

## **General Terms and Conditions of Three Coins GmbH**

Validity: 1.2.2016

### **1. Scope of application of the General Terms & Conditions**

- 1.1. Scope of validity: The following General Terms and Conditions (in the following shortened to "**GTCs**") apply to all contracts concluded between Three Coins GmbH, FN 381438 p (in the following also shortened to „**Three Coins**“ or the "**Company**") and its business partners and customers and thus supplement the content of the individual contract concluded between the respective contractual partners.. If provisions of the respective individual contract contradict provisions of these terms and conditions, the provisions of the individual contract shall apply.
- 1.2. Contradictions, deviation and changes: In the case of conflict with the GTCs of the contractual party, the terms and conditions of Three Coins apply exclusively. Deviations from these terms and conditions are subject to the written form as far as this is permitted and legally no other form is mandatory. Amendments or side agreements must be validated by authorised persons from Three Coins and are only valid for the individual business case. The other employees of Three Coins are not authorised to make any changes or sub-agreements to these terms and conditions. Deviating contractual conditions of the contractual party are expressly contradicted. You will also not bind Three Coins even if Three Coins does not object to them again after their reception by Three Coins. Changes to these terms and conditions after conclusion of the contract shall be made to the respective contractual party by Three Coins in writing and shall come into force, unless the respective contractual party is not a consumer within the meaning of the Austrian Consumer Protection Act, if the respective contractual party fails within two weeks of notification of the changes to contradict these changes in writing.
- 1.3. Equal treatment: There are no indications that the provisions of these GTCs could directly or indirectly affect women or men differently. The requirements of the GTCs therefore have no gender equality relevance. In the following text, for every possible male designation, the adequate female form must be implicitly taken into account.

## **2. Protection of concept and ideas**

If the potential customer has previously invited Three Coins to draw up a concept and if Three Coins complies with this invitation before concluding the respective individual contract, the following provision applies:

- 2.1. Pitching contract: Already by the invitation and the acceptance of the invitation by Three Coins, the potential customer and Three Coins enter into a contractual relationship (the "pitching contract"). These GTCs shall also form the basis for this contract.
- 2.2. Concept development: The potential customer acknowledges that Three Coins already provides cost-intensive preliminary services when the concept is drafted, even though they have not yet undertaken any service obligations.
- 2.3. Concept protection: The concept is subject to the protection of copyright law in its linguistic and graphic parts, as far as these achieve the status of creative work. The use and processing of these parts without the consent of Three Coins is not permitted to potential customers on the basis of the copyright law.
- 2.4. Idea protection: The concept also contains project-relevant ideas that do not reach status of creative work and thus do not enjoy the protection of copyright law. These ideas are at the beginning of every creative process and can be defined as the spark that ignited everything later on and thus as the origin of the respective concept. Therefore, those elements of the concept are protected that are unique and give the project its characteristic impression. As an idea in the sense of this agreement, in particular training and teaching concepts, advertising slogans, advertising texts, graphics and illustrations, advertising material, etc. are considered, even if they do not reach the status of a creative work.
- 2.5. Prohibition on exploitation: The potential customer agrees to refrain from commercially exploiting or allowing commercial exploitation or making use of these creative ideas presented by Three Coins within the scope of the concept, or allowing them to be used or made use of outside the corrective of a single contract to be concluded later.
- 2.6. Own Ideas: If the potential customer believes that Three Coins has presented them with ideas that they has already come across prior to the presentation, they will email them to Three Coins within 14 days of the date of the presentation of evidence which will allow a temporal assignment. In the opposite case, the parties assume that Three Coins has presented the potential customer with a new idea. If the idea is used by the customer, then it can be assumed that Three Coins was thereby meritorious.

2.7. Compensation: The potential customer can exempt himself from their obligations under this point 0 by paying compensation in the amount of an on-the-spot payment for creative concepts plus 20% VAT. The exemption does not become effective until full payment of the compensation has been received by Three Coins.

