

**General Terms and Conditions  
of  
Wunderman GmbH  
Schanzenstraße 6-20  
Kupferhütte 4.4  
51063 Köln  
(hereinafter referred to as "the  
Agency")  
Effective: 01/01/2014**

**1. General – Scope of Application**

(1) The Agency's general terms and conditions (hereinafter referred to as "GTC") apply to contracts between the Agency and suppliers or service providers (hereinafter referred to as "Contractors"). The terms and conditions only apply to entrepreneurs within the meaning of §§ 310, sections 1, 14 of the German Civil Code.

(2) These general terms and conditions apply exclusively, conflicting or different conditions of the Contractor are not recognised by the Agency, unless the Agency has explicitly approved their validity in writing.

(3) The Agency's general terms and conditions apply even if the Agency accepts the Contractor's deliveries without any reservations in the knowledge that the Contractor's terms and conditions conflict with or differ from these terms and conditions.

(4) All agreements entered into between the Agency and the Contractor for the purpose of fulfilling the order must be stipulated in writing in the contract.

(5) If and when the Agency ordered the services for one of its customers, items 8, 12, 13, 17 of the present GTC also apply for the benefit of that customer. To the extent that these provisions include the Agency's exclusive rights, a right is considered to be conferred exclusively for the purpose of the present GTC if no other third party besides the customer and the Agency is entitled to use that right. In that case, property transferred according to these conditions will be jointly owned by the Agency and the customers.

(6) The Agency is obligated to disclose if and when it takes action as its customer's proxy. In that case the GTC apply with the proviso that they refer to the customer instead of the Agency. This does not apply to items 8 and 10, which shall remain in effect to the benefit of the Agency even if it acts as the customer's proxy.

**2. Service Provision, Delivery Deadlines**

(1) The Contractor is required to obtain the Agency's express prior approval before hiring subContractors to provide services.

(2) The agreed time of delivery is binding.

(3) The Contractor is obligated to notify the Agency immediately and in writing if circumstances occur or are identified which would indicate that the stipulated time of delivery will not be met.

(4) If the Contractor defaults in delivery it is obligated to pay the Agency a contractual penalty in the amount of 1% of the delivery value for each completed week of the delay, not to exceed 10% of the total delivery value. The Agency is entitled to enforce a penalty in addition to performance. The Agency is obligated to notify the Contractor of the reservation of a penalty no later than at the time of the last performance by the Contractor, or in the case of contracts for work labour, no later than in the acceptance certificate. The penalty corresponds to the minimum damage expected in the event of a delayed delivery by the Contractor. The Agency reserves the right to assert a claim for damages or any other rights; however, the penalty shall be deducted from any compensation from damage paid by the Contractor as a result of a delayed delivery. The Contractor reserves the right to prove that the Agency did not suffer any damage or that the amount of damage suffered is less than the above-mentioned lump sum. In that case the contractual penalty shall be reduced accordingly.

**3. Prices**

(1) All prices listed in the order are fixed net prices, plus applicable value added tax. Taxes according to § 50a subparagraph 4 EStG in conjunction with § 49 EstG, duties or other property, including subsequent resulting charges will be invoiced to the Agency. They exclude subsequent claims, especially those resulting from increases in wages or material prices or from changes in labour conditions, and other dues.

(2) Subject to any individual agreements, prices include all features, components and devices which belong to the item ordered according to the state of the art and which have not been expressly excluded. Subject to any differing individual agreements, compensation shall include compensation for the granting of copyrights and other industrial property rights. The Agency does not make any advance payments to the Contractor but is entitled to partial performance. Unless otherwise agreed, the contractually agreed compensation satisfies all of the Contractor's claims.

Increased performance is only subject to compensation if so agreed in writing between the parties.

**4. Payments and Billing**

(1) If payments are made within 14 days of receipt of the invoice the Agency is entitled to deduct a discount of 3% from the invoice amount.

(2) The due date for payment is 60 days after receipt of the invoice.

