

General Terms and Conditions of Facelift brand building technologies GmbH

The following general terms and conditions apply to all contracts that **Facelift** brand building technologies GmbH ("**Facelift**") makes with its customers (hereinafter referred to as "**Customer**").

1. Conclusion of Contract

Unless otherwise expressly regulated in the offer from Facelift, a contract between Facelift and the customer is concluded through the offer submitted by Facelift and the receipt of acceptance by the customer of the offer from Facelift. Both offer and acceptance are to be declared in text-form (e.g. by Email or telefax).

2. Subject of the Contract

- 2.1. The subject of the contract results from these General Terms and Conditions as well as the offer and the relevant performance specifications set in the agreements.
- 2.2. The General Terms and Conditions of the customer do not become part of the contract even if they are attached to requests for an offer, orders, declarations of acceptance etc., and even if they are not expressly contradicted.

3. Duties and Obligations of the Customer

- 3.1. The customer shall support Facelift in providing the services required to the extent which is necessary, in particular, by providing the required information and materials in good time and at the customer's own cost. To the extent that is necessary for Facelift to be able to provide the services required, the customer grants Facelift the non-exclusive, non-transferable, non-sublicensable right to the above mentioned information and materials.
- 3.2. The customer shall provide Facelift with a contact person. However, Facelift has the responsibility for the project.
- 3.3. The customer has the responsibility for providing, in his own sphere, the technical requirements for the utilization of the services provided by Facelift, in particular, an adequate internet connection.
- 3.4. In addition, the customer shall undertake adequate measures to ensure the security of its data files in the Facelift Cloud (e.g. through regular data backups).
- 3.5. The customer shall act in accordance with the valid guidelines of the social media channels that are being used e.g. Facebook, Twitter, YouTube, Wordpress, etc.
- 3.6. In the event of a malfunction of the Facelift Cloud, which the customer can recognise, the customer shall inform Facelift at the earliest possible opportunity.

4. Delivery and Acceptance

4.1. Facelift Cloud

The setup of the Facelift Cloud and the provision of the access data to the customer are usually completed within 10 working days.

4.2. Facelift Services

- 4.2.1. The delivery of the services of Facelift Advertising Services as well as Facelift Professional Services (hereinafter jointly referred to as "**Facelift Services**") occur individually by agreement.

- 4.2.2. As soon as separable services are available, Facelift shall notify the customer and make the completed services available for testing. The customer has ten (10) working days to test these, in particular, the content for campaigns (design of adverts, landing pages, incentives, etc.) and to declare acceptance. Should defect be discovered during the period of acceptance, Facelift shall be given a fair amount of time for subsequent fulfilment. This shall be followed by a further provision for acceptance. The customer then has a further period of ten (10) working days to test the services provided and declare acceptance.
- 4.2.3. Should the customer not accept the services provided within the period specified in Clause 4.2.2, although being obliged to do so, § 640 para. 1 sentence 3 BGB (Civil Code) applies accordingly.

5. User Rights and Ownership

- 5.1. The underlying software for the Facelift Cloud is copyrighted. Facelift is the exclusive owner of any intellectual and industrial property rights of the Facelift Cloud.
- 5.2. Facelift shall provide the customer with the non-exclusive, non-transferable, non-sublicensable right to use the products of the Facelift Cloud that the customer has selected within the framework of this contract and for the purpose stated therein. This right shall be limited to the duration of the contract.
- 5.3. In addition, upon on acceptance of the respective order, Facelift shall provide the customer with the non-exclusive, non-transferable, non-sublicensable right to use all of the works that can be secured by copyright that have been developed within the framework of this contract and for the purpose stated therein. This right shall be unlimited by time or space.
- 5.4. Unless otherwise regulated, the usage rights do not include the right of processing by the customer.
- 5.5. Unless otherwise regulated, all the originals, drafts and work results remain the property of Facelift. Should, for the purpose of providing the services, Facelift hand over to the customer any data carriers, documents and other materials, then, subject to the foregoing regulation, Facelift shall, upon the customer's acceptance of the services provided, transfer to the customer the ownership of what the data carrier, documents or other materials refer.

