



## TERMS AND CONDITIONS (GTC)

General terms and conditions of the advertising media Tocciori & Tocciori GbR, Eschweilerstr. 70, 52477 Alsdorf, (Legally represented by Silke & Franco Tocciori), VAT number: **202/5418/1358**, VAT number: **DE271539089** hereinafter referred to as "Advertising Media Tocciori GbR".

### § 1 Applicability

The advertising media Tocciori GbR concludes only on these general terms and conditions. By placing the order, the client acknowledges their applicability and validity. Deviating agreements can only be made legally effective in writing between the corresponding contractual partners and apply as a supplement to the concluded contractual relationship. These terms and conditions take precedence over any general terms and conditions of the respective client or agent.

### § 2 Conclusion of contract

These terms and conditions apply exclusively to contracts with the advertising media Tocciori GbR. Deviating regulations in the general terms and conditions of the customer are therefore expressly rejected. Offers by the advertising media Tocciori GbR in brochures, advertisements, advertising, homepage etc. are also subject to change and non-binding with regard to price information, unless a binding assurance is expressly given. The validity of the individually created offers by the advertising media Tocciori GbR is 7 days. The customer has the right to withdraw from the contract concluded with advertising media Tocciori & Tocciori GbR in writing within a period of 14 days without giving reasons.

After this period has expired or by making a down payment for the contract, the contract is deemed to have been accepted and advertising media Tocciori & Tocciori GbR will begin the contractually ordered and agreed work. advertising media Tocciori & Tocciori GbR has the right to grant itself a period of 90 days for the completion and execution of the order ordered by the customer, during which time the customer is bound to his order. The corresponding period begins at the point in time at which the customer has provided all necessary materials for the fulfillment of the contract components to advertising media Tocciori & Tocciori GbR. If advertising media Tocciori & Tocciori GbR does not refuse acceptance within 7 days of receipt of the order, the confirmation is deemed to have been issued. Advertising media Tocciori & Tocciori GbR has the right to refuse the customer an order in whole or in part without giving reasons. Verbal ancillary agreements are ineffective. Changes to the conditions, including this written form clause, must be in writing. Adherence to a performance deadline by the advertising media Tocciori GbR depends on the timely delivery by their cooperation partners.

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### § 3 Scope of services

The advertising media Toccoi GbR offers the following services: Creation, adaptation and maintenance of websites and shop systems, other graphic services and design, CD/DVD-ROM production, Internet services and range of services, content production and website hosting, film - and photo production, image processing, press, office and event service, radio and public relations work, office services, printing, textile printing and foil lettering.

The advertising media Toccoi GbR provides its services exclusively according to the wishes and information of the customer placing the order. Installation, instruction and training are only part of the performance obligations of advertising media Toccoi & Toccoi GbR if this has been agreed in writing. Advertising media Toccoi & Toccoi GbR only has to consider requests for changes and extensions if they are necessary for technical reasons in order to achieve the purpose of the contract. At advertising media Toccoi & Toccoi GbR, the customer only receives services relating to the products listed.

In the event of a significant change in the contractual obligations of advertising media Toccoi & Toccoi GbR for the purpose of adapting to the needs of the customer, advertising media Toccoi & Toccoi GbR can charge the customer for the necessary additional work. This also applies to an extensive examination of whether and under what conditions the change or extension can be carried out, insofar as advertising media Toccoi & Toccoi GbR has pointed this out in writing. The advertising media Toccoi GbR is entitled to partial deliveries.

### § 4 Prices and payment

The current price models of the advertising media Toccoi GbR at the time the order is placed apply to all payments. Fixed prices only apply if the price agreement in individual cases, e.g. B. contains neither a price increase possibility nor a time limit of the fixed price agreement due to an offer. The prices do not include the statutory sales tax. Shipping costs, installation, training and other ancillary services are not included in the price unless otherwise agreed. Additional services are to be remunerated separately. This applies in particular to additional expenses as a result of:

- the submission of data in non-digitized form,
- of necessary and reasonable use of third-party services,
- of effort for license management,

commissioned testing, research and legal reviews, and out-of-hours services.

If the customer is in arrears with payment, he must expect interest on arrears at a rate of 8% above the base interest rate. If the payment period is exceeded, interest on arrears will accrue even without a reminder. The customer must reckon with the fact that the advertising media Toccoi GbR first credits payments to the customer's older liabilities. If costs of legal action have already arisen, advertising media Toccoi & Toccoi GbR can first offset the customer's payments against these costs, then against the interest and finally against the main service. The advertising media Toccoi GbR demands an advance payment of 50% of the total order value for its performance and services, which must be paid by the customer before the start of the work. Excluded from this obligation are printing services, foil lettering or textile printing, for which the full amount has to be paid to advertising media Toccoi & Toccoi GbR as a prepayment.

