General Terms and Conditions

Kaiserlicht e.U.

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1. Scope and Conclusion of Contract

1.1. Kaiserlicht e.U. (hereinafter referred to as the “Agency”) provides its services exclusively on the basis of the following General Terms and Conditions (GTC). These apply to all legal relationships between the Agency and the client, even if not explicitly referred to. These GTC apply exclusively to entrepreneurs within the meaning of Section 1 (1) (1) of the Austrian Consumer Protection Act (KSchG); they do not apply to consumers.

1.2. The version valid at the time the contract is concluded shall be binding. Deviations from these GTC, as well as any additional agreements with the client, are only valid if confirmed in writing by the Agency. The requirement for written form is also fulfilled by email.

1.3. Any terms and conditions of the client are not accepted, even if known, unless expressly agreed otherwise in writing on a case-by-case basis. The Agency expressly objects to the client’s terms and conditions. No further objection to the client’s terms and conditions by the Agency is required.

1.4. Changes to the GTC will be communicated to the client and are deemed agreed if the client does not object to the amended GTC in writing within 14 days; the client will be expressly informed of the significance of remaining silent in the notification.

1.5. If individual provisions of these General Terms and Conditions are invalid, this shall not affect the validity of the remaining provisions or of the contracts concluded on the basis thereof. The invalid provision shall be replaced by a valid one that comes closest to its intended meaning and purpose.

1.6. The Agency’s offers are non-binding and subject to change.

2. Concept and Idea Protection

If the potential client has invited the Agency in advance to create a concept, and the Agency complies with this invitation before the main contract is concluded, the following applies:

2.1. By issuing the invitation and the Agency’s acceptance of it, a contractual relationship is established between the potential client and the Agency (“Pitching Agreement”). This agreement is also subject to the GTC.

2.2. The potential client acknowledges that the Agency already incurs significant upfront costs by developing the concept, even though the client has not yet assumed any service obligation under the main contract.

2.3. The concept, in its textual and graphic components, is protected by copyright law insofar as these reach the level of a creative work. Use or modification of these parts without the Agency’s consent is not permitted to the potential client, already by virtue of copyright law.

2.4. The concept also contains relevant ideas that do not reach the level of a creative work and are therefore not protected by copyright law. These ideas stand at the beginning of every creative process and can be seen as the initial spark for everything that follows, and thus as the origin of marketing strategies.

Therefore, those elements of the concept that are unique, novel and distinctive, and which give the concept and/or the marketing strategy its characteristic identity, are protected. For the purposes of this agreement, “ideas” include in particular implementation concepts, storyboards, advertising slogans, ad copy, graphics and illustrations, test animations, etc., even if they do not reach the level of a creative work.

2.5. The potential client agrees not to commercially exploit or have exploited, nor use or have used, the creative ideas presented by the Agency as part of the concept outside the necessary framework of a main contract to be concluded later.

2.6. If the potential client believes that ideas presented by the Agency were already known to them before the presentation, the client must notify the Agency of this without delay, and no later than 14 days after the day of the presentation, by email, providing evidence that allows chronological verification.

2.7. If no such notice is given, both parties assume that the Agency has presented the potential client with an idea that is new to them. If the idea is used by the client, it is to be assumed that the Agency has earned compensation for it.

2.8. The potential client may release themselves from the obligations under this section by paying reasonable compensation plus 20 % VAT. The release only becomes effective once full payment of the compensation has been received by the Agency.

2.9 The prospective client shall treat the concept and all presentation materials as confidential. The prospective client may not, in whole or in part, disclose them to third parties, enter them into artificial intelligence systems (e.g. ChatGPT, Claude, Copilot), or process them, or have them processed, by means of such systems. This obligation applies until a main contract is concluded and, if no such contract is concluded, continues indefinitely. If a main contract is concluded for individual parts of the concept only, this obligation continues to apply to the remaining parts. Once the main contract has been concluded, the use of the commissioned services is governed by Section 10.

