

# General Terms and Conditions

**EVOCreative s.r.o.**, with its registered seat at Veletržní 841/45, 170 00 Prague 7 - Holešovice, Identification No. 27195767, Tax Identification No. CZ27195767, registered in the Commercial Register kept by the Municipal Court in Prague, File No. C 103584 (hereinafter the “**Agency**”), releases hereby the following:

## **General Terms and Conditions**

(hereinafter the “**Terms**”).

### **1. Applicability**

1.1. These Terms shall govern relations between the Agency and the Client stemming from the Agreement implementation.

1.2. These Terms are binding for the Agency and the Client and form an integral part of the Agreement. By entering into an Agreement their mutual relationship between the Parties shall be governed by these Terms.

1.3. Unless the Agreement or another written agreement between the Parties states otherwise, these Terms are applicable under all circumstances. In the event of any discrepancy between the specific covenants between the Parties and these Terms, the specific covenants shall prevail.

### **2. Definitions**

For the purposes of these Terms the following definitions should be understood as follows:

2.1. **Client** – physical or legal entity entering into the Agreement with the Agency.

2.2. **Parties** – the Agency and/or the Client.

2.3. **Agreement** – agreement on provision of services, particularly (i) creative website design (in particular of corporate identity design, Printing materials design, web presentations design and of further online applications), (ii) website and online applications development (in particular of HTML and administrative systems CMS development), or (iii) another written agreement on cooperation/providing services entered into by the Agency and the Client or (iv) an obligation occurred by means stated in these Terms.

2.4. **Performance** – the subject-matter of the Agreement entered into, which consists of product(s) and/or services provided by the Agency to the Client.

### **3. Subject Matter**

3.1. By entering into an Agreement the Agency commits itself to provide a Performance as specified in the Agreement and the Client commits to accept it and to pay the agreed Price.

3.2. The Agreement is considered as entered into by confirmation of the Client’s order by the Agency or by the acceptance of the Agency’s proposal by the Client. The Agreement is also considered as entered into by takeover of the Performance by the Client.

3.3. In the event of the termination of the contractual relationship, the Agency is entitled to reimbursement of the costs reasonably incurred as a result of the Agreement amendment or

termination.

#### **4. Price and the Payment Terms**

4.1. The price of the Performance is deemed as contractual and agreed by both Parties in the Agreement (hereinafter the “**Price**”).

4.2. The invoice or the proforma invoice shall be handed over or delivered to the Client to the address stated in the Agreement or the address the Client has provided. In case of doubt, the invoice is considered as delivered on third (3) day following the day of its dispatch. Unless proved otherwise, the day of its dispatch is for these reasons considered as the day following the day of its issue.

4.3. Unless stated and provided on the invoice otherwise, the invoice is due on 14th calendar day after the day following its issue.

4.4. The Client is obliged to pay the whole amount due stated in the invoice so that the funds should be to the due day already credited to an account of the Agency. Payment by cheque and by postal order type "C" is not accepted.

4.5. The Client is obliged to add to every payment the identifying variable symbol (the invoice number), indicated on the invoice. The payment without or with an incorrect variable symbol, i.e. unidentified payment, is considered as unpaid with all its arising consequences.

4.6. Client's claims of defective Performance do not constitute a reason for not fulfillment of the Client's duty to pay the Price of the Performance in a proper and timely manner.

4.7. Unless stated otherwise, the Agency reserves the right to ask for the payment for the Performance in advance, i.e. prior to or within the Performance or its handover, to the extent of 70% of the Price. The advance payment is due upon the proforma invoice, issued by the Agency with the maturity of three (3) calendar days. Client's delay with the invoice payment correspondingly prolongs the Agency's deadline. In the event of Client's delay with the invoice payment exceeding fourteen (14) calendar days is the Agency entitled to withdraw from the Agreement.

4.8. If the project is delayed, canceled or modified by the client, the Agency reserves the right to bill immediately for the work that has been completed up until the date of such cancellation of modification. The client must pay in full for the services rendered until such date whether they will use the requested work or not.

