BLUE MOON

BOOSTING BRANDS

General Terms and Conditions (GTC)

Status 2022

I. Scope

1. The following General Terms and Conditions of Business (GTC) shall apply to all contracts, supplies and other services during business with undertakings that are non-consumers for the purposes of § 310 I BGB (Bundesgesetzbuch [German Civil Code]). Agreements that vary from these General Terms of Contract shall only be valid provided they are set out in writing and are signed by both contracting parties. The General Terms of Contract shall also apply to consultancy services provided, which are not the subject of a separate consultancy agreement.
2. Where BLUE MOON has ongoing business relationships with customers that are also businessmen (Kaufleute), as defined in the German Commercial Code (HGB), these General Terms and Conditions shall also become an integral component of an agreement if BLUE MOON did not specifically refer to their incorporation in an individual case.

II. Quotations and Contract Conclusion

1. A first consultation and introductory conversation is for interested persons free, except if BLUE MOON has sent a corresponding quotation to interested persons beforehand. If the customer does not subsequently place an order, a second consultation will be billed on an hour spent basis at a rate of EUR 150.00 plus the applicable VAT. Time is billed in 5 (five) minute increments.
2. All quotations, be they quotations from catalogues, from other sales documentation and from the Internet, shall in all cases be subject to change without notice, and must exclusively be understood as requests to supply a quotation.
3. Orders shall be deemed to have been accepted if we have confirmed them in writing, or, if a waiver of an order confirmation is declared, the order has been immediately executed. In the latter case, the invoice shall count as an order confirmation.
4. Unless indicated otherwise in writing, quotation prices shall in principle be net prices.
5. If alterations to the content of contracts, samples delivered or approved manufacturing documents should take place after an order has been placed, the alterations to be made shall incur a cost.
6. In the case of monthly flat rates, a minimum term of 12 months always applies. This shall be automatically extended by a further 12 months unless notice of termination is given in writing 3 months before the end of the term.

III. Delivery and Delivery Time, Delivery Periods

1. The risk of accidental loss of the work to be delivered shall transfer to the customer at the latest at the time of handover at the agreed place of delivery.
2. If delivery and fulfilment times have not been committed to explicitly and on a binding basis, indications given in this respect shall be deemed only to be an approximation. Delivery periods committed to on a binding basis, which do not refer to a precise calendar date, shall start to run from the point at which the customer receives the order confirmation.
3. Delivery and fulfilment periods shall be extended in the event of an occurrence of force majeure, and of all unpredictable obstacles which arise after contract conclusion, for which we shall not be liable. This extension shall only apply if the obstacles in question actually have a significant effect on product delivery. We undertake to immediately declare such obstacles. In this case the customer may ask us to declare whether we intend to withdraw from the contract or to fulfil our delivery obligations within a reasonable period. If we do not immediately make such a declaration, the customer may withdraw from the contract. In this case, no compensation may be claimed. If the customer suffers from such obstacles, the aforementioned provisions shall apply accordingly.
4. Our liability as regards timely delivery shall be restricted to our own culpability and that of our agents for whom we carry vicarious liability. We shall not be liable for the culpability of our upstream suppliers. If culpable behaviour on the part of our upstream suppliers should give rise to a compensation claim, we undertake to assign this to the customer.
5. If we are in default in the delivery of work, the customer must, at our request, immediately inform us whether it wishes to insist on delivery, declare its withdrawal from the contract, or if applicable, claim compensation in lieu of performance.
6. If a customer is in default in acceptance of our work, we shall only be liable in the event of gross negligence or intent. If deliveries are not collected within a month, without reason, following default in acceptance, we shall be entitled to destroy the work.
7. If the customer commissions BLUE MOON with work for which it has paid in advance, it shall be obliged, in the absence of an explicit agreement to the contrary, to take all necessary precautions to ensure that BLUE MOON can fulfil our performance obligations within six months following contract conclusion. If the customer fails to call upon our performance obligations in good time, it will become necessary to re-negotiate the original transaction, taking into account any cost increases. If agreement cannot be reached, BLUE MOON shall be entitled to withdraw from the contract. Payment already made, shall be reimbursed less any necessary expenditure on our part and a flat rate amount of compensation for lost profit in the amount of 20 % of the contract value. This last provision shall apply, provided that BLUE MOON is not responsible themselves for the circumstances that prevented acceptance of the work. The statutory provisions in relation to the limitation of claims shall not be affected.

