

RAINBOW UNICORN TERMS AND CONDITIONS FOR THE PROVISION OF AGENCY SERVICES

1. Scope of application

- 1.1 The following General Terms and Conditions (GTC) apply to all deliveries and services provided by Rainbow Unicorn, Anna Niedhart & Christian Reich GbR, Anklamerstraße 50, 10115 Berlin ("Rainbow Unicorn") on behalf of its customers. These terms and conditions are an essential part of every order with customers of Rainbow Unicorn. Deviating terms and conditions of customers as well as changes and additions to these terms and conditions are only valid if they have been recognized in writing by Rainbow Unicorn. This also applies if Rainbow Unicorn has not expressly objected to the customer's terms and conditions of business and/or delivery
 - 1.2 The specific scope of an order provided by Rainbow Unicorn for a customer is called up with individual orders (e.g. confirmed cost estimate). These GTC apply in addition to such orders. In the event of differences between these GTC and an order, the content of the respective order applies.
 - 1.3 Rainbow Unicorn provides its services as part of a specific order based on briefings that are handed over to Rainbow Unicorn and explained by the customer. The briefing represents the binding working basis for Rainbow Unicorn. If the briefing is given orally, the corresponding resolution report becomes the binding working document.
- ### 2. General collaboration
- 2.1 Rainbow Unicorn delivers resolution reports within three business days after each meeting with the customer. These are binding for the further processing of projects, unless objected to in writing within a further period of three working days. In urgent cases, a shorter period can be agreed.
 - 2.2 If Rainbow Unicorn places orders with Rainbow Unicorn from a customer to third parties (e.g. printing shops, models, etc.), this is done on behalf and in the name and for the account of the customer. The payment of the third party is made directly by the customer and not by Rainbow Unicorn. If, exceptionally, the order is placed in the name of Rainbow Unicorn, Rainbow Unicorn is entitled to demand an appropriate advance payment at any time. Internally, Rainbow Unicorn acts in the name and for the account of the customer, even if Rainbow Unicorn appears externally in its own name.
 - 2.3 For orders for the development and elaboration of advertising material to third parties, Rainbow Unicorn will send a cost estimate. Rainbow Unicorn does not start the assignment until the cost estimate has been approved by the customer. Delays and costs due to late releases are not borne by Rainbow Unicorn and will be reimbursed by the customer.
 - 2.4 Working documents and all information about the other party that becomes accessible in connection with an order must be treated as strictly confidential. The confidentiality obligation according to the previous sentence does not apply if and to the extent that the information in question is demonstrably generally known or becomes generally known through no fault of the other parties or was or will be lawfully obtained from a third party or is already available to the other party. The confidentiality obligation ends no later than five years after the conclusion of the order.

3. Customer cooperation

- 3.1 The customer will provide Rainbow Unicorn with all information necessary for the execution of the respective order as well as other information necessary for Rainbow

Unicorn's performance. Rainbow Unicorn may rely on the accuracy of this information.

- 3.2 The customer will inform Rainbow Unicorn in good time in the form of briefings about planned measures and the available budgets as well as about changes. Instructions to Rainbow Unicorn are given in writing.
- 3.3 The customer will issue his instructions and approvals in good time so that Rainbow Unicorn's workflow is not affected and Rainbow Unicorn is able to carry out follow-up work on time and without additional costs and loss of quality. The customer bears additional costs and time differences due to late releases.

4. Compensation

- 4.1 "Offers" made by Rainbow Unicorn are not yet offers in the legal sense, unless they are marked as binding, but only invitations to the customer to submit a binding offer. This applies regardless of whether the customer previously requested the offer or whether Rainbow Unicorn submitted it on its own initiative. The contract with the customer is concluded as soon as Rainbow Unicorn confirms an order from the customer in text form. This order confirmation can be sent within 14 working days after receipt of the order. Unless otherwise agreed, a contract is also formed when Rainbow Unicorn has started to implement the contract in agreement with the customer. The agreed order price is binding and only includes internal services by Rainbow Unicorn. In the case of requests for changes and additions, a separate fee must be paid for Rainbow Unicorn's additional work. Ancillary costs (e.g. freight, packaging, postage, etc.) and third-party services will be passed on to the customer without a surcharge. The customer bears reasonable and customary travel costs incurred by Rainbow Unicorn in the course of fulfilling the order. The customer bears taxes, fees to collecting societies (VG Wort, GEMA, etc.), compensation payments under the law of use, customs costs and artist social security contributions, even if these are subsequently levied.
- 4.2 All Rainbow Unicorn invoices have a payment term of 30 days after receipt of the invoice. Discounts are not granted.
- 4.3 30 days after the due date and receipt of this invoice you are in default according to §286 Abs. 3 BGB. The interest on arrears shall amount to 9% above the base interest rate pursuant to §288 Abs. 1 and 2 BGB.

