

## LEGAL CERTAINTY

### TERMS AND CONDITIONS eMotionSlide.com by Wolfgang H. Klein | BERGISCH GLADBACH

[The terms and conditions correspond to the current German Copyright Act. It guarantees legal certainty for both contracting parties].  
All terms and conditions previously published by eMotionSlide.com by Wolfgang H. Klein | Bergisch Gladbach are replaced by these terms and conditions.  
eMotionSlide.com by Wolfgang H. Klein | Bergisch Gladbach [hereinafter referred to as WHKlein] provides creative services in the fields of film, motion design, photography, communication design, illustration, object design, print design, web design and programming.

WHKlein - represented by Wolfgang H. Klein - works exclusively under the following conditions. By placing an order/contract, the General Terms and Conditions are implicitly recognized as part of the contract at the latest. The customer's General Terms and Conditions shall not automatically apply; the individual agreement between the parties in writing shall be decisive. If no individual contractual provision has been made, the following terms and conditions shall be deemed to have been expressly agreed when you place an order. These terms and conditions shall also apply to all future business relations with the customer, even if they are not expressly agreed again.

#### 1. MEDIA DESIGN

- 1.1 WHKlein understands a media design exclusively as the media design of a PR, communication or advertising medium based on a complete briefing without the realization of the design work.
- 1.2 The media design is presented in the form of a written exposé or a layout sketch on paper or by means of a 1c or 4c printout on paper or on an electronic user interface.
- 1.3 WHKlein shall not hand over designs on electronic data carriers, unless they are designs in the field of screen design, such as designs for the Internet and designs for an intranet.
- 1.3 WHKlein shall generally have freedom of design in terms of media within the scope of the order. The choice of material and carrier are part of the media design.

#### 2. COPYRIGHT PROTECTION AND RIGHTS OF USE AND UTILIZATION

- 2.1 The subject matter of the contract is the creation of the commissioned copyright work and the granting of rights of use and utilization to this work. WHKlein's overall performance consists in the creation of a work in accordance with Section 631 BGB. This work is used under copyright law. The right of use/utilization is granted as a simple or exclusive right (§ 31 UrhG) and limited in terms of type, scope, duration and territory and content (§ 32 UrhG). This also includes currently unknown uses.
- 2.2 The works [concepts, texts, media designs, photographs, illustrations, composites, audio, film/video and interactive multimedia] of WHKlein are protected as personal intellectual creations by copyright law, the provisions of which shall be deemed to have been agreed even if the level of creation required under Section 2 UrhG has not been reached.
- 2.3 Without the consent of WHKlein, the works, including the copyright designation, may not be changed either in the original or in reproduction. Any imitation, even of parts of the work, is not permitted.
- 2.4 For each publication of the work, WHKlein must be named as the author as follows: ©eMotionSlide.com by WOLFGANG H. KLEIN DGPh. The attribution must be made with the work, in the case of films and moving images in the credits.
- 2.4 The works of WHKlein may only be used for the agreed type of use and the agreed purpose to the agreed extent. In the absence of an express agreement, the purpose of the contract shall only be the purpose made recognizable by the client when placing the order. The client acquires the right to use the work within the agreed scope only after full payment of the remuneration and all order-related organizational and material costs, additional services and external costs incurred.
- 2.5 Repeat use [e.g. subsequent editions] or multiple use [e.g. for another product or for subsidiaries or other countries] are subject to a charge; they require the consent of WHKlein.
- 2.6 The transfer of granted rights of use to third parties requires the consent of WHKlein.
- 2.7 WHKlein is entitled to information about the scope of use/utilization.

