

General Terms and Conditions (GTC) As per: 01/01/2015

Further to the statutory provisions and other regulations, the following General Terms and Conditions ('GTC') are agreed between yourselves as customers and Barth Medienhaus GmbH:

1. Scope

1. These GTC apply to all business relations between Barth Medienhaus GmbH, Wolfsmatten 1, 77955 Ettenheim, Germany, (hereafter 'Barth Medienhaus GmbH') and the customer, insofar as the customer is a commercial enterprise as specified under § 14 of the German Civil Code (BGB) or is a legal entity under public law.
2. Barth Medienhaus GmbH shall not recognise any contradictory GTC or any such GTC as deviate from or supplement these GTC, unless explicit approval for the applicability of said GTC shall be provided. This shall also apply in the event that the submission or acceptance of an offer or any other contractual declaration on the part of the customer shall take place under the condition precedent that the customer's General Terms and Conditions shall apply.
3. These general terms and conditions also apply to all future transactions with the customer.

2. Cost estimates and offers

1. On the request of the customer, Barth Medienhaus GmbH shall draft a cost estimate/offer for the services as described.
2. All cost estimates/offers by Barth Medienhaus GmbH shall be unbinding unless otherwise specified. Barth Medienhaus GmbH shall remain bound to fixed offers for a period of one (1) months, that is to say four (4) weeks; the time at which said offer is submitted shall be authoritative.
3. No guarantee is accepted for the accuracy of a cost estimate/offer; fluctuations of up to 20 % are at all times possible.
4. All services not specified in a cost estimate/offer shall be provided in agreement with the customer or on the instructions of the customer and shall be charged as an additional order on the basis of the actual workload.
5. Barth Medienhaus GmbH shall inform the customer insofar as it is not possible to provide said services without substantially exceeding the scope of the cost estimate/offer (> 20 %). The customer shall thereupon be entitled to serve notice to the agreement. Barth Medienhaus GmbH shall be entitled to claim remuneration for all services agreed and completed

until this date and shall furthermore be entitled to claim compensation for expenses not contained in the remuneration specified above.

3. Conclusion and form of the agreement

1. The agreement shall come into force upon confirmation of the offer by the customer or by confirmation of the order by Barth Medienhaus GmbH.
2. A special form, in particular the written form, shall not be mandatory.

4. Cooperation

1. The contractual parties shall both appoint and name contact persons who shall bindingly coordinate all questions relating to the execution of the agreement. Deputies shall be appointed to cater to absent periods due to holidays, sickness and such like. The parties are obligated to provide notification of any changes in these persons appointed. Until such notification is received, the previously appointed contact persons shall remain entitled to submit and take receipt of declarations within the scope of their previous powers of representation.
2. The contact persons shall in regular intervals and in all cases deemed necessary for present reasons communicate on the progress and obstacles encountered in the execution of the agreement.
3. Barth Medienhaus GmbH shall draft a confirmation that shall be sent to the customer as concerns this networking of information and the agreements made between the contact persons. This confirmation shall be deemed binding for all agreements between the parties unless the customer should without delay raise objections upon receipt thereof.

5. Services

1. The details of all services that Barth Medienhaus GmbH shall provide on behalf of the customer are specified in the description of services attendant to each offer.
2. Unless otherwise agreed separately, Barth Medienhaus GmbH is not obligated to surrender any interim results, drafts, layouts source files or such like used to produce the contractual service.
3. Barth Medienhaus GmbH is entitled to provide incremental services, provided acceptance can be reasonably expected of the customer.
4. Unless otherwise agreed separately, the patent, design, copyrights or trademark protection or suitability for registration of the ideas, proposals, concepts, designs

and other services provided within the framework of the agreement shall not be surrendered.

6. Duties of cooperation

1. The customer shall support Barth Medienhaus GmbH in the fulfilment of all services due under the agreement. This shall include in particular the punctual provision of information, materials, data ('content') and hardware and software whenever required as part of the customer's duties of cooperation.
2. The customer is obligated to provide all contents required in a common, directly usable, standard digital format (for instance *.jpg, *.gif, *.tiff, *.ai, *.eps, *.psd, *.pdf, *.txt, *.doc or other formats subject to prior agreement). Insofar as it is necessary to convert the contents the customer provides into a different format, the customer shall carry all costs thereof on the basis of the time required and the applicable hourly rates at Barth Medienhaus GmbH.
3. Should the customer recognise that the data, requirements or contents the customer submits are erroneous, incomplete, unclear or infeasible, the customer shall be required to inform Barth Medienhaus GmbH and of the foreseeable consequences thereof without delay and in writing.
4. All duties of cooperation on the part of the customer and required under the terms of the agreement shall be provided without separate remuneration unless otherwise and explicitly specified.

