

*Dunckelfeld GmbH
Krefelder Straße 18 a
50670 Köln*

GENERAL TERMS AND CONDITIONS FOR AGENCY SERVICES OF DUNCKELFELD GMBH

ART. I GENERAL, SCOPE OF APPLICATION, DIFFERING TERMS AND CONDITIONS

01. These General Terms and Conditions for Agency Services (hereinafter referred to as General Terms and Conditions) of DUNCKELFELD GmbH apply solely in relation to companies (hereinafter referred to as Customers) within the meaning of Section 14 of the Bürgerliches Gesetzbuch [German Civil Code] i.e. natural persons or legal entities which, when concluding a legal transaction, are acting in the performance of their commercial or independent professional activities.
02. These General Terms and Conditions exclusively apply to business relations between DUNCKELFELD GmbH and Customers, also to information and advice.
03. If the General Terms and Conditions are introduced in the business with a Customer, they shall also apply to all further business relations between DUNCKELFELD GmbH and the Customer unless otherwise expressly agreed in writing.
04. Differing general terms and conditions of the Customer shall only apply if and when DUNCKELFELD GmbH expressly acknowledges them in writing. Silence on the part of DUNCKELFELD GmbH regarding such differing general terms and conditions shall in particular not be deemed acknowledgement or consent, and this shall also apply to future contracts.
05. Amendments to these General Terms and Conditions shall take effect and shall automatically become an integral part of the contract if the amendments were made available to the Customer in writing and the Customer has not objected to the amendments in writing within one month of receipt. DUNCKELFELD GmbH must expressly refer to this legal consequence in its letter when sending the amended General Terms and Conditions. If the Customer objects, the General Terms and Conditions underlying the contract until then shall continue to be valid.
06. Employees of DUNCKELFELD GmbH shall not have the right to make verbal or written agreements which are binding on DUNCKELFELD GmbH, the content of which differs or goes beyond that of the respective contract concluded and the General Terms and Conditions underlying the respective contract.
07. In the event of differences or inconsistencies between agreements in a contract concluded and these General Terms and Conditions, the agreements in the contract shall take precedence.
08. All agreements, collateral agreements, warranties and amendments of contracts shall only be valid when given in writing. This shall also apply to any waiver of the written form itself. Verbal amendments or modifications of contracts shall be invalid. This shall not affect the precedence of an individual agreement (Section 305 b BGB [German Civil Code]).

ART. 2 CONCLUSION OF CONTRACTS, SCOPE OF SERVICES

01. The agency services to be provided by DUNCKELFELD GmbH shall be set out respectively in the quotation of DUNCKELFELD GmbH, on which the contract is based. The quotation shall include a detailed description of the services and, if applicable, supporting documentation and guidelines of DUNCKELFELD GmbH. The quotation of DUNCKELFELD GmbH shall, therefore, determine the content of the contract unless otherwise expressly agreed in writing. The documentation supporting the quotation shall be provided to the Customer together with the quotation. In addition, the documentation shall be readily available for inspection at the registered office of DUNCKELFELD GmbH and shall be forwarded as written document free of charge to the Customer upon written request.
02. A contract shall be concluded upon written confirmation of the quotation by the Customer but at the latest when performance of the agency services by DUNCKELFELD GmbH begins.
03. DUNCKELFELD GmbH reserves the right, after reasonable prior notice, to extend and modify agency services and to make improvements. DUNCKELFELD GmbH shall have the right to modify the services in such a way if such modification complies with commercial practice resp. is necessary, taking into account the interests of DUNCKELFELD GmbH or due to legal changes/amendments, and is acceptable for the Customer.
04. DUNCKELFELD GmbH is entitled to use sub-contractors to perform its agency services.
05. Minutes of meeting sent by DUNCKELFELD GmbH to the Customer shall be binding unless the Customer objects to them within five (5) working days of receipt.