#### **5. Rights and Duties**

5.1. The Agency is obliged to carry out the Performance at its own expense and at their own risk in the deadline stipulated in the Agreement. If the Agency recognizes within the Agreement implementation the necessity to prolong the agreed deadline (apart from the situations stated in Sections 5.2. – 5.4.), it is obliged to ask for Client's written approval. Unless stated otherwise, the Agency is allowed to fulfill its contractual obligations before the agreed deadline.

5.2. The Client is obliged to provide the Agency in the agreed deadline with the complete documentation required for the execution of the Performance by the Agency. In the event such deadline is not stated in the Agreement, the Client is obliged to deliver such documentation upon the Agency's notification in a stipulated deadline.

5.3. In order to approve the particular stages of the Performance and to choose the proposed solutions (e.g. by means of commenting and confirming the partial drafts, proofreading, etc.), the Client is obliged to provide the Agency with the requested cooperation. If such requested cooperation is not provided, the Agency is entitled to interrupt its works until the required

cooperation is provided.

5.4. Upon the Agency's request, the Client is further obliged (in particular before printing or before publication on the Internet) to perform within the forty-eight (48) hours after its handover, necessary proofreading of the drafts submitted by the Agency (including the grammatical and spelling proofreading). In the event such requested proofreading is not provided, the Agency is entitled to interrupt its works on the Performance until the required proofreading is done and/or the drafts are approved.

5.5. In case the Client is due according to Sections 5.2 – 5.4 for more than 30 (thirty) days, the Agency is from this reason entitled to withdraw from the Agreement.

5.6. Any further changes, alterations and amendments of the drafts approved by the Client are considered as an Agreement amendment (change of the Performance), based on which is the Client obliged to agree on with the Agency the new Price of the Performance. In the event such new Price of the Performance is not agreed on by the Parties, the Agency will not provide the Client with any further performance.

5.7. In the event the material necessary for the Performance shall be delivered to any third party for further processing, photographic works, printing works or binding, the Agency does not bear liability for any damage occurred during such transport or processing.

5.8. The Parties agree that in case of (i) Client's delay with its obligations under Section 5.2 – 5.4, (ii) delay of third party, participating in the Performance with approval of the Client, or (iii) unusual traffic delays, unexpected illnesses or by external influences beyond the scope of control of the Agency, the Agency is entitled to extension of the agreed time-limits for the period corresponding to such delay.

5.9. In the event, the Client insists on using incomplete or incorrect documentation supplied, the Agency is not liable for possible defects of the Performance occurred.

5.10. The Agency is entitled to, in order to create or to achieve the desired appearance of the Performance, use various elements of the third parties (in particular photographs, video clips and music/sounds). The Client is entitled to refuse the purchase of the elements, with the full knowledge that such refusal will influence the final appearance of the Performance. The Agency has a right to remove all elements that were not purchased; in case the agreed payment schedule is adhered to, the Agency is entitled to supply the rest of the final project, approved by the Client. All approved elements shall be purchased by the Client prior to the project finalization and its dispatch to be printed, delivered or published on the Internet.

5.11. The Client assumes responsibility for using all purchased elements, used within the Performance. The Agency is not liable for any unlawful usage/change of the elements done by the Client or any third party after the Performance delivery or handover or dispatch to the manufacturer.

## **6. Delivery**

6.1. The printing materials, documentation/data, are delivered to the Client in .pdf, .jpg or .jpeg file formats. In the event the Client carries out the printing of the materials by himself or herself, he or she is obliged to (i.e. before its final adjustment for printing) notify the Agency and provide it with an accurate printer and printing specification and requirements. The Agency is entitled to reimbursement of incurred expenses associated with an additional alteration/adjustment of the data to be printed. The source codes (in the .ai, .psd, etc. file formats) are considered as a Performance only if explicitly stated in the Agreement. In the event the source codes are not pursuant to the Agreement provisions considered as the Performance, the Client is entitled to purchase them from the Agency.

6.2. Web design, such as a draft of structure and appearance of web pages and web applications, is delivered to the Client in .psd file format. The Client is not entitled to interfere with the web design created by the Agency without its prior explicit consent.

