

506 Data & Performance GmbH

Terms and Conditions - Services

Status October 2023

1. APPLICABILITY, CONCLUSION OF THE CONTRACT

1.1 506 Data & Performance GmbH (hereinafter referred to as "506") provides its services exclusively on the basis of the following General Terms and Conditions. These shall apply to all future business relations, even if they are not expressly referred to.

1.2 Deviations from these terms and conditions, as well as other supplementary agreements with the customer shall only be effective if they are confirmed in writing by 506.

1.3 Any terms and conditions of the customer shall not apply unless expressly agreed otherwise in writing in individual cases. 506 is not required to object to the customer's general terms and conditions.

1.4 If any provision of these General Terms and Conditions is invalid, the remaining provisions and contracts concluded on the basis thereof shall remain binding. The invalid provision shall be replaced by a valid provision that most closely reflects its meaning and purpose.

1.5 506's offers are subject to change and are non-binding.

2. SCOPE OF SERVICES, ORDER PROCESSING AND CUSTOMER'S DUTY TO COOPERATE

2.1 The scope of the services to be provided is determined by the service description in the contract or any order confirmation by 506, as well as any briefing protocol. Subsequent changes to the content of the service require written confirmation by 506. Within the framework specified by the customer, 506 shall have freedom of design in fulfilling the order.

2.2 Customers shall make available to 506 in a timely and complete manner all information and documents required for the performance of the service. The customer must inform 506 of all circumstances that are of importance for the performance of the order, even if these only become known during the performance of the order. The Customer shall bear the expenses incurred by the fact that work has to be repeated or is delayed as a result of his incorrect, incomplete or subsequently changed information from 506.

2.3 The customer is further obligated to check the documents provided for the execution of the order (photos, logos, etc.) for any copyrights, trademark rights or other rights of third parties. 506 shall not be liable for any infringement of such rights. If a claim is made against 506 due to such an infringement of rights, the customer shall indemnify and hold 506 harmless; the customer shall compensate 506 for all disadvantages it incurs due to a claim made against it by a third party.

3. EXTERNAL SERVICES / COMMISSIONING OF THIRD PARTIES

3.1 506 shall be entitled, at its own discretion, to perform the service itself, to make use of competent third parties as vicarious agents for the performance of contractual services and/or to substitute such services ("Third Party Service").

3.2 The commissioning of third parties within the scope of an External Service shall be carried out either in its own name or in the name of the Customer, but in any case for the account of the Customer. 506 shall carefully select this third party and ensure that it has the necessary professional qualifications.

3.3 Insofar as 506 commissions necessary or agreed third-party services, the respective contractors are not vicarious agents of 506.

4. DEADLINES

4.1 Unless expressly agreed as binding, stated delivery or service deadlines shall only be considered approximate and non-binding. Binding agreements on dates shall be recorded in writing or confirmed by 506 in writing.

4.2 If the delivery/service of 506 is delayed for reasons for which it is not responsible, such as events of force majeure and other unforeseeable events that cannot be averted by reasonable means, the performance obligations shall be suspended for the duration and to the extent of the impediment and the deadlines shall be extended accordingly. If such delays last more than two months, the customer and 506 shall be entitled to withdraw from the contract.

4.3 If 506 is in default, the customer may only withdraw from the contract after it has granted 506 a grace period of at least 14 days in writing and this period has expired fruitlessly. Claims for damages by the customer due to non-performance or delay are excluded, except in the case of proof of intent or gross negligence.

5. PREMATURE DISSOLUTION

5.1 506 shall be entitled to terminate the contract with immediate effect for good cause. Good cause shall be deemed to exist, in particular, if:

- a) the performance of the service becomes impossible due to reasons for which the customer is responsible or is further delayed despite a grace period of 14 days being set;
- b) the customer continues to violate essential obligations under this contract, such as payment of a due amount or obligations to cooperate, despite a written warning with a grace period of 14 days.;
- c) there are justified concerns regarding the creditworthiness of the customer and the customer fails to make advance payments at the request of 506 or does not provide suitable security prior to performance by 506;
- d) bankruptcy or composition proceedings are instituted against the customer's assets or an application for the institution of such proceedings is rejected for lack of assets to cover costs or if the Customer ceases to make payments.