IV. Payment

1. In the absence of a written agreement to the contrary, billed work shall fall due for payment when our invoice is delivered. If contractual work is accepted, payment shall also fall due when our invoice is delivered.
2. Special written agreement shall be required for payment via a bill of exchange. Bills of exchange and cheques shall exclusively be accepted by way of payment and not in lieu of payment. We reserve the right, in the event of a bill protest, to demand immediate cash payment against return of the documents received.
3. If the customer defaults in its payment obligations, the statutory provisions shall apply. Explicit reference is made to §286 III BGB. In the event of default, we shall be entitled to take back the products delivered. This shall not equate to withdrawal from the contract.
4. If a refusal to pay is associated with a defect complaint, retention of payment shall not be permitted if the customer was aware or should have been aware of the defect at the time of transfer of risk, or was unaware of it through gross negligence. Defects that we have fraudulently failed to disclose shall be excluded.
5. The customer may only offset a payment claim against a payment claim that has been acknowledged by us or has been finally and non-appealably approved.

V. Acceptance and Notification of Deficiencies

1. The customer has a duty to review the services provided by BLUE MOON without undue delay as of the time when they are provided and shall also provide any notification of deficiencies without undue delay. Where the Customer does not provide a written notification of deficiencies within 7 (seven) working days, the service shall

be deemed properly provided. Hidden defects shall be excluded from this requirement. § 377 HGB shall not be affected.

2. In the event of a defect complaint, the customer shall not be entitled to use the delivered work in any way, until such time as the matter has been clarified by mutual agreement or through court proceedings.

VI. Claims for Deficiencies

1. Any deficiencies in the services provided by BLUE MOON will be remedied by BLUE MOON within the deficiency's liability period of one year of their acceptance upon receiving a respective notification from the customer. At the discretion of BLUE MOON, remediation will be provided by rectifying the deficiency (subsequent performance) or providing a replacement free of charge. The related expenses, in particular the cost of transport, infrastructure, work and materials, shall be borne by BLUE MOON.
2. If it is not possible to remedy the deficiency within an adequate period of time, or where the subsequent performance or the provision of a replacement must be deemed failed for other reasons, the customer may remedy the deficiency itself and request compensation for the required expenditure, reduce the price, rescind the agreement, claim damages or demand compensation for wasted expenditure. Details regarding the two latter claims are set out in the following clause of these General Terms and Conditions. The customer's right to demand an advance payment for the expenses related to its own remediation of the deficiencies, as specified in Section 637 (3) of the German Civil Code (BGB), is expressly excluded.
3. A subsequent performance or provision of a replacement can only be deemed failed if BLUE MOON was given adequate opportunity to provide the subsequent performance or replacement, if it is impossible, if BLUE MOON refused to provide it or delayed it to an extent which the customer cannot reasonably be expected to accept, if there is reasonable doubt as to the chances of a successful subsequent performance or provision of a replacement or if the customer cannot reasonably be expected to accept it for other reasons.

VII. Liability

1. The customer's claims for damages or for compensation for wasted expenditure shall be as described in the foregoing clause, regardless of the legal nature of the claim.
2. For damage due to an injury to life, limb or health which is caused by a negligent breach of duty by the supplier or a willful or negligent breach of duty committed by a legal representative of the supplier or a person used by the supplier in the performance of its obligations, BLUE MOON is liable without limitation.
3. With respect to the other liability claims, BLUE MOON is only liable without limitation in cases where the services do not conform to the characteristics guaranteed and in cases of intent and gross negligence, also of its legal representatives and officers. For the fault of other persons used in the performance of its obligations, BLUE MOON is only liable to the extent applicable to liability for ordinary negligence, as set out in paragraph 4 of this liability clause.
4. BLUE MOON is only liable for ordinary negligence if the breach concerns a duty which is of special importance to fulfilling the purpose of the agreement (material contractual duty). If a material duty is breached, total liability shall be limited to five times the fee agreed and to the damage which can typically be expected with the respective type of contract.
5. Liability for the loss of data is limited to the expenditure typically required to restore the data which would have been incurred if data had been backed up regularly and in accordance with the related risk.
6. The foregoing provisions also apply for the benefit of the employees of BLUE MOON.
7. This does not affect liability under the German Product Liability Act (Section 14 ProdHG).

