

General Terms & Conditions

E-Formation GmbH, New Media Agency

General Terms & Conditions, status as of June 2006

1. Area of Application

- 1.1. E-Formation GmbH, New Media Agency, located in Kiel, in the following called E-Formation, renders its service based on the general terms & conditions (GTC).
- 1.2. The following terms & conditions are recognised with each order by the customer.
- 1.3. Placing of order required in written form.
- 1.4. The regulations, which change or annul these conditions, are valid only as confirmed in writing by E-Formation.

2. Scope of services, Fees

- 2.1. The scope of services results from the offer, of which contents will be achieved by an agreement between E-Formation and the customer. This offer will be the basis of placing a contractual order. If in between the start of the order and the realisation thereof the customer wishes to make any changes or additions that are not covered in the offer, E-Formation will make a separate offer for these points which should be confirmed in writing.
- 2.2. The offers from E-Formation are without engagement and obligation. Should the prices increase before commencement of the order, E-Formation is obligated to inform the customer about it immediately. All fees are to be paid in full in three parts, if no other terms of payment was agreed upon; the first Installation upon placing the order, the second with an acceptance test of the whole draft, and the third after completion of service.
- 2.3. In case the customer does not fulfil his payment obligations or his obligations that originate from the retention of title, or stops the payment, they may be declared bankrupt. If claims come in that raise considerable doubt to the customer's credit standing, our total outstanding claim - including bills of exchange with a later due date - will be due immediately.
- 2.4. In case the customer detains payment longer than 4 weeks, E-Formation is entitled to stop a service for the customer immediately. In the case payment should be delayed, E-Formation can require interest at the rate of 5% according to the respective discount rate of the German Central Bank.
- 2.5. Any defects or any changes, which are unacceptable from the point of the customer, should be announced within 8 days after performed services or changes.
- 2.6. The Customer can charge up against the E-Formation demands only with indisputable or legal ascertained counterclaims.
- 2.7. The fees are net amounts, which are to be paid and will be subject to value added tax (VAT) at the rate currently applicable.

3. Copyright

- 3.1. The copyright belongs to the drafts of the web designer as a personal and spiritual creation. The regulations of the copyright law count also if due to § 2 UrhG (Copyright Law) necessary creation level is not reached.
- 3.2. The copy right law (§ 4, Art.1, Art. 2 CRL) counts to the development of data bank works as a personal and spiritual creation, which elements are arranged systematically or methodically. The reproduction of online data banks or of essential parts for economic or private aims is inadmissible. (§ 55a CRL).
- 3.3. There is a creation freedom within the assumed order.
- 3.4. Using of the web-site contents created by E-Formation (graphics, source texts, scripts, etc.) will be allowed only for the customer only in the agreed volume. Its transmission to a third party is not permitted. Each other displacement needs expressive approval by E-Formation.
- 3.5. There is basically no claim to other publication forms than when specifically agreed with the customer (Printing the internet-site, disc or CD-Rom).

4. Liability and limitation of liability

- 4.1. E-Formation is responsible only for damages, which are caused by E-Formation, its legal representatives or one of its fulfillment assistants wantonly negligent or voluntary, unless it concerns warranted characteristics. In this case E-Formation is responsible at most up to the amount of the order value. The preceding restrictions of liability concern contractual as well as external-contractual claims.
- 4.2. E-Formation does not be responsible for the correct functions of infrastructures or transmission routes of the Internet which are not in the area of the E-Formation responsibility, or its fulfillment assistant, provided that a liability exists as an exception due to point 4.1.
- 4.3. E-Formation will not be responsible in any case for insufficient economic success, consequential damages and for damages from claims of third party.

5. Secrecy, Press release

- 5.1. The documents, the shared information and experiences handed over to the other party should be exclusively used for the purpose of this contract and not divulged to any third party, as long as the contract does not specifically permit any third party to have access to the information or if, by that time, the information is known to third party. Third parties will be not auxiliary persons like freelancers, subcontractors etc. who are involved in the contractual relationship processing.
- 5.2. In addition, the parties to a contract agree to protect a confidentiality concerning the content of a contract and and any information obtained affecting a contract.
- 5.3. The secrecy obligations also apply after the ending of the contractual relationship.
- 5.4. On the demand of one of the parties of the contract the shared documents like policy papers, briefing documents etc. shall be handed back to it after the ending of effecting a contract, as long as the other party to a contract cannot assert a legitimate interest in these documents.
- 5.5. Press release, information etc., in which the one party to the contract is referring to the other party, are allowed only according to the former written approval – includes e-mail approval.

