

General Terms and Conditions

of Bokowsky + Laymann GmbH

The following General Terms and Conditions (AGB) regulate conclusively the contractual relationships between Bokowsky + Laymann GmbH (hereinafter Bokowsky + Laymann GmbH and its customers as far as no other written agreements have been concluded. Deviating declarations and business conditions of our customers shall not oblige us even if we do not expressly contradict them on conclusion of the agreement.

These General Terms and Conditions contain the following individual regulations:

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| 1. | Co-operation | 8. | Violations of protective rights |
| 2. | Co-operation duties of the customer | 9. | Withdrawal |
| 3. | Participation of third parties | 10. | Liability |
| 4. | Dates | 11. | Prohibition of poaching |
| 5. | Performance modifications | 12. | Secrecy, press declaration |
| 6. | Remuneration | 13. | Miscellaneous |
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1 Co-operation

- 1.1 The parties shall work together in confidence and inform each other mutually in case of any deviation from the agreed procedure or any doubt about the correctness of the procedure of the other without delay. If the Customer recognises that its own statements and requirements are incorrect, incomplete, not clear or not executable, he shall notify Bokowsky + Laymann of this and any recognisable consequences without delay.
- 1.2 The contractual parties shall mutually nominate contact persons and their deputies who shall manage the execution of the contractual relationship responsibly and expertly for the contractual party nominating them.
- 1.3 Any change in the persons nominated shall be reported by the parties without delay. Up to receipt of such notification, the previously nominated contact and/or his deputy shall be regarded as being entitled to make and receive declarations within the framework of his/her power of representation up to then.
- 1.4 The contacts shall inform each other at regular intervals about progress and obstacles in executing the agreement so as to be able, if necessary, to intervene decisively in execution of the agreement.
- 1.5 Bokowsky + Laymann shall draw up a record about the exchange of information of the contacts. This record shall be sent to the Customer. In the case of any contradictory opinions, he shall have the right to have his opinion taken up in the record. This right shall be exercised at the latest one week after receipt of the record.

2 Customer's obligation to co-operate

- 2.1 The Customer shall support Bokowsky + Laymann in fulfilment of its contractually owed performance. This includes in particular the making available in good time of information, data material and hard and software inasmuch as the co-operation performance of the Customer requires this. The Customer shall instruct Bokowsky + Laymann in detail as to the services to be carried out by Bokowsky + Laymann.
- 2.2 The Customer shall make the number of its own staff members available which are necessary for execution of the contractual relationships and who possess the necessary specialist knowledge.
- 2.3 Inasmuch as the Customer has undertaken to procure material within the framework of execution of the agreement (image, tone, text and similar), the Customer shall make this available to



Bokowsky + Laymann immediately in a common, directly utilisable and, as far as possible, digital format. If conversion of the material transferred by the Customer into another format is necessary, the Customer shall assume the costs arising for this. The Customer shall make sure that Bokowsky + Laymann is given the rights necessary for the use of this material.

2.4 The Customer shall carry out all co-operation works at his own expense.

3 Participation of third parties

For third parties who become active on the initiative or at the tolerance of the Customer in the sphere of activities of Bokowsky + Laymann, the Customer shall be responsible as he is also for vicarious agents. Bokowsky + Laymann shall not be responsible towards the Customer if Bokowsky + Laymann cannot fully or partly fulfil its obligations towards the Customer due to the behaviour of one of the aforementioned third parties.

4 Dates

5.1 Dates for the provision of services may only be promised on the part of Bokowsky + Laymann by the contact person.

5.2 The contractual parties shall determine dates as far as possible in writing. Dates, through the non-observance of which one contractual party can come into delay pursuant to article 286 clause 2 of the Civil Code without any reminder (binding dates), shall always be determined in writing and designated as being binding.

5.3 Delays in performance due to force majeure (e.g. strike, shut-out, official instruction, general disturbances in telecommunications etc.) and circumstances within the sphere of responsibility of the Customer (e.g. non-punctual provision of co-operation performance, delays through third parties to be attributed to the Customer etc.) shall not be the responsibility of Bokowsky + Laymann and shall entitle Bokowsky + Laymann to postpone the provision of the services concerned by the duration of the obstruction plus any reasonable run-up time. Bokowsky + Laymann shall notify the Customer without delay of any delays in performance due to force majeure,

5 Alterations to performance

5.1 If the Customer wishes to alter the contractually determined scope of the services to be provided by Bokowsky + Laymann, he shall express this wish for alteration towards Bokowsky + Laymann in writing. Further procedure shall adhere to the following provisions. In the case of slight wishes for alteration which can be examined rapidly and implemented in all probability within 8 working hours, Bokowsky + Laymann can refrain from the procedure according to clauses 2 to 5.