Unless otherwise expressly agreed in writing, the remaining fee is due for payment immediately after invoicing. The invoices are payable without any deduction and free of charges. If the contractual partner (customer) refuses acceptance due to defective

performance or asserts warranty claims, the fee is nevertheless due for payment. In the case of orders that include several units, advertising media Toccoori & Toccoori GbR is entitled to invoice each individual service after delivery.

Dunning fees and the costs, including out-of-court legal intervention, shall be borne by the contractual partner. Insofar as delivered items become the property of the contractual partner, this only happens when the fee including ancillary costs has been paid in full.

### **§ 5 Dates, deadlines and impediments to performance**

Delivery dates or deadlines, which can be agreed as binding or non-binding, must be in writing. If the cooperation of the customer is required or agreed for the performance of the advertising media Toccoori GbR, the delivery time is extended by the time that the customer has not fulfilled this obligation. For delays caused by:

- a) Changes in customer requirements.
- b) Inadequate requirements in the application (hardware or software deficits), insofar as they were not known or should not have been known to advertising media Toccoori & Toccoori GbR.
- c) In the event of problems with third-party products, the delivery or service date is extended accordingly. Insofar as advertising media Toccoori & Toccoori GbR is unable to provide its contractual services or cannot provide them on time as a result of labor disputes, force majeure, delivery problems of third parties or other unavoidable circumstances for advertising media Toccoori & Toccoori GbR, advertising media Toccoori & Toccoori GbR will not have any adverse legal consequences. If changes or additions are requested by the customer that are not just of a minor extent, dates and deadlines based on the original subject matter of the contract lose their validity.

### **§ 6 Acceptance**

The customer will accept the services of advertising media Toccoori & Toccoori GbR immediately after completion and/or fulfillment. The services provided by advertising media Toccoori & Toccoori GbR are deemed to have been accepted if advertising media Toccoori & Toccoori GbR has notified the readiness for acceptance, pointing out the importance of the omission of the declaration of acceptance! Or furthermore:

- a) The customer then fails to declare acceptance within a period of time that allows him to identify significant errors during the required careful examination, but no later than after 7 working days, or refuses to do so, citing defects to be detailed to the best of his ability.
- b) The customer makes media content or parts thereof accessible to third parties without further examination or commissions advertising media Toccoori & Toccoori GbR to do so, insofar as non-acceptance is not due to a significant defect in the services provided by advertising media Toccoori & Toccoori GbR.

If the readiness for acceptance is not communicated, the point in time at which the customer should reasonably have been aware of the services shall apply instead of the point in time of the notification.

### **§ 7 Obligation to cooperate**

The customer will provide the necessary data, especially content to be entered for the service to be provided in a timely manner and in digital form. Insofar as advertising media Toccoori & Toccoori GbR provides the customer with drafts and/or test versions, stating a reasonable period of time for checking the correctness and completeness, the drafts and/or

test versions are deemed to have been approved after a period of 7 days, insofar as advertising media Toccoi & Toccoi GbR has not requested a correction receives. The customer is responsible for sufficient resources and information within the scope of his obligation to cooperate. Drafts and templates provided to the customer for viewing remain the property of advertising media Toccoi & Toccoi GbR until payment has been made.

The customer is exclusively and solely liable for his internet content such as text, sound, media and downloads. He is obliged to check his content for legal certainty and, if necessary, to commission an update. The advertising media Toccoi GbR is acquitted of the responsibility for website content and manufactured design and advertising content. As well as or insofar as errors or impairments of the functionality of the services of the advertising media Toccoi GbR such as a website, intranet, web hosting occur, which were not the fault of the advertising media Toccoi GbR, the latter is exempt from liability. The customer is responsible for the correctness of the commissioned content and for printing or display errors due to superficial corrections on the part of the customer. Since in such a case the customer has not instructed the advertising media Toccoi GbR to make the change, he cannot take recourse against design or display errors. The customer must also find out about the corresponding legal certainty with regard to the media content he has commissioned and instruct him on the current legal display variant.

## **§ 8 Rights of use**

The advertising media Toccoi GbR grants the customer an exclusive and transferrable right of use. If advertising media Toccoi & Toccoi GbR provides services for the design of internet presences, the purpose of use of the website and/or its components is not restricted in use. The customer acquires this right upon full payment of the services provided by advertising media Toccoi & Toccoi GbR. Upon request, the customer is obliged to provide advertising media Toccoi & Toccoi GbR with written information about the scope of use. When using the customer's templates, Werbemedien Toccoi GbR assumes that these are not encumbered with the rights of third parties or that the customer has the right of use required for the order. The advertising media Toccoi GbR also makes use of the rights of third parties (external license material) for the fulfillment of the services, which can only be transferred to the customer with restrictions, especially in terms of time.