7. Changes in services

1. The customer shall inform Barth Medienhaus GmbH in writing in the event that any changes in the scope of contractually specified services shall be desired. Barth Medienhaus GmbH shall review said request for changes on the part of the customer and the implications for the existing agreement. Remuneration for said review shall be payable on the basis of the Barth Medienhaus GmbH hourly rate.
2. Barth Medienhaus GmbH shall inform the customer of the results of said review. In this, Barth Medienhaus GmbH shall either provide a detailed proposal for the execution of said request for changes or shall elucidate why said request for changes is not executable.
3. Insofar as the results of said review indicate that the request for changes can be implemented, the contractual parties shall agree on the content of the proposal for the execution of the request for changes. The agreement shall be amended accordingly, provided that agreement thereon is reached. The original scope

of services shall remain in place if no agreement is reached.

4. Agreed deadlines shall be postponed appropriately if and to the extent to which they are affected by the change procedure; this postponement shall consider the duration of review period, negotiation on the change proposal and if applicable also the executable request for changes and shall also include a suitable lead period. Barth Medienhaus GmbH shall inform the customer of the new schedule.
5. Barth Medienhaus GmbH shall inform the customer in writing insofar as it wishes to amend the contractually agreed scope of services and shall submit a proposal for execution as specified under item 7.2. The further procedure shall be based on items 7.3 and 7.4. Barth Medienhaus GmbH shall carry the costs associated with drafting the change proposal.

8. Release, inspection

1. Upon the request of Barth Medienhaus GmbH, the customer shall be obligated to release (= inspect incremental deliveries or services, also drafts and interim results), whenever said items can be sensibly assessed in their own right. This shall apply in particular if the inspection of an incremental delivery or service by the customer (compare under item 6 Duties of cooperation by the customer) shall be necessary in order to continue with the provision of services. Barth Medienhaus GmbH shall be entitled in these cases to immediately suspend all further services until release has been issued.
2. Requests for changes following release shall be considered a change in services (compare item 7 Changes in services).
3. Insofar as an inspection (= final inspection) must take place, Barth Medienhaus GmbH shall inform the customer of the completion of services. The customer is required to review services without delay and, in the event that any deficiencies should be apparent, notify Barth Medienhaus GmbH thereof without delay. If the customer neglects this notification, the services shall be considered approved unless the deficiency was maliciously concealed or is such that it could not be detected during the examination.

9. Schedules

1. Barth Medienhaus GmbH shall not be answerable for delays in the provision of services due to circumstances for which the customer shall bear responsibility (e.g. failure to fulfil punctual duties of cooperation) or force majeure (e.g. strike, lockout, general breakdown in telecommunications). Said

circumstances shall entitle Barth Medienhaus GmbH to postpone the provision of the services affected for the duration of the temporary obstruction, plus an appropriate lead time. Barth Medienhaus GmbH will notify the customer of any delays in the provision of services due to force majeure. The customer shall be entitled to declare in writing toward Barth Medienhaus GmbH withdrawal from the agreement insofar as the customer cannot be reasonably expected to accept the services for reasons of force majeure, provided said withdrawal is declared without delay.

2. Insofar as the enforcement of rights on the part of the customer shall presuppose the definition of an appropriate grace period, this period shall be at least two (2) weeks.

10. Rights

1. The customer shall be granted no rights of title and no usufruct to the drawings, drafts, layouts, software and other materials and documents submitted within the framework of offers and contractual negotiations. Any provision to third parties shall require explicit consent on the part of Barth Medienhaus GmbH.
2. Conditional upon full payment of the agreed remuneration for services provided, Barth Medienhaus GmbH shall extend to the customer a simple usufruct to exploit the services for the purposes specified in the agreement and in the scope defined therein. This usufruct shall be unrestricted in time and place. The usufruct shall be restricted in terms of content to the purpose of the agreement.
3. Insofar as the customer desires to exploit in part or whole the work designed by Barth Medienhaus GmbH in a manner that exceeds the originally agreed purpose or scope, agreement must be reached in advance on a special remuneration as recompense for said usufruct.
4. Any transfer of the usufruct or the extension of sub-licenses shall only be permitted if they are explicitly agreed in writing or can be considered an inherent part of the contractual purpose.
5. The customer shall not be entitled to amend or modify the software application (e.g. HTML template, CSS) without specific approval. This shall not apply to amendments and modifications required in order to fulfil the contractual purpose. It is permitted to carry out editorial amendments (amendments of content and alignment of the structure) on a website.
6. Upon issue of approval by Barth Medienhaus GmbH, the customer shall be entitled to name Barth Medienhaus GmbH on the completed work and its reproduced copies with a link to its homepage under www.medien-haus.de and at least on the legal notice page.

