



## General Terms and Conditions

of mk<sup>2</sup> maria kraus marketing & kommunikation gmbh – hereinafter „mk<sup>2</sup>“

(version November 2011)

### 1. General

These General Terms and Conditions apply to all, including future, business transactions with our customers and subcontractors (suppliers und service providers), provided that these are entrepreneurs, governmental entities or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).

Differing terms or agreements, regardless of possible knowledge by mk<sup>2</sup>, are not part of the contract unless expressly agreed upon in writing by mk<sup>2</sup>.

### 2. Conclusion of a Contract

A contract between the customer and mk<sup>2</sup> is effected by the acceptance of a previously submitted offer by mk<sup>2</sup>. Content and conditions of the contract conform exclusively with the content of mk<sup>2</sup>'s offer, if no written agreement was made in a particular case. Unless the order confirmation of the customer differs from the content of the offer, a contract shall only be effected by a new written confirmation by mk<sup>2</sup>.

A contract between mk<sup>2</sup> and subcontractors becomes effective by written order confirmation by mk<sup>2</sup> exclusively. Content and conditions of the contract conform exclusively with the content of mk<sup>2</sup>'s order confirmation, if no written agreement was made in particular case.

### 3. Processing of Orders

#### 3.1 Specification of Services

mk<sup>2</sup> provides services in the field of marketing and communications consulting, sales promotion, corporate design, public relations and business-to-business communication.

The subject and the scope of these services that are to be provided by mk<sup>2</sup> for the customer are defined, unless otherwise agreed in writing, exclusively from these terms and the contractual specification of services.

If the subject of performance is the creation of a work, the customer is obliged to declare acceptance of the work after its completion. If the customer is obliged to declare acceptance but does not do so within 3 working days after receipt of the work, the acceptance is stipulated.

In providing artistically designed works, mk<sup>2</sup> is free to decide on the manner of design within the framework of the customer's basic guidelines. The customer may not object to deviations from his artistic and creative imagination regarding mk<sup>2</sup>'s performance, unless otherwise agreed in writing. Unless otherwise agreed upon in writing, mk<sup>2</sup> is to deliver a proof by e-mail.

If no correction of the proof or request for changes is made within 3 working days, the offered work or service shall be deemed to be accepted.

#### 3.2 Commissioning of Third Parties

For the fulfillment of contractual obligations to the customer, mk<sup>2</sup> is entitled to engage the services of third parties (e. g. photographer). In this case the contractual performance stands under reserve of the accurate and timely supply to mk<sup>2</sup> itself by the third party, unless the non-delivery or non-timely delivery is caused by mk<sup>2</sup>. The customer is to be advised immediately of any non-availability or delay of performance, predictable or occurred.

#### 3.3 Delivery, Delivery Time

Unless otherwise agreed, mk<sup>2</sup> has fulfilled its contractual obligations by timely placing for shipment, whether by mail, courier or e-mail. The risk of transport, such as damage or loss, is born by the customer.

If the customer does not meet or is late in meeting the obligations incumbent upon him, the agreed delivery times for mk<sup>2</sup> shift accordingly.

mk<sup>2</sup> is obliged to a day-specific delivery, only if it is covered in the contract expressly.



In relation to customers and subcontractors mk<sup>2</sup> does not bear costs of delivery such as freight or transport costs, toll or dues, unless expressly agreed upon beforehand. If mk<sup>2</sup> has advanced such costs, customers and subcontractors are obliged to reimburse these immediately.

#### **4. Remuneration, Terms of Payment, Maturity**

All prices agreed upon between customer and mk<sup>2</sup> are net prices and do not include turnover/value-added tax.

At any time mk<sup>2</sup> may ask for an appropriate advance payment. For unexpected increases in costs and prices resulting during processing of the order, mk<sup>2</sup> can claim, with proof, a refund from the customer in the same amount.

The remuneration owed by the customer is due in full when the invoice is issued. If the customer does not pay, he is, without any further avowal by mk<sup>2</sup>, in default after 30 calendar days from the date of the invoice.

In case of delay in payment mk<sup>2</sup> is authorized, in addition to the default interest in the amount of 8 percentage points over the base interest rate (sec. 247 BGB ), to claim a lump-sum of 15.00 EUR for processing a demand for payment or for a refusal of debit.