6. Conditions of Payment

6.1. General Conditions of Payment

- 6.1.1. The amount of remuneration payable and the period of any advanced payments are defined in the respective offer.
- 6.1.2. All prices shown are subject to Value Added Tax at the applicable official rate.
- 6.1.3. Unless otherwise stated in the offer, the cost of incentives, images for advertisements as well as other third-party costs which occur within the framework of the services provided by Facelift shall be part of the invoice to the customer without any surcharges.
- 6.1.4. All travelling expenses (e.g. for local workshops) shall be charged separately providing they are part of the particular offer in question and are appropriate.
- 6.1.5. Invoices shall be due for payment within ten days of receipt.

6.2. Special Condition for Payment for Facelift Cloud

The customer's obligation to pay for the products selected from the Facelift Cloud begins with the provision of access data to the customer.

6.3. Special Condition for Payment for Facelift Services

- 6.3.1. Remuneration for services in the area of Facelift Services shall be invoiced in advance and shall be due for immediate payment in full.
- 6.3.2. Third-party costs, in particular, the cost of incentives and images for advertisements which occur within the framework of the services provided by Facelift Services shall be invoiced in advance and be due for immediate payment in full. This shall also apply to the customer's advertising budget.
- 6.3.3. Should circumstances arise for which Facelift cannot be held liable, but, that lead to the basis of calculation for Facelift ceasing to exist or being sustainably damaged so that it is not reasonable for Facelift to sustain the contract unchanged, Facelift has the right to renegotiate remuneration with the customer. However, this does not apply, should the adjustment not be reasonable for the customer. In such cases, Facelift shall have the right to terminate the contract by way of extraordinary termination and the customer to a percentage refund of the remuneration for services not rendered.
- 6.3.4. In case of termination or cancellation of the media campaign by the customer without (i) Facelift being responsible for the termination or cancellation or (ii) should clause 8.3.1 (ii) apply, the customer shall be charged the Management Fee pro rata on the media budget already used.
- 6.3.5. In addition, should clause 6.3.4 apply, a cancellation fee amounting to 1000. - EUR shall be charged to cover the extra cost. The customer remains free, however, to prove that Facelift suffered less or even no damage.
- 6.3.6. In any account, the setup fee is always due in full at the conclusion of the contract. A (pro rata) refund shall not take place should clause 6.3.4 apply.

6.4. Default

Should the customer be in default with payment of the prices for two consecutive months or over a period of time amounting to more than two months be in default of payment of the prices to an amount equivalent to the monthly basic rate for two months, then, Facelift may postpone rendering the service and/or terminate the contract without observing any notice period. The assertion of further claims due to delayed payments remains unaffected.

7. Warranty

7.1. Facelift Cloud

- 7.1.1. Facelift is obliged to repair defects in the products of Facelift Cloud chosen by the customer within a reasonable period of time.
- 7.1.2. The customer is only entitled to an extraordinary termination of the agreement in accordance with § 543 BGB (Civil Code) due to the failure to grant use in accordance with the agreement if Facelift has been given sufficient opportunity to rectify the defect and such attempt has failed providing that Facelift has not fraudulently concealed a defect.
- 7.1.3. Should there be a defect to the Facelift Cloud, the customer shall not reduce the monthly fee. The possible existing right to a refund of fees paid under reservation remains unaffected.

7.2. Facelift Services

Should the services provided within the framework of the provision of Facelift Services prove to be defective and it is not possible for Facelift to rectify this or provide a faultless replacement, Facelift shall show the customer the possibilities of a workaround. If it is reasonable to expect the customer to accept them, they shall be deemed rectified.

7.3. Services Free of Charge

Liability is explicitly excluded for material and legal defects for services free of charge. In the case of fraudulent concealment of a defect, the customer's rights shall be exercised solely in accordance with legal regulations.

