

General Terms and Conditions of Business of AZ Direct GmbH for Consulting and Agency Services

Carl-Bertelsmann-Straße 161 S, 33311 Gütersloh, Germany

Registered office: Gütersloh, Court of Register Gütersloh HRB 1631
Managing Director: Mario Schwegler, Thomas Wonnemann
Valid from: March 1, 2008

1. General scope

1.1. Consulting and agency services ("the services") by AZ Direct GmbH (hereinafter "AZ") will be provided exclusively according to the following general terms and conditions of business (hereinafter "terms and conditions of business"), which the principal recognizes by issuing the order or receiving the services. They also apply for all corresponding future services by AZ. Any of the principal's terms and conditions which are different and supplementary do not apply, even if these are not expressly opposed by AZ.

1.2. Separate terms and conditions of business apply to other services by AZ, in particular for services and deliveries relating to addresses and data and relating to order data processing, for the production and processing of advertising materials and for list broking.

1.3. If there are no other specific provisions in individual cases, and if the character of the agreement cannot be ascertained, the agreements concluded by AZ in connection with providing advice to the principal are to be regarded as service agreements within the meaning of section 611 of the Bürgerliches Gesetzbuch (BGB German Civil Code) or as agreements for the provision of business with a service character within the meaning of sections 675 and 611 of the BGB.

1.4. The subject of the agreement is the agreed services and not a specific economic success.

2. Conclusion of the agreement

2.1. Offers by AZ are not binding. Agreements only come into being when AZ confirms the order in writing and the agreement is exclusively geared to the content of the order confirmation and these terms and conditions of business. Any verbal agreements or acceptances must be confirmed in writing by AZ to become valid.

2.2. AZ reserves all rights to the offer documents and the work and services submitted before the agreement was concluded (presentations, layout, text) and the ideas included therein. They may not be made available to third parties in an unchanged or changed form without AZ's permission, and must be returned to AZ immediately upon request. Acceptance of a presentation fee by AZ does not constitute permission for the principal to use the offer documents, including the ideas mentioned above, the work or the services.

3. Content and scope of services/processing of the agreement

3.1. AZ will provide consulting services to plan and conduct marketing activities.

3.2. AZ will provide agency services as part of its creative services; these include, above all, developing ideas and concepts for direct advertising. AZ will design the respective activity both with regards to graphics and text.

3.3. AZ will provide its services with the requisite care and in accordance with standard practices in the advertising sector. It does not, however, vouch for the principal's advertising activities conducted as a result of the consulting and/or agency services having a specific economic success, in particular increases to revenues or results.

3.4. AZ is authorized to have the services fully or partially executed by qualified third parties at its own discretion.

3.5. AZ will comply with any changes to services desired by the principal, to the extent that these are possible and reasonable from an operational perspective. The parties undertake to make any changes to the contractual conditions that may be required without delay, in particular to increase remuneration and move deadlines.

3.6. Minutes of the meetings provided by AZ are binding if the principal does not contradict these immediately upon their receipt.

4. Cooperation requirements on the part of the principal

4.1. The principal will always provide support in the requisite extent and without request to AZ in providing its services. In particular the principal will provide AZ with all of the information and documents AZ requires to provide its services, for example with regard to the desired target group, the affected products and the content of the advertising.

4.2. To the extent that nothing is agreed to the contrary, AZ will present the results of its services to the principal primarily in writing, if necessary also with the aid of electronic means, in other cases verbally. To the extent that documentation of the consulting process or other documents are desired by the principal, AZ will make these available in a suitable written form ("written versions"). In this case, only the content of the written versions is binding, or verbal or telephone declarations by AZ's employees are unbinding unless these are confirmed in writing.

4.3. The services and their results are exclusively for use by the principal itself. The principal will receive a single copy of any written versions (such as documentation and other reports).

4.4. AZ will submit drafts to the principal for release. The principal undertakes to review the drafts to ensure that there are no legal issues or to have these reviewed by third parties (see also Item 10.1).

5. Service provision

5.1. Deadlines and dates are only binding if these have been confirmed in writing by AZ and if the principal provides AZ with all of the information and documents required to perform the services in good time and any advance payments have been made as agreed. Agreed deadlines commence on the date of the order confirmation. The deadlines extend correspondingly if any additional or supplementary orders are issued at a later date.

5.2. Any unforeseeable, unavoidable events that are not within AZ's sphere of influence, and for which AZ is not responsible such as Acts of God, war, natural catastrophes, instructions from public authorities or labor disputes release AZ from its undertaking to make punctual performance or delivery for their duration. Agreed deadlines extend for the duration of the disruption; the principal will be informed in an appropriate manner that the disruption has occurred. If the end of the disruption cannot be foreseen, or if it lasts for longer than three months, each party is authorized to withdraw from the contract.

5.3. If AZ's performance is delayed, the contractor is only authorized to withdraw from the contract if AZ is responsible for the delay and if a reasonable deadline set by the principal for performance has lapsed without performance being made.

5.4. If there are delays which are due to the principal, for example due to subsequent requests for changes or a delay in providing the information, the delivery may be postponed for the period of the delay. AZ does not make any undertaking for preferential processing.

5.5. Any templates and drafts provided by AZ are only binding with regard to their color, image or audio, or the quality of the materials if AZ has confirmed in writing that it is possible to realize the characteristics.

6. Acceptance of agency services

6.1. The principal undertakes to accept the agency services provided in line with this agreement within a reasonable period of up to two weeks of the provision of the respective (partial) agency services. Acceptance may not be refused due to minor defects.

