



General terms and conditions for the provision of goods and services of the Kalteswasser Multimedia GmbH

Status 15.01.2006

1. Scope of Application and Object of the Contract

1.1 These general terms and conditions of KM (subsequently to be referred to as "Kalteswasser Multimedia GmbH") apply according to the contractually stipulated subject of agreement to the following:

- Provision of services (consulting and benefit services)
- Software production
- All other services provided, including all offers from KM as well as commissions received by KM and the services required by these commissions.

1.2 Any provisions in deviation of these terms must be confirmed by KM in writing prior to their application. A letter of confirmation of an oral agreement is valid only when confirmed in writing by the letter`s recipient. All orders, including the acceptance of a guaranty for specific features (constitution), as well as potential warranties of the work require for their effectivity written confirmation from KM. This requirement of written form can only be waived through a written agreement.

1.3 General terms and conditions of the customer will not be subject matter of the contract, regardless of whether these include request offerings, orders, declarations of acceptance and are not contradicted.

2. Offer and Placement of Order

2.1 All offers made by Kalteswasser are without engagement unless otherwise made explicit in the offer. KM reserves the right to minor technical deviations from the offer even after the customer`s acceptance of the offer.

2.2 Deadlines regarding delivery and service are only binding when specified as such in writing by both KM and the customer. Otherwise all deadlines are non-binding.

2.3 The customer is not to give a third party access to the offer in any way, be it as a whole, in parts, or in revised form, unless written consent is given by KM to make the product accessible to a third party.

2.4 Assignment and description of contractual services (consulting, project, scope of services, specifications, execution and payment etc.) are to be carried out through individual contracts or contract notes by KM in the appropriate compositional form and must be composed in writing unless otherwise specified.

2.5 The functional specifications are to be composed by the customer with the appropriate consultation from KM. The functional specifications amicably become part of the respective contract after their completion by both parties.



3. Collaboration

3.1 The parties are to work together trustfully and are to inform each other immediately of any deviations from the agreed procedure or of any doubt concerning the correctness of the method of procedure.

3.2 If the customer notices that its own information is faulty or that its own requests can not be carried out, it is to report this to KM immediately, as well as any recognizable consequences of such actions or information.

3.3 The parties to the contract are to name each other their respective contact persons as well as their own representatives. In doing so, both parties recognize each other as responsible for the execution of the contractual relationship which they respectively lead.

3.4 Both parties are to immediately report to each other any changes in the persons named. Until the admission of this notification, the previously named contact person and/or representative is authorized to give or receive declarations as is within the scope of their duties and power of representation.

3.5 In order to facilitate any necessary intervention regarding the managing of the execution of the contract, the contact persons are to inform each other in regular intervals of any progress or hindrances in regards to the execution of the contract.

4. Obligation to Cooperate by the Customer

4.1 The customer is to support KM in KM`s fulfillment of the contractually owed services. This duty includes the punctual provision of information and data material, as well as hardware and software, as is required by the participatory services of the customer. The customer is to inform KM in detail as to the services which are expected of KM.

4.2 The customer is to provide KM with the necessary number of technically qualified employees for the successful realization of the contractual relationship.

4.3 Provided that the customer has obligated itself in the scope of the execution of the contract to supply KM with materials (image, sound, text etc.), the customer is to do so in a timely fashion and the materials provided should be in an utilizable and preferably digital format. If a conversion of the material provided by the customer into another format is necessary, the customer is required to assume the costs for this process. The customer is to guarantee that KM receives the necessary rights for the use of the materials provided.

4.4 The customer is obliged to assume the costs of the fulfillment of obligations

4.5 All third parties who are instigated or tolerated by the customer to work in the area operations for KM are the responsibility of the customer, as in the case of auxiliary persons. KM takes no responsibility in regards to the customer for any duties either completely, partially or not punctually completed due to the conduct of one of the aforementioned third parties.



5. Deadlines

5.1 The service dates for the achievement of the individual segments of a project as well as for the completion of the entire project are to be determined in individual contracts. The service dates are to be agreed upon in writing no later than the incorporation of the functional specifications.

5.2 Deadlines for the service provision are to be accepted on the part of KM only by the designated contact person.

5.3 The contractual parties are preferably to fix deadlines in writing. Deadlines in accordance with § 286 Paragraph 2 of civil code which are defaulted upon without reminder due to the default of one of the contractual parties (binding deadlines) are to be fixed in written form and are to be identified as binding.