11. Shipping

1. Insofar as the customer specifies that the work should be shipped to a place other than the place of fulfilment, the risk of accidental loss or deterioration shall be transferred to the customer upon submission thereof to the forwarding agent or freight carrier and by no later than upon departure ex works or warehouse, irrespective of whether said shipping takes place from the place of fulfilment.
2. Barth Medienhaus GmbH shall be entitled to select the least expensive transport route and transport means insofar as the transport route and transport means are not agreed individually. In this selection, Barth Medienhaus GmbH shall be considerate of all readily apparent interests on the part of the customer.
3. Shipping and packaging costs shall be charged in addition to the contractually agreed remuneration, plus the statutory rate of value added tax. The customer shall carry the costs of any specific packaging requested.

12. Third-party services

1. Barth Medienhaus GmbH is entitled to carry out the work with which it has been entrusted itself or to commission third parties with said provision.
2. The customer hereby and explicitly grants Barth Medienhaus GmbH the authorisation to commission third parties in its name and on its account to cooperate in the provision of services as specified under the agreement.

13. Remuneration

1. Insofar as a fixed remuneration is agreed, Barth Medienhaus GmbH shall be entitled to invoice instalment payments for parts of the agreed services that are complete unto themselves and can be used independently. Barth Medienhaus GmbH shall be entitled to claim from the customer an advance payment amounting to 30 % of the order sum immediately upon contracting if the net order sum is in excess of 3,000 (three thousand) euro. Unless otherwise agreed, the customer shall be obligated to make this payment for an order sum in excess of 6,000 (six thousand) euro.
2. Insofar as payment shall be made for time required and unless otherwise agreed, the remuneration rates in force at Barth Medienhaus GmbH shall apply accordingly.
3. Insofar as Barth Medienhaus GmbH invoices for services provided on the basis of man/days or daily

rates, each man/day or daily rate shall correspond with eight working hours.

4. The customer shall be charged additionally and at cost price for all outlays, expenses and travel costs accrued by Barth Medienhaus GmbH within the framework of the order insofar as remuneration is paid for time required.
5. All of the contractually agreed remuneration shall apply exclusive of all packaging and shipping and shall apply plus the statutory rate of value added tax.
6. Proposals put forward by the customer or any other forms of cooperation shall have no implications for the amount of remuneration.

14. Terms of payment, right of retention, offsetting

1. All services shall be paid without cash discount and within fourteen (14) days of the invoice date, unless otherwise agreed. The statutory provisions shall apply to the preconditions and consequences of arrearage. From the 15th day following invoice date onward, Barth Medienhaus GmbH shall be entitled to charge default interest amounting to nine percent above the base interest rate (§ 247 German Civil Code, BGB).
2. Counter-claims may only be offset if they are undisputed or have been upheld in a court of law. Notwithstanding, the customer shall be entitled to offset with a counter-claim that replaces a justified right of retention as specified in the applicable contractual relationship.
3. Any right of retention on the part of the customer shall be restricted to the same contractual relationship and shall be limited in amount to threefold the expenses required in order to rectify any given deficiencies. Nevertheless, the customer is entitled to enforce right of retention as concerns undisputed claims or claims upheld in a court of law.

15. Warranty, liability

1. The customer shall be entitled to subsequent fulfilment insofar as a consignment/service provided shall be defective. Barth Medienhaus GmbH is entitled to choose between subsequent fulfilment in the form of repair or delivery/manufacture of a new, faultless item. The customer shall be obligated to return the defective item in the event that a replacement consignment is to be provided.
2. The customer shall be entitled to reduce the price or to withdraw from the agreement without grace period in the event that said subsequent fulfilment fails. This shall apply also if Barth Medienhaus GmbH refuses subsequent fulfilment or the subsequent fulfilment cannot be justifiably expected of the customer.