5.2 The customer shall be entitled to terminate the contract for good cause without granting a grace period. In particular, good cause shall be deemed to exist if 506 continues to violate material provisions of this contract despite a written warning with a grace period of 14 days to remedy the violation of the contract.

6. HONOR

6.1 Unless otherwise agreed, the agency's fee claim shall arise for each individual service as soon as it has been rendered. The agency shall have the right to demand advance payments to cover its expenses. From an order volume with an (annual) budget of € 70,000.0,- or those extending over a longer period, the agency shall be entitled to issue interim or advance invoices or to call for payments on account.

6.2 The fee shall be understood as a net fee plus VAT at the statutory rate. In the absence of an agreement in individual cases, the agency shall be entitled to a fee in the amount customary in the market for the services rendered and the transfer of the rights of use under copyright and trademark law.

6.3 All services rendered by the agency that are not expressly covered by the agreed fee shall be remunerated separately. All cash expenses incurred by the agency shall be reimbursed by the customer.

6.4 The agency's cost estimates shall not be binding. If it is foreseeable that the actual costs will exceed those estimated by the agency in writing by more than 15%, the agency shall inform the customer of the higher costs. The cost overrun shall be deemed to have been approved by the customer if the customer does not object in writing within three working days of such notification and at the same time discloses less expensive alternatives. If the cost overrun is up to 15%, a separate notification is not required. This cost estimate overrun shall be deemed approved by the client from the outset.

6.5 The agency shall be entitled to the agreed remuneration for all work carried out by the agency which, for any reason, is not carried out by the client. The offsetting provision of § 1168 ABGB is excluded. Upon payment of the fee, the client shall not acquire any rights of use to work already performed; rather, concepts, drafts and other documents not executed shall be returned to the agency without delay.

7. PAYMENT, RETENTION OF TITLE

7.1 The fee shall be due for payment immediately upon receipt of the invoice and without deduction, unless special terms of payment have been agreed in writing in individual cases. This shall also apply to the charging of all cash expenses and other expenses. The goods delivered by 506 shall remain the property of 506 until full payment of the remuneration including all ancillary liabilities.

7.2 If the customer is in default of payment, the statutory interest on arrears shall apply at the rate applicable to business transactions. Furthermore, in the event of default in payment, the customer undertakes to reimburse 506 for the dunning and collection expenses incurred, to the extent that they are necessary for appropriate legal prosecution. In any case, this includes the costs of two reminder letters in the amount customary in the market as well as a reminder letter from a lawyer commissioned with the collection. The assertion of further rights and claims shall remain unaffected.

7.3 In the event of default of payment by the Customer, 506 may immediately declare due and payable all services and partial services rendered under other contracts concluded with the Customer. Furthermore, 506 is not obligated to provide further services until the outstanding amount has been paid. If payment in installments has been agreed upon, 506 reserves the right to demand immediate payment of the entire outstanding debt in the event that partial amounts or ancillary claims are not paid on time (loss of date).

7.4 Customer shall not be entitled to set off its own claims against claims of 506 unless Customer's claim has been acknowledged by 506 in writing or has been established by a court of law.

8. PROPERTY RIGHTS AND COPYRIGHT

8.1 All services provided by 506, including those from presentations (e.g. suggestions, ideas, sketches, preliminary drafts, scribbles, final drawings, concepts, negatives, slides), including individual parts thereof, shall remain the property of 506, as shall the individual workpieces and design originals, and may be reclaimed by 506 at any time - in particular upon termination of the contractual relationship. By paying the fee, the customer acquires the right of use for the agreed purpose. In the absence of any agreement to the contrary, however, the customer may use the services of 506 exclusively in Austria. The acquisition of rights of use and exploitation of services of 506 shall in any case require the full payment of the fees invoiced by 506 for such services.

8.2 Modifications or adaptations of services of 506, such as in particular their further development by the customer or by third parties working for the customer, shall only be permitted with the express consent of 506 and - insofar as the services are protected by copyright - of the author.

8.3 For the use of services of 506 that go beyond the originally agreed purpose and scope of use, the consent of 506 is required - regardless of whether this service is protected by copyright. 506 and the author shall be entitled to a separate appropriate remuneration for this.