2.10 If the prospective client breaches Section 2.5 or 2.9, the prospective client shall pay the Agency a contractual penalty equal to the customary market fee for the creation and use of the concept, irrespective of proof of damage. The Agency reserves the right to claim further damages.

3. Scope of Services, Project Execution and Client’s Duty to Cooperate

3.1. The scope of the services to be provided is determined by the service description in the Agency contract or any order confirmation by the Agency, as well as any briefing records (“Offer Documents”). Subsequent changes to the scope of services must be confirmed in writing by the Agency. Within the framework set by the client, the Agency has creative freedom in fulfilling the order.

3.2. All services provided by the Agency (including but not limited to drafts, sketches, storyboards, look development, 3D models & textures, character rigs, animatics, animations, renderings and digital files) must be reviewed by the client and approved within three working days of receipt. If not approved in time, they shall be deemed accepted by the client.

3.3. The client shall provide the Agency with all information and documents required for the performance of the services in a timely and complete manner. The client shall promptly inform the Agency of all circumstances relevant to the execution of the order, even if these only become known during its execution. The client bears the costs arising from work having to be repeated or being delayed due to inaccurate, incomplete or subsequently changed information provided by the client.

3.4. The client declares that they are authorised to make the dispositions resulting from placing the order. The client declares that they hold all rights to the material to be processed or have the express consent or permission of the rights holders. This also applies to rights administered or to be administered by collecting societies (e.g. AKM, Austro-Mechana, LSG, GEMA, etc.).

Upon request, the client is obliged to provide corresponding written declarations and confirmations from the rights holders. The Agency is not obliged but is entitled to make the notifications or contractual agreements required towards the collecting societies on behalf of the client and at the client's expense. By placing the order, the client grants the Agency the exclusive usage rights, unlimited in time, territory and content, to all film works and moving images to which the order relates, for the purpose of editing, alteration and revision.

The client agrees to indemnify and hold the Agency harmless against any infringements arising in the course of performing the order, in particular infringements of copyright, neighbouring rights or personality rights, insofar as these were caused by the client's failure to adequately secure the necessary rights.

4. Third-Party Services / Commissioning of Third Parties

4.1. The Agency is entitled, at its own discretion, to perform the service itself, to engage qualified third parties in the performance of contractual services and/or to substitute such services ("Third-Party Services").

4.2. Third parties are commissioned within the scope of Third-Party Services either in the Agency's own name or in the name of the client. The Agency will carefully select and monitor such third parties and ensure that they have the required professional qualifications.

4.3. Where the Agency commissions necessary or agreed Third-Party Services, the respective contractors are not vicarious agents of the Agency.

4.4. The client shall assume, to the extent legally permissible, all obligations towards third parties that extend beyond the term of the contract. This expressly also applies in the event of termination of the Agency contract for good cause.

5. Deadlines

5.1. Delivery or performance dates stated by the Agency are only approximate and non-binding unless expressly agreed as binding. Binding deadlines must be recorded in writing or confirmed in writing by the Agency. Email meets the requirement for written form.

5.2. If delivery or performance by the Agency is delayed for reasons beyond its control, including but not limited to force majeure and other unforeseeable events that cannot be prevented with reasonable effort, the Agency's obligations are suspended for the duration and to the extent of the impediment, and deadlines are extended accordingly. Such unavoidable events include in particular, but are not limited to, power outages, unforeseeable software and hardware as well as network restrictions, and zombie attacks.

If such delays persist for more than 6 weeks from the occurrence of the event, both the client and the Agency are entitled to terminate the contract.

5.3. If the Agency is in default, the client may only withdraw from the contract after having granted the Agency a reasonable grace period of at least 14 days in writing and this period has expired without result. Claims for damages by the client due to non-performance or delay are excluded, except where intent or gross negligence is proven.