8. Liability, Release and force majeure

- 8.1. Irrespective of the legal grounds of the customer's claim, (violation of contract, quality defect or defect of title, illegal act or any other) Facelift shall be liable for any damages resulting from that only under the following provisions:
 - 8.1.1. In cases of intent, claims under the Product Liability Act or fraudulent concealment of a defect as well as loss of life, physical injury or harm to health, Facelift shall only be liable solely in accordance with legal regulations.
 - 8.1.2. In the event of gross negligence, the liability of Facelift shall be limited to the amount of reasonably foreseeable damage. This limitation does not apply where the damage has been caused by executive employees or legal representatives of Facelift.
 - 8.1.3. In the event of ordinary negligence, Facelift is only liable in as much as Facelift has breached a contract without the fulfilment of which due performance of the contract would not be possible, whose breach jeopardises the achievement of the purpose of the contract and the customer can as a rule rely on the compliance with these obligations (so-called "cardinal obligations"). In these cases, the liability of Facelift is limited to typically and foreseeable damage.
 - 8.1.4. Should liability be justified in cases of simple negligence, the liability of Facelift is limited to the simple order value of the contract through which, as a result of its services, the damage occurred.
 - 8.1.5. In cases of liability regardless of negligence for the impediment of performance during default, liability of Facelift shall also be limited to typically foreseeable damage.
 - 8.1.6. In the case of loss of data, Facelift shall only be liable to the extent that the damage would have occurred even though the customer regularly performed proper data backup.
 - 8.1.7. In cases of slight negligence, Facelift shall not be liable for loss of profits.
 - 8.1.8. Liability on the part of Facelift, irrespective of fault, for damages (Clause 536a German Civil Code) for any defects existing at the time of signing of the contract shall be excluded.
 - 8.1.9. Claims for damages or compensation for futile expenses due to quality defects or defect of title when services are free of charge are limited to cases of wilful intent and gross negligence. This restriction does not apply by fraudulent concealment of a defect, claims under the Product Liability Act or at the loss of life, physical injury or harm to health.
 - 8.1.10. Should the customer neglect to meet the required collaborative action in accordance with the contract, Facelift shall not be responsible for a restriction of services if, and in as much as, the failure to meet the required collaboration action was the cause and Facelift carries no responsibility. This shall be especially true should Facelift have requested the customer to meet the requirements for collaborative action without avail and after setting a reasonable time-limit in text-form.

8.2. Release

The customer shall release Facelift and all affiliated companies and sub-contractors from all claims and other losses from third-parties that arise for Facelift and all the affiliated companies and sub-contractors due to or in connection with a violation of duties by the customer. This shall be, in particular, the case in connection with the provision and use of materials and works encumbered with the rights of third parties except when the customer is not responsible for a breach of duty.

8.3. Conditions beyond the will and control of Facelift

- 8.3.1. As long and in as much as Facelift (i) waits for the participation or information from the customer which are necessary for the service performance of Facelift or (ii) Facelift is impeded in performing its contractual obligations by strikes or lockouts in third companies or in the operation of Facelift (in the latter case only if the labour dispute is legal), official intervention, legal prohibitions, or other circumstances ("force majeure") that are not the fault of Facelift (e.g. through the unavailability or the only partial availability of the interfaces of the social media channels being used), delivery and service deadlines shall be considered extended by the duration of the impediment and an appropriate run-up period after the end of the impediment and no violation of duties occurs for the period of the down time. Facelift shall immediately inform the customer of such impediments and their probable duration. If the force majeure lasts more than three (3) months without interruption both parties are released from their performance obligations as far as these obligations are affected by the force majeure. This shall not apply to the customer in case of Clause 8.3.1 (i).
- 8.3.2. In so far as force majeure can be remedied through amendments to the performance due from Facelift or can be circumvented ("Workaround"), Facelift shall immediately show the customer the facts, the workaround as well as the associated additional expenses. Should the customer not reach a decision within a reasonable period of time to reimburse the additional expenses, then, only Clause 8.3.1 shall apply.
- 8.3.3. Facelift draws attention to the fact that the original data input into communications services (e.g. Facebook, Twitter, YouTube, WordPress, etc.) has to be performed by the user themselves and despite security mechanisms of the respective platforms it can come to a registration of irregular user profiles (so-called "**fake accounts**"). It is not possible for Facelift to filter out such fake accounts, e.g. within the framework of Win a Facebook Fan.

