

# **AGB (EN)**

Bottermann Visuals e.U.

## **1. Preamble**

The company Bottermann Visuals e.U., postal address in :  
Lützowgasse 14 / 1, 1140 Vienna, (hereinafter referred to as "PROVIDER"), has specialised in the design and development of image videos, short animations, still images and designs.

The contractual partner of the PROVIDER shall hereinafter be referred to as the "Customer".

The services of the PROVIDER are directed exclusively at entre-preneurs within the meaning of section 1 para. 1 Z 1 Austrian Customer Protection Act ("KSchG"). If the Customer is a private consumer within the meaning of section 1 para 1 no 2 KSchG (or section 1 para 3 KSchG), he shall inform the PROVIDER thereof.

For the purpose of better readability, no gender-specific differentiation is made. This is done without any intention of discrimination.

## **2. Scope of application**

All business relations between the PROVIDER and the customer are subject to these GTC in the version applicable at the time of the conclusion of the transaction. Any deviating GTC of the customer shall not apply, unless the PROVIDER has agreed to their validity in writing (whereby e-mail is sufficient).

The contractual, ordering and business language is English.

These GTC form an integral part of the offer which the PROVIDER makes to the Customer.

## **3. Loyalty obligations**

The customer is obligated to provide true and complete information in the course of the business relationship and to keep his data up to date at all times. He must treat his data confidentially and protect them from access unauthorised persons. If the customer suspects misuse by third parties, he must immediately inform the PROVIDER of this without delay. The Customer shall use secure passwords and keep them independently and securely.

The customer shall refrain from all measures which could impair the technical provision of the services by the PROVIDER (including cyber-attacks). Any such behaviour will be legally prosecuted.

The customer may only use the services offered by the PROVIDER for their intended purpose.

#### **4. Payment modalities**

The amount of the fee results in each case from the offer of the customer. The prices quoted are in EUR. In case of doubt, VAT is not yet included. As a rule, prices are therefore to be understood as net prices. The amounts stated at the time of the order shall apply in each case.

The customer shall be bound by its offers for three days, unless otherwise agreed.

Unless otherwise agreed, the PROVIDER shall charge for his services according to the actual work performed, whereby his stated hourly rate shall apply. If the PROVIDER provides a cost estimation, this is not binding and therefore without guarantee.

Unless expressly agreed otherwise, the fee shall be due for payment after receipt of a proper invoice as follows:

- 1/3 of the agreed fee may be invoiced immediately after conclusion of the contract;
- 1/3 of the agreed fee may be invoiced immediately after release of a basic version/draft version;
- 1/3 of the agreed fee can be invoiced immediately after acceptance of the final version.

For additional work not already covered by a flat rate, the PROVIDER shall receive a fee according to the time spent on the basis of an hourly rate.

Expenses and costs for content which the PROVIDER procures from third parties in the interest of the customer (e.g. licence costs for photos) shall be charged to the customer.

Expenses may be charged separately. Travelling times shall be deemed to be working times.

If the claims are not paid within fourteen days, the PROVIDER shall charge the statutory interest on arrears within the meaning of section 456 of the Austrian Commercial Code ("UGB") from the due date. For reminders, an expense allowance of EUR 40.00 per reminder may be charged. In the event of default in payment, the PROVIDER shall be entitled to restrict or block access to services.

#### **5. Right of use**

The PROVIDER is the author (within the meaning of section 10 para Austrian Copyright Act "UrhG") of works created by him. If a work is produced jointly by several persons, the PROVIDER shall, in case of doubt, be qualified as a co-author.

Upon full payment of all fees and expenses, the PROVIDER shall grant the customer the exclusive right to use the work, unlimited in terms of content, location and time (within the meaning of section 24 para 1 second sentence UrhG) to the works created by him. By way of clarification, it is stated: The PROVIDER shall, however, retain the right to use

general development elements such as pro-programme codes, files, scripts or approaches to solutions which the PROVIDER has not expressly created on behalf of the customer or which are included in the order as preparatory work, in relation to third parties. The PROVIDER is therefore expressly entitled that a work created in a customer project may be used also in a subsequent project for a different customer.

The customer shall be entitled to edit, modify or supplement the contractual works himself or through a third party. The PROVIDER shall make the necessary files available to the customer for this purpose.

Unless otherwise agreed, the customer shall be entitled to sublicense the work commissioned by him.

However, this shall not prevent the PROVIDER from opposing distortions, mutilations and other modifications of his work (with-in the meaning of section 21 para 3 UrhG) if his intellectual inter-ests in the work created by him are seriously impaired.