5. Rights of Use

- 5.1 If there are copyrights or other legal positions in the services provided as part of an order, the scope of the rights of use to be transferred from Rainbow Unicorn to the customer for the work results is based on the respective agreement in the individual case and otherwise on the specifications of § 31 paragraph 5 UrhG. Any source files created by Rainbow Unicorn are only covered by the granting of rights of use if this has been explicitly briefed or agreed in advance in the case of individual programming or corporate identity orders.
- 5.2 The further transfer or sublicensing of the rights of use transferred to the customer by the customer to third parties requires the prior written consent of Rainbow Unicorn to be effective; an exception to this is the assignment or licensing to subsidiaries or affiliated companies within the meaning of §§ 15 ff. AktG within a group and sales partners of the customer.
- 5.3 Rights of use for designs rejected by the customer or not released for execution remain with Rainbow Unicorn. Rights of use are only fully transferred to the customer

after all financial obligations of the customer to Rainbow Unicorn relating to the respective service have been settled.

- 5.4 Copyright and ancillary copyrights to external services (models, photographers, directors, etc.) are acquired according to the customer's specifications in his name and on his account. In all cases in which such a claim by a third party becomes apparent, Rainbow Unicorn will inform the customer in good time before the use of the material affected by this and obtain approval or act according to the customer's instructions.
- 5.5 Rainbow Unicorn is permitted to use the results of its work or excerpts thereof for the purpose of self-promotion and participation in competitions in the advertising industry with no time or space restrictions and free of charge, provided that this does not affect the customer's confidentiality interests.

6. Liability

- 6.1 The liability of Rainbow Unicorn, its representatives and vicarious agents for slightly negligent breaches of duty is excluded with the exception of the breach of essential contractual obligations (so-called cardinal obligations, i.e. those obligations whose fulfillment make the proper execution of the contract possible in the first place and on whose observance the other party may regularly rely) as well as injury to health, life and limb. The liability of Rainbow Unicorn, its representatives and vicarious agents is limited to compensation for the foreseeable, contract-typical and direct damage depending on the type of service. In particular, Rainbow Unicorn is not liable for lost profits.
- 6.2 Rainbow Unicorn undertakes to carry out the work assigned to Rainbow Unicorn with professional and commercial care to the best of its knowledge and in compliance with the generally accepted principles of the advertising industry. With this duty of care, Rainbow Unicorn guarantees that the advertising material and measures produced by Rainbow Unicorn do not infringe the rights of third parties, unless otherwise indicated; Otherwise, liability under competition law for legal admissibility lies with the customer. Rainbow Unicorn will inform the customer in good time of legal risks that a proper advertising salesman can identify. If Rainbow Unicorn considers an examination under competition law by a particularly competent person or institution to be necessary for the measure to be carried out.
- 6.3 Rainbow Unicorn is not liable for advertising statements made by the customer regarding any product properties. Furthermore, Rainbow Unicorn is not liable for the admissibility of using the results of its work outside of the respective contract area or for purposes other than those agreed. Rainbow Unicorn is also not liable for the patent, copyright, trademark, design patent or other protectability of the services it provides. As part of the development of brands, Rainbow Unicorn does not undertake a final check, but is happy to arrange for this for the customer if they do not want to carry out such a check themselves.
- 6.4 Rainbow Unicorn releases the customer from justified claims by third parties whose rights have been violated contrary to Section 6.2. The customer indemnifies Rainbow Unicorn from its own and third-party claims if Rainbow Unicorn has acted at the customer's express request, although Rainbow Unicorn has informed the customer of its concerns regarding the admissibility of the advertising measures or the possibility of violating third-party rights. The same applies to the admissibility of the advertising of the brands, goods and/or services as well as factual statements about the products and services of the customer, insofar as these originate from him. The customer exempts Rainbow Unicorn from all claims of authors and third parties entitled to performance

protection according to §§ 32, 32 a ff. UrhG, provided that they have been commissioned by Rainbow Unicorn on the instructions of the customer. An exemption also includes the costs for a necessary and appropriate legal defense of the respective party.