The restricted transmission can lead, among other things, to the fact that third-party license material is no longer available or is available under significantly changed conditions over which advertising media Toccoi & Toccoi GbR has no influence. In this case, advertising media Toccoi & Toccoi GbR will do its best to use similar material. advertising media Toccoi & Toccoi GbR can charge the customer for the costs of third-party license material by presenting the licensor's invoice. There is no further identification of parts of the service to be rendered that are encumbered with the rights of third parties.

The customer may only use third-party license material in connection with and within the scope of the services provided by advertising media Toccoi & Toccoi GbR. If the licensor makes a claim against the advertising media Toccoi GbR because the third-party license material was not used accordingly, the customer of the advertising media Toccoi GbR is responsible for compensation for the resulting damage. The customer is obliged to inform advertising media Toccoi & Toccoi GbR of any illegal use of the license material of which he becomes aware, and to take legal action against an infringer of industrial property rights or to support advertising media Toccoi & Toccoi GbR in doing so. If the customer infringes rights of use through the services of advertising media Toccoi GbR z. B. known through warnings from third parties, the advertising media Toccoi GbR remains free from the demand made.

## § 9 Copyright notices and references

All copyrights and ancillary copyrights of the products and services created or distributed by advertising media Toccoi & Toccoi GbR are exclusively owned by Werbemedien Toccoi GbR and their representatives, and are partially or fully passed on to the contractual partner or customer by payment of a corresponding license fee written agreement transferable.

The customer grants the advertising media Toccoi GbR the right to integrate the logo of the advertising media Toccoi GbR and/or a text link in services rendered such as internet offers or design items such as a film, photo or design template of the customer and link these to each other and the website of the advertising media Toccoi GbR to link.

The customer will accept all protective notices such as copyright notices and other legal reservations unchanged.

This applies in particular to the references to the originator in the program code. advertising media Toccoi & Toccoi GbR reserves the right to use services such as designs and objects, even if they are based on customer templates, for presentation purposes, in particular to include the customer's website in a reference list for advertising purposes and to set appropriate links.

## § 10 Warranty

The advertising media Toccoi GbR will carry out the order carefully. It can also have the order carried out in whole or in part by third parties. If the contractual partner does not issue any written instructions, the advertising media Toccoi GbR is free with regard to the type of execution of the order. This applies in particular to the image and text interpretation, the design, the graphic arrangement and layout, the selection of the photo models, the video script, the recording location and the optical technical means used. Deviations from earlier deliveries do not constitute a defect as such. In order to completely satisfy the warranty, the customer will be provided with two independent correction runs to change and view the subject matter of the contract after the order has been placed and after the work has been completed. After acceptance of the order items/services, the advertising media Toccoi GbR is released from the warranty. With regard to the use and processing of products or services from third-party providers (e.g. foils, colors, applets, widgets, promotional items, etc.) for the fulfillment of the order by advertising media Toccoi & Toccoi GbR, the corresponding warranties of the third-party providers apply. In this case, the advertising media Toccoi GbR is released from the warranty and is not liable for third-party materials. Also excluded are server defects or failures, delivery problems from partners, etc., from which advertising media Toccoi & Toccoi GbR absolves itself.

Obvious defects that an average customer immediately notices must be reported by the customer to advertising media Toccoi & Toccoi GbR within 7 working days after delivery by means of a registered letter to advertising media Toccoi & Toccoi GbR. Defects that are not obvious must be reported to advertising media Toccoi & Toccoi GbR within 7 working days of detection. Otherwise, claims from these defects cannot be asserted.

The defects, in particular the error messages that have occurred, are to be reported in detail as far as possible (e.g. through error logs). The contractual partner bears the risk for all circumstances that are not related to the person of advertising media Toccoi & Toccoi GbR, such as the weather during outdoor recordings, timely provision of products and props, failure of models, travel impediments, technical server problems, availability of web content, event schedules, etc at the risk and expense of the contractual partner.

## § 11 Liability

The customer is exclusively and solely liable for his internet content such as text, sound, media and downloads. He is obliged to check his content for legal certainty and, if necessary, to commission an update. The advertising media Toccori GbR is not responsible for the content of the website.

Liability under the Product Liability Act remains unaffected. The advertising media Toccori GbR is liable for intentional or grossly negligent breaches of contract by the advertising media Toccori GbR. This does not apply to legal representatives and vicarious agents of the advertising media Toccori GbR. Liability for data loss is limited by the typical recovery effort. This is based on the damage that would have occurred if reasonable security measures had been taken (e.g. making backup copies). Advertising media Toccori & Toccori GbR is not liable for damage that was not expected to occur within the framework of this contract. Atypical, unforeseeable damage is therefore not covered by liability. In general, the advertising media Toccori GbR acquits itself of defects or defects caused by third parties. The advertising media Toccori GbR is not liable for warnings for customer content or violations of rights in relation to internet content. The advertising media Toccori GbR concludes contracts and agreements with the customer only with a general disclaimer. This means that the advertising media Toccori GbR works for the customer on instructions for an agreed fee and is not informed about the customer's operational decisions and processes. Work is only carried out in accordance with the contractual agreements. Despite the agreement, responsibility for the contractual goods of the contract holder lies solely and exclusively in the hands of the contract holder. There is no guarantee with regard to brute force attacks or hacker attacks.

