

General Terms and Conditions

1. General

The following General Terms and Conditions of Evernine GmbH (hereinafter the “Contractor”) apply for all offers, orders, supplies and services of the Contractor. They also apply when we provide our service in the knowledge of contradictory or deviating conditions.

General terms and conditions of the Customer are not part of the contract unless we have explicitly agreed to the application of such general terms and conditions.

The employees of Evernine GmbH are not authorized to conclude verbal ancillary agreements or to provide verbal assurances going beyond the content of the respective contract including these terms and conditions.

Any such ancillary agreements shall only be valid with the written consent of the Management.

2. Granting of the order, flat fee

All offers of Evernine GmbH are subject to change and non-binding.

The order is regarded as granted when the Contractor receives a written confirmation with specific reference to the offer, and the Contractor confirms this in written or in text form within one week of receipt of the offer.

In the event of non-fulfillment of a contract due to reasons for which the Customer is responsible, Evernine GmbH can charge for the actually incurred work, but at least 25 % of the order value, unless the Customer can prove that the damages incurred were lower.

3. Contracting implementation/project plan

Unless otherwise agreed, Evernine GmbH will draw up a project plan within four weeks of the order being granted showing the structure and the graphic-visual design and operationalization according to the requirements profile of the Customer as well as his obligations to cooperate.

The Customer must confirm the project plan or propose changes within three weeks. Evernine GmbH has the right to serve notice of termination on the contract if a confirmed version has not been reached within six weeks of submission of the project plan.

[As applicable: Deadlines established in the confirmed project plan are binding for both parties.]

4. Delivery conditions/cooperation obligations of the customer / reachability

4.1 Reachability

In the event of a booking of projects with One Voice Project Management, the reachability of the respective contact is restricted to office hours (Mon–Thur 9–18 hrs, Fri 9–16 hrs including when possible guaranteed response on the same day within 48 hours). During holiday times or in the case of illness, an alternative contact will be offered whose reachability must be individually agreed (i.e. responses not necessarily on the same working day). Reachabilities depend on the employment contracts of the One Voice project managers (generally full-time / stated office hours). Customers will be informed in the case of part-time situations.

4.2 Delivery conditions/cooperation obligations of the Customer

Compliance with the agreed deadlines requires the fulfillment of the contractual obligations of the Customer, in particular with reference to the provision of text, image, audio and video material and other content (in total: “materials”). If the provision of the customer materials is delayed, the delivery deadline of Evernine GmbH shall be extended by the same number of days as the scheduled delivery deadline for the materials is exceeded. Evernine GmbH is entitled to charge the Customer for these days of wasted deployment of staff (number of hours or days by which the delivery deadline of the materials is exceeded) in accordance with the agreement applicable at this time. In the event of default on the part of the Customer, Evernine GmbH has the right, after the fruitless expiry of a reasonable period of grace granted to the Customer in writing, to terminate the respective individual contract without notice. Evernine GmbH expressly reserves the right to assert a claim for any damages thus incurred.

The Customer is responsible for the procurement of the rights to text, print, picture, audio and video material unless it is agreed in writing that Evernine GmbH acquires the rights for individual materials. The Customer permits Evernine GmbH to duplicate and process all customer materials made available to the extent necessary for the purpose of the contract, and, in particular, collect them in a machine-readable form, store them electronically and digitalize them. The Customer provides an assurance that he holds the necessary rights of use for the customer materials for the purpose of this contract, and is authorized to transfer these rights, and that the use of the customer materials in accordance with the contract does not infringe upon the rights of any third party.

The Customer bears the sole obligation to ensure that the rights of third parties are not affected or infringed upon in connection with the materials provided by him and their use. If claims are brought against the Contractor due to the infringement of intellectual property rights or copyrights, the Customer shall exempt the Contractor from any costs arising from this.

The Customer guarantees that the customer materials provided are technically flawless, i.e. that they are suitable for processing in data-processing systems. Additional costs incurred due to the reworking of technically flawed materials shall be charged to the Customer if he expressly requests the reworking despite the additional costs, and Evernine GmbH is willing to do this.

Evernine GmbH can demand acceptance of defined service installments and interim results.

5. Amount and due date of remuneration

Supplies and services are made at the prices and conditions subject to the written order confirmation. The prices quoted therein are binding.

The quoted prices do not include the value-added tax applicable at the time of issuing the invoice. Insofar as nothing else is agreed, payments must be made without deductions within ten days of the invoice date. For the drawdown of services of Evernine GmbH that are not part of an offer calculation, the respectively valid price list of Evernine GmbH shall apply.

If the payment deadline is exceeded, notwithstanding other rights, Evernine GmbH is entitled to charge interest amounting to 3% over the respective discount rate of the Deutsche Bundesbank.

The Customer only has the right to withhold payments or to set off counterclaims if such counterclaims are undisputed or legally effective.

Evernine GmbH shall reserve the right of ownership to the supplied products up to full payment of the purchase price and fulfillment of all outstanding (balance) accounts, also in the future.

6. Liability

In the case of damages of any kind caused by the Contractor or his employees or legal representatives for whatever legal reason, the Contractor is only liable in the case of intent and gross negligence, culpable injury to life, body and health, infringement of substantial contractual obligations, fraudulent concealment of defects, within the framework of a quality and/or service life guarantee, in the case of defects, insofar as the Contractor is liable subject to the product liability act for personal injury and property damage to privately used items. In the case of infringement against substantial contractual obligations, the Contractor is liable in each case only for the foreseeable, typically occurring damages.

The Customer can only withdraw from the contract within the framework of the legal stipulations if the Contractor is responsible for the infringement of obligations on which the withdrawal is based.

7. Guarantee

In the case of material and legal defects, the Contractor shall provide a guarantee with the exclusion of all further claims and subject to the regulations in Section 6 and in Section 10 in accordance with the following conditions.

The Customer tests a work immediately on delivery, and accepts it on the basis of a written declaration within five days. If the supplied work does not correspond to the requirements agreed, or if it has other defects for which Evernine GmbH is responsible, the Customer shall inform Evernine GmbH of the defects in writing within five days. Evernine GmbH will immediately carry out the necessary improvements or eliminate the defects within a reasonable period of grace.

The work is regarded as accepted if Evernine GmbH has not received a written acceptance declaration or a written notice of defects within five days of delivery.

An insignificant reduction of the value or the suitability need not be taken into consideration. If the use according to the contract is impaired during the guarantee period, Evernine GmbH has the right to several attempts to eliminate the defect. If these attempts fail, the Customer can also demand a reduction of the fee or withdraw from