(3) The Contractor is obligated to state the Agency's order and job numbers on all shipping documents and delivery notes, including invoices. Failure to do so will result in delayed processing for which the Agency shall not be liable.

**5. Dispatch of Goods**

All shipments, including work performances and Contractor's labour and materials, are delivered free unless otherwise agreed in writing. The Contractor shall bear the cost of freight, packing and shipping. If the Agency bears the costs according to a separate agreement the Contractor shall clear the shipping costs and deadlines with the Agency in advance. Partial deliveries and the final delivery shall be marked as such on dispatch notes.

**6. Notice of Defect – Liability For Defects**

(1) The Agency shall check the delivery/service for defects within a reasonable amount of time and issue a notice of defect within 5 working days. The time period for submitting a notice of defect is calculated from the time the goods are received in the case of visible defects and from the time the defect is discovered in the case of hidden defects.

(2) In the event of a defect the Agency's claims are governed by the legal provisions, subject to the following provisos: Defective deliveries of items embodied in physical form must be replaced at once with deliveries that are free of defects. Other defective services must be repeated without any defects. The subsequent improvement of defective deliveries or services requires the Agency's approval. If the Contractor fails to remove the defect within a reasonable grace period the Agency has the right to either withdraw from the contract or reduce the compensation and, in each case, demand additional compensation for damages. The statutory period of limitations is 36 months, calculated from the transfer of risk.

**7. Acceptance – Liability For Defects For Work Performance and Contractor's Labour and Materials Contracts**

(1) Acceptance of work performances and Contractor's labour and materials takes place immediately upon receipt by the Agency without the Contractor's involvement and without the need for a request for acceptance, unless otherwise agreed in writing and unless the Contractor does not reserve the right of involvement by written notification before the Contractor's goods and services are received by the Agency. Acceptance must be declared in writing.

(2) The Agency has the right to refuse acceptance if the work performance does not conform to the contract, unless the defect is immaterial.

(3) If the Agency takes delivery of a work performance despite knowing about defects the delivery is taken under reservation. The Agency is entitled to the statutory warranty rights in the event of defects in the work performance or labour and materials.

(4) If and when the nature of a service prevents it from being transported the notice of receipt shall be replaced by a notice of readiness for acceptance.

#### **8. Release From Liability in the Event of Material Defects and Defects of Title and in the Event of Other Third-Party Claims**

(1) The Contractor shall release the Agency, immediately and upon first demand, from any claims asserted against the Agency by a third party, for whatever legal reason, as a result of a material defect, or a defect of title, or any other defect of a product delivered by the Contractor or a service provided by the Contractor. In that case the Contractor shall reimburse the Agency for the necessary expenses of the prosecution of/legal defence against the action.

(2) In addition, the Contractor shall release the Agency, upon first demand, from any claims asserted against the Agency by a third party as a result of or in connection with the services provided to the Agency or to the Agency's customer by the Contractor, if and when these claims are based on any other violation of the Contractor's contractual, quasi-contractual or legal duties to the Agency, and if the Contractor is responsible for the breach of duty.

#### **9. Notice to Terminate**

In addition to the statutory rights of termination the Agency also has the right to terminate the contract with the Contractor in whole or in part without notice for good cause. Good cause shall be deemed to exist in particular if and when the Agency's customer for whom the Contractor's delivery/service was

intended cancels the services ordered for which the Contractor's goods and services were to be used, provided the Agency is not responsible for the cancellation. If the Agency cancels without notice for this reason it is only obligated to pay for goods and services which have already been accepted or embodiments of work results which have already been delivered.

#### **10. Non-Competition Clause**

The Contractor promises not to provide comparable services to the Agency's customer for whom the services were requested and to the customer to whom they were ultimately delivered, either directly or indirectly, or have a third party provide these services, for up to a year after completion of the order. In the same way, the Contractor is obligated to ensure that its own employees shall not provide any comparable services, either directly or indirectly, to the customer. For each culpable violation of the non-competition clause, the Contractor is obligated to pay to the Agency a contractual penalty in the amount of 20% of the compensation charged to the customer by the Contractor for its services or – if an invoice has not been issued yet – of the amount owed to the Contractor according to the contractual arrangements. The Contractor shall provide the Agency with correct information in this respect and allow the Agency to carry out suitable control and inspection measures, including at its office premises. The Contractor reserves the right to prove that the Agency did not suffer any damage or suffered only minor damage. In that case the contractual penalty shall be reduced to the smaller damage amount. The Agency reserves the right to assert a claim for damages on the basis of the same breach of duty, taking into account the contractual penalty.