8.4 For the use of services provided by 506 or of advertising materials for which 506 has prepared conceptual or design templates, the consent of 506 shall also be required after the expiration of the contract, regardless of whether this service is protected by copyright or not.

8.5 For uses pursuant to paragraph 4, 506 shall be entitled to the full remuneration agreed in the expired contract in the 1st year after the end of the contract. In the 2nd or 3rd year after expiry of the contract, only half or one quarter of the remuneration agreed in the contract. From the 4th year after the end of the contract, no remuneration shall be payable.

8.6 The customer shall be liable to 506 for any unlawful use in the double amount of the fee appropriate for such use.

9. CONCEPT AND IDEA PROTECTION

If the potential customer has already invited the agency in advance to create a concept and if the agency complies with this invitation before the conclusion of the main contract, the following regulation shall apply:

9.1 By the invitation and the acceptance of the invitation by the agency, the potential customer and the agency enter into a contractual relationship ("Pitching Contract"). This contract is also based on the GTC.

9.2 The potential customer acknowledges that the Agency already provides cost-intensive preliminary services with the concept development, although he has not yet assumed any service obligations himself.

9.3 The concept is subject to the protection of the Copyright Act in its linguistic and graphic parts, to the extent that they reach the level of a work. The potential customer is not permitted to use or edit these parts without the consent of the agency, if only on the basis of copyright law.

9.4 The concept also contains ideas relevant to advertising that do not reach the level of a work and therefore do not enjoy the protection of copyright law. These ideas are at the beginning of every creative process and can be defined as the igniting spark of everything that is later produced and thus as the origin of marketing strategies.

Therefore, those elements of the concept are protected which are peculiar and give the marketing strategy its characteristic imprint. In particular, advertising slogans, advertising texts, graphics and illustrations, advertising materials, etc. are considered to be an idea within the meaning of this agreement, even if they do not reach the level of a work.

9.5 The potential customer undertakes to refrain from commercially exploiting or having exploited or using or having used these creative advertising ideas presented by the agency within the framework of the concept outside the corrective of a main contract to be concluded at a later date.

9.6 If the potential Customer is of the opinion that ideas were presented to it by the Agency which it had already come up with prior to the presentation, it shall notify the Agency of this by e-mail within 14 days of the presentation, citing evidence which allows a temporal allocation.

9.7 In the contrary case, the Contracting Parties shall assume that the Agency has presented the potential Customer with an idea that is new to him. If the idea is used by the customer, it shall be assumed that the Agency became meritorious in the process.

9.8 The potential Customer may release itself from its obligations under this item by paying reasonable compensation plus 20% VAT. The release shall only come into effect after the Agency has received the payment of the compensation in full.

10. LABELLING

10.1 506 shall be entitled to refer to 506 and, if applicable, to the originator on all advertising media and in all advertising measures, without the Customer being entitled to any remuneration for this.

10.2 Subject to the Customer's written revocation, which is possible at any time, 506 shall be entitled to refer to the existing business relationship with the Customer on its own advertising media and in particular on its Internet website by name and company logo (reference).

11. WARRANTY

11.1 Customer shall notify 506 in writing of any defects without undue delay, in any case within eight days after delivery/service by 506, hidden defects within eight days after detection of the same, describing the defect; otherwise the service shall be deemed approved. In this case, the assertion of warranty claims and claims for damages as well as the right to contest errors due to defects shall be excluded.

11.2 In the event of a justified and timely notice of defects, the customer shall be entitled to improvement or replacement of the delivery/service by 506. 506 shall remedy the defects within a reasonable period of time, whereby the customer shall allow 506 to take all measures necessary to examine and remedy the defects. 506 shall be entitled to refuse to improve the performance if this is impossible or involves a disproportionately high effort for 506. In this case, the customer shall be entitled to the statutory rights of conversion or reduction. In the event of improvement, it shall be incumbent on Customer to carry out the transfer of the defective (physical) item at its own expense.

11.3 It shall be incumbent upon the Customer to carry out the review of the performance with regard to its legal admissibility, in particular with regard to competition, trademark, copyright and administrative law. 506 shall not be liable for the correctness of content if this has been specified or approved by Customer.