6. Contract period /Cancellation

- 6.1. The minimum contract period for all contracts amounts, unless the context otherwise requires, is 12 calendar months, beginning with the calendar month in which the service (or its conclusion) is provided or begun. If the service is not cancelled in writing with a term of 3 months till the end of the contract term, it may be renewed tacitly for a further year. The ending of the service from this contract is without prejudice to the terms of other contracts. The explanation of the reasons for cancellation of the contract is not required.
- 6.2. The E-Formation GmbH reserves the right to cancel any contract within 4 weeks at the end of month without any explanation of the reasons.
- 6.3. The contractual period will be signed in the offers and renewed automatically for the same contractual period, and unless the contract is cancelled in writing with a minimum of three months notice of cancellation.

7. Exposure to data

- 7.1. As far as the data delivered to E-Formation is concerned (pictures, texts, videos, other data), the customer should make and retain backup copies.
- 7.2. In the case of data loss the customer is obligated to transfer to E-Formation over again the relevant databases free of charge.
- 7.3. E-Formation assumes no liability for the risk in terms of the possibility, that the delivered data can be lost in transmission.
- 7.4. E-Formation refers to (according to § 33 BDSG) that the personal data will be saved inside of performance of the contract and if necessary will be forwarded to involved co-operation partners, auxiliary persons and service providers from E-Formation in the necessary volume. Otherwise the personal data will be collected, processed and used provided that the customer agrees to it or it is authorised by law.
- 7.5. The customer has to take care, that the delivering information is free from rights of the third party. The Customer has to warrant, that the contents does not offend against the applicable law and will be approved for use by E-Formation.
- 7.6. All rights and duties, which arise from contents, data and domain names are incumbent on the customer. The Customer will warrant also an adherence of the copyrights for all text and picture material.
- 7.7. E-Formation is entitled to block illegal contents immediately without special notification and to cancel a current contract without previous notice.
- 7.8. The customer is responsible in person for all contents, which are produced/published by the customer self, by means of his access data or by a third party. This applies to reference of the customer to such contents of a third party. The data and the contents of the customer cannot agree with an opinion of E-Formation.
- 7.9. The customer will receive user name and password for upkeep his database, project management and other services. The customer is bound to keep it in confidence and is responsible for any abuse, which is following because of false using. The customer has anytime a possibility to let us change his password informing us about it in writing. In the case of misuse or unauthorised access to data, E-Formation is entitled to block access immediately.

8. Unacceptable contents

- 8.1. The customer will guarantee that the contents to be presented do not violate the effective law, in particular a criminal law. If this is not guaranteed, E-Formation reserves the right to immediate cancellation without notice.

9. Miscellaneous

- 9.1. If other terms are not stipulated, E-Formation is entitled to place its logo inconspicuously to the customer´s web-site and to create there a link to the E-Formation website. The logo should not exceed the size of 80x30 pixels.
- 9.2. The Customer will permit E-Formation to show from his website to the E-Formation website under the menu-point „Best of/References“.
- 9.3. E-Formation is entitled to commission a third service provider and auxiliary persons to delivery parts or the whole service or activities. E-Formation is entitled to change anytime without special notification the using Internet-structure and the ordered service provider and auxiliary persons, in so far as there will not result any disadvantages or the context otherwise requires.
- 9.4. The information mentioned in GTC from E-Formation to the customer, as well as the information, which may be deemed necessary in other business development, will be delivered from E-Formation to the e-mail address of the customer or via mail. Messages are regarded as delivered with receipt and hereby made availability to this address.
- 9.5. Changes of General Terms and Conditions are communicated to the client not less than 4 week before their coming into effect. Should such changes not be disagreed within one month from a delivery, they are regarded as accepted. If these changes concern money considerations and volume of service, a 2 monthly notification time is regarded. In this case an extraordinary right to cancel will be allowed for a client with a term of 4 weeks from entry of a change.
- 9.6. E-Formation is entitled to delegate a contract with all rights and duties by deant of explanation to a legal successor, as far as he/she stakes on a provision of the services due.
- 9.7. Legal matters are made and will be determined under the jurisdiction of the German Federal Law and matters will be considered under the authority of the Courts of the City of Kiel, in the Federal Republic of Germany.

10. Final Clause

- 10.1. Should any regulation of the contract be/will be invalid or should the contract be incomplete, so it is not affected in its residual content thereof. The ineffective regulation is regarded as replaced by the regulation which economically corresponds to the appreciation and the purpose of the ineffective regulation effective in law. The same applies to possible contract gaps.