#### **11. Work Results From the Performance of the Contract**

The Contractor shall refrain from using any work results created in the course of producing its contractual services, even if they are not the subject matter of the acceptance, for any other purposes, unless otherwise agreed in writing.

#### **12. Transfer of Rights, Intellectual Property Rights, Source Code**

(1) The Agency and the Contractor are agreed that the ownership of the work items, including all originals, copies, negatives, slides, digital data, samples, etc. and of all other documents, manuscripts, designs, drawings, photos, video and audio recordings and any other materials created in the course of

fulfilling the order is transferred to the Agency when the work is delivered to the Agency. The Contractor does not have the right to dispose of the originals or copies of the work items transferred to the ownership of the Agency for general use. Copies of electronically processed images shall be stored by the Contractor in a technically correct manner at the Contractor's expense. The Contractor shall insure these at their restoration value against all risks on behalf of the Agency. The Contractor is obligated to surrender the copies of electronically processed images to the Agency at any time, either permanently or temporarily, by request of the Agency or a third party named by the Agency.

(2) The Contractor transfers to the Agency all proprietary rights of use and exploitation, ancillary copyrights and other industrial property rights acquired in the course of carrying out the contract, without any restrictions in terms of content, time and location, for the Agency's exclusive use and exploitation, unless otherwise agreed in writing. In particular the transferred rights include the right to copy, disseminate, present, send the work in any conceivable manner, including modified, shortened, as an excerpt, translated, synchronised.. This right applies to all methods and systems of reproduction known at the time the contract is concluded. All rights are transferred to the Agency upon acceptance of the Contractor's goods and services. There is no right to receive authorship credit. The transfer of rights includes the Agency's authority to transfer the acquired rights in whole or in part to third parties for use and exploitation. The Contractor agrees that the Agency shall grant non-exclusive rights of use to third parties instead of the acquired exclusive rights of use. The transfer and concession of the above-mentioned rights shall be considered paid for in full and settled by the agreed professional fee. This does not include the rights under § 36 of the German copyright act.

(3) If and when the Contractor is obligated to create or modify software the Contractor shall surrender to the Agency, for the Agency's unlimited and exclusive usage, the source code and documentation of the software that was created or modified.

#### **13. Third-Party Rights, Other Legal Admissibility of the Projected Benefit Application**

(1) The Contractor shall ensure that the production of its goods and services and their use and exploitation as

stipulated by the contract do not result in violations of third-party rights, especially personal rights, which may lead to claims against the Agency or its legal successors. The Agency is entitled, but not obligated, to instruct the Contractor accordingly, and to ask the Contractor to provide information about its precautionary measures and surrender any records that prove the acquisition of third-party rights and the authority to transfer these rights to the Agency, in accordance with item 12 above. The Contractor warrants the effective acquisition of these rights regardless of culpability and releases the Agency and its legal successors from third-party claims.

(2) The Contractor shall ensure that the use and exploitation of the services or products provided as stipulated by the contract is permissible and, in particular, does not violate any legal regulations.

#### **14. Return of Work Documents**

Material and work documents provided to the Contractor for the purpose of executing the contract remain the Agency's property unless otherwise agreed. Unless they were used up as intended during the execution of the order all materials and work documents shall be returned to the Agency immediately after the services have been rendered or the contract has been concluded without any further request, or they shall be destroyed at the Agency's request

#### **15. Inspection of Records**

The Contractor agrees to maintain books and records that show the basis for the ordinary or extraordinary costs billed to the Agency as a result of this order. The Contractor shall provide the Agency with these books and records for review and examination for a period of two years after receipt of the final payment for the services in question. During this two-year period the Agency has the right to examine the books and records with regard to all costs. The Contractor shall provide all of these books and records to the Agency upon request. If during a review the Agency finds that the Contractor's prices exceed reasonable amounts the Contractor shall reimburse the Agency for any amounts charged in excess.