VIII. Documents, Drafts, Samples Provided

1. If the customer gives us samples, models and drafts, including in file format, they shall only be returned to the customer after completion of the work in response to a request to do so. We shall not check the content of materials, data etc. supplied by the customer, which are to be used during production. The customer shall bear sole responsibility for the content. The customer shall therefore be required to carefully check the materials supplied to us, in particular from the point of view of copyright and trade mark law and of any industrial legal protection matters that may arise. If we should incur costs as a result of the legal protection of data or image material of third parties, these shall be passed on to the customer as special costs, subject to the surcharges set out under II.5. of these General Terms of Contract.
2. If we provide the customer with samples, drafts etc. for correction, we shall not check them again after they have been approved. The customer shall bear full responsibility for errors.
3. If data is delivered to the customer for approval on a corresponding data carrier, such data must immediately be checked for completeness, quality and agreed condition. Errors, quality defects and contractual variations must immediately be notified and declared to us in writing (see VI. 1 of these Terms of Contract).
4. If files and associated media are delivered for the production needs of third parties (print shops, etc.), the customer shall be solely responsible for supervising provision of the work by the third party.
5. We would explicitly point out that files sent by us must in some cases be altered by print shops and other manufacturers, in order to make the content of the data material sent by us correspond to the products finally produced. The customer therefore undertakes to sample the work of third parties, in order to compare it against the data supplied by us, in order to highlight any sources of error.

IX. Reservation of Title

1. BLUE MOON shall retain the title to the service provided to the customer until all claims for payment under the agreement which exist at the time of the provision of the service or arise thereafter have been settled in full; where payment is made by check or a bill of exchange, title shall be retained until the check has cleared or the bill of exchange has been paid.
2. With respect to any payment arrears for which the customer is responsible or any
material breach of the duty of care or the duty to provide proper care, the assertion of
its retention of title by BLUE MOON shall not be considered a rescission of the agreement unless BLUE MOON expressly notifies the customer that it shall be considered a
rescission of the agreement.
3. Where BLUE MOON exercises its retention of title, the customer's right to continue to use the services provided by BLUE MOON ceases to apply.

X. Exploitation of Rights

1. Unless otherwise agreed, BLUE MOON shall remain the sole owner of the rights to use and exploit the services provided by BLUE MOON until all payments and compensation agreed have been paid in full. These rights shall not transfer to the customer until the payment claims have been satisfied.
2. If we are required to provide graphical services, the customer shall

receive the layout data in the form of high-resolution PDF files after the end of the projects. The customer undertakes not to alter the data or use it for any other purpose.

3. If the customer wants BLUE MOON to provide editable source files, such source files generally are not covered by this agreement, but will only be made available based on an express agreement against payment of separate compensation.
4. If we are required to build a website, reference to our copyright shall be included therein at an appropriate position. The customer shall not be entitled to alter or delete this reference without our approval.

XI. Rights of Use of Unlicensed Images

1. We reserve the right, as part of our work obligations, to propose unlicensed images for further use, for example on the customer's website or in other PR brochures, and to process these subjects to its approval. These images are purchased via corresponding service companies, which impose rights of use on us, to which we must also commit the customer.
2. If we purchase a license for such an image, we are solely and exclusively entitled to
use his image only for this one customer. A transfer of the licensed image to other
companies or persons outside BLUE MOON is not permitted. The redirection of the pictures represents an abuse of foreign property and in particular the infringement of existing copyrights.

XII. Copyrights of Third Parties

1. BLUE MOON shall not be liable to third parties for breaches of copyright, provided
BLUE MOON has obtained licences in relation to copyright-protected material belonging to third parties in the name of its clients and for their benefit.
2. If BLUE MOON acquires rights of use from third parties for its clients, such rights of use shall always be acquired in the name of the clients, not in the name of BLUE MOON. BLUE MOON may not be held liable for any defects during the granting of rights, in particular in the event that the licensor is either not entitled to grant a licence at all, or else is only entitled to grant a less extensive licence.
3. In the event that a claim is made against BLUE MOON for unlawful use by the client of
material belonging to a third party, the client undertakes to exempt BLUE MOON from all claims.

XIII. Conflicts with other Terms and Conditions

Where the customer also uses general terms and conditions, the agreement shall also be deemed formed without any express agreement on the incorporation of general terms and conditions. To the extent the content of the different sets of terms and conditions matches, that part of the content shall be deemed agreed. Any conflicting individual provisions shall be deemed replaced with the non-mandatory provisions of law. The same applies in cases where the customer's terms and conditions contain provisions which are not contained in these General Terms and Conditions. Where these General Terms and Conditions contain provisions, which are not contained in the customer's terms and conditions, these General Terms and Conditions apply.

XIV. Choice of Law

The parties agree that all legal relations arising under this agreement shall be governed by the law of the Federal Republic of Germany, to the exclusion of the United Nations Convention on the International Sale of Goods.