5.2 Bokowsky + Laymann shall examine the effects which the desired alteration can have in particular with respect to remuneration, additional action and dates. If Bokowsky + Laymann recognises that services to be provided cannot be carried out or only with delay due to such examination, Bokowsky + Laymann shall notify the Customer of this and shall draw his attention to the fact that the wish for alteration can only be examined further if the services concerned are postponed by, at first, an indeterminate period. If the Customer declares himself to be in agreement with this postponement, Bokowsky + Laymann shall carry out the examination of the desire for alteration. The Customer shall be entitled to withdraw his wish for alteration at any time; the process of alteration which has been initiated shall then end.

5.3 After examining the wish for alteration, Bokowsky + Laymann shall present the Customer with the effects of the desire for alteration on the agreements reached. This presentation shall include either a detailed proposal for implementation of the desired alterations or information as to why the wish for alteration cannot be implemented.



- 5.4 The contractual parties shall agree on the content of a proposal for the implementation of the wish for alteration without delay and add the result of successful agreement to the text of the agreement to which the alteration refers as a supplementary agreement.
- 5.5 If no agreement is reached or if the alteration process is terminated for some other reason, the original scope of performance shall be retained, The same shall apply for the case that the Customer is not in agreement with postponement of the services for further execution of examination according to clause 2-
- 5.6 The dates affected by the alteration process shall be postponed taking into consideration the duration of the examination, the duration of agreement about the alteration proposal and, if relevant, the duration of the alteration wishes to be carried out plus a reasonable run-up period as far as necessary. Bokowsky + Laymann shall notify the Customer of the new dates.
- 5.7 The Customer shall bear any expense arising through the demand for alteration. This shall include in particular the examination of the desire for alteration, the drawing up of the alteration proposal and any standstill period. The expenses shall be calculated for the case that there is agreement between the parties about these, otherwise according to the customary remuneration of Bokowsky + Laymann.
- 5.8 Bokowsky + Laymann is entitled to alter or to deviate from the services to be provided if the alteration or deviation is reasonable for the Customer taking into consideration the interests of Bokowsky + Laymann.

6 Remuneration

- 7.1 The Customer shall bear against verification all expenses such as travel and accommodation costs, expenses and the remuneration demands of third parties arising within the framework of execution of the agreement. Travelling costs shall only be compensated if the travel route from the head office of Bokowsky + Laymann exceeds 50 km. The pure travelling time shall not be remunerated. For the processing of orders with third parties the costs of which shall be calculated directly to the Customer, Bokowsky + Laymann can levy a handling fee of 15% (in words: fifteen percent).
- 7.2 The remuneration of Bokowsky + Laymann shall take place as far as not agreed otherwise always according to time and shall be invoiced monthly. Decisive for the remuneration of the time shall be the currently valid remuneration rates of Bokowsky + Laymann as long as nothing else has been agreed. Bokowsky + Laymann is entitled to alter or supplement the remuneration rates forming the basis of the agreements according to its discretion (article 315 BGB). Quotations or budget plans drawn up by Bokowsky + Laymann shall be non-binding.
- 7.3 If the parties have not reached any agreement about the remuneration of a service provided by Bokowsky + Laymann, the provision of which the Customer could only expect according to the circumstances against remuneration, the Customer shall pay the remuneration customary for this service. In cases of doubt, the remuneration rates demanded by Bokowsky + Laymann shall be regarded as being customary.
- 7.4 All contractually agreed remuneration shall be subject to the statutory turnover tax.

7 Rights

- 7.1 Bokowsky +Laymann shall grant the Customer the simple, spatially and temporally non-limited rights in the services provided to use these services according to the agreement. If software is the object of the services, articles 69 d and e UrhG shall apply.
- 7.2 Any further-reaching use as that described in clause 1 is not permitted. In particular, the Customer is not permitted to grant sub-licences independently or to copy, let out or otherwise utilise the services



- 7.3 Up to complete payment of the remuneration, the Customer shall only be permitted to use the services provided under the right of revocation on the part of the Bokowsky + Laymann. Bokowsky + Laymann can revoke the use of such services, with which the Customer is in delay with the payment of remuneration, for the duration of delay.