3. The statute of limitations as concerns claims for defects shall be one (1) year.
4. Insofar as it shall be a question of culpability, Barth Medienhaus GmbH, its legal representatives, employees or other assistants shall not be liable for simple negligence in the event of claims to compensation, irrespective of the legal grounds and in particular due to infeasibility, delay, substandard or false delivery, breach of contract, violation of obligations in contractual negotiations and delictual act, excepting in such cases in which said violation refers to substantial contractual obligations. Substantial contractual obligations are the obligations to make punctual and faultless delivery of the designated consignment and shall also include obligations to provide consulting, protection and duties of care that permit the customer to make use of the consignment as agreed under contract or that are intended to protect the life and limb or the staff employed by the customer or that protect the customer's property against substantial damage.
5. Insofar as there are material reasons for liability to provide compensation for damages on the part of Barth Medienhaus GmbH, said liability shall be restricted to the damage that Barth Medienhaus GmbH could foresee as possible, contractually typical consequences of breaches of contract upon conclusion of the contract or that Barth Medienhaus GmbH should have foreseen upon application of the norms of due diligence and care. Further, indirect damage and subsequent damage arising from defects in the consignment shall only be eligible for replacement in the event that this damage shall be typically expected upon use of the consignment as intended.
6. In the event of simple negligence, the liability of Barth Medienhaus GmbH for material damage and the consequent financial losses shall be restricted to the damage arising from the violation of a substantial contractual obligation.
7. These aforementioned exemptions from and limitations on liability apply in equal measure to the committees, legal representatives, employees and other assistants acting on behalf of Barth Medienhaus GmbH.
8. Any technical information or consulting services Barth Medienhaus GmbH provides shall be provided free of charge and without any liability, provided said information or consulting are not integral parts of the contractually owed, agreed scope of services.
9. The restrictions defined in § 15 items 4-8 shall not be applicable to the liability of Barth Medienhaus GmbH based on culpable intent, guaranteed property features, injury to life, limb or health or as defined in the Product Liability Act.

16. Third-party content

1. Barth Medienhaus GmbH shall not be responsible for content provided by the customer. Barth Medienhaus GmbH is not obligated to review the material and content for possible violations of law; however Barth Medienhaus GmbH may punctually inform the customer of its opinion on any such cases of plainly foreseeable, substantial risks.
2. Insofar as claims are raised against Barth Medienhaus GmbH on the basis of materials and contents the customer provides, the customer shall exempt Barth Medienhaus GmbH from any such claims raised by third parties.

17. Reservation of title

1. Barth Medienhaus GmbH shall reserve title (reservation of title to goods) to all services provided until such time as all monetary claims held by Barth Medienhaus GmbH and arising from the business relationship with the customer have been satisfied, even if payments have already been made for individual services thereof.
2. The customer must inform Barth Medienhaus GmbH immediately in the event of compulsory execution on the services provided.

18. Secrecy, referencing

1. The contractual parties agree to maintain secrecy as concerns the content and structure of terms of this agreement and as concerns the knowledge acquired in the fulfilment thereof.
2. This secrecy shall extend for a period of 5 years beyond the end of the contractual relationship.
3. Insofar as a contractual party requests, the documents said contractual party submitted must be returned at the end of the contractual relationship, provided the other contractual party is unable to enforce any justified interest in these documents.
4. Press releases, information and such like in which one contractual party makes reference to the other are only permitted following prior written consent, whereby e-mail shall suffice. This notwithstanding, Barth Medienhaus GmbH is entitled to name the customer as a reference customer on its website or in other media and to duplicate and publish the services provided as part of its own advertising and to present said services for public demonstration purposes and make reference thereto, unless the customer shall be able to enforce a contradictory, justified interest.

5. The customer is instructed that unencrypted e-mails are a public media. Barth Medienhaus GmbH accepts no liability for the confidentiality of e-mails.

19. Final provisions

1. Unless otherwise agreed, the place of fulfilment shall be the branch premises of Barth Medienhaus GmbH.
2. The exclusive place of jurisdiction for all legal disputes arising directly or indirectly from this contractual relationship, its emergence and its validity is Ettenheim. This shall apply equally to disputes in connection with documents, bills of exchange or cheques relating to the contractual relationship. However, Barth Medienhaus GmbH shall also have the right to bring action against the customer in courts at the customer's place of residence or business address.
3. German law shall apply under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) to all legal questions arising in connection with the order and its fulfilment.
4. Should for any reason one or more individual provisions of these GTC be void, this shall not affect the validity of the remaining provisions hereof.

Note

The customer is instructed that Barth Medienhaus GmbH shall save data from the contractual relationship in accordance with § 28 Federal Data Protection Act for the purpose of data processing and that it reserves the right to transmit said data to third parties when and as needed for the fulfilment of the agreement – for instance when registering or altering domains and such like.