6.2. If the principal does not accept the agency services within the period specified in Item 6.1, sentence 1, this is equivalent to acceptance.

7. Remuneration, costs, payment conditions

7.1. All remuneration and agreed lump-sum fees and all expenses incurred (travel expenses, out-of-pocket expenses, work materials, purchased third-party services, etc.) are net and are to be remunerated. To the extent that VAT is due, this will be invoiced separately in the respective applicable statutory amount. If the contracting parties have not agreed specific remuneration, AZ will invoice the services it provides using hourly rates based on AZ's price list which applies on the date the agreement is concluded. In this case, third-party services will be oncharged according to their actual expense.

7.2. AZ can demand reasonable advances for remuneration, lump-sum fees and reimbursement of expenses at any time. AZ may also invoice partial services that have been provided. At the end of the contract, AZ will issue a final invoice, which in particular includes a list of all services and expenses previously invoiced together with their status (paid/unpaid).

7.3. Payment of the remuneration/lump-sum fee covers all claims by AZ for contractual provision of its services (in particular consulting, conception, design and text).

7.4. Each invoice is due for payment immediately and in full. Payments by the principal are only regarded as having been made when AZ can use the respective amount. Bills and checks are only accepted as compensation after specific agreement and free of charge and outlays for AZ.

7.5. If payment is not made in time, AZ is authorized to charge default interest at the respective applicable statutory rate. This does not affect rights to assert further default-induced losses.

7.6. If, after conclusion of the contract, AZ becomes aware that the contractor will not be able to make payment, AZ is authorized only to perform outstanding services against advance payment or with collateral. If the advance payments or collateral have not been provided even after a reasonable deadline has been set, AZ can withdraw from individual or all of the affected agreements in full or in part in each respective case. This does not affect AZ's right to assert further rights.

7.7. The principal is only entitled to offset amounts if his counterclaim is undisputed or has been legally ascertained.

7.8. The principal is only authorized to assert a right of reservation if his counterclaim is based on the same contract, is undisputed or has been legally ascertained.

8. Warranty; compensation for damages and restriction to liability

8.1 The principal must review work and services supplied by AZ immediately upon receipt, however in any case before further processing, and report any defects without delay as soon as these are ascertained. If this immediate review or notification of defects is omitted, the principal has no warranty claims. If there are defects, AZ has the right to rectify these twice during a reasonable period.

8.2. Subject to Item 9.2, AZ's statutory liability for compensation for damages is restricted as follows:

- With regard to damages from the negligent infringement of key obligations from the contractual relationship which could be typically foreseen when the contract was concluded, AZ is liable for a limited amount;
- AZ is not liable for negligent infringement of minor obligations from the contractual relationship;

8.3. The above restrictions to liability do not apply in cases of mandatory statutory liability (in particular under the Produkthaftungsgesetz (German Product Liability Act)), if any guarantee has been assumed, or in the event of personal losses that were culpably caused.

8.4. The principal undertakes to take suitable measures to prevent damage and to reduce its extent.

9. Usufructuary rights

9.1. The copyrights, ownership and marketing rights to all of the work and drafts presented remain with AZ. There is no obligation to release these. AZ does not undertake to archive these. Any exceptions to this must be agreed in writing.

9.2. When the work is transferred, AZ grants the principal the right to use the work including all templates, studies, drafts, presentation documents and all other results of work, be they physical or stored on data carriers, that were created in fulfillment of the issued order, in line with the contractual agreement or in line with the circumstances of the order, to the extent that this can be recognized by AZ. In cases of doubt, AZ fulfills its undertaking by granting non-exclusive usufructuary rights for the Federal Republic of Germany for the period of use of the advertising material. Any use that goes beyond this requires AZ's permission.

9.3. AZ will ensure that, even if third parties are used to provide the services, the principal can use the work in line according to the agreement, without being exposed to any subsequent claims to remuneration by third parties.

9.4. AZ is authorized to use the work (advertising materials developed) after it has been used for its own advertising. This authorization also includes publication for PR purpose and to participate in competitions; any prizes or remuneration that may be won as a result are due to AZ.

10. Upholding statutory provisions, data protection

10.1. AZ undertakes to notify the principal of legal concerns of which AZ is aware. However, this does not release the principal from its undertaking to review the proposed advertising activities or to have these reviewed by third parties to ensure there are no legal issues (in particular with regard to competition law, commercial legal protection, general immorality and data protection).

10.2. AZ points out to the principal that data may only be used in line with statutory provisions, in particular the Bundesdatenschutzgesetz (German Federal Data Protection Act). AZ also expressly points out the notification obligation with regard to the right of contradiction set out in section 28 (4) of the BDSG and the binding purpose within the meaning of section 28 (5) of the BDSG. The principal itself must ensure that these provisions are upheld.

11. General provisions

11.1. Changes and modifications to the agreement and/or these terms and conditions of business and ancillary agreements must be made in writing. This also applies to any changes to the requirement for written form.

11.2. If individual provisions of these terms and conditions of business are invalid, this does not affect the validity of the remaining provisions. In this event, the parties undertake to replace the invalid provision with a valid provision that most closely approximates the economic intent of the invalid provision.

11.3. If the principal is a merchant, a legal entity under public law or a public-law special fund, the exclusive place of venue for all disputes from the contractual relationship is Gütersloh. This also applies if the principal does not have a general place of venue in the Federal Republic of Germany or if it relocates its usual place of business outside Germany after concluding the agreement. However, AZ is authorized to file suit against the principal at any other statutory place of venue.

11.4. The law of the Federal Republic of Germany applies.