8 Violations of protective rights

- 8.1 Bokowsky + Laymann shall release the customer from all claims of third parties for violations of protective rights (patents, licences and other protective rights) at its own expense as far as these are the responsibility of the agency. The customer shall inform Bokowsky + Laymann without delay about any current claims of third persons. If the Customer does not inform the agency without delay about the current claims, the claim to release shall lapse. The Customer shall assume the full responsibility for the content and materials provided by the Customer itself and undertakes for its part to release Bokowsky + Laymann from all claims of damaged third parties. In principle, the Customer is recommended to have all content published on the Internet legally checked.
- 8.2 Irrespective of any claims for damages of the Customer, in the case of violations of protective rights, Bokowsky + Laymann may make alterations, – according to its own choice and at its own expense with respect to the service concerned after previous agreement with the Customer, which, preserving the interests of the customer, ensure that violation of a protective right no longer exists or acquire the necessary rights to use for the Customer.

9 Withdrawal

The customer can only withdraw due to a violation of obligation, which does not exist in a defect in the purchased article or the work, if Bokowsky + Laymann bears the responsibility for this violation of obligation.

10 Liability

- 10.1 Bokowsky + Laymann shall be liable for intent and for gross negligence. For slight negligence, Bokowsky + Laymann shall only be liable in the case of violation of a significant contractual obligation (cardinal obligation) and for damage resulting from death, bodily injury or damage to the health.
- 10.2 The liability shall be restricted in the case of slight negligence collectively to the amount of the foreseeable damage the emergence of which has to be typically expected. In each case, the liability shall be limited to the amount of the remuneration agreed for the service.
- 10.3 For the loss of data and/or programs, Bokowsky + Laymann shall not be liable inasmuch as the damage is based on the fact that the Customer has neglected to carry out a backup and by doing so ensured that lost data can be restored at a justified loss of time.
- 10.4 The aforementioned regulations shall apply also in favour of the vicarious agents of Bokowsky + Laymann.

11 Prohibition of poaching

The Customer undertakes not to poach any staff member of Bokowsky + Laymann or to appoint such without the approval of Bokowsky + Laymann for the duration of the co-operation between the parties and for a period of one year thereafter. For the case of culpable contravention, the Customer undertakes to pay a contract penalty still to be fixed by Bokowsky + Laymann and, in case of dispute, to be examined by the competent court.

12 Secrecy, press declaration

- 13.1 The documents, knowledge conveyed and experience passed over to the other contractual party may be used only for the purpose of the agreement and not be made accessible to third parties inasmuch as they should not be made accessible to third parties by definition or are already known to the third party. Third parties are not the auxiliary persons called on for execution of the contractual relationships such as, for example, free-lance employees, sub-contractors etc.
- 13.2 In addition, the contractual parties agree to maintain confidentiality about the content of this agreement and about knowledge gained in winding it up.
- 13.3 The obligation to secrecy shall apply also over and beyond the end of this contractual relationship.
- 13.4 If one contractual party demands, the documents handed over by it such as strategy papers, briefing documents etc. shall be surrendered to it after the end of the contractual relationship inasmuch as the other contractual party can assert no justified interest in these documents.
- 13.5 Press declarations, information etc. in which one contractual party makes reference to the other shall only be permissible after previous written agreement by the other – also per email.

13 Miscellaneous

- 13.1 The assignment of demands is only permissible with the previous written approval of the other contractual party- This approval may not be refused unreasonably. The regulations of article 354 a HGB shall remain unaffected by this.
- 13.2 A retention right can be asserted only due to counter claims from the contract relationship concerned.
- 13.3 The contractual parties can only set off demands which have been legally established or undisputed.
- 13.4 Bokowsky + Laymann may nominate the customer on its web site or in other media as a reference customer. This includes also the use of legally protected brand logos. Product designations and other trademarks of the Customer. Moreover, Bokowsky + Laymann may reproduce the services provided for demonstration purposes publicly or refer to these unless the Customer can assert any contrary justified interest. The Customer has the right to reject nomination as a reference customer. Rejection shall take place in writing. All alterations and supplement to the contractual agreements shall be recorded in writing for reasons of verification. Termination shall take place in writing. Reports which are to take place in writing can also take place by email.

14 Final provisions

- 14.1 All alterations and supplements to contractual agreement shall be recorded in writing for purposes of verification. Termination shall take place in writing. Reports which are to take place in writing can also take place by email.
- 14.2 If individual provisions of the agreements between the parties are or become fully or partly ineffective, the effectiveness of the other provisions is not affected by this. The parties shall in this case replace the invalid provision with an effective provision which most closely approaches the economic purpose of the invalid provision. The same shall apply for any omissions in the agreements.
- 14.3 The general terms and conditions of the Customer shall not become a part of this agreement.
- 14.4 The law of the Federal Republic of German shall apply excluding International Private Law and the UN Sales Convention.



14.5 The sole place of jurisdiction for all legal disputes from or in connection with this agreement is Munich.

Munich, November 2002

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3 O K O W S K Y + L A Y M A N N

Marketing in Computer-Mediated Environments