6.3. HTML development consists of the development of the source code in which the web pages are saved on the server and that enables its display on the Internet. The Complete source code of the website is delivered as HTML & CSS and graphics in .jpg, .jpeg, .gif, or .png file formats and can be compressed in .zip file format. The Performance is understood as an introduction of the web pages into operation. The source data are considered as a Performance only if explicitly stated in the Agreement. In the event such source data is not pursuant to the Agreement provisions considered as a Performance, the Client is entitled to purchase them from the Agency.

6.4. CMS (Content Management System) development, meaning the development of a system for website content management is based on available open source software. Such systems are not a property of the Agency and therefore the Agency does not recommend any interventions into these administrative systems, even though they would comply with legal regulation. After the Performance handover, the Agency provides the Client with a 30-day trial period within which it without any additional charge solves the eventual problems arising from the usage of the administrative system occurred, except the problems caused by an intervention of the Client or any third party into administrative systems codes. After the lapse of this period the Agency is not responsible for any eventual problems regarding the administrative systems.

6.5. Unless stated otherwise in the Agreement or any written document, the Agency is not obliged to retain and return the documentation provided by the Client.

6.6. The Client is fully responsible for the submitted documentation content accuracy, required for the Performance. The Client is further responsible for the documentation not violating the generally applicable regulation, good manners and principles of fair trade and also that by the usage of the Performance will not infringe any rights and/or legitimate interests of third parties (personality rights, the right to protect the reputation of the legal entity, copyrights, trademark rights, etc.). The Client is obliged to and undertakes to, for the case any damage as a result of the documentation supplied to the Agency arises, to reimburse such damage. As damage is considered also costs of judicial or arbitration proceedings, including costs of legal representation, expert witnesses cost, etc. The Client is fully responsible for the fact the demanded Performance (of the documentation submitted by the Client) complies with all requirements laid down by regulation of the Czech Republic, European Union or of the jurisdiction of any other country where the Performance will be used. The Agency is not liable for the data accuracy in the documents submitted by the Client and in respect to this is not obliged to examine whether such does not violate rights of the third party and is further not liable for their eventual breach.

6.7. Unless stated in the Agreement otherwise, the Agency shall within the Performance act independently and is not, regarding the place and manners of its realization, bound by the Client's instructions. Unless stated in the Agreement otherwise, the Agency might delegate the execution of the Performance to another person. In such case, the Agency is responsible as if the implementation would be done by itself.

6.8. Contact between the Agency and the Client is conveyed by a project manager. Without prior consent of the particular project manager, the Client is not entitled to contact other Agency's or of third cooperating party team members. In the event of a breach of such obligation, the Agency reserves a right to withdraw from the Agreement and is not liable for any damage caused by the Client's manner.

6.9. By signing the Agreement the Client is obliged not to enter into an employment or similar relationship with the Agency's employees or coworkers for a period of one (1) year after the

termination of the Agreement.

## **7. Liability**

7.1. The Agency is liable for the damage caused to the Client by action based on fault, breaching these Terms and/or the Agreement.

7.2. The Agency is not liable for the damage caused by circumstances excluding liability or by vis major.

7.3. Any and all defects of the Performance shall be asserted by the Client in writing without an undue delay, at the latest within thirty (30) days after the Performance handover. Non-assertion of the claim in the deadline specified constitutes an irrevocable acceptance and recognition of the fact the Performance fully corresponds with the Agreement.

## **8. Sanctions**

8.1. In the event of Client's delay with Price payment or of its part or delay with any other obligation arising from the Agreement and/or these Terms, the Client is obliged to pay the Agency interest on arrears amounting 0,1% daily of the outstanding amount beginning on the day following the due date until being paid.

8.2. The assertion of the interest on arrears and/or of the contractual penalty by the Agency does not relieve the Client from his duty to pay the due amount and does not consume the Agency's right to claim compensation for damage caused. The damages are not limited by the contractual penalty; the contractual penalty and the interest on arrears do not recompense the damages. The Client is obliged to reimburse the Agency regardless of fault. Client's duty to pay the contractual penalty is not limited by circumstances excluding liability.