6. Premature Termination

6.1. The Agency is entitled to terminate the contract with immediate effect for good cause. Good cause exists in particular if

a) the performance of the service becomes impossible or economically pointless for reasons attributable to the client, or continues to be delayed despite a grace period of 14 days;

b) the client persistently breaches essential obligations under this contract, such as payment of an amount due or duties to cooperate, despite a written warning with a grace period of 14 days;

c) there are justified concerns about the client's creditworthiness and the client, at the Agency's request, neither makes appropriate advance payments nor provides suitable security before the Agency performs its services.

6.2. The client is entitled to terminate the contract for good cause without granting a grace period. Good cause exists in particular if the Agency persistently breaches essential provisions of this contract despite a written warning with a reasonable grace period of at least 14 days to remedy the breach.

A subsequent change to the artistic (core) concept does not constitute good cause.

7. Fees

7.1. Unless otherwise agreed, the Agency's entitlement to fees arises for each individual service as soon as it has been rendered. The Agency is entitled to request advance payments to cover its expenses. For orders with an (annual) budget of € 100,000 or more, or those extending over a longer period, the Agency is entitled to issue interim or advance invoices or to request payments on account.

7.2. All fees are net fees plus statutory VAT.

In the absence of an agreement in the individual case, the Agency is entitled to a fee at the customary market rate for the services rendered and for the transfer of copyright and trademark usage rights.

7.3. All services of the Agency that are not expressly covered by the agreed fee will be remunerated separately.

7.4. Cost estimates provided by the Agency are non-binding. If it is foreseeable that the actual costs will exceed the Agency's written estimate by more than 15 %, the Agency will inform the client of the higher costs.

The cost overrun is deemed approved by the client if the client does not object in writing within three working days of this notice and at the same time propose more cost-effective alternatives. For a cost overrun of up to 15 %, no separate notification is required. Such an overrun of the cost estimate is deemed approved by the client in advance, to the extent legally permissible.

7.5. For all work of the Agency that is not carried out by the client for whatever reason, the Agency is entitled to the agreed fee.

Offsetting against claims of the client from other contractual relationships requires the Agency's approval in accordance with section 8.5.

Payment of the fee does not grant the client any usage rights to work already performed; concepts, drafts and other documents that have not been implemented must instead be returned to the Agency without delay.

8. Terms of Payment

8.1. The fee is due for payment immediately upon receipt of the invoice and without deduction, unless special payment terms have been agreed in writing in the individual case. This also applies to the recharging of all cash expenses and other outlays.

8.2. In the event of default in payment by the client, statutory default interest at the rate applicable to transactions between entrepreneurs shall apply. Furthermore, in the event of default, the client undertakes to reimburse the Agency for the dunning and collection costs incurred, insofar as these are necessary for appropriate legal enforcement.

This includes in any case the costs of two dunning letters at a customary market rate of currently at least € 20.00 per letter, as well as a dunning letter from a lawyer engaged to collect the debt. The assertion of further rights and claims remains unaffected.

8.3. In the event of default in payment by the client, the Agency may declare all services and partial services rendered under other contracts concluded with the client immediately due for payment.

8.4. Furthermore, the Agency is not obliged to provide further services until the outstanding amount has been settled (right of retention). The obligation to pay the fee remains unaffected.

8.5. The client is not entitled to offset their own claims against claims of the Agency, unless the client's claim has been acknowledged in writing by the Agency, established by a court, or approved in writing by the Agency.

8.6. If payment in instalments has been agreed, the Agency reserves the right to demand immediate payment of the entire outstanding balance (acceleration) if partial amounts or ancillary claims are not paid on time.

8.7. Unless otherwise agreed in writing, the Agency reserves the right to request down payments for orders with a value of € 100,000 or more. Typically, 20 % of the total contract value is due at the start of the project, a further 30 % at the project midpoint and 50 % at project completion.

