

**GENERAL TERMS AND CONDITIONS of  
Serviceplan Austria GmbH**  
Gregor-Mendel-Straße 50  
1190 Wien

**1. Scope of Application**

All sales, deliveries and services of Serviceplan Austria GmbH (“SERVICEPLAN”) shall exclusively be subject to the following General Terms and Conditions (“Terms of Delivery”), which the customer acknowledges by placing the order or by receiving the delivery or service, as applicable. These Terms of Delivery shall also apply to any future transactions with the customer. The application of any conflicting or supplementary terms and conditions of the customer shall be excluded, even if SERVICEPLAN does not expressly object to such terms and conditions.

**2. Conclusion of Contract, Subcontracting to Third Parties, Change Requests**

1. Unless otherwise agreed in writing, offers submitted by SERVICEPLAN shall be non-binding. A contract shall not be deemed concluded until it has been confirmed by SERVICEPLAN in a written confirmation of order and shall be governed exclusively by the contents of the confirmation of order and these Terms of Delivery. Oral agreements or promises shall only be valid if an authorized employee of SERVICEPLAN has confirmed them in writing.
2. For purposes of fulfilling its obligations resulting from the contract, SERVICEPLAN shall be entitled to enter into subcontracts with third parties.
3. SERVICEPLAN reserves the right to place orders with third parties in the name and for the account of the customer. By approving the cost quote prepared by the third party, the customer authorizes SERVICEPLAN to place the respective order with the respective third party in the name and for the account of the customer. In these cases, SERVICEPLAN shall verify any invoices received from third parties as to their calculative and factual correctness and pass them on to the customer for direct settlement.
4. If the customer requests the change of a performance specification as compared to the original performance specifications (e.g. a briefing of the customer) after the conclusion of the contract, a corresponding written agreement between the parties shall be required. If SERVICEPLAN incurs any additional expenses and/or has to render additional services as a result of such change, SERVICEPLAN shall be entitled, upon advance notice, to charge an additional remuneration in accordance with its price list as applicable at the time of the customer’s request.

**3. Quality, Liability for Defects / Insufficient Performance**

1. If and to the extent SERVICEPLAN is obliged under the contract to deliver products in return for payment the following shall apply:
  - 1.1 Upon delivery, SERVICEPLAN's products shall be of the agreed quality; the quality shall exclusively be determined by the specific written agreements between the parties concerning the characteristics, features and specifications of the products.
  - 1.2 Any rights of the customer in case of defects of SERVICEPLAN's products shall require that the customer inspects the respective product upon delivery and notifies SERVICEPLAN of any defects in writing without undue delay, but no later than two weeks following delivery; any hidden defects must be notified to SERVICEPLAN in writing immediately upon their discovery.

Translation from German – Sales T&Cs of Serviceplan Austria GmbH for Austria

- 1.3 The customer is obliged to accept, as soon as the agreed completion is shown to them and the partial delivery or end product has been made available for handover.
- 1.4 Acceptance takes place in accordance with the individual contract agreed between the parties. Partial acceptance is possible by agreement. The relevant service owed (partial service or end product) is deemed to be accepted if the customer does not, within two weeks of delivery, inform in writing of any defects or if they use the service owed by SERVICEPLAN for its intended purpose (e.g. release for production, activation on Internet/intranet, adoption in the organization of the customer, use in production environment, release for pressing, reproductions, etc.).
- 1.5 In the event of a notification of a defect, SERVICEPLAN shall in each case have the right to inspect and test the product to which objection was made. The customer shall grant SERVICEPLAN the required period of time and opportunity to exercise such right. SERVICEPLAN may also demand that the customer returns the product to which objection was made to SERVICEPLAN at SERVICEPLAN's expense. Should the customer's notification of the defect prove to be unjustified and provided the customer realized or negligently failed to realize this prior to the notification of the defect, the customer shall be obliged to reimburse SERVICEPLAN for all costs incurred in this respect, e.g. travel expenses or shipping costs.
- 1.6 SERVICEPLAN shall remove defects at its option by remedying the defect or by supplying a defect-free replacement (collectively "Subsequent Performance"), each free of charge to the customer. The customer shall give SERVICEPLAN reasonable time and opportunity necessary for the Subsequent Performance. Items that have been replaced by SERVICEPLAN shall be returned to SERVICEPLAN upon its demand.
- 1.7 Any rights of the customer in case of defects shall be excluded in the following events: (i) natural wear and tear, (ii) defects of the products based on reasons for which the Customer is responsible, such as improper use or incorrect handling, (iii) incorrect assembly and/or installation by the customer or a third party commissioned by the customer, and (iv) the performance of inappropriate repair works by the customer or a third party commissioned by the customer.
- 1.8 SERVICEPLAN shall bear the costs for shipment, travel, labor and material that accrue for the purpose of a Subsequent Performance. Subsequent Performance shall not include the installation and removal of the defective product; the costs for installation and removal shall be borne by the customer.
- 1.9 If Subsequent Performance is impossible or unreasonable for the customer, the customer may, at its option and in accordance with the statutory provisions, rescind the contract or reduce the purchase price.
- 1.10 SERVICEPLAN owes the customer the provision of a service based on the technical conditions applicable at the time of commissioning. If, in the course of providing the service, the technical conditions (e.g. change of interfaces or updates by customer) having a direct or indirect effect on the provision of the service by SERVICEPLAN should change, this shall have no consequence on the agreed services and specifications owed by SERVICEPLAN. This also applies if other changes of a technical nature occur which are due to neither SERVICEPLAN nor the customer (e.g. updates of software, web browsers, operating systems, etc., interface changes by third parties (Apple, Google, Facebook, Firefox, Microsoft, etc.)). If, as a result of the technical changes, the services originally owed by SERVICEPLAN need to be changed, expanded or modified in any other way by SERVICEPLAN, this does not constitute part of the provision of services owed by SERVICEPLAN and should be paid for separately by the customer following agreement between the parties.