ART. 3 TERMINATION

01. Contracts with a minimum term can be terminated at the earliest when the minimum term ends.
02. Contracts for which a period of notice was not agreed and contracts concluded for an indefinite period can be terminated in each case by giving notice of two months to the end of a quarter.
03. This shall not affect the right of either party to terminate the contract without notice for good cause. DUNCKELFELD GmbH shall have the right to terminate the contract for good cause in particular if the Customer defaults in whole or in part in the payment for agency services invoiced to the Customer and the total amount due is more than 10 % of the agreed total remuneration.
04. Notice of termination shall only be valid when given in writing.

ART. 4 CUSTOMER'S DUTIES AND OBLIGATIONS

01. The Customer shall be obliged at all times to cooperate as required in respect of the agency services to be provided by DUNCKELFELD GmbH. The Customer must in particular provide all documents and / or information required for DUNCKELFELD GmbH to perform the agency services in due time and without being requested to do so. If the Customer fails to cooperate as required, fails to do so in due time or properly, the Customer shall bear the consequences resulting from this (e.g. delays, additional expense).
02. If the Customer provides DUNCKELFELD GmbH with documentation (e.g. images, texts, data, files etc.) to use in designing and rendering agency services, the Customer shall give an assurance that it has the right to provide and use this documentation and third-party rights are not infringed by its use. DUNCKELFELD GmbH shall make no verification. If the documentation is not free of third-party rights, the Customer shall indemnify DUNCKELFELD GmbH against any possible damage claims with respect to the documentation provided.

03. The Customer shall be obliged to notify DUNCKELFELD GmbH immediately of any change in its (company) name, its domicile or registered office resp. its invoice address, legal form and, in the case of its direct debiting procedure, its bankers.
04. If a notice concerning a violation by the Customer of the foregoing duties and obligations produces no result, DUNCKELFELD GmbH shall have the right to terminate the contractual relationship without notice.

ART. 5 SERVICE DATES, DEFAULT

01. Binding dates and periods to provide the agency services must be expressly agreed in writing. If dates and periods are not binding or approximate (approx., about etc.), DUNCKELFELD GmbH shall use its best efforts to comply with them.
02. A commercial transaction for delivery by a fixed date shall only exist if DUNCKELFELD GmbH has expressly confirmed such transaction in writing or the legal requirements for a commercial transaction for delivery by a fixed date exist. The Customer's mere unilateral designation of a delivery as a commercial transaction for delivery by a fixed date shall not be sufficient for this.
03. If DUNCKELFELD GmbH defaults in providing the agency services, the Customer must first set DUNCKELFELD GmbH a reasonable extension of time to perform the agency services of at least 14 days unless this is unreasonable in the specific case.
04. DUNCKELFELD GmbH shall not be in default as long as the Customer is in default in fulfilling obligations towards DUNCKELFELD GmbH; this shall also include obligations under other contracts.

ART. 6 FORCE MAJEURE AND OTHER OBSTRUCTIONS

01. If events of force majeure occur, DUNCKELFELD GmbH shall notify the Customer in due time in writing or text form. In such case, DUNCKELFELD GmbH shall have the right to postpone the provision of the agency services for the duration of the obstruction, or to rescind in whole or in part that part of the contract not yet fulfilled if DUNCKELFELD GmbH has met its foregoing duty to provide information. Events of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks and company obstructions through no fault of DUNCKELFELD GmbH e.g. fire, water and damage to machinery and any other obstructions which, when considered objectively, were not negligently caused by DUNCKELFELD GmbH.
02. If a date or period is agreed with binding force to provide the service and this date or the period is exceeded due to events according to Art. 6 (1), the Customer shall have the right, after a reasonable extension of time has elapsed without result, to rescind that part of the contract not yet fulfilled if the Customer cannot be objectively expected to adhere further to the contract. The Customer shall have no further claims, especially claims for damages, in such case.

