

General Terms & Conditions

Food Professionals Köhnen GmbH 45549 Sprockhövel

1 Scope of application

These GT&C shall apply to all our offers and services with exclusive effect. The client's terms and conditions shall only be effective if recognised by us in writing.

2 Presentations, drafts

Every use, dissemination or publication of works or services, or parts thereof, which we present or supply with the aim of concluding a contract (presentations), or which are rejected or not accepted by the client as execution of a commission, shall require our prior consent, irrespective of whether they are protected by copyright. This shall also apply to alterations, processing and utilisation of the ideas on which our works and services are based, except where these have not found expression in the client's advertising materials to date. The agreement and the receipt of a fee shall not be deemed to be consent within the meaning of the above provisions.

3 Delivery, performance, performance of commission

a) The performance of a commission and adherence by us to deadlines and dates shall be conditional on the client having ensured that the terms of the commission are clear, having procured the necessary permits and releases, having presented documents which confirm in due time the proposals we have presented, having given notice in due time of desired changes, and having fulfilled all its other duties and cooperation obligations. The fulfilment of and compliance with our delivery and service obligations shall be conditional on correct and timely cooperation by the client.

b) We shall be entitled to reject the client's commissions and instructions if their content contravenes the law, official regulations or the German Press Council's principles of journalism (press code), or has been objected to by the German Press Council in complaint proceedings, or if their publication cannot reasonably be expected from us due to content, origin or technical form.

c) If a commission is not executed for reasons for which we are not responsible, for example due to

force majeure, computer breakdown, strike, statutory or official regulations, or disruptions for which third parties are responsible, and if the said events were not foreseeable at the time the contract was concluded, we shall be entitled to postpone the fulfilment of our obligations for the duration of the hindrance and a reasonable lead time. We shall inform the client as soon as possible of the time such hindrances start and end. The client may require us to declare whether we will withdraw from the contract or deliver in reasonable time.

4 Engagement of third parties

We shall be entitled to engage third parties to perform the commissioned service, or parts thereof.

5 Changes to commissioned services

a) Subsequent changes or additions to the commission or to important products of the commission shall be recorded in writing and confirmed by both parties.

b) On request by the client we shall implement changes of later date provided this is possible without additional costs or postponements of deadlines. If the change causes an expense which is not covered by the agreed provision for remuneration, we shall inform the client within 2 working days of the change to costs, remuneration and deadlines. If the client does not consent to the change within a further 5 working days or if no other agreement is reached, we shall not be obliged to implement the changes to the commission.

c) If the client cancels commissions or the implementation of individual projects or promotions, we shall be entitled to require the agreed remuneration for the commission, the project or the promotion. We shall however be prepared to deduct the value of the expenditure we are saved by the cancellation and by virtue of the deployment of our workforce for other purposes.

6 Warranty

a) We shall perform our tasks meticulously and conscientiously. We do not accept any responsibility for the commercial success of recommendations, innovation or product strategies or of PR or advertising proposals and/or activities.

b) We shall present all advertising materials and promotional proposals to the client for its approval before their publication and implementation, which shall be initiated by us. The client shall be obliged to carefully examine on receipt our services, works and proposals, including image and film material,

even if these are only for temporary use and exploitation, and to approve same. This shall also apply to the services and works performed by third parties engaged by us. The client must make a careful check on the advertising statements contained in the proposals, works and advertising materials, in particular with regard to the quality, condition and expiry date of the advertised products, and also to compliance with laws regulating patents, design patents, trademarks, advertising, copyright, food products and the press.

c) After a justified complaint about our services, we shall be entitled to the option of rectification or a replacement delivery. If the subsequent performance is unsuccessful, the client may reduce the amount of remuneration or withdraw from the contract. If the client opts for withdrawal from the contract, it shall not be entitled to claim damages on grounds of the defect. If only a part of the services or works is defective, the client may only withdraw from the whole contract if it has no interest in the remaining, defect-free part.

d) The statements, descriptions and/or signs or trademarks of the client used as a representation of the contents, and included in the conception and design of packaging, will not be examined by us with regard to their completeness, correctness and compliance with statutory regulations, for which we thus accept no responsibility.

e) We will in no case be responsible for factual statements included in PR promotions on the client's products and services, in cases where these are prescribed by the client.