8.3. The Agency has a right to, regardless of any other Client's determination, to set-off the Client's payments primarily to accessions of the claim, contractual penalties or other claims arising from the right to be reimbursed and then on single claims in order of their maturity.

## **9. Service of Documents**

9.1. Service of documents between the Parties is governed by the following principles:

- i. The Client sends documents to the Agency to its address, stated in the Agreement or provided in writing.
- ii. The Agency sends documents to the Client to his or her address, stated in the Agreement or provided in writing.
- iii. The Parties can use e-mail addresses, stated in the Agreement or provided in writing, as a form of written communication.

9.2. In the event the documents are dispatched by registered post, unless stated otherwise, the day of delivery is considered as:

- i. unless proved otherwise, the third day after the dispatch
- ii. the day of Client's receipt of the consignment refusal
- iii. in case the consignment is not picked up by the Client (regardless of being or not being notified) the last day of the deposit period
- iv. the day in which the Agency was notified the consignment is undeliverable from the reason the Client does not stay on the address stipulated, and the consignment was

thereby returned to the sender.

#### **10. Intellectual Property Rights**

10.1. The Client agrees so that the Agency would for the duration of the Agreement and after its termination use all information regarding Client's goods and services.

10.2. All patents, copyrights and other rights of a similar nature, related to the materials handed over by the Client to the Agency in order to fulfill the contractual obligations, remain fully intact and are not anyhow transferred to the Agency.

10.3. In the event the Agency provides within the Agreement implementation the Client with any kind of material, document or a different product, then the property rights to them are transferred upon the Price payment.

#### **11. Confidentiality**

11.1. The Parties undertake to keep all knowledge gained within the Agreement implementation confidential, not to abuse the information gained (e.g. the supplied materials and documentation) for improper benefits achievement while negotiating with third parties or implementation of the solution offered by a different person or by yourself.

11.2. The Agency finds within the Agreement implementation information regarding Client's entrepreneurial activities, which is not publicly known and its disclosure to third parties would interfere with Client's legitimate interests, shall undertake to keep all such information confidential. The Client is obliged to mark such information that shall not be disclosed and determine the extent of their publishing.

#### **12. Applicable Law and Dispute Resolution**

12.1. The contractual relations between the Parties shall be governed by and construed in accordance with the laws of the Czech Republic.

12.2. Any matters not expressly regulated hereunder will be governed by the Civil Code, especially by the provisions on contracts for work. The Parties exclude the application of the following provisions of the Civil Code to this Agreement: Section 557 (rule of contra proferentem), Section 1799 and Section 1800 (clauses of accessory contracts).

12.3. The Parties agreed on that all disputes arising from obligations from the Agreement and/or from these Terms, unless settled by mutual agreement, will be resolved by the general court of the Agency in the Czech Republic.

#### **13. Final provisions**

13.1. An Agreement withdrawal shall be done in written and delivered to the Client. The withdrawal comes into effect upon its delivery.

13.2. If any of the provision is or becomes invalid or unenforceable, this fact shall not affect the validity and enforceability of other provisions of the Agreement on the condition that such provision is severable from the remaining text of the Agreement. The Parties agree to replace any invalid or unenforceable provision/s with a new provision as close to the original meaning as possible.

13.3. The Client in witness of his or her true and earnest will to accept the obligations arising for them from these Terms, attaches his or her signature to the Agreement.

13.4. Amendment of rights and obligations arising from the Agreement entered into, as well as his or her assignment of such rights and obligations, are subject to a prior Agency's approval.

13.5. These Terms come into effect on the date specified below and fully replace the previous Terms.

13.6. Legal relations between the Client and the Agency are governed by the Terms, valid on the day of the Agreement entered into.

13.7. The current version of these Terms is available in the seat of the Agency and is also released at <https://evocreative.com/>.

In Prague on June 25, 2019

**On behalf of Evocreative s.r.o.**

Fernando Miguel Davila Castillo

Executive Director