ART. 7 USES OF THE AGENCY SERVICES OF DUNCKELFELD GMBH

01. If the granting of rights of use is the object of the agreed service, the Customer shall have a simple, non-exclusive right of use in respect of the agency services. The Customer may use the agency services only to the extent agreed in the contract.

02. A direct or indirect use of the agency services provided by DUNCKELFELD GmbH by third parties shall only be permitted with the express written consent of DUNCKELFELD GmbH. "Third parties" within the meaning of this provision are also group companies of the Customer as defined by Section 15 of the German Aktiengesetz [Stock Corporation Act] or otherwise affiliated companies or shareholders of the Customer.
03. DUNCKELFELD GmbH shall have the right to be specified on results of the agency services as author/creator.
04. DUNCKELFELD GmbH shall have the right to use the work results as reference and for its own advertising purposes (e.g. on the homepage of DUNCKELFELD GmbH). The Customer shall grant DUNCKELFELD GmbH a corresponding right of use for that purpose. If the foregoing use of the work result by DUNCKELFELD GmbH is not possible or not possible without restriction due to conflicting third-party rights (e.g. to trade marks, logos) etc., the Customer shall indicate this to DUNCKELFELD GmbH in due time in written form.
05. If DUNCKELFELD GmbH uses, modifies or processes publicly available resp. freely available (licence-free) data (e.g. photos) of third parties to provide the work results, DUNCKELFELD GmbH shall not be obliged to surrender these data separately to the Customer.

ART. 8 PAYMENT TERMS, THIRD-PARTY SERVICES

01. In principle, 40 % of the order amount shall be invoiced to the Customer after placement of the order, a further 30 % upon realisation of half the total agency services to be provided or half the overall duration of the project, the remainder of 30 % of the order amount after acceptance.
02. Invoices of DUNCKELFELD GmbH shall be due for payment net plus value added tax at the respective legally valid rate in each case within 10 days of the invoice date.
03. DUNCKELFELD GmbH reserves the right, by way of derogation from the above payment terms pursuant to Art. 8 (1) + (2), to invoice the Customer separately for the respective agency services provided resp. service phases and to require immediate payment of the corresponding amounts.
04. The objects supplied by DUNCKELFELD GmbH when providing the agency services shall remain its property until all claims under the business relationship with the Customer have been settled in full. Any rights of use as well shall only pass to the Customer upon full settlement of all receivables resulting from the business relationship with the Customer.
05. If the Customer defaults in payment, DUNCKELFELD GmbH shall have the right, subject to the assertion of any further damage, to calculate default interest of 9 % above the respective base interest rate at the time the claim for payment becomes due.
06. The date payment is received by DUNCKELFELD GmbH or credited to the account shall be deemed the payment date.
07. Any default in payment by the Customer shall cause all claims for payment under the business relationship with the Customer to become due immediately. Regardless of any agreements to defer payments or to pay by instalment, in this case all the Customer's liabilities due to DUNCKELFELD GmbH shall become payable immediately.
08. If payment terms are not met or circumstances known or recognisable that, in the proper commercial judgement of DUNCKELFELD GmbH, give rise to justified doubt about the Customer's creditworthiness, also including such facts that already existed when the contract was concluded but which were unknown to DUNCKELFELD GmbH or did

not have to be known to DUNCKELFELD GmbH, DUNCKELFELD GmbH shall have the right, notwithstanding further statutory rights, in such cases to discontinue further work on current orders and to request advance payments for agency services still outstanding or the provision of securities, and, after a reasonable extension of time to provide such securities expires without result, to rescind the contract, irrespective of other statutory rights. The Customer shall be obliged to reimburse DUNCKELFELD GmbH for all damages incurred by the non-performance of the contract.

09. DUNCKELFELD GmbH shall have the right to order necessary third-party services to perform the agency services in the name and for the account of the Customer. If contracts for third-party services are concluded in the name and for the account of DUNCKELFELD GmbH, the Customer shall be obliged to indemnify DUNCKELFELD GmbH in the internal relationship against all liabilities arising from conclusion of the contract, in particular against the obligation to pay the remuneration for the third-party service.