## § 12 Customer's obligation to back up data

The customer is obliged to adequately protect himself against data loss. Since the new installation of software, but also the modification of the installed software, involves the risk of data loss, the customer is obliged to take precautions against data loss by means of a comprehensive data backup before reinstalling or modifying the installed software. The customer is obliged to archive and store the access data he has provided. Advertising media Toccori & Toccori GbR is not liable for unauthorized access by third parties.

## § 13 Data protection and secrecy

The advertising media Toccori GbR saves the data of the customer (e.g. address data, access code and bank details) required in the context of the contract initiation and processing. In particular, sensitive customer data is therefore protected against unauthorized access by our own security. The advertising media Toccori GbR is committed to the customer to secrecy, this includes the transfer of confidential data and competitor agreements. Both contracting parties will treat confidentially marked information that becomes known to them within the framework of the contract. Software-related documents such as documentation and above all the source code must be protected against unauthorized access. Advertising media Toccori & Toccori GbR points out that, given the current state of the art, it is not possible to prevent the reproduction of works, in particular graphics or other optical or acoustic design means that are placed online.

## § 14 Termination Maintenance contracts concluded

With advertising media Toccori & Toccori GbR have a basic term of 12 months. In the case of the concluded contracts, the customer can terminate the contract at the earliest 1 month before the end of the contract period, at the end of the contract. The contract is extended by 12 months if it is not canceled in writing 1 month before the end of the contract. This applies unless other written agreements exist. The right to terminate for good cause remains unaffected. In particular, in the event of a violation of § 7 - rights of use - and if the customer is more than one month in arrears with payment of the remuneration, advertising

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media Toccoi & Toccoi GbR can terminate the contract without notice. In the event of termination without notice by advertising media Toccoi & Toccoi GbR or early termination by the customer, the contractual partner is obliged to fulfill the contract and pay by the scheduled end of the contract with an expiry period. The remaining term of the concluded contract is due immediately upon termination and will be invoiced upon conclusion.

### **§ 15 License fee**

Unless otherwise expressly agreed in writing, if a license to use is granted, advertising media Toccoi & Toccoi GbR is entitled to a separate publication license fee in the agreed or reasonable amount according to the current prices. The publication license fee does not include sales tax at the statutory rate. Irrespective of legal claims, the following applies in the event of an infringement of copyright and/or ancillary copyrights to the articles that are the subject of the contract: The claims are due regardless of fault. In the event of an infringement of the right to the manufacturer's designation, the customer is entitled to at least an amount equivalent to the reasonable remuneration as immaterial damage, subject to additional financial damage. The right to information also applies to the right to removal.

### **§ 16 Notifications**

If the contractual partners communicate by electronic mail (e-mail), they recognize the unrestricted validity of the declarations of intent transmitted in this way in accordance with the following provisions. The e-mail must include the sender's name and e-mail address, tax identification number and the time of sending (date and time) and a rendering of the sender's name at the end of the message. Confidentiality is not guaranteed for data transmitted unencrypted on the Internet. At the request of the other party, each contractual partner provides a coordinated encryption system such as PGP or a corresponding certification key on its side.

An e-mail received within the framework of the above provisions shall be deemed to have originated from the other partner unless there is evidence to the contrary. The liability of the e-mail and thus the text form applies to all declarations that the usual contract processing entails. However, the text form is excluded in the case of termination, as well as declarations that are expressly requested in writing by a contractual partner that deviate from this agreement.

### **§ 17 Applicable law and place of performance**

The contractual partners agree on the application of German law with regard to all legal relationships arising from this contractual relationship. German law also applies to cross-border traffic, excluding the UN sales law. The Product Liability Act is not applicable; In any case, liability for damage other than personal injury is excluded if the contractual partner is an entrepreneur. Indemnifications and indemnities also include the costs of out-of-court legal defence. These general terms and conditions apply accordingly to articles and services manufactured by advertising media Toccoi & Toccoi GbR, regardless of the process or technology used. The place of jurisdiction for all mutual services under the contract is Aachen.

### **§ 18 Online shops of the advertising media Toccoi GbR**

Shop systems provided by the advertising media Toccoi GbR and their general terms and conditions apply as a supplement to these general terms and conditions in a valid form.

These general terms and conditions apply to articles and services manufactured to order by advertising media Toccoi & Toccoi GbR, online sales, regardless of the process or technology used.

Effective May 11, 2023

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