5.4 KM does not assume any responsibility for delays of service due to extenuating circumstances (e.g. strikes, lockouts, official ordinances, general disturbances of telecommunication etc.) or due to circumstances within the scope of responsibility of the customer (e.g. the unpunctual provision of services, delays). In the case of such a delay of service, KM reserves the right to extend the time period for the completion of the services in question for the same amount of time taken up by the delay. KM will notify the customer of delays of service due to extenuating circumstances.

5.5 If a deadline of completion has been exceeded, the customer is to send a written reminder in regards to the completion as well as to set an appropriate time limit for the provision of services or supplementary performance. The customer can only withdraw from the contract after the determination of this time limit. The time limit must be at least 4 weeks long.

5.6 The customer is only allowed to issue a warning or specify a time limit if the exceedance of the deadline was not due to belated change requests on behalf of the customer or to other circumstances within the scope of the customers responsibility.

6. Modifications of Service

6.1 If the customer wants to modify the contractually stipulated scope of services to be performed by KM, the modification request must be submitted to KM in writing. The following procedure is to correspond with the subsequent stipulations. In accordance with paragraphs 2 to 5, KM can disregard the specific procedure for those modification requests which can be examined quickly and subsequently implemented within a period of 8 working hours.

6.2 KM will examine the potential consequences of the desired modifications, focusing especially on modifications in payment, additional spending and deadlines. If the results of KM`s investigation are that the services either can not be performed or only rendered in a delayed fashion, KM will inform the customer and indicate to the customer that modifications of request will only subsequently be examined if the rendering of the services in question is initially postponed until a non-specified date. If the customer expresses his consent with this postponement, KM will execute the examination of the modification request. The customer is authorized to withdraw his modification request at any time. In the case of withdrawal, the newly introduced modification procedure will end.



6.3 After the examination of the modification request, KM will present to the customer the consequences the modification request will have on the agreements in question. The presentation will contain either a detailed proposal for how to implement the change request or a detailed account of why the change request can not be implemented.

6.4 The contractual parties are immediately to hold a vote concerning the content of the proposal and the results of a successful vote are to be added as a rider to the text of the agreement which the modification concerns.

6.5 If an agreement is not met or if the changing procedure ends for any other reason, the scope of services is to remain as it was originally. The same rule also applies if the customer does not consent to a postponement of the services until a further examination according to Paragraph 2.

6.6 The deadlines relevant to the changing procedure are to be extended in an appropriate fashion according to the duration of the examination, the duration of the vote on the modification proposal and, if necessary, according to the length of the execution of the change requests. KM will inform the customer of the new deadlines.

6.7 The customer is to bear the cost of the expenses incurred through their initiation of the changes. This is especially applicable in the following instances: examination of the modification request, the development of a modification proposal, and any possible idle time. In the case that the parties reach an agreement on daily rates, the expenses will be calculated by KM according to this agreement. Otherwise, the expenses will be calculated according to the KM`s customary payment fashion.

6.8 KM is authorized to change or deviate from the contractually agreed upon provision of services if the change or deviation is reasonable for the customer and in the consideration of KM`s interests.

7. Payment

7.1 Purchase tax applies additionally both to payment and the additional charges, which are to be fixed in the contract. Payment regarding expenditures of time is equal to the amount of the payment per time unit. This payment corresponds to the qualification of the employee appointed for the specific service and is also to be fixed in the contract.

7.2 If a payment according to time expenditure has been agreed upon, the basis of the payment shall be accounted for in an activity report. Activity reports are to be conducted by all KM employees and are to be filled out every 30 minutes. Travel time is also to be included in the fees of the hourly rate. Bills shall be presented monthly ex post.

7.3 If a fixed price for the payment has been agreed upon, KM reserves the right to be paid in installments corresponding to the services rendered by KM. This entitlement corresponds to the following project phases:

- Inception of contract
- First partial-delivery (at a latest 6 months after the beginning of the project)
- Preparation for acceptance
- Acceptance



7.4 Additionally to payment KM charges additional expenses (e. g. travel costs, data processor costs) payable monthly in arrears.

7.5 If the working hours or traveling time are outside of the normal working hours, the following additional charges apply to the payment per working hour:

- 50% on workdays between 8 p.m. and 6 a.m.
- 100 % on Saturdays, Sundays and holidays.