9. Confidentiality

- 9.1. The parties are mutually obliged to maintain strictest confidentiality about the facts and circumstances of the business activities of the other party that become known or are known already in connection with the contract ("**confidential information**") even after the termination of the contract.
- 9.2. The above mentioned obligation of secrecy shall not apply to confidential information which the recipient party of that the confidential information can demonstrate that (i) the confidential information was already known prior to disclosure by the disclosing party, (ii) the confidential information was lawfully communicated by a third-party that was not acting as a representative of the disclosing party, (iii) the confidential information was developed by the recipient party or independently for the recipient party, (iv) the confidential information is publically accessible or (v) if there is a statutory or administrative obligation to disclose the information.
- 9.3. Facelift shall be entitled to disclose confidential information to a third-party, in particular to affiliates of Facelift within the meaning of § 15 et seq. of the Aktiengesetz (German Stock Corporation Act) to the extent this is necessary for the fulfilment of the contractually agreed performance ("need-to-know"-principle) providing the disclosing party has previously informed the third-party in writing of the obligation to maintain confidentiality in accordance with the provisions of this contract.
- 9.4. Irrespective of the obligation for secrecy in Clause 9.1, both parties are entitled to use the name and logo of the other party as an official reference for the purpose of self-advertising without disclosing details of the cooperation.

10. Data Protection

- 10.1. Facelift shall not acquire any rights to the data that are stored for the customer within the framework of the use of the performance rendered by Facelift or data made available for Facelift (especially personal data of third parties).
- 10.2. In the case of the processing of personal data, Facelift shall only collect, process and use such personal data within the scope of the concluded contract and on the instructions of the customer. For this, the provisions in the "Supplementary Terms and Conditions of Order Data Processing " shall prevail which can be accessed under <https://www.facelift-bbt.com/data-processing-on-behalf/>
- 10.3. The customer shall be principally responsible for complying with the regulations of the German Federal Data Protection Act (BDSG) regarding personal data in order data processing. Moreover, the customer remains, in terms of the contract and in accordance with data protection laws "the owner of the data".

11. Contract Term and Termination

- 11.1. The contract term is defined in the respective offer. In case minimum contract duration shall be agreed upon in the contract, ordinary termination is not permitted during this period. The right of extraordinary termination shall remain unaffected thereby.
- 11.2. The contract shall always extend automatically for a further twelve (12) months when the agreed minimum duration expires should it is not terminated with a notice of three (3) months before the end of the relevant term.
- 11.3. Irrespective of the legal grounds, termination can only be performed by letter, fax or e-mail.

12. Other Terms and Conditions

- 12.1. The contract can only be modified by mutual written agreement (e-mail exchange shall be sufficient). This also applies to changes to the requirement for communication to be in writing.
- 12.2. The customer is entitled to transfer the contract or particular rights and obligation of it to a third party without the written agreement of Facelift. Clause 353a German Commercial Code (HGB) remains unaffected.
- 12.3. The offsetting of claims which are undisputed or have been established by law as well as the exercise of a right of retention that is not based on the same contractual relationship is not allowed.
- 12.4. The contractual relationship between the parties shall be governed by the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on the International Sale of Goods of 1980 (UN Sales Convention) as well as the exclusion of the law on the conflict of laws.
- 12.5. Place of performance for customers who are merchants, a legal entity under public law or a special fund under public law is the District Court (Landgericht) Hamburg.
- 12.6. If any court finds that any provision of the contract is invalid, illegal or unenforceable the rest of the document shall not be affected.

Instead of invalid, illegal or unenforceable contract provisions as well as to fill gaps or loopholes, an appropriate provision shall be used which is most closely in keeping with what the contract parties intended at the time of the conclusion of the contract, had they considered that point at the outset.