

General Terms & Conditions

1. General

These "General Terms & Conditions" shall exclusively govern any business transaction between the client and Fink & Fuchs AG. Any opposing terms & conditions of the client shall only apply if they are explicitly recognized by Fink & Fuchs in writing. Any deviating or additional agreements to these "General Terms & Conditions" must be made in writing. The revocation of the written form requirement must also take place in writing.

2. Contract/Project Order

The basis of business relationships is the corresponding PR agency contract, the project order and associated order confirmations, which define the agreed services (scope of services) as well as the remuneration. In addition, these General Terms & Conditions apply. Fink & Fuchs' offers are non-binding. Clients shall be bound by their orders upon receipt by Fink & Fuchs.

3. Services and Fees

The basis for billing is the price list of Fink & Fuchs in its latest version. Unless agreed otherwise, Fink & Fuchs' claim to remuneration for each single service shall arise as soon as this service has been provided. Fink & Fuchs shall be entitled to ask for advances to cover its expenses.

All services of Fink & Fuchs that are not explicitly compensated by the agreed fee shall be remunerated separately.

This applies in particular to all additional services provided by Fink & Fuchs.

All third-party costs and expenses that are incurred by Fink & Fuchs shall be paid by the client. If it can be expected that the actual cost will exceed the quoted costs by more than 20 per-cent, Fink & Fuchs will notify the client of the higher costs.

Third-party costs that are incurred in the context of PR activities, such as room rental, catering costs, photographer's fees, costs for clipping services, printing and shipping costs, layout, typesetting and repro costs, costs for equipment in event facilities etc., will be forwarded to the client with a handling surcharge of 15 per-cent.

The charges that are required by German law and must be paid to the German Social Security Fund for Artists (= 3.9% in 2011) shall be on-debited to the client in the event that orders are issued to appropriately qualified free-lance staff (e.g. copywriters, photographers, designers, web designers, artists, etc.).

4. Withdrawal of Contracting Party / Order Cancellations or Changes

In the event of the withdrawal of a contracting party or of changes in orders, Fink & Fuchs shall be entitled to an adequate compensation or payment for its services and expenses rendered in the respective amount until termination of the order. The client is to be informed of additional costs that are incurred due to changes of regular project orders that have been executed without fault and the client is obliged to bear such costs.

5. Withdrawal by Fink & Fuchs

Fink & Fuchs is also entitled to withdraw from the contract for cause, especially in the event that:

- orders from the client violate legal regulations;
- the contracting party has applied to initiate bankruptcy proceedings over its property or stopped its payments;
- bankruptcy proceedings have been initiated over the property of the contracting party or bankruptcy proceedings are refused for lack of funds or other reasons.

Fink & Fuchs will notify the contracting party in writing of its exercise of the right of cancellation. The above cases of withdrawal shall not give rise to any damage claim of the contracting party.

6. Non-Disclosure Obligation

Fink & Fuchs, its employees and any contracted third parties agree to maintain secrecy for all affairs that come to their knowledge in the context of their work for the client. This non-disclosure obligation shall apply both to the client and his business relationships. Only the client himself, but not his vicarious agents, can exempt Fink & Fuchs in writing from this non-disclosure obligation. This obligation shall still apply even after the termination of the contract.

7. Right of Use

Upon receipt of full payment, Fink & Fuchs will grant the client the unlimited right of use for all ideas and proposals that have been developed in the context of this contract, unless conflicting rights of third parties exist.

8. Approval

The client shall verify and authorize all PR services from Fink & Fuchs that are proposed or to be supplied. In particular, the client shall ensure the verification of the legal admissibility of Fink & Fuchs's services, especially with respect to competition and brand regulations. Fink & Fuchs will initiate an external legal verification only if requested in writing by the client. The client shall pay the costs incurred by such action.