11.4 The warranty period is six months from delivery/service. The right of recourse against 506 pursuant to § 933b para. 1 ABGB shall expire one year after delivery/service. The customer is not entitled to withhold payments due to defects. The presumption provision of § 924 ABGB is excluded.

12. LIABILITY AND PRODUCT LIABILITY

12.1 In cases of slight negligence, liability of the Agency for material or financial damage of the Customer shall be excluded, irrespective of whether it concerns direct or indirect damage, loss of profit or consequential damage, damage due to delay, impossibility, positive breach of contract, culpa in contrahendo, defective or incomplete performance. The existence of gross negligence has to be proven by the injured party.

12.2 Any liability of 506 for claims made against the customer on the basis of the service provided by 506 (e.g. advertising measure) shall be expressly excluded if 506 has fulfilled its obligation to inform the customer or if such obligation was not recognizable to it, whereby slight negligence shall not be prejudicial. In particular, 506 shall not be liable for litigation costs, the customer's own attorney's fees or costs of judgment publications as well as for any claims for damages or other claims of third parties; the customer shall indemnify and hold 506 harmless in this regard.

12.3 Claims for damages by the customer shall expire six months after knowledge of the damage; in any case, however, after three years after the infringing act by 506. Claims for damages shall be limited in amount to the net order value.

13. SOCIAL MEDIA CHANNELS

506 expressly points out to the customer that the providers of social media channels such as Facebook, Twitter and Co. - hereinafter referred to as providers for short - reserve the right in their terms of use to reject or remove advertisements and appearances for any reason. Accordingly, the providers are not obliged to forward content and information to users. There is therefore a risk, which cannot be calculated by 506, that advertisements and appearances may be removed for no reason. In the event of a complaint from another user, providers are granted the opportunity to make a counterstatement, but even in this case the content is removed immediately. In this case, the restoration of the original, lawful state may take some time.

506 works on the basis of these terms of use of the providers, over which it has no influence, and also bases an order from the customer on these terms of use. By placing an order, the customer expressly acknowledges that these terms of use (co-)determine the rights and obligations of a possible contractual relationship. 506 intends to execute the order of the customer to the best of its knowledge and to comply with the guidelines of social media channels. However, due to the currently valid terms of use and the simple possibility of each user to claim violations of rights and thus achieve a removal of the content, 506 cannot guarantee that the commissioned campaign is also retrievable at all times.

14. DATA PROTECTION

506 processes the personal data concerning you in order to fulfill the contract or to carry out pre-contractual measures, as well as for information and marketing purposes. Without this data, we cannot conclude or fulfill the contract with you.

It should be noted that in the event of a contract being concluded, personal data relating to you may be transferred to internal and external service providers (programmers, web administrators, printers, ...). The aforementioned third parties are commissioned by 506 iSd Art. 28 DSGVO as processors and are obligated to ensure data security in accordance with Art. 24 and 32 DSGVO.

Your data will only be processed within the EU.

We store the personal data concerning you exclusively within the framework of the fulfillment of the contract or legal obligations.

Every customer who provides personal data to 506 has a right to information according to Art. 12/13 DSGVO, information according to Art. 15 DSGVO as well as to correction or deletion of personal data and restriction of processing according to DSGVO. In the event of a complaint, they may contact the competent authority. To satisfy their data subject rights, please use the e-mail address office@506.ai.

15. APPLICABLE LAW

The contract and all mutual rights and obligations derived therefrom as well as claims between 506 and the customer shall be governed by Austrian substantive law, excluding the UN Convention on Contracts for the International Sale of Goods.

16. PLACE OF PERFORMANCE AND JURISDICTION

16.1 The place of performance shall be the registered office of 506. In the case of shipment, the risk shall pass to the Customer as soon as 506 has handed over the goods to the carrier selected by it.

16.2 The place of jurisdiction for all legal disputes arising between 506 and the Customer in connection with this contractual relationship shall be the court having subject-matter jurisdiction for the registered office of 506. Notwithstanding the foregoing, 506 shall be entitled to sue the Customer at its general place of jurisdiction.