#### 3. REMUNERATION

- 3.1 The design [concepts, texts, media designs, photos, illustrations, composites, audio, film/video and interactive multimedia] and the respective granting of copyright use [right of use, type of use, scope of use, duration of use and area of use] form a uniform service.
- 3.2 If the client does not use the design as intended, WHKlein shall nevertheless charge the remuneration for the design and for the use/utilization agreed in the offer or by the order confirmation.
- 3.3 Any activity free of charge, in particular the creation of designs free of charge, is not customary in the profession.
- 3.4 Suggestions and instructions of the client, in particular for technical, creative and other reasons, and his other cooperation shall have no influence on the remuneration; they shall also not constitute a joint copyright.
- 3.5 Unless otherwise agreed in the offer or in the order confirmation, payment shall be due upon delivery of the design work. The remuneration shall be payable in EURO without deduction upon receipt of the invoice.
- 3.6 If work is delivered in parts, the corresponding partial remuneration shall be due upon delivery of the respective part. If the execution of an order extends over a longer period of time, WHKlein may demand corresponding payments on account.
- 3.7 Additional services, services and drafts that go beyond the scope of the offer shall be invoiced at EURO 190.00 net per hour. If WHKlein's additional services result in designs that are protected by copyright law, an additional usage fee shall be charged in accordance with the current SDSt/AGD/BFF collective remuneration agreement. This collective remuneration agreement is registered with the Federal Ministry of Labor and Social Affairs and the responsible ministries of all German federal states in accordance with § 7 of the Collective Agreement Act.
- 3.8 Remuneration for freelance services is calculated on the basis of base price x factor. The smallest billable factor is 0.5.
- 3.9 Remunerations are net amounts, which are to be paid in EURO plus 7.5% handling costs and statutory VAT.
- 3.10. The unauthorized - and without the written consent of eMotionSlide.com Wolfgang H. Klein - use / use / modification of his designs / works will be charged at a flat rate of EURO 950.00 per work and use. This also applies to designs/works that are published on eMotionSlide.com Wolfgang H. Klein websites or blogs. Furthermore, eMotionSlide.com Wolfgang H. Klein has the right to be clearly named as the author of the work on the reproductions. If the user violates the right to be named, he is obliged to pay an additional contractual penalty amounting to 100% of the remuneration. This shall not affect the right to claim higher damages in the event of a concrete calculation of damages. This shall also expressly apply to all drafts/works of WHKlein which are used on the WEB or by other means without written permission. As a precaution, WHKlein points out that all infringements will be prosecuted under criminal law.
- 3.11. The information provided by eMotionSlide.com Wolfgang H. Klein in brochures, advertisements, means of communication, Internet etc. is intended for the submission of an offer by the customer. They are non-binding, also with regard to prices.

#### 4. MATERIAL AND ORGANIZATIONAL COSTS

- 4.1 Material and organizational costs incurred in connection with the design work or the realization of the design shall be reimbursed and passed on to the client.
- 4.2 The prices are net plus the statutory value added tax.
- 4.3 Material that is not verified in point 4.2 and travel expenses shall be invoiced to the client at the purchase price plus 16% service fee.

#### 5. ADDITIONAL SERVICES AND TACIT ORDER EXTENSION

The modification and/or creation of further concepts, texts, media designs, photos, illustrations, composites, audio, film/video and interactive multimedia, the modification of final artwork, typesetting and image files as well as other additional services shall be invoiced separately to the client insofar as they go beyond the scope of WHKlein's offer. In case of doubt, additional services shall be invoiced in accordance with the current remuneration collective agreement Design SDSt/AGD/BFF.

#### 6. THIRD-PARTY COSTS

- 6.1 Third-party costs are invoices for products and services from third-party companies that are necessary for order processing.
- 6.2 The customer is obliged to provide all materials and information required to fulfill the contract free of charge. The customer warrants that all materials provided by it do not violate applicable law and are free of third-party rights.
- 6.3 WHKlein shall only commission third-party services in the course of the performance of the contract on the basis of an agreement concluded with the client in its name and for its account.
- 6.4 Insofar as WHKlein commissions third-party services in its own name at the instigation of the client, the client shall indemnify WHKlein against any resulting liabilities.
- 6.5 Third-party costs that WHKlein has paid in its own name at the instigation of the client will be invoiced to the client plus a service fee of 16%.
- 6.6 Third-party costs are due after they have been invoiced or provided.