For the right of the PROVIDER to publish his works for advertising purposes, see point 19.

## **6. Copyright designation**

The PROVIDER shall be entitled to be designated as author with his name or company and company logo on works created by him.

Unless otherwise agreed, the following designation shall be clearly visible on the author's works:

Credit: Bottermann.

Failure to quote or removal of the author's designation without consent shall constitute an infringement of copyright.

## **7. Obligation to cooperate**

The customer is obliged to support the PROVIDER in the provision of its services on an ongoing basis and to a reasonable extent.

and to a reasonable extent in the performance of its services. In particular, he shall provide the PROVIDER with the necessary information, data and descriptions and communicate his wishes and ideas for the performance of the service in a timely and clear manner.

The customer shall communicate requests for changes and additions without undue delay in order to minimise the associated effort for the PROVIDER as low as possible.

## **8. Communication**

Enquiries from the customer must be made in a traceable and reconstruct able manner via the medium:

office@bottermannvisuals.com

The PROVIDER shall endeavour to respond to requests within two working days at the latest.

The PROVIDER is entitled to remedy technical problems by way of a workaround.

## **9. Change Management**

The customer has the right to request changes until the final acceptance of the service.

The desired changes must be described as precisely as possible by the customer. Unless otherwise agreed, change requests shall be charged on a time and material basis. Changes requested by the changes re-quested by the customer can lead to deadlines not being met and the PROVIDER cannot be blamed for this circumstance. The customer shall be notified in advance of any changes to deadlines caused by change requests in advance.

## **10. Retention of title („Eigentumsvorbehalt“)**

The goods and services delivered by the PROVIDER shall remain the property of the PROVIDER until full payment of the remuneration.

The rights of use described under point 5 shall only be transferred to the customer under the condition precedent of full payment by the customer.

## **11. Performance issues**

The PROVIDER shall not be liable if he is unable to fulfil its obligations under the contractual relationship due to circumstances for which he or a vicarious agent is not responsible due to circumstances beyond the control of the PROVIDER or any of its agents. This applies, inter alia, to the lack of availability of energy or tele-communication services as well as due to force majeure (including epidemics). It is clarified that the PROVIDER cannot be held liable for the conduct of persons who are not within its sphere of control (e.g. terms of use of various social media channels such as Face-book, Youtube or Instagram).

If the PROVIDER is affected by force majeure (e.g. natural disasters, epidemics) or other events that are not circumstances for which the PROVIDER is not responsible, the PROVIDER shall inform the customer as soon as possible. The delivery period shall be extended by the by the duration of these events.

## **12. Liability and warranty**

The PROVIDER's liability for slight negligence is excluded. The liability is generally limited to the amount of the foreseeable damage which is to be prevented by the breached

obligation. This limitation of liability shall not apply in the case of intentional conduct ("premeditation").

Liability for loss of profit is excluded.

This limitation of liability does not apply with regard to personal injury and with regard to the Product Liability Act.

The warranty period is six months from acceptance of the respective service. Using of the service shall be qualified acceptance of the rendered service. The customer must fulfil his obligation to give notice of defects ("Rügeobliegenheit") in the sense of section 377 UGB (Austrian Commercial Code) within 14 days of acceptance of the contractual service at the latest.

Defects complained of by the customer must be readjusted and reproduced by the PROVIDER so that the latter can reconstruct the malfunction.

The limitations of liability set out here shall also apply to vicarious agents.

### **13. Indemnification**

The customer warrants that the content provided by him is free of third-party rights and that he can grant the PROVIDER the necessary rights of use.

The customer warrants that he has all the rights necessary for use within the framework of the contractual relationship. (e.g., copy-rights, trademark rights, personal rights, ancillary copyrights) to the information, content and materials provided by him.

The customer shall indemnify the PROVIDER against all claims of third parties which they assert against the PROVIDER due to unlawful conduct of the customer. This includes the costs of extra-judicial and judicial prosecution and legal defence.

### **14. Involvement of subcontractors**

The PROVIDER may use vicarious agents ("Erfüllungsgehilfen") (as defined in section 1313a Austrian Civil Right Act ("ABGB")) for the fulfilment of its obligations under this contract.

### **15. Amendment of this GTC**

The PROVIDER shall be entitled to amend these Terms and Conditions at any time. The PROVIDER shall inform the customer of such amendments by sending the amended terms and conditions to the  
to the e-mail address last notified to him. The customer shall have  
the right to object to this change. If no objection is made by the customer within 14 days of the of this amendment, it shall be assumed that the customer has implicitly agreed to the amendment of the General terms and conditions.