ART. 9 RIGHT OF SET-OFF AND RIGHT OF RETENTION

01. The Customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have been recognised by declaratory judgment.
02. The Customer can only exercise a right of retention if its counter-claim relates to the same contractual relationship.

ART. 10 ACCEPTANCE

01. The agency services due from DUNCKELFELD GmbH shall require acceptance by the Customer. The Customer shall declare its acceptance in each case in writing, also for partial projects, upon written request by DUNCKELFELD GmbH.
02. After written request by DUNCKELFELD GmbH, the Customer shall declare its acceptance or refusal of acceptance in writing to DUNCKELFELD GmbH immediately but at the latest within 14 days of receipt of the request. Minor defects shall not entitle the Customer to refuse acceptance. After this period expires, the service offered by DUNCKELFELD GmbH for acceptance shall be deemed accepted by the Customer (according to Section 640 (1) sentence 3 BGB) if the Customer has not performed acceptance for no objective reason or has refused to declare acceptance.
03. Acceptance shall also be deemed performed if the Customer is using the agency services provided.

ART. 11 NOTICE OF DEFECTS, WARRANTY, BREACH OF DUTY

01. The Customer shall give notice of recognisable defects immediately but at the latest 10 days after the service is provided. Notices of defects must include a detailed description of the defect. Failure to give notice of defects in due time shall exclude any claim by the Customer for breach of duty due to defective performance.
02. Notices of hidden defects must be given immediately after they are recognised but at the latest within the statutory period of limitation specified in Art. 11 (5). Notices of defects must include a detailed description of the defect. Failure to give notice of defects in due time shall here too exclude any claim by the Customer for breach of duty due to defective performance.
03. Notices of defects according to Art. 11 (1) and Art. 11 (2) must be given in writing. Any notice of defect not given in writing shall also exclude any claim by the Customer for breach of duty due to defective performance.

04. The warranty claims of the Customer shall be limited initially to rectification or, at the option of DUNCKELFELD GmbH, to provision of the agency service again. If rectification finally fails, the Customer can assert damages or rescind the contract.
05. DUNCKELFELD GmbH shall provide a warranty for verifiable defects for a period of one year, calculated from the date the statutory period of limitation begins. This shall not apply if DUNCKELFELD GmbH is culpable of fraudulent intent, gross negligence or intent.
06. The foregoing statutory period of limitation shall also apply to competing claims in tort and to any claims from consequential damage caused by a defect.
07. Further claims by the Customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of Art. 12.

ART. 12 LIABILITY, LIMITATION OF LIABILITY

01. DUNCKELFELD GmbH shall be liable in principle only for its own intent and gross negligence and intent and gross negligence of its legal representatives and vicarious agents. The liability of DUNCKELFELD GmbH and that of its legal representatives and vicarious agents for slight negligence shall, therefore, be excluded except in the following cases:
 - (a) breach of material contractual obligations;
 - (b) breach of obligations within the meaning of Section 241 (2) BGB if it is no longer reasonable to expect the Customer to accept the service of DUNCKELFELD GmbH;
 - (c) injury to life, limb and health;
 - (d) the assumption of a guarantee for the quality of a service or the existence of an outcome of performance;
 - (e) fraudulent intent; or
 - (f) other cases of liability prescribed by law.

“Material contractual obligations” are obligations that protect the legal positions of the Customer which are material to the contract and which have to be granted to the Customer according to the subject matter and purpose of the contract. Material contractual obligations are also obligations, the fulfilment of which makes the due performance of the contract at all possible in the first place, and where the Customer regularly relies on and may rely on compliance with such obligations.