7.6 Bills are to be paid in full no later than 15 days after invoice receipt.

7.7 The customer can only offset KM`s claims with undisputed and legally ascertained amounts receivable.

7.8 In the case of a fault or defect, the customer can only partially withhold payment in a fashion proportional to and in consideration of the fault or defect.

7.9 In the case that the expenditure of labor greatly exceeds the estimate due to incomplete or inaccurate information or improper involvement on behalf of the customer, KM is authorized to demand an increase in payment, even in instances of payment involving a flat rate or maximum payment limit.

7.10 Only after complete payment will the rights of the services of KM be transferred to the customer.

7.11 If the parties have not met an agreement regarding the payment of a specific service of KM which can only be understood as requiring payment, then the customer is required to pay the common price for this service. In case of doubt, the normal rate charged by KM applies.

7.12 If the customer is to default on a payment, the late payment is to be made with an annual interest of eight percent (8%) above the respective primary rate of the German National Bank (Deutsche Bundesbank) in accordance with § 247 Paragraph 2 of German Civil Code. Any further claim to compensation for damages remains unaffected by this stipulation.

8. Implementation and Briefing

8.1 The implementation of software and the briefing of service personnel are to take place only on account of special agreements.

9. Acceptance

9.1 Kalteswasser Multimedia is authorized to present partial deliveries and partial services for acceptance (Partial Acceptance). This includes: self-contained phases for the fulfillment of specified phases or services, self-contained and therefore functional parts, self-contained documents or parts of documents.

9.2 The customer will process every acceptance (Partial Acceptance) of the services rendered by KM without delay. KM is authorized to take part in every acceptance of the contracted works.

9.3 The acceptance of software is to take place by means of a performance test. The test has been successfully completed when the test procedures which have



been either agreed upon or, in light of the lack of an agreement, fixed by KM at their own discretion, show no considerable faults or defects.

9.4 The acceptance has successfully taken place when after 30 calendar days or an alternative deadline agreed upon by both parties the customer either does not express any reprovals of considerable faults or has taken the work results into active operation after the provision of acceptance.

10. Redhibitory or Defect of Quality

10.1 If the performance from KM exhibits a defect of quality, the customer is authorized to request either a subsequent improvement or a new delivery (remedy), according to the customer`s wishes.

10.2 If after the first request the customer has fixed for KM an appropriate deadline and KM denies the supplementary remedy or if two attempts at a supplementary remedy fail due to the same defect of quality before the first deadline, the customer reserves the right to rescind the contract or to request a decrease in payment on account of a considerable breach of duty, unless the situation has otherwise been managed through specific circumstances regarding the type of defect or flaw. The same also applies when a supplementary remedy for KM is unreasonable. In the case of an insubstantial breach of duty, the customer is only authorized to request a decrease in payment.

10.3 To the extent that compensation can be claimed upon presentation of the lawful expectations, the claim for damages is restricted to 7% of the worth of the defective service. In the case of multiple claims for damages due to mistakes or defects, the maximum limit is 7% of the contractually stipulated total payment. Further claims concerning faults or defects are not permissible. This limitation of liability does not apply in instances of intent or gross negligence.

10.4 In the case of insubstantial deviation of KM`s service in regards to the contractually based constitution or usability, no claims to defects of quality can be made.

10.5 If KM has provided services for troubleshooting after notification of an error or dysfunction and no defect of quality is found to exist, the customer is obligated to pay for the costs thus incurred. The costs will be calculated by KM on the basis of the respective payment rate corresponding to the point of time in which the services were provided.

10.6 Liability for a defect of quality expires in instances where services provided by KM have been altered or interfered with by the customer or when the customer does not immediately submit a written reproof to KM. The expiration of liability for a defect of quality does not apply when the customer can prove in the report of the defect that the customer`s intervention was not the cause of the defect. Further, the liability for a defect expires if the software is not being used in accordance to the contractually stipulated conditions of use corresponding to the documentation.

10.7 In the case of a correct elimination of error, it is required that the customer adequately describes the error and that this error is ascertainable by KM. Further, KM is to be provided with the necessary documents regarding the correction of error for the facilitation of the correction.