#### 7 PRODUCTION RELEASE

- 7.1 Prior to the start of production, a release signed by the client as error-free must be submitted.
- 7.2 If the client does not sign the approval, WHKlein shall consider the drafts and production templates to have been approved by the client as error-free after seven working days from the date of the submitted approval document.

#### 8 PRODUCTION SUPERVISION

- 8.1 WHKlein will only supervise the co-design of the production by persons or third-party companies requested by the client on the basis of a special agreement. If such an agreement exists, WHKlein is authorized to make the necessary decisions and issue instructions.
- 8.2 If WHKlein undertakes the finishing of the production, it shall do so to the best of its knowledge and belief. The client shall indemnify WHKlein against liability in this respect.
- 8.3 WHKlein may reject persons or third-party companies [e.g. photographers, copywriters, programmers, designers, image archives, printers, exposure studios] - who have been commissioned by the client to help shape the work - if WHKlein has doubts about their professional skills or technical quality and therefore considers them to be inadequate.

#### 9 LIABILITY

- 9.1 WHKlein shall not assume any liability for the admissibility of the work under competition and trademark law. The same applies to protectability.
- 9.2 By publishing the work, the client assumes responsibility for the accuracy of the image, sound and text. WHKlein shall not be liable for errors of form or content [e.g. spelling,

translations, facts].

9.3 Insofar as WHKlein commissions external services at the instigation of the client in its name and for its account, WHKlein shall not be liable for the services and work results of the commissioned service provider.

9.4 The release of production and publication is the responsibility of the client. If, in exceptional cases, the client delegates approval in whole or in part to WHKlein, it shall indemnify WHKlein against liability.

9.5 Templates [e.g. texts, photos, samples] provided to WHKlein shall be used on condition that the client is authorized to use them.

#### **10. ENTICEMENT, COMPETITION**

10.1 The customer expressly undertakes not to entice away any employees of WHKlein or to employ them without WHKlein's consent for the duration of the cooperation between the parties and for a period of 24 months thereafter. For each case of culpable infringement, the customer undertakes to pay a contractual penalty to be determined by WHKlein and, in the event of a dispute, to be reviewed by the competent court.

10.2 WHKlein's supplier expressly undertakes to refrain from competing activities with WHKlein's customers for the duration of the parties' cooperation and for a period of 24 months thereafter. This also includes competing activities of the supplier's employees, regardless of whether they are employed or freelancers (subcontractors). In the event of non-compliance, the following claim for damages (contractual penalty) in favor of WHKlein is expressly agreed. The contractual penalty shall be calculated on the basis of four times the net turnover achieved with WHKlein's customer by the supplier in the last 12 months, calculated from the date on which the culpable breach of this non-competition clause becomes known.

#### **11 CONFIDENTIALITY, DOCUMENTS, RIGHTS AND REFERENCE**

11.1 All business or technical information made accessible by WHKlein must be kept secret from third parties as long as and insofar as it is not demonstrably public knowledge and may only be made available in the supplier's own company to those persons who must necessarily be involved in its use for the purpose of delivery to WHKlein and who are also obliged to maintain secrecy.

11.2 In addition, the contracting parties agree to maintain confidentiality about the content of this contract and about the knowledge gained during its execution. WHKlein reserves title and copyright to all documents and aids provided to the supplier for the execution of an order by WHKlein, such as in particular storyboards, drawings, illustrations, drafts, calculations, descriptions, plans, models, samples, technical specifications, data carriers, other documents, tools, parts and materials. Such documents and aids must be used exclusively for the contractual performance and must be returned to WHKlein in full (including any copies or records made) after completion of the contract. Products manufactured according to WHKlein's documents and aids may neither be used by the supplier itself nor offered or supplied to third parties.