9. Deadlines

Fink & Fuchs will make every reasonable effort to meet the agreed deadlines. However, failure to meet any deadlines will entitle the client to exercise his legal rights only after granting Fink & Fuchs a reasonable grace period. This period shall begin with Fink & Fuchs's receipt of a written notice. An obligation to pay damage claims based on the title of the delay shall only arise from willful action or gross negligence on the part of Fink & Fuchs. Inevitable or unforeseeable events – in particular delays caused by subcontractors of Fink & Fuchs – shall exempt Fink & Fuchs in any case from meeting the agreed delivery date. In particular, Fink & Fuchs will not be held liable for the loss of services in the areas of telecommunications, travel connections, and logistics services.

10. Payment

Fink & Fuchs's invoices are payable within 30 days of receipt without deduction. For delayed payments, past-due interest at a rate of 6 per cent p.a. above the base rate is agreed. The supplied goods and services shall remain the property of Fink & Fuchs until payment is made in full.

11. Warranty and Damages

The client shall claim and substantiate any apparent faults in writing within seven workdays after the service has been rendered by Fink & Fuchs. In the event of justified and timely complaints, the client shall be entitled to have Fink & Fuchs deliver improved results.

In the event of breach of duties due to ordinary negligence, Fink & Fuchs's liability shall be limited to the direct average damage that can be foreseen based on the specific type of service and is typical for such contracts. This includes cases of negligent breach of duties by Fink & Fuchs's legal representatives or vicarious agents. Fink & Fuchs will not be held responsible for any breach of insignificant contractual duties due to ordinary negligence. The above limitations of liability shall not apply in case of physical injury and injury to health as well as for the client's loss of life for which Fink & Fuchs can be held responsible. In addition, liability under the product liability law and liability for warranties shall remain unaffected.

12. Liability in Case of Third-Party Claims against the Client or Fink & Fuchs

The client shall be expressly responsible for the compliance with legal regulations, particularly in the field of competition law, in the communication activities that are proposed by Fink & Fuchs. In particular, the client shall authorize a PR activity proposed by Fink & Fuchs only after making sure that it is admissible under the applicable competition legislation or if he agrees to fully assume the risk that is associated with the execution of the PR activity. Fink & Fuchs expressly rejects any liability for claims that are raised against the client as a result of PR activity. In particular, Fink & Fuchs will not be held responsible for the cost of legal action, the client's own costs of legal counsel or the costs of the publication of judgment, as well as for any damage claims or similar claims of third parties. The client shall exempt Fink & Fuchs from any liability and legal prosecution in the event that claims are raised against Fink & Fuchs itself based on the execution of a PR activity. The client shall compensate Fink & Fuchs for any associated financial and other loss (including immaterial damages).

13. Prohibition of Enticement

The direct or indirect mutual enticement of employees by the two contracting parties is prohibited. It shall also be prohibited for the contracting parties to employ an employee of the other contracting party in their own company in any way during an existing employment relationship. The above limitations do not apply if the respective employer has previously approved the planned employment with the contracting party in writing. Violations of this provision will result in a penalty in the amount that is defined in the contract or project order, unless the respective contracting party had no knowledge of the previous employment with the other contracting party at the time of recruiting the employee.

14. Applicable Law

The legal relationships between the client and Fink & Fuchs and the issue of the validity of a contract as well as its advance and subsequent effects shall be exclusively governed by the law of the Federal Republic of Germany.

15. Place of Performance and Venue

The place of performance is Wiesbaden. The agreed venue for any direct or indirect litigation that may arise between Fink & Fuchs and the client shall be the German court that is locally and technically responsible for the location of Fink & Fuchs. However, Fink & Fuchs shall also be entitled to invoke the aid of another court that is responsible for the client.

16. Concluding Provisions

Should any individual provisions of these "General Terms & Conditions" be or become invalid, this shall not affect the validity of the remaining provisions. The parties agree to substitute the invalid condition with a valid condition that comes closest to the intended purpose.

Issue: January 2017