10.8 If the defectiveness is due to the service of a supplier, the liability of KM in the case of a defect of quality is limited to the cession of the claim of defect to which KM is entitled KM to the supplier. In the case that the supplier refuses to perform the supplementary remedy or delays doing so unacceptably or for any other reason is incapable of fulfilling this duty, the customer`s claim of defect is directed towards KM in proportion to the numeral 10.1. The period of limitation is suspended for the length of the usage of the supplier.

10.9 Claims of the customer due the necessary expenditures required for the purpose of supplementary remedy such as transport, work costs, or material costs, are excluded as far as the expenditures increase due to the subsequent transport of the subject of agreement to a place of fulfillment other than the one contractually agreed upon.

10.10 Claims of defect of quality come under the statute of limitations one year after acceptance. If KM has guaranteed certain features of the work, the customer`s corresponding claims also come under the statute of limitations one year after acceptance.

11. Rights of Use

11.1 In regards to the services performed by KM, KM allows the customer the simply, spatially and temporally unrestricted right to use the services provided in accordance with the contract. If software is subject of agreement, §§ 69 d und e UrhG applies.

11.2 Any use other than those described in Paragraph 1 is forbidden. The customer is especially prohibited from disseminating sublicenses and from copying, renting or otherwise turning the services to account.

11.3 The customer is only revocably permitted to use the services rendered until the full payment has been made to KM. KM is authorized to revoke the use of such services for the length of the delay of payment upon which the customer is defaults.

11.4 If the customer has been contractually allowed an exclusive right of use and the customer is to cancel the contract before the completion of the deliverables for reasons outside of the scope of responsibility of KM, the customer is only to receive a simple right of use for the results transferred. In this case, KM maintains the exclusive right of use.

11.5 The relinquishment and concession of rights of the source code as well as the internal developmental documents are exempt, as long as the updating and troubleshooting can be performed by KM for adequate payment.

12. Infringements upon Industrial Property Rights

12.1 At its own costs, KM will make the customer exempt of any claims of a third party regarding infringement upon industrial property rights (patents, licenses, copyrights). The customer is to inform KM immediately of any applicable claims of a third party. If the customer does not immediately inform KM of the claims asserted, the exemption is terminated.



12.2 In the case of infringement upon industrial property rights, KM is authorized to undertake changes so as to eradicate these infringements or to acquire the necessary rights of use for the customer. KM does so at its own risk in regards to the services concerned and regardless of any claims of damages on behalf of the customer. KM is allowed to do so upon its own volition but must discuss the decision with the customer before any actions are taken.

13. Withdrawal

13.1 The customer can only withdraw due to a breach of duty that does not concern a defect in the goods or services provided and only if KM is responsible for this breach of duty.

13.2 If the customer decides to either cancel the contract or request compensation instead of service or makes any similar claims due to improper service on behalf of KM, KM requests that the customer inform KM in writing whether it will make use of these rights or desires the continued provision of services. A cancellation of contract is only possible if KM is responsible for the delay in the provision of services.

14. Services (Consulting and Support Services)

14.1 If no duration of the contract has been specified in the contract, the contract can be cancelled by all contractual parties after a time limit of (3) months beginning at the end of every calendar quarter-year.

14.2 If the duration of the contract has been determined within the contract, the customer has the right to prematurely cancel the contract after a time limit of (3) months beginning at the end of every calendar quarter-year.

14.3 In the case of a cancellation of contract in accordance with article 14.1, the customer is to pay for the services which have been provided by KM until the cancellation, as is stated within the contract. If the customer prematurely cancels the contract in accordance with article 14.2, the customer is to pay both for the services provided until the cancellation as well as an amount of 35% of the payment for the services that would have been provided after the cancellation. The customer is authorized to prove that KM has saved 65% of the worth of the remaining payment on expenses due to the non-execution of further services and that for this reason KM can only claim the remaining 35% of payment.

14.4 The cancellation is to be fixed in writing. In order to ensure the time limit and the requirement for written form, it is not allowed to cancel by means of fax machine, email, or any other form of electronic communication.

15. Liability

15.1 KM is liable for intent and gross negligence. KM is only liable for slight negligence in the case of a breach of an essential contractual duty (cardinal duty), as well as in the damages sustained from an injury of life, body or health.

15.2 In the case of slight negligence, liability is limited in terms of the amount of the foreseeable damages which usually have to be expected. Liability is limited in every case to a sum total of 25,000,- EURO.