8.8. For orders with a value of € 500,000 or more, the Agency reserves the right to request a bank guarantee. The bank guarantee must be subject to the ICC URDG in the version applicable at the time and must be drawable upon a written declaration by the Agency that its service has been rendered and the client's consideration is due. The costs of the bank guarantee are borne by the client. The provision of the bank guarantee is a condition precedent for the main contract to take effect.

9. Storage of Client Material

9.1. If film or other materials are handed over to the Agency, the Agency is obliged to store them only until completion of the initial processing assignment. Storage takes place in the Agency's material storage, which is not designed for archival storage. Originals and duplicate materials are not stored separately. The Agency accepts no liability for the proper and safe storage of the material handed over; it is the client's responsibility to ensure adequate insurance cover and to make and store sufficient backup copies.

9.2. Acceptance and return take place during the Agency's usual business hours; the client must announce collection at least 24 hours in advance. In particular, the Agency is entitled to have the material stored by third parties on behalf of the client.

9.3. Storage fees are based on customary market rates. For material not required by the Agency, storage fees apply from the day of delivery. The Agency is entitled, after prior notice within a reasonable period, to send the material to the address of the client last notified to the Agency. If the notice cannot be delivered, or if the client refuses acceptance or cannot be reached, the Agency is entitled to destroy the material after one month at its own discretion, at the client's expense and risk.

10. Copyright

10.1. In the case of intellectual property rights, all rights remain with the Agency until full payment of the agreed fee. If the client grants rights to third parties, the client assigns its claims against such third parties to the Agency until all outstanding claims have been settled. The Agency accepts this assignment.

10.2. In the case of the production and/or editing of content, all rights to preparatory and processing programs and models (in particular 3D models, source code, working materials, etc.) remain with the Agency. These are not part of the order.

10.3. Unless expressly agreed otherwise, rights are transferred to the client only to the extent of the use intended by the client and communicated to the Agency. Accordingly, the client is entitled to use, exercise and exploit the transferred rights within the scope of this planned use after full payment of all fees. The client is not entitled to modify or edit the content provided. Editing also includes changing colours and colour schemes.

Any further grant of rights must be agreed separately with the Agency.

10.4. In the event of seizures or other interventions by third parties, the client must inform the Agency immediately in writing so that appropriate legal action can be taken.

10.5. Use of artificial intelligence: The Agency is entitled to use artificial intelligence tools ("AI") in providing its services, in particular for creating and editing images, videos and texts. AI is used at the Agency's professional discretion. Upon request, the Agency will inform the client to what extent AI has been used. If the use of AI is to be waived in whole or in part, this must be agreed in writing before the order is placed.

10.6. The client acknowledges that content generated exclusively or predominantly by AI may, under the current legal situation, not be protected by copyright or only to a limited extent. For such content, rights are granted under section 10.3 only to the extent that the Agency itself holds rights to it. The Agency gives no warranty as to the protectability or exclusivity of AI-generated content.

10.7. The Agency selects AI tools with care. The Agency is entitled to enter material provided by the client into AI tools, unless the client objects to this in writing before handing over the material. The client acknowledges that providers of AI tools may, under their terms of use, also use material entered for training their models, and that the Agency has no influence on this. If the material contains confidential content, third-party rights or personal data whose disclosure for this purpose is not permitted, the client must object to such use before handing over the material. In the event of an objection, the Agency will refrain from using such tools for this material; any additional effort resulting from this will be invoiced separately. Any liability of the Agency for AI-generated content infringing third-party rights without the Agency's knowledge is excluded, except in cases of intent or gross negligence; section 12.4 remains unaffected.

11. Credits

11.1. The Agency is entitled to refer to the Agency and, where applicable, to the author on all advertising materials and in all advertising measures, without the client being entitled to any remuneration for this.

11.2. The Agency is further entitled to publicly present the content edited or created by the Agency on the internet for its own presentation (portfolio) and to refer to the project, including the client, working title, etc.