02. DUNCKELFELD GmbH shall be liable only for typical and foreseeable damage unless DUNCKELFELD GmbH can be reproached for intentional breach of duty or a case of injury to life, limb and health or other cases of liability prescribed by law.
03. Liability for indirect damages and consequential damage caused by a defect shall be excluded unless DUNCKELFELD GmbH has violated a material contractual obligation or DUNCKELFELD GmbH, its executives or vicarious agents is(are) reproached for intentional or grossly negligent breach of duty or a case of injury to life, limb or health exists.

04. Liability for damage other than the liability stipulated in the above paragraphs shall be excluded without regard for the legal nature of the asserted claim. This shall apply in particular to damage claims arising from negligence when concluding the contract, due to other breach of duty or due to claims in tort for compensation in respect of property damages according to Section 823 BGB.
05. Exclusion resp. limitation of liability according to the foregoing Art. 12 (1) to (4) shall apply to the same extent for the benefit of executives and non-executive employees and other vicarious agents as well as sub-contractors.
06. Claims by the Customer for damages from this contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory period of limitation. This shall not apply if DUNCKELFELD GmbH is culpable of fraudulent intent, intent or gross negligence and in the case of a claim arising from tort.
07. There is no connection between the reversal of the burden of proof and the foregoing stipulations.

ART. 13 CONFIDENTIALITY, DATA PRIVACY

01. DUNCKELFELD GmbH undertakes to keep confidential such facts, documents and know-how, of which it becomes aware in the course of implementing the contractual relationship with the Customer, and which contain technical, financial, business or market-related information about the Customer's company, if the Customer has designated the respective information as confidential or has an obvious interest in its confidentiality (hereinafter referred to as "Confidential Information"). DUNCKELFELD GmbH shall use the Confidential Information exclusively for the purpose of implementing and performing the contractual relationship with the Customer in accordance with the contract and the individual contracts based thereon.
02. DUNCKELFELD GmbH shall oblige its personnel who process or have access to the Confidential Information to maintain confidentiality in the same way.
03. The obligation of confidentiality according to Art. 13 (1) above shall not exist if the respective Confidential Information:
 - (a) at the time it became known was already in the public domain or will enter the public domain at a later date;
 - (b) was intentionally made available by the Customer to the public (e.g. in a press release);
 - (c) was already known to DUNCKELFELD GmbH or is disclosed by a third party authorised to disclose it; or
 - (d) had to be disclosed pursuant to a mandatory legal obligation, judicial decision or order of a public authority or supervisory body.
04. DUNCKELFELD GmbH shall
 - (a) collect, process and use, within the meaning of the Bundesdatenschutzgesetz [Federal Data Protection Act] (BDSG) as amended, all information with personal data which it receives to perform the contract;
 - (b) treat such Information as strictly confidential;
 - (c) shall collect, process or use such information only according to the Customer's instructions;
 - (d) allow such information to be processed only by employees who are bound to maintain data secrecy (Section 5 BDSG).

ART. 14 FINAL PROVISIONS

01. Place of performance for these General Terms and Conditions is the registered office of DUNCKELFELD GmbH, Cologne.
02. Any disputes arising between the parties shall be settled exclusively before a competent Cologne court of law. DUNCKELFELD GmbH shall, however, also have the right to bring an action against the Customer at its place of general jurisdiction.
03. German law shall apply exclusively hereto, to the exclusion of the UN Sales Convention (CSIG). This shall also apply if the Customer has its registered office abroad.
04. The transfer of rights and obligations of the Customer arising from a contract concluded with DUNCKELFELD GmbH shall require the written consent of DUNCKELFELD GmbH.
05. If any provision of the contract is or shall become invalid for reasons other than those stated in Sections 305 - 310 BGB, this shall not affect the validity of the other provisions of the contract. An invalid provision shall be replaced by a valid provision which corresponds or corresponds as closely as possible to the economic purpose and intention of the invalid provision. This shall also apply accordingly if the provisions are incomplete.

DUNCKELFELD GMBH

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