#### **16. Change Request**

The Agency has the right to ask the Contractor for changes in its goods and services at any time (hereinafter called "Change Request"). Change Requests must be numbered consecutively. After receiving a Change Request the

Contractor shall explain to the Agency any changes in its goods and services as a result of the Change Request and notify the Agency promptly and in writing of any consequences resulting from the request, especially with regard to compensation. If the Agency then decides to keep the Change Request the Contractor must create a cost estimate and submit it to the Agency for approval. The difference in compensation resulting from the changes requested by the Agency shall not exceed the total additional or reduced costs. As far as practicable, the basis used to calculate the price of the contractual services must also be used to calculate the adjusted compensation. If a Change Request issued by the Agency is implemented without the Contractor having notified the Agency in advance of additional costs the Contractor does not have the right to claim compensation for the additional costs, if any. So long as no agreement is reached as to an adjustment of the contract the existing subject terms of contract shall remain unchanged. In addition, the Agency has the right in that case to cancel individual orders, if they are affected by the Change Request. In that case the Agency is only obligated to pay for the services which have already been accepted or for the embodiments of work results which have already been delivered.

#### **17. Proprietary Rights**

Ownership of the embodiment of a work result is transferred to the Agency upon its acceptance. An extended or expanded reservation of proprietary rights is excluded.

#### **18. Non-Disclosure, Secrecy Obligation**

(1) The Contractor shall maintain the secrecy of all information, work and records, hereinafter referred to as "Confidential Information", related to the contract and refrain from making it available to third parties, with the exception of its own employees. The Contractor shall impose the same secrecy obligation on its employees and vicarious agents. The secrecy obligation does not apply if and when the Contractor a) was already familiar with the Confidential Information before it was brought to its attention in the context of rendering services to the Agency, b) has developed the Confidential Information independent of the services rendered to the Agency, c) has received the Confidential Information from a third party without breach of a secrecy obligation, d) is

obligated to disclose the Confidential Information due to an enforceable order issued by a German authority or a German court, if and when the Contractor has informed the Agency in writing of the pending disclosure immediately upon learning of the disclosure requirement and has given the Agency ample time to challenge the disclosure requirement, and e) the Confidential Information is or will be publicly known without any breach of the secrecy obligation. Without prejudice to its obligation to pay damages to the Agency as a result of a breach of this obligation the Contractor shall release the Agency from the third-party liability for damages upon first demand.

(2) If and when it cannot be ruled out that the Contractor will, in the course of rendering its services, have access to the personal data of the Agency or the Agency's customer or will collect, process and/or utilise personal data, it will do so by way of order data processing. In that case the Contractor shall sign an agreement on order data processing with the Agency. If the Contractor fails to meet this obligation the Agency has the right, after issuing a second request for an agreement on order data processing, to withdraw from the contract after a grace period of 1 week has passed.

#### **19. Prohibition of Assignment**

The Contractor does not have the right to assign the claims arising against the Agency from the contractual relationship with the Agency without the Agency's consent.

#### **20. Corporate Policy**

The Agency and the companies in the WPP Group are committed to certain values. The Contractor therefore promises the Agency to respect the code of conduct stipulated and available on [www.wpp.com](http://www.wpp.com).

#### **21. Miscellaneous**

(1) These GTC are exclusively subject to German law under exclusion of all international and supranational (contractual) legal systems, especially the UN Convention on Contracts for the Sale of International Goods.

(2) If the Contractor is a merchant or does not have a place of general jurisdiction in Germany, or if it moves its usual residence outside of the area of application of the law of the Federal Republic of Germany after conclusion of the contract, the exclusive place of jurisdiction is Cologne.

Unless otherwise agreed, the place of fulfilment is Cologne.