## **16. Independent performance of work**

The PROVIDER shall perform his work independently. He is not integrated into the structures of the customer and is not subject to any instructions. He is neither bound to a certain working hours, a certain place of work, a certain sequence of work or a certain work procedure. The time required for the performance of the contractual service is left to his discretion.

## **17. Data protection and protection of business and trade secrets**

The transfer of data and information to the respective required business partner is permitted to the extent necessary for the fulfilment of the contractual relationship. Otherwise, the PROVIDER and the customer are mutually obliged to maintain secrecy about the circumstances, data or business and trade secrets relating to the other. and trade secrets of which they become aware as a result of the present business relationship and in particular to observe data secrecy. These obligations to maintain data and business secrecy shall also apply beyond the contractual relationship.

The PROVIDER and the customer furthermore undertake to keep their employees and vicarious agents liable in this sense.

The PROVIDER draws attention to the fact that personal data of the Customer may be processed on the basis of interests (within the meaning of Art 6 (1) (f) GDPR) may be processed for advertising purposes. The customer may object to this data processing for advertising purposes (Art 21 (2) GDPR).

Apart from legal obligations to retain data (section 132 BAO, section 212 UGB), the PROVIDER is not obliged to store works created for the customer or to create back-ups.

More detailed regulations on the processing of data can be found in the data protection declaration:

<https://www.bottermannvisuals.com/datenschutzerklaerung>

## **18. Safeguarding business and trade secrets in tenders and tender preparation**

Concepts which are not already protected under the Copyright Act constitute trade secrets of the PROVIDER within the meaning of section 26b (Austrian Act against unfair trades) "UWG" and shall be adequately protected by the customer.

The (potential) customer undertakes to refrain from using the content presented by the PROVIDER in the context of the preparation of the offer outside of this business relationship.

If the (potential) customer wishes to exploit the trade secret of the PROVIDER in a follow-up project, he shall require the consent of the PROVIDER.

## **19. Reference clause and publication in Showreel**

The PROVIDER is entitled to refer to the fact of the business relationship with the Customer by means of an information on its website. In this context, the PROVIDER is entitled to use the client's logo.

The PROVIDER has the right to use the works created by him for advertising purposes. This includes in particular that his works may be published (also online) in the PROVIDER's showreel.

## **20. Applicable law and revenue**

The contractual relationship shall be governed by and construed in accordance with Austrian law. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and its conflict-of-law rules is excluded.

The exclusive place of jurisdiction is Vienna. The place of performance shall be the registered office of the PROVIDER.

## **21. Duration of the contractual relationship**

The contractual relationship with the customer begins with the conclusion of the contract. If a one-off service is owed (target obligation), the contractual relationship ends with the complete provision of the mutually owed services. In the case of continuing obligations, the contractual relationship can be terminated with 14 days' notice on 31 March, 30 June, 30 September and 31 December.

## **22. Project cancellation**

In the event of termination, the customer shall be entitled to further develop the services provided by the PROVIDER up to that point by himself or by a third party at his own expense.

The customer shall compensate the PROVIDER for all services rendered in the amount of the value of the services provided to that date. The PROVIDER shall be entitled to hold back its services until full financial compensation has been received.

## **23. Further issues**

If any part of these terms and conditions is invalid, the validity of the remaining terms and conditions shall not be affected thereby. The ineffective condition shall be replaced by such an effective condition that comes as close as possible in economic terms to the intention of both contracting parties.

Amendments to these terms and conditions as well as supplements thereto shall only be valid if they are agreed and signed in writing (the provision concerning the amendment of these GTC pursuant point 15 remains unaffected).

The PROVIDER recommends that the customer save these GTC permanently.

Informationen gemäß § 5 ECG , § 25 Abs 5 MedienG und § 14 UGB:

Bottermann Visuals e.U.  
Owner: Gerhard Bottermann

Address: Lützowgasse 14 / 1, 1140 Wien  
Phone.: +43 676 4161102  
E-Mail: office@bottermannvisuals.com

Object of the company: Technical transfer (development, copying and dubbing) and dubbing audiovisual productions, dubbing onto any type of carrier material, as well as loading and Post-processing and digital image and sound design for moving images.

UID-Nummer: ATU76246803

Company registration number: FN 550290 a

Member of the Austrian Economic Chamber

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(bka.gv.at)

Author: Lawyer Dr. Tobias Tretzmüller, LL.M., [www.digital-recht.at](http://www.digital-recht.at).

A copy of these terms and conditions, or just parts thereof, re-quires the consent of the author.