Agency has complied with its customary notification obligations or was not aware of such, whereby slight negligence shall not give rise to any claims. In particular, the Agency shall not be liable for litigation costs, the Client's own legal fees or the costs of publishing judgments, nor for any claims for damages or other claims of third parties; the Client shall indemnify and protect the Agency from claims in relation to the foregoing.
- 13.3 Any damage claim by the Client shall expire in six months from time the damage becomes known; but no more than three years after the tortious act by the Agency. Claims for damages shall be limited in amount to the net order value.
- 13.4 The Agency shall only be liable in the case of intentional or gross negligence for damage to property or financial loss to the Client that is caused by the Agency. The Agency shall only be liable for compensation of typical and foreseeable damage. Liability for indirect damage, consequential damage or loss of profit is excluded in any event. The Client shall provide proof of gross negligence. Furthermore, the Agency shall not be liable for the accuracy of the statements made in advertisements of any kind.
- 13.5 Agency liability is in any event limited to the amount of the net fee paid over the last twelve months before the occurrence of the damage or, if higher, the amount paid by the Agency's liability insurance policy. The Agency shall be liable for any third party commissioned by it in accordance with section 1315 ABGB. Claims for damages on the part of the Client shall expire after six months from the time the Client became aware of the damage; but no more than three years after the injurious act of the Agency.

XIV. Applicable law

This agreement and all reciprocal rights and obligations contained therein and claims between the Agency and the Client shall be governed by substantive Austrian law, excepting provisions on conflict of laws and the UN Convention on Contracts for the International Sale of Goods.

XV. General provisions

- 15.1 The Client agrees that the written communications may also be transmitted by fax or email. The Agency will try to create technical facilities to reduce associated risks (transmission errors, viruses, manipulations), however without assuming liability for any success. The Agency is not obliged to keep documents (final drawings, film copies, audio tapes, printouts, etc.) created by it in connection with the execution of the order for longer than six months after termination of the agreement. Upon request, the Agency shall provide the Client with copies of the documents received for reimbursement of costs in a suitable form at the end of the agreement.
- 15.2 The Agency shall remain generally free to provide services to other companies that operate in the same line of business as the Client.
- 15.3 The rights and obligations arising from the contractual relationship between the Agency and the Client may be transferred to any legal successor respectively.



15.4 Any amendments and addenda to the agreement shall be made in writing in order to be legally valid. If any provision of these General Terms and Conditions is invalid, this shall not affect the validity of the remaining provisions and the agreements concluded based on them. The invalid provision shall be replaced by one that comes closest in sense and purpose to the original provision.

XVI. Place of performance and jurisdiction

- 16.1 The place of performance shall be the registered office of the Agency. In the case of shipping, the risk passes to the Client as soon as the Agency has delivered the goods to the hauling company chosen by the Agency.
- 16.2 The parties agree that the place of jurisdiction for all legal disputes between the Agency and the Client arising in connection with this contractual relationship shall be the court competent for the registered office of the Agency. Notwithstanding the above, the Agency may bring legal proceedings against the Client at its own general court of jurisdiction.
- 16.3 References to natural persons in this agreement that are in the masculine form shall be read to refer equally to men and women. In referring to specific natural persons, the respective gender-specific form shall be used.