### **3. Scope of services, order processing and co-operation duties of the customer**

- 3.1. Services: The scope of the services to be provided is based on the specifications in the respective individual contract or any order confirmation by Three Coins, as well as the possible briefing protocol ("Offer documents"). Subsequent changes to the service content require written confirmation by Three Coins. Within the framework specified by the customer, there is freedom of design of Three Coins in respect of fulfilment of the order.
- 3.2. Customer's obligation to inspect: All services provided by Three Coins (in particular all preliminary designs, sketches, final artwork, brush prints, blueprints, copies, colour prints and electronic files) must be reviewed by the customer and released by the customer within three working days from receipt by the customer. If not approved in time, they are considered approved by the customer.
- 3.3. Customer Information Duty: Customer will promptly and fully provide Three Coins with all information and documentation necessary for the provision of the service. They will provide information of all circumstances that are of importance for the implementation of the order, even if these only become known during the implementation of the order. The customer shall bear the costs that arise if work is delayed or has to be repeated as a result of incorrect, incomplete or subsequently amended details from Three Coins.
- 3.4. Violation of rights of third parties: The customer is furthermore obliged to verify the documents made available for the implementation of the order (photographs and logos, etc.) for any copyrights, brand or trademark rights or other rights of third parties (rights clearing) and guarantees that the documents are free from the rights of third parties and can, therefore, be used for the intended purpose. Three Coins shall not be held liable in the event of minor negligence or after fulfilling its duty to warn - at least in the internal relationship with the customer - for any violation of such rights of third parties through documentation made available. If a claim is brought against Three Coins for such a violation by a third party, the customer shall indemnify and protect Three Coins from claims; they shall compensate all losses incurred as a result of a claim by a third party, in particular the costs of appropriate legal representation. The customer agrees to assist Three Coins in warding

off any claims from third parties. The customer shall provide Three Coins with all documents without being requested to do so.

#### **4. External services/commissioning of third parties**

- 4.1. Service provision by third parties: Three Coins is entitled at its own discretion to perform the service itself, to use knowledgeable third parties as vicarious agents in the provision of contractual services and/or to substitute such services (in the following shortened to "**External Service**").
- 4.2. Commissioning: Third parties will be commissioned to provide an external service either in their own right or on behalf of the customer. Three Coins will select these third parties carefully and make sure that they possess the required professional qualifications.
- 4.3. Customer admission: To the extent that Three Coins commissions necessary or agreed third-party services, the respective contractors are not vicarious agents of Three Coins. In obligations to third parties, which go beyond the contract period, the customer has to be admitted. This also applies in the case of a termination of the contract for good cause.

#### **5. Deadlines**

- 5.1. Non-binding validity of deadlines: Specified delivery or service periods are, unless expressly agreed as binding, only to be considered as approximate and non-binding. Binding deadlines must be recorded in writing or confirmed in writing by Three Coins.
- 5.2. Delayed Delivery: If the delivery / service of Three Coins is delayed for reasons for which it is not responsible, such as events of force majeure and other unforeseeable events that cannot be prevented by reasonable means, the service obligations for the duration and extent of the obstacle are suspended and the deadlines extended accordingly. If such delays continue for more than two months and no other agreements have been made with the customer, the customer and Three Coins are entitled to rescind the contract.
- 5.3. Withdrawal of the customer: If Three Coins is in default, the customer can only withdraw from the contract after setting Three Coins in writing a reasonable grace period of at least 14 days and this has expired fruitlessly. Claims for damages of the customer due to non-performance or default are excluded, except in case of intent or gross negligence.

#### **6. Fees**

- 6.1. Fees: The fees depend on the agreement in the individual contract. All fees include 20% VAT, which is shown separately. In the absence of an agreement in individual cases, Three Coins is entitled to fees at the usual market rate for the services provided and for the granting of the copyright and trademark rights of use. All services provided by Three Coins that are not expressly compensated by the agreed fee will be remunerated separately. All Three Coins cash outflows are to be reimbursed by the customer.
- 6.2. Advances: Three Coins is entitled to demand advances to cover its expenses. These can be created as interim or advance invoices or called up as on-account payments.
- 6.3. Cost estimates: Cost estimates from Three Coins are not binding. If it is anticipated that the actual costs will exceed those estimated in writing by Three Coins by more than 15%, Three Coins will alert the customer to the higher costs. The cost overrun shall be deemed to have been approved by the customer if the customer does not object in writing within three working days of this notice and at the same time announces more cost-effective alternatives. If it is a cost overrun is anywhere up to 15%, a separate communication is not required. This costs estimate overrun shall be deemed to have been approved by the client from the outset.
- 6.4. Fee for non-execution: Three Coins shall be entitled to the agreed fee for all work by Three Coins, which for whatever reason is not implemented by the customer. The crediting provision of § 1168 of the Austrian Civil Code is excluded. By paying the fee, the customer acquires no rights at all for use for work already performed; non-implemented concepts, drafts and other documents should be returned immediately to Three Coins.

## **7. Payment terms**

- 7.1. Payment details: Unless otherwise contractually agreed, the payment for the ordered services must be directed to the account details specified in the payment note within two weeks of the date specified in the respective individual contract.