XV. Data Protection

1. With respect to the customer's personal data, BLUE MOON will comply with all relevant legal regulations, in particular the provisions of the General Data Protection Regulation (GDPR).
2. BLUE MOON will collect, store, process and use the customer's personal data if, to the extent that and for as long as this is necessary for establishing, performing or terminating the agreement.
The customer's personal data is only collected, stored, processed or used beyond the foregoing limits where this is required or permitted by law or where the customer has given his/her consent.
3. The customer is aware that it is necessary to collect, process and use certain data, for example his/her name, his/her status as a consumer or businessman, address, date of birth and bank details, based on Art. 6 (1) (b) GDPR for the purpose of taking steps at the request of the customer prior to entering into an agreement and the purpose of performing the agreement.
4. BLUE MOON has the right – to the extent permitted by law – to inquire about the risk of any default in payment on the part of the customer for the purpose of making a decision regarding the establishment, performance or termination of the agreement. In this respect it will collect and process probability values for the customer's future behavior. It will also use address data of the customer to calculate these probability values. For this inquiry, BLUE MOON will use the services of credit rating agencies, such as SCHUFA Holding AG (Wiesbaden), or other third parties and transfer data concerning the customer to them or request such data from them for this purpose. The collection, processing and use of data for this purpose is based on Art. 6 (1) (b) GDPR.
5. BLUE MOON has the right, in particular, to transfer the customer's data to third parties if and to the extent that this is necessary for the purpose of taking steps at the request of the customer prior to entering into an agreement and the purpose of performing the agreement (e.g. for shipping, billing or customer service) in accordance with Art. 6 (1) (b) GDPR or for complying with a legal obligation, as specified in Art. 6 (1) (c) GDPR. BLUE MOON may also – to the extent permitted by law – share this data with third parties (e.g. collection agencies) for the purpose of collecting a debt in accordance with Art. 6 (1) (b) and/or (f) GDPR.
6. Where the legal requirements apply, BLUE MOON will provide information regarding the personal data concerning the customer stored by it to the customer free of charge upon request. Where the legal requirements apply, the customer has the right to request that his/her data be corrected or deleted, that the processing of such data be restricted, or that his/her data be transferred to a third party. In addition, the customer has the right to file a complaint with a supervisory authority.
7. The customer has the right to object to any use of his/her personal data (I) for the performance of a task carried out in the public interest or in the exercise of official authority vested in BLUE MOON or (II) for the necessary protection of the legitimate interests pursued by BLUE MOON or by a third party – such as, as the case may be, in accordance with Section 5 above – in accordance with Art. 21 (1) GDPR at any time by submitting a notice to BLUE MOON which does not require a particular form. If BLUE MOON cannot prove overriding compelling legitimate grounds for using the data, it will cease using the data concerned for these purposes upon receiving the objection. The customer may also object to any use of his/her personal data for direct marketing purposes in accordance with Art. 21 (2) GDPR at any time free of charge by submitting a notice to BLUE MOON which does not require a particular form. Upon its receipt of the objection, BLUE MOON will cease using the data concerned for these purposes.

8. The controller for all questions relating to data protection and for exercising the rights described in Sections 6 and 7 is:

BLUE MOON Communication Consultants GmbH
Friedrichstraße 8
41460 Neuss, Germany
Telefon +49 2131 66156-0
Telefax +49 2131 66156-66
E-Mail: info[at]bluemoon.de

The data protection officer can be contacted at datenschutz@bluemoon.de or by sending a letter to our mailing address with the addition "Der Datenschutzbeauftragte (the data protection officer)".

The supervisory authority responsible for BLUE MOON is:
Landesbeauftragte für Datenschutz und Informationsfreiheit [State Commissioner for the Protection of Data and Freedom of Information]

Nordrhein-Westfalen [North-Rhine Westphalia]
Postfach [PO Box] 20 04 44
40102 Düsseldorf, Germany
Phone: +49 (0)211 / 38424-0
Fax: +49 (0)211 / 38424-10
Email: poststelle@ldi.nrw.de

XVI. Place of Performance and Jurisdiction

Provided the customer is a trader, public law legal entity or public law special trust, the place of performance and place of jurisdiction for deliveries and payments and for all disputes arising between the parties shall be Neuss. However, we shall also be entitled to sue the customer at its place of business.

XVII. Final Provisions

1. If one or more clauses of these General Terms of Contract should be invalid or null and void, this shall not invalidate the remaining clauses. The parties shall replace the invalid provision with the legally valid provision which most closely reflects the economic meaning and purpose of the invalid provision by mutual agreement. The foregoing provision shall apply to any gaps in the agreement mutatis mutandis.
2. For the purposes of these General Terms and Conditions, written form shall be deemed complied with by sending any notice by email unless otherwise agreed separately.
3. If there are any discrepancies in translated versions of these General Terms and Conditions, the German version shall prevail. The same applies to the interpretation of these General Terms and Conditions.

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