The customer can only claim an offsetting against counterclaims, which are based on the same contractual relationship and are being undisputed or assessed in a legally binding judgement.

In case of fault the customer is not entitled to the right of retention, unless the delivery is obviously defective or the customer is obviously entitled to refuse acceptance of the work. In this case the customer is entitled to retain only if the retained amount is in appropriate relation to the defects and the estimated cost of an alternative performance.

Claims of the subcontractor against mk<sup>2</sup> may be ceded only with prior written consent. mk<sup>2</sup> may not refuse its consent inequitably.

#### **5. Warranty Claim**

Warranty claims of the customer become time-barred 12 months after the passage of risk or acceptance.

#### **6. Liability**

In case of intent or gross negligence by mk<sup>2</sup> or by our subcontractors or assistants in performance, mk<sup>2</sup> is liable according to the provisions of applicable law; the same applies in case of breach of fundamental contract obligations. To the extent that the breach of contract is not intentionally or not grossly negligent, our liability for damages shall be limited to the foreseeable, typically occurring damage.

Our liability for culpable harm to life, body or health as well as our liability under the Product Liability Act shall remain unaffected.

Any liability not expressly provided for above is disclaimed.

#### **7. Copyright, Usage Rights**

The subcontractor assigns to mk<sup>2</sup> the exclusive, only and worldwide usage right for all work products protected by copyright and delivered to mk<sup>2</sup> for:

**7.1** duplication and distribution as publication, in particular in or as newspapers, magazines, book formats, booklets, flyers, news sheets, catalogs, on cards and maps, postcards, calendars, posters, leaflets, placards, advertising hoardings, trade fair stands and other advertising media of any kind,

**7.2** duplication, distribution and public display in digital form on all physical electronic storage media, in particular on video, CD, DVD, Blu-Ray Disc, HD DVD, hard discs, USB flash drives, data tapes,

**7.3** duplication, distribution and public display for accessibility and storing in digital form in all data bases, networks, in particular in the internet (www).

mk<sup>2</sup> may assign all usage rights to its customers.

The subcontractor guarantees that the work products he delivers within the scope of this contract are free of copyrights, ancillary copyrights or other industrial property rights of third parties. This guarantee is also furnished by our customers for all material they supply, such as e. g. photos or drawings.



The subcontractor relinquishes the adding of his author's designation to the copyright-protected work products delivered by him. If customs of the particular trade are not opposed to it and the subcontractor wishes it expressly, mk<sup>2</sup> will name the subcontractor's designation of authorship.

mk<sup>2</sup> assigns to the customer the usage rights for all copyright-protected work products produced for the customer in the contractually agreed scope. Unless otherwise agreed upon separately, a simple usage right is transferred.

## **8. Property Rights**

All products delivered to the customer by mk<sup>2</sup> remain the exclusive property of mk<sup>2</sup> until the complete fulfillment of all claims against the customer from the respective order. If the customer is a merchant within the meaning of the HGB (German Commercial Code), mk<sup>2</sup> keeps the property until complete fulfillment of all claims against the customer from the entire business relation.

## **9. Self-Advertising**

For the purposes of self-advertising mk<sup>2</sup> is allowed to refer to services provided for the customer in an appropriate form and to name job-content and customer.

Only with prior written approval of mk<sup>2</sup> are subcontractors permitted to refer to services provided for mk<sup>2</sup> for the purposes of self-advertising. If business interests are not opposed to, mk<sup>2</sup> will give its consent.

## **10. Final Clause**

### **10.1 Applicable Law**

All legal relationships between mk<sup>2</sup> and customers or subcontractors are governed by the law of the Federal Republic of Germany. The Convention on Contracts for the International Sale of Goods is excluded.

### **10.2 Jurisdiction**

Exclusive place of jurisdiction for all legal disputes between mk<sup>2</sup> and customers or subcontractors is to be the place of business of mk<sup>2</sup>.

### **10.3 Severability Clause**

Should certain provisions of this General Terms and Conditions be invalid, the remaining provisions shall not be affected. In this case the parties shall replace the invalid provision by a valid provision that comes as close as possible to the commercial purpose of the invalid provision.