If there is no point in time in the individual contract, the Three Coins' claim for fee for each individual service arises as soon as it has been rendered.

- 7.2. Transfer costs and fees: In principle, payments are to be made free of charge for the recipient. This also applies to payments from abroad and even if there is a transaction fee. The costs of payment transactions are always borne by the initiator of the transaction.

- 7.3. Electronic accounting: Three Coins is entitled to submit invoices to the customer in electronic form. The customer expressly agrees to the sending of invoices in electronic form by Three Coins.
- 7.4. Payment arrears: In the event of a payment arrears of more than five bank working days, Three Coins is not obliged to provide any further services. In the event of late payment by the customer, Three Coins may immediately declare payment due for all services and partial services provided under other contracts concluded with the customer. If payment has been agreed in instalments, Three Coins reserves the right to demand immediate payment of all outstanding debt in the event of late payment of any partial or incidental charges (missing of deadline).
- 7.5. Reminder fees and default interest: If the receipt of payment - if no other payment period has been agreed, otherwise with similar consequential deadlines as described - cannot be determined within 14 days, a payment reminder will be sent. If the payment is not received after 21 days, a reminder fee of EUR 20.00 can be charged. In the event of late payment, Three Coins shall continue to be entitled to charge default interest to the amount of 8% above the base lending rate (in accordance with § 352 of the Austrian Commercial Code). If the payment is not received within two weeks even after a reminder, the transaction can be handed over to a collection agency. In case of payment default, dunning and collection costs are to be compensated! The statutory default interest applies.
- 7.6. Prohibition on set-off: The customer is not entitled to set off their own claims against claims of Three Coins, except if the customer's claim was recognised in writing by Three Coins or judicially determined.

## **8. Intellectual property**

- 8.1. Property: All services of Three Coins, including those of presentations (for example, suggestions, ideas, "formats", sketches, preliminary drafts, scribbles, final artworks, concepts, negatives and slides), as well as individual parts thereof, remain just as the individual work pieces and design originals owned by Three Coins and may be reclaimed by Three Coins at any time, including on the termination of the contract. By paying the fee, the customer acquires the right of use for the agreed purpose. Unless otherwise agreed, the customer may use the services of Three Coins exclusively in Austria. The acquisition of rights of use and exploitation of services from Three Coins in any case requires the full payment of the fees charged by Three Coins. If the customer uses the services of Three Coins before this date, then this use is based on a revocable lease relationship.

- 8.2. Changes: Changes or processing of services by Three Coins, in particular their further development by the customer or third parties acting for the latter, are only permitted with the express prior written consent of Three Coins and - insofar as the services are protected by copyright - the author.
- 8.3. Consent for continued use: Any use of Three Coins' services beyond the originally agreed purpose and scope of use, whether copyrighted or otherwise, requires the prior written consent of Three Coins. For this purpose, Three Coins and the author are entitled to a separate appropriate remuneration. The use of Three Coins services or advertising materials for which Three Coins has developed conceptual or design templates is subject to the prior written consent of Three Coins after the expiration of the contract, whether or not that service is protected by copyright.
- 8.4. Claim when in use: For uses according to Point 8.3 Three Coins has in the first year after the end of the contract an entitlement to the full remuneration agreed in the expired contract. In the second or third year after expiry of the contract, only half or one quarter of the remuneration agreed in the contract. From the fourth year after the end of the contract, no remuneration is payable.
- 8.5. Liability of the customer: The customer is liable to Three Coins for any unlawful use to the extent of double the appropriate fee for this use.
- 8.6. Joint developments: In the case of works or services developed by Three Coins together with the customer, what has been said above only applies to those parts of the work or service that were clearly provided/created by Three Coins alone.

## **9. Identification**

- 9.1. Advertising: Three Coins is entitled to indicate all advertising materials and all advertising measures to the customer/Three Coins and possibly the author, without the customer being entitled to a claim for remuneration.
- 9.2. Reference note: Subject to the written revocation of the customer, which is possible at any time, Three Coins is entitled to indicate on its own advertising media and, in particular, on its Internet website with name and company logo to the existing or former business relationship (reference note).