15.3 KM is not liable for the loss of data or programs if such damages are due to the customers neglecting to back up data and therefore failing to ensure that lost data can be reproduced through justifiable expenditures.

15.4 The above-mentioned provisions also apply on behalf of vicarious agents of KM.

15.5 All of the contractual claims for damages expire a year after the beginning of the lawful statutory period of limitations.

16. Non-solicitation Agreement

16.1 The customer is obligated not to solicit any employees of KM or to hire any employees of KM without the consent of KM for the duration of the cooperation of the parties and up to one year after the cooperation. If the customer does not comply with this rule, the customer is obliged to pay a contractual penalty the amount of which is to be determined either by KM or, in the case of dispute, by the appropriate court of law.

17. Privacy, Statement to the Press, Data Security

17.1 All documents, imparted knowledge and experiences are to be used exclusively for the purposes of this contract and are not to be made accessible to a third party, as long as this information has not been contractually determined to be accessible to a third party or if the third party is already privy to this information. Those persons who have taken part in and are responsible for the execution of the contractual relationship such as freelancers or subcontractors are not considered to be third parties.

17.2 Furthermore, the contractual parties agree to preserve the confidentiality of the contract and the knowledge gained through the contract`s execution.

17.3 The secrecy obligation also applies after the end of the contractual relationship.

17.4 If one of the contractual parties requests certain documents such as strategy papers, briefing documents etc., the other party is obliged to transfer these documents after the end of the contractual relationship if it cannot assert any justifiable interest regarding the use of these documents.

17.5 Statements to the press, general information etc. in which one of the contractual parties makes reference to the other are only permissible after written approval has been given (including email).

17.6 The processing of information related to specific persons is only permissible if a law or other statutory regulation allows or prescribes it or if the person in question has expressed his/her approval or consented in the form of a contract. Data received by KM from a customer relating to specific persons will only be implemented within the framework of the contractually stipulated purposes and only in the necessary amount for each specific instance. Information will only be presented to governmental bodies if it is required by law. All employees are legally bound to data secrecy.



18. Arbitration

18.1 The parties will try to resolve all differences of opinion regarding or not regarding their contractual relationship through detailed discussion between the contact persons.

18.2 All disputes which cannot be settled are to be subject to an arbitration process. If one party refuses to take part in the arbitration process, he has the right to proceed through a court of law as long as he informs the other party in writing prior to doing so.

18.3 In order to successfully execute the arbitration process, the parties are to call the Deutscher Multimedia Verband e.V., Kaistrasse 14 in 40221 Düsseldorf with the intention of taking part in a conciliation act and ending their dispute either partially or completely, temporarily or permanently.

18.4 All deadlines affected by the arbitration process and the discussion between the contact parties can be postponed. The length of the postponement will take into consideration both the length of the arbitration and potentially the length of the results of the arbitration to be performed, as well as an ample grace period.

19. Miscellaneous

19.1 Subrogation is only permissible after the receipt of written consent from the other contractual party. The consent may not be unreasonably rejected. The ordinance of § 354 a HGB remains unaffected by this stipulation.

19.2 A right of retention can only be claimed on account of counterclaims from the respective contractual relationship.

19.3 KM is authorized to refer to the customer on KM`s website or in other media as a reference customer. Unless the customer can justifiably claim conflicting interests, KM is authorized to publicly reproduce or refer to the services rendered for demonstrational purposes.

20. Final Provisions

20.1 All changes or amendments to contractual agreements must be documented in writing for proof of purpose. Cancellations are to be carried out in writing. Notifications which are to be made in writing can also be carried out through email.

20.2 If individual provisions of party agreements are or become completely or partially ineffective, it is to have no effect on the rest of the provisions. In this case, the parties are to replace the ineffective provision with an effective provision which approximates the purpose of the ineffective provision as much as possible.

20.3 Claims of the customer regarding defect of title come under the statute of limitations one year from the beginning of the lawful limitation period.

20.4 These General Terms and Conditions are governed by the laws of the Federal Republic of Germany, to the exclusion of the CISG (United Nations Convention on Contracts for the International Sale of Goods) and international private law.



20.5 The exclusive place of jurisdiction for all civil disputes related or unrelated to this contract is the registered office of Kalteswasser Multimedia GmbH.