7 Terms of payment, remuneration, costs and expenses

a) We reserve the right to agree payment on account in any particular individual commission or framework agreement.

b) If the actual expense involved in executing a commission is greater than the expense on which the estimate of costs was based, we shall be entitled to invoice the increased expense to the client, if this is reasonable for the client and if the amount charged is not more than 10% higher than the said estimate.

c) Our invoices shall be due for payment, without deduction, within 14 days of receipt of the invoice (invoice date). The client shall be in default if it does not pay by that date.

d) The client may only offset claims that have been recognised by us or established at law against claims of ours.

8 Retention of title

We reserve title to our deliveries and works until our invoices have been paid in full. The retention of title shall cover all the claims against the client existing at the time the contract is concluded.

9 Confidentiality obligations

All the information and business processes mutually exchanged between us and the client, or made accessible to us or the client in any other way in connection with the commission, must be kept strictly confidential, and may not be disclosed to third parties, unless otherwise agreed or unless disclosure is required by the relevant statutory provisions.

10 General limitation of liability, periods of limitation

a) The client's claims and rights on grounds of defects in our services shall become time-barred on expiry of 12 months as from the time the service is delivered to or accepted by the client.

b) Our liability shall be exclusively in accordance with the agreements reached in these General Terms of Engagement and the contract. Our liability and other claims of every kind under warranty and for damages, regardless of the legal nature of the claims asserted against us, in particular on grounds of breach of duty resulting from a formal obligation or an unlawful act and for claims for compensation for lost profit or on grounds of other financial loss by the client, shall be excluded, unless we are responsible for the damage or loss due to wilful intent or gross negligence. These and all other limitations of liability in these General Term of Engagement shall not apply to a guarantee we have assumed, a procurement risk we have accepted, or to liability under the product liability act or to injury to life, the person or health, or to material contractual obligations. In case of the premeditated or negligent breach of material contractual obligations – apart from the cases of wilful intent, gross negligence and liability for damage or loss resulting from injury to life, the person or health – we shall be liable only for damage or loss foreseeable within reason under standard contractual conditions. This shall not involve an amendment to the burden of proof to the disadvantage of the Client.

c) Every limitation of liability in these General Terms of Engagement shall also apply to the personal liability or our employees, representatives and agents.

11 Transfer of rights of use

a) As of the settlement of all invoices related to the commission, we shall transfer to the client all the usage rights necessary for the use of our works and services on the scale that is agreed for the particular commission. In case of doubt we shall fulfil our obligation by granting non-exclusive rights of use in the territory of the Federal Republic of Germany for a limited period corresponding to the length of time our services will be utilised. Any use in excess thereof, in particular processing and modification, shall require our prior written consent.

The aforesaid provision shall not apply to rights of use of photographs and photographic works. The parties may agree on the granting of rights to use photographs and photographic works, but only separately and in individual cases. In such cases the corresponding rights of use shall initially be transferred to a limited period of 1 year. Thereafter they may be acquired without limitation of time.

b) Rights to use works which have not yet been paid for in full at the time the commission ends shall remain with us unless agreements have been reached to other effect.

c) The transfer of rights of use by the client to third parties shall be subject to our prior written consent.

12 Governing law, place of performance, court with jurisdiction, severability clause

a) The law of the Federal Republic of Germany shall apply to the exclusion of the United Nations CISG Convention.

b) Except where agreed otherwise, the place of performance shall be our legal domicile Sprockhövel. The courts at our domicile Sprockhövel shall have sole jurisdiction. We shall however be entitled to take legal action against the client at its court of general jurisdiction.