- 1.11 The limitation period for the customer's rights in case of defects shall be twelve months beginning with the handover of the respective product to the customer. The statutory limitation period shall apply to damage claims of the customer based on other reasons than defects of the product and to rights of the customer with respect to defects concealed in bad faith or caused intentionally.

#### **4. Termination in Case of Long-Term Agreements**

If the contract qualifies as a long-term agreement (*Dauerschuldverhältnis*), the following shall apply:

1. If the parties concluded the contract for an indefinite period of time, they shall be entitled to terminate the contract without cause with a notice period of six months to the end of a calendar year. If the parties concluded the contract for a fixed term, however, they shall not be entitled to terminate the contract without cause.
2. Both parties shall be entitled to terminate the contract without notice with immediate effect for good cause.
3. In particular, SERVICEPLAN may terminate the contract without notice for good cause if
  - 3.1 the customer stops making payments; or
  - 3.2 the customer culpably breaches one of its obligations to a considerable extent and, to the extent a warning letter is required, does not refrain from breaching its obligations notwithstanding the warning letter.
4. Notice of termination must be given in writing in order to be effective.

#### **5. Prices, Terms of Payment**

1. Unless the parties have agreed upon a certain price, the price shall be determined by SERVICEPLAN's price list as applicable at the date of the conclusion of the contract.
2. Unless otherwise agreed in writing, the social security payments for self-employed artists (*Künstlersozialabgabe, KSK*) payable by law on all remunerations and ancillary costs to be paid to self-employed artists and publishers shall be invoiced to the customer by SERVICEPLAN on a net basis at the rates applicable at the specific time.
3. SERVICEPLAN shall invoice to the customer travel expenses at SERVICEPLAN's travel expense rates as applicable at the date of the conclusion of the contract.
4. SERVICEPLAN's invoices shall be payable by the customer on a net basis within ten days from the invoice date.
5. Payments must be made to the bank account indicated on the invoice by SERVICEPLAN without deduction of bank charges or other costs.
6. Bills of exchange and checks shall only be taken on account of performance upon special arrangement and without any bank charges or other costs for SERVICEPLAN.
7. All prices shall be exclusive of VAT at the statutory rate applicable at the invoice date.

8. If SERVICEPLAN becomes aware of the risk of the customer's inability to perform (*mangelnde Leistungsfähigkeit*) after the conclusion of the contract, SERVICEPLAN shall be entitled to make any outstanding deliveries and/or services only against prepayment or the provision of security. If such prepayments or security have not been made or provided even after the expiry of a reasonable grace period, SERVICEPLAN may partially or totally rescind individual or all of the affected contracts. SERVICEPLAN shall remain entitled to assert further rights.
9. In the case of default in payment on the part of the customer, SERVICEPLAN shall be entitled to claim default interest in the amount as set out by the Austrian Commercial Code (*Unternehmensgesetzbuch*, UGB), as amended, above the applicable base rate per annum. Any claims of SERVICEPLAN for further damages due to the default shall remain unaffected.
10. The customer shall only be entitled to a set-off against SERVICEPLAN's claims if the customer's counterclaim is uncontested or has been finally adjudicated.
11. The customer shall only be entitled to assert a right to refuse performance (*Leistungsverweigerungsrecht*) or a right of retention (*Zurückbehaltungsrecht*) to the extent that its counterclaim is based on the same contract and is uncontested or has been finally adjudicated.