11.3 The confidentiality obligation shall also apply beyond the termination of the contractual relationship.

11.4 If a contracting party so requests, the documents handed over by it, such as strategy papers, briefing documents, etc., shall be returned to it after termination of the contractual relationship, unless the other contracting party can assert a legitimate interest in these documents.

11.5 Technical documentation, documents, drawings, diagrams, schematics, graphics, photographs, layout templates and other documentation produced by the supplier in the course of the execution of the order - whether on data carriers, in printed form or as material for print preparation or printing - as well as all samples, tools, materials and other operating resources shall become the property of WHKlein upon provision. Furthermore, WHKlein receives all rights of ownership, use and exploitation of all the aforementioned copyrightable works - to the extent permitted by law. No separate remuneration is owed by WHKlein for the transfer of the aforementioned rights; it is fully included in the prices stated in WHKlein's orders or supplier offers.

11.6 Without prior express written consent, the supplier is prohibited from naming WHKlein or the business relationship between the supplier and WHKlein as a reference in any form whatsoever.

#### **12 RETENTION OF TITLE AND RISK OF SHIPMENT**

12.1 Only rights of use and utilization are granted to WHKlein's designs; no ownership rights are transferred.

12.2 The originals [production drafts, final artwork, negatives, film data] shall be returned to WHKlein undamaged after a reasonable period of time, unless expressly agreed otherwise.

12.3 The work shall be sent and returned at the risk and for the account of the client.

#### **13. DEADLINES**

13.1 Deadlines for the provision of services may only be confirmed by the contact person on the part of WHKlein.

13.2 The contracting parties shall set deadlines in writing wherever possible. Deadlines, the non-observance of which causes a contracting party to be in default without a reminder pursuant to Section 286 (2) of the German Civil Code (binding deadlines), must always be set out in writing and designated as binding.

13.3 WHKlein shall not be responsible for delays in performance due to force majeure (e.g. strike, lockout, official orders, general disruptions to telecommunications, etc.) and circumstances within the customer's sphere of responsibility (e.g. failure to provide cooperation services on time, delays caused by third parties attributable to the customer, etc.) and WHKlein shall be entitled to postpone the provision of the affected services for the duration of the impediment plus a reasonable start-up period. WHKlein shall notify the customer of delays in performance due to force majeure.

#### **14 CANCELLATION OF ORDER**

If the customer cancels the production, for whatever reason, 30% of the gross order value shall be charged as a cancellation fee.

If the cancellation is made less than two weeks before the start of production, 50% of the gross order value shall be due for payment, 75% for less than five days and 100% for 48 hours or less. The date on which the letter of termination is received by WHKlein shall be decisive for the point in time of cancellation. The amount of the aforementioned flat-rate costs shall take into account

the average expenses saved and the usual possible alternative use of the booked service. WHKlein's customer shall be entitled to provide evidence of lower damages.

#### **15. SPECIMEN COPIES**

In order to document the use and authorship, WHKlein shall be provided with specimen copies of reproduced works free of charge, which may also be used for WHKlein's own advertising and public relations work. WHKlein has the right to use the services produced for the customer and their designs as a reference for self-promotion if the customer's name is mentioned. This also applies to self-promotion on the Internet, in particular at [www.emotionsslide.com](http://www.emotionsslide.com).

#### **16 LABELLING**

WHKlein reserves the right to add references and imprint details [name, address, telephone, fax, internet address and/or email] to its work.

#### **17. COMPANY NAME AND CONTRACTUAL PARTNER WITHIN THE MEANING OF THE GERMAN CIVIL CODE [BGB]**

17.1 Your contractual partner within the meaning of the German Civil Code [BGB] is Wolfgang H. Klein.

#### **18 PLACE OF PERFORMANCE, LAW AND LANGUAGE**

The place of performance and place of jurisdiction for both parties is Bergisch-Gladbach. The contract language is German.

End of the GTC