## **10. Warranty**

- 10.1. **Obligation to notify:** The customer shall report any defects immediately, in any event within fourteen days after delivery/service by Three Coins, hidden defects within fourteen days after detection thereof, in writing describing the defect; otherwise the service is considered approved. In this case, the assertion of warranty claims and claims for damages as well as the right to contest errors due to defects are excluded.
- 10.2. **Rights of the customer and of Three Coins:** In the case of justified and timely notice of defects, the customer has the right to an improvement or exchange of the delivery/service by Three Coins. Three Coins will remedy the deficiencies in a timely manner, allowing the customer to provide Three Coins with all necessary measures to investigate and correct the defect. Three Coins may refuse service improvement if it is impossible or disproportionately expensive for Three Coins. In this case, the customer is legally entitled to amend the order or to request a reduction in the price. In the case of improvement, it is up to the client to carry out the transmission of the defective (physical) thing at their expense.
- 10.3. **Customer's obligation to inspect:** It is also the responsibility of the customer to carry out the verification of the service whether it is permissible in a legal sense, in particular, in competition, trademark, copyright and administrative law Three Coins is only required to conduct a rough review of whether the matter is permissible in law. In the event of slight negligence or the fulfilment of any warning obligation with respect to the customer, Three Coins shall not be liable for the legal admissibility of contents if these have been specified or approved by the customer.
- 10.4. **Warranty period:** The warranty period is six months from delivery/service. The right to recourse against Three Coins in accordance with § 933b Paragraph 1 of the Austrian Civil Code expires one year after delivery/service. The customer does not have the right to withhold payment on account of defects. The provision on presumption in § 924 of the Austrian Civil Code is excluded.

## **11. Liability and product liability**

- 11.1. **Liability Disclaimer:** In cases of slight negligence, the liability of Three Coins and its employees, contractors or other vicarious agents ("people") for property damage or financial loss of the customer is excluded, regardless of whether it is direct or indirect damage, loss of profit or consequential damage, damages due to default, impossibility, positive breach of contract, negligence on conclusion of contract, due to defective or incomplete service. The existence of gross negligence must be proved by the injured party.



As far as the liability of Three Coins is excluded or limited, this also applies to the personal liability of their "people".

- 11.2. Indemnification and protection from claims: Any liability of Three Coins for any claims made against the customer for any service provided by Three Coins (such as advertising) shall be expressly excluded if Three Coins has fulfilled its obligation to notify or such was not recognisable to them, whereby slight negligence does not give rise to damage. In particular, Three Coins shall not be liable for litigation costs, the customer's own legal fees or the costs of publishing judgments as well as for any claims for damages or other claims of third parties; the customer must indemnify and protect Three Coins from claims in relation to this.
- 11.3. Statute of limitation and limitation of Liability: Claims for damages of the customer expire in six months from knowledge of the damage; but at least three years after the injurious act of Three Coins. Claims for damages are limited in amount to the net order value.

## **12. Data protection**

The customer agrees that their personal data, specifically name / company, occupation, date of birth, commercial register number, powers of representation, contact person, business address and other addresses of the customer, telephone number, fax number, e-mail address, bank details, credit card data, VAT-ID number) for the purpose of contract fulfilment and customer care as well as for own advertising purposes, for example, to send offers, advertising leaflets and newsletters (in paper and electronic form), as well as for the purpose of referring to existing or former business relationships (reference note) is automatically determined, stored and processed. The client agrees that electronic mail will be sent to him for advertising purposes until further notice.

This consent can be revoked at any time in writing by e-mail, fax or letter.

## **13. Premature termination**

- 13.1. Termination by Three Coins: Three Coins is entitled to terminate the contract for good cause with immediate effect. In particular, an important reason applies if
- a) the performance of the service is rendered impossible for reasons for which the customer is responsible or is delayed further despite setting a grace period of 14 days;
  - b) the customer continues, in spite of a written warning with a grace period of 14 days, in violation of material obligations arising from this contract, such as payment of a due amount or duty to co-operate.

c) there are legitimate concerns about the creditworthiness of the customer and the latter does not make any advance payments on behalf of Three Coins or provide suitable security prior to the service of Three Coins;

13.2. Termination by the customer: The customer is entitled to terminate the contract for important reasons without granting a grace period. An important reason exists in particular if, despite a written warning, Three Coins continues to violate essential provisions of this contract with a reasonable grace period of at least 14 days for remediation of the breach of contract.

#### **14. Applicable law, place of performance and jurisdiction**

Austrian law applies exclusively, to the exclusion of its referral norms and to the exclusion of UN sales law. Place of fulfilment and jurisdiction is Vienna. The place of jurisdiction for consumers is governed by the statutory provisions.

#### **15. Severability clause**

15.1. Should individual provisions of the contract, including these GTCs, fully or partly lack efficacy, or should the contract have an omission, the efficacy of the residual provisions or parts of such provisions remain untouched. In place of the ineffective or missing provisions, effective regulations which come closest to the commercial content of the invalid provision come into effect.

15.2. The fact that Three Coins does not exercise any or all of its rights cannot not lead to the waiving of these rights.