12. Warranty

12.1. The client must report any defects in writing, with a description of the defect, without delay and in any case within four days of delivery or performance by the Agency, and hidden

defects within eight days of their discovery; otherwise, the service shall be deemed accepted. In this case, the assertion of warranty and damage claims as well as the right to contest the contract on grounds of error due to defects are excluded; intent and gross negligence remain unaffected.

12.2. In the event of a justified and timely notice of defects, the client is entitled to improvement or replacement of the delivery or service by the Agency. The Agency will remedy the defects within a reasonable period, provided that the client enables the Agency to carry out all measures necessary for examining and remedying the defects.

The Agency is entitled to refuse the improvement of the service if it is impossible or involves disproportionately high effort for the Agency. In this case, the client is entitled to the statutory rights to a price reduction. In the case of improvement, the client is responsible for sending the defective (physical) item at their own expense.

The Agency may make subsequent performance conditional on the client paying a portion of the fee that is reasonable in light of the defect.

The client is only entitled to a price reduction or termination of the contract if they have given the Agency two opportunities to remedy the same defects.

12.3. The client has no claims if errors or defects were caused by incorrect operation or maintenance of the subject matter of the contract or by unauthorised changes to it by the client.

12.4. The client is also responsible for reviewing the service for its legal admissibility, in particular under competition, trademark, copyright and administrative law. The Agency is only obliged to carry out a general check of legal admissibility. In cases of slight negligence, or after fulfilling any duty to warn the client, the Agency is not liable for the legal admissibility of content specified or approved by the client.

13. Liability and Product Liability

13.1. To the extent permissible, the Agency is not liable for damage caused by slight negligence. Liability for indirect and unforeseeable damage, consequential damage and loss of profit is excluded to the extent permitted by law.

If the restoration of material handed over to the Agency for processing is not possible on the basis of negatives, copies or other source material of the client, the typical and foreseeable damage under the contract shall be understood as the replacement of the material value of the carrier medium of the same type and length.

The injured party bears the burden of proof for gross negligence. Insofar as the Agency's liability is excluded or limited, this also applies to the personal liability of its staff.

13.2. Any liability of the Agency for claims raised against the client on the basis of the service provided by the Agency (e.g. an advertising measure) is expressly excluded if the Agency has fulfilled its duty to warn or such a duty was not recognisable to it; slight negligence shall not be detrimental in this respect.

14. Applicable Law

Unless otherwise agreed in writing, the contract and all mutual rights, obligations and claims between the Agency and the client arising from it are subject to Austrian substantive law, excluding its conflict-of-law rules and the UN Convention on Contracts for the International Sale of Goods.

15. Place of Performance and Arbitration

15.1. The place of performance is the registered office of the Agency.

15.2a To the extent legally permissible, the following is agreed: For disputes with a value of € 500,000 or more, all disputes arising from or in connection with this contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with those Rules. The Rules in force at the time the proceedings are commenced shall apply.

15.2b To the extent legally permissible, the following is agreed: For disputes with a value of up to € 500,000, the court with subject-matter jurisdiction at the registered office of the Agency shall have jurisdiction for all disputes arising from or in connection with this contract. Notwithstanding this, the Agency is entitled to sue the client at the client's general place of jurisdiction.

16. Written Form and Severability

16.1. Changes or additions to these General Terms and Conditions must be made in writing; this also applies to any waiver of the written form requirement. If any of the above provisions is or becomes invalid, the validity of the remaining provisions shall not be affected. Invalid provisions shall be replaced by provisions which, taking into account the interests of the contracting parties, are suitable to achieve the intended economic purpose of the invalid provision. The same applies to any gaps in these provisions.

16.2. Where terms referring to natural persons are used in only one gender in this contract, they refer equally to persons of all genders. When applying such a term to specific natural persons, the respective gender-specific form shall be used.

16.3. In case of any discrepancies between the German and the English version, the German version shall prevail.