- 6.5 Rainbow Unicorn is fully liable for its representatives and vicarious agents in accordance with § 278 BGB. However, Rainbow Unicorn assumes no liability beyond Rainbow Unicorn's selection and monitoring obligations for the proper fulfillment of orders to third parties who are not vicarious agents of Rainbow Unicorn for the provision of its performance obligations from the respective order. Upon request, Rainbow Unicorn will, however, assign all claims for damages against third parties to which Rainbow Unicorn is entitled to the customer and support them appropriately in enforcing these claims.
 - 6.6 Customer claims against Rainbow Unicorn are subject to a statute of limitations of twelve months.
 - 6.7 Offsetting by the customer against claims by Rainbow Unicorn is only permitted if the customer's claims are undisputed or have been legally established.
 - 6.8 Customer rights arising from or in connection with the order may not be assigned without the written consent of Rainbow Unicorn.
 - 6.9 The customer can only assert rights of retention, in particular with regard to a claim for return of the customer, with regard to undisputed claims or claims that have been legally established by a court. In the event of differences of opinion between the parties regarding the interpretation and implementation of an order as well as the evaluation of the service by Rainbow Unicorn, the customer waives measures in the proceedings for interim legal protection.
- ## **7. Delivery**
- 7.1 The customer will be informed of any exceeding of the delivery dates and deadlines, stating the reasons and the probable duration. Compensation for damages and withdrawal always presuppose the unsuccessful expiry of a previously set reasonable grace period.
 - 7.2 The deadlines will be suspended if, after the order has been placed, the customer's requests for changes cause a significant rescheduling of the schedule. Rainbow Unicorn will inform the customer of this and coordinate a new appointment with him.
 - 7.3 Unless otherwise expressly agreed in writing, the place of performance is the registered office of Rainbow Unicorn. Delivery to another location will be carried out by Rainbow Unicorn at the customer's expense and risk.
 - 7.4 Acceptance is based on the statutory provisions. Public use and/or payment of the corresponding service by the customer constitute acceptance. It is also equivalent to acceptance if the customer fails to deliver the work ready for acceptance within a period of ten, unless a different deadline has been set or agreed in individual cases working days after delivery.
 - 7.5 Defective are only grossly inappropriate or improperly executed deliveries and services as well as those in which the tasks set and the desired design have been completely ignored and/or instructions have been grossly deviated from or which do not correspond to the state of the art. Production-related small quantities do not constitute a defect.
 - 7.6 Rainbow Unicorn will keep all of the customer's documents for a period of twelve months after delivery and then make them available to the customer upon request. If the customer does not express their desire to have the documents handed over before the end of the two-year period in writing or in text form, Rainbow Unicorn is entitled to destroy the documents.

8. Termination

- 8.1 In particular, Rainbow Unicorn can withdraw from the order or terminate the order with immediate effect if the proper processing of the order is in question because the customer has not only temporarily stopped his payments, the customer has stopped his business operations or a significant part of his business operations or enforcement measures to collect payment obligations from this contract have been unsuccessful. The same applies if an application is made to open insolvency proceedings against the customer's assets. The statutory rights to withdrawal and extraordinary termination remain unaffected. A termination must always be made in writing.
- 8.2 In the event of termination of the contract, all contracts concluded with the approval of the customer will be properly processed, billed and remunerated by the customer.
- 9. Final Provisions**
- 9.1 Verbal collateral agreements do not exist. Deviating or supplementary individual contractual regulations to these GTC or the order placed must be in writing to be effective and apply exclusively to the respective order. This also applies to the waiver of the written form clause.
- 9.2 Should one of the provisions of these GTC or the order be or become invalid, this does not affect the validity of the rest of the GTC or the order. The invalid or unenforceable provision shall be replaced by a valid and enforceable provision whose effects come closest to the economic objective pursued by the contracting parties with the invalid or unenforceable provision. The same applies in the event of a loophole.
- 9.3 The place of jurisdiction is Berlin, unless the law stipulates another location. German law applies to the exclusion of the UN purchase law.
- 9.4 If there is a written form requirement according to these GTC, this is also fulfilled by e-mail or fax, except in the case of terminations (section 8.1) and changes or additions to these GTC (section 9.1), which must always be made in accordance with the written form requirement in accordance with Section 126 Paragraph 2 BGB to have.
- 9.5 THESE TERMS AND CONDITIONS ARE VALID AS OF DECEMBER 1ST, 2018.

UPDATED: SEPTEMBER 18, 2023