## **6. Retention of Title**

1. If and to the extent SERVICEPLAN owes the delivery of products under the contract, these products shall remain the property of SERVICEPLAN until the purchase price has been paid in full.
2. The customer may only sell the products subject to retention of title ("Products subject to Retention of Title") with SERVICEPLAN's prior written consent. The customer may not pledge the Products subject to Retention of Title, grant chattel mortgages on them or make other dispositions endangering SERVICEPLAN's title to such Products subject to Retention of Title.
3. The customer shall be obliged to treat the Products subject to Retention of Title with care for the duration of the retention of title.
4. Should the customer be in default with the purchase price vis-à-vis SERVICEPLAN and should SERVICEPLAN rescind the contract, SERVICEPLAN may, notwithstanding any other rights, request surrender of the Products subject to Retention of Title and may use them otherwise to satisfy its matured claims against the customer. In such case, the customer shall grant SERVICEPLAN or SERVICEPLAN's agents immediate access to the Products subject to Retention of Title and surrender the same.

## **7. Delivery Periods and Delivery Dates, Partial Deliveries, Passing of Risk**

1. Delivery dates and delivery periods shall only be binding if they have been agreed as binding in the contract and the customer has provided SERVICEPLAN with all information and documentation required for the performance of such delivery or service, as applicable, in a timely manner and has made any advance payments in the manner and amount as agreed upon by the parties. Delivery periods shall commence on the date of the confirmation of order. In the event of subsequently agreed changes pursuant to Section 2.4, the delivery periods and delivery dates shall be extended or rescheduled accordingly. SERVICEPLAN shall inform the customer of such an extension or rescheduling, as applicable.
2. Events that are unforeseeable, unavoidable and outside the control and sphere of influence of SERVICEPLAN and for which SERVICEPLAN is not responsible, such as acts of God, war,

natural disasters or labor disputes, shall release SERVICEPLAN for the duration of such event from its obligation to make timely delivery and/or perform services timely. Delivery and performance periods and dates shall be extended or rescheduled, as applicable, by the length of such disturbance; the customer shall be informed of the occurrence of such disturbance in an appropriate manner. If the end of such disturbance is not foreseeable or if it continues for more than two months, either party may rescind the contract.

3. With regard to products not manufactured by SERVICEPLAN itself, the obligation to deliver shall be subject to SERVICEPLAN's correct and timely receipt of such products from its suppliers.
4. If the deliveries or services, as applicable, by SERVICEPLAN are delayed, the customer shall only be entitled to rescind the contract if SERVICEPLAN is responsible for the delay and a reasonable grace period set by the customer has expired to no avail.
5. SERVICEPLAN may make partial deliveries for good reason if and to the extent this is reasonable for the customer.
6. The passing of risk shall be subject to the statutory provisions.

## **8. Liability**

1. SERVICEPLAN undertakes to perform the tasks assigned to it with due professional and commercial care the best of its knowledge and by complying with the generally accepted principles of the advertising industry. In no case, however, shall SERVICEPLAN be obliged to perform a legal review of the permissibility of its work results unless expressly agreed otherwise in writing by the parties.
2. SERVICEPLAN shall not be liable for information supplied by the customer, in particular with regard to the characteristics of the product, and it shall not be liable for advertising measures implemented upon the customer's explicit request in spite of objections made by SERVICEPLAN as to the advertising measures' permissibility (if and to the extent SERVICEPLAN is obliged to review their permissibility). In this case, the customer shall indemnify SERVICEPLAN against any third-party claims.
3. Limitation of liability and mitigation of damage
  - 3.1 SERVICEPLAN's contractual and statutory liability for damages due to slight negligence shall, irrespective of its legal ground, be limited as set forth below:
    - (a) In case of a breach of a material contractual obligation, SERVICEPLAN shall only be liable up to the amount of the foreseeable damage typical for this type of contract;
    - (b) SERVICEPLAN shall not be liable in case of a breach of a non-material contractual obligation and any other slightly negligent behavior.
  - 3.2 The limitations of liability in accordance with Section 3.1 shall not apply in the case of mandatory statutory liability as well as in the case of culpably caused personal injuries. Furthermore, they shall not apply if and to the extent that SERVICEPLAN has assumed a guarantee.
  - 3.3 Section 3.1 and 3.2 shall apply accordingly to SERVICEPLAN's liability for frustrated expenses.
  - 3.4 The customer shall be obliged to take reasonable measures to avert and mitigate damages.

4. Third parties commissioned by SERVICEPLAN shall not be deemed vicarious agents (*Erfüllungsgehilfen*) of SERVICEPLAN unless and to the extent they perform services to the customer that SERVICEPLAN is obliged to render. In this regard, SERVICEPLAN can only be held liable for the above-mentioned third parties as regards fault in selecting them (*culpa in eligendo, Auswahlverschulden*). Therefore, SERVICEPLAN shall in particular not be liable for any damage incurred due to defects, default or non-performance of obligations of the above-mentioned persons. In such case, SERVICEPLAN undertakes to represent the interests of the customer and to assert any claims against the above-mentioned persons or to assign its own claims to the customer upon the customer's request.

## **9. Cooperation Obligation of the Customer**

1. The customer shall be obliged to provide SERVICEPLAN with any and all information required for the performance of the deliveries and services. In addition, the customer shall be obliged, at its own initiative, to make SERVICEPLAN aware of any circumstances that may be of relevance to the performance of the deliveries and services by SERVICEPLAN, where it is recognizable to the customer that SERVICEPLAN is not aware of such information.
2. To the extent that SERVICEPLAN and the customer define stages of development in mutual agreement, the customer shall be obliged to fulfill all necessary cooperation obligations to comply with these steps. If the customer requests changes to the defined stages of development, Section 2.4 and Section 7.1 shall apply accordingly.
3. Should the customer be in default of acceptance or should the customer be in breach of any other cooperation obligations, SERVICEPLAN shall be entitled, without prejudice to its other rights, to rescind the contract in accordance with the statutory provisions.

## **10. Copyrights, Title**

1. Upon full payment of the agreed price, the customer shall acquire the exclusive license to use the copyrights (*Erwerb der ausschließlichen Urhebernutzungsrechte*) pertaining to the works of SERVICEPLAN – with the exception of any third-party services contained in such works – which have been approved, realized and published by the customer for the term of the contract, this license being restricted as regards its content to the respective purpose and realization and as regards its territory to the scope of application of the contract, to the extent that such granting of rights is admissible according to the statutory provisions or the actual circumstances (especially as regards music, film and photo rights).
2. To the extent possible, licenses to use the copyrights pertaining to third-party works shall be separately acquired and granted to the extent specified in Section 10.1 and in accordance with the agreement concluded in the specific case.
3. The customer is not entitled to edit or modify the work of SERVICEPLAN in part or in full or to transfer the rights to third parties, unless this is expressly included in the delivery or service agreed upon.

In the case that source codes are part of the service owed by SERVICEPLAN, the following applies in relation the rights of use for the source code:

- a. Rights of use for source codes in relation to any software products provided by SERVICEPLAN or in relation to websites and apps created by SERVICEPLAN (hereinafter collectively referred to as "Software products") are granted upon written request of the customer following acceptance of the respective Software product and payment in full of the agreed prices for the Software product by the customer and only on

payment of a fee to be agreed separately for the allocation of rights of use for the source code, provided the parties have not made any other contrary agreement in this regard.

- b. If and to the extent that source codes are issued to the customer by virtue of a special agreement according to item 3.1, the customer is also entitled, in addition to their use of the Software product, to edit the Software product and, where applicable, in this context also grant sub-licenses to third parties to edit the Software product.
- c. Regardless of the allocation of rights of use for the benefit of the customer, SERVICEPLAN retains the right to continue to use the source codes as its author and, where applicable, make them available to third parties. The parties may limit or exclude this right by means of a separate agreement.

SERVICEPLAN is not liable for any kind of interference on the part of the customer in the relevant Software product of SERVICEPLAN, such as modifications, additions and edits, in particular. The customer shall hold SERVICEPLAN harmless against any claims of third parties which result from or relate to such interferences made by the customer

4. SERVICEPLAN reserves all rights to the presentation documents used for the performance of the contract (in particular exposés, treatments, drawings, plans, graphics and prototypes) as well as to all preliminary stages of SERVICEPLAN's finished work. They must not be made available to third parties and shall be returned to SERVICEPLAN upon request without undue delay.

#### **11. Promotion of SERVICEPLAN's Services**

SERVICEPLAN may, free of charge, disclose the contractual relationship to the customer and the results of the services performed for the customer in the usual scope for the purpose of promoting SERVICEPLAN's services as far as the customer does not expressly object to such use in writing in the individual case.

#### **12. Final Provisions**

1. Any changes of and amendments to the contract and/or these Terms of Delivery shall require written form in order to be effective. The same shall apply to any amendment of this written form requirement.
2. Any oral or written side agreements shall only be binding upon SERVICEPLAN upon SERVICEPLAN's written confirmation of such agreements.
3. If a provision of the contract and/or these Terms of Delivery is invalid in whole or in part, the validity of the remaining provisions shall remain unaffected hereby.
4. Exclusive venue for any and all disputes arising from or in connection with the contractual relationship of the parties shall be the registered seat of SERVICEPLAN.
5. The laws of Austria with the exclusion of UN Sales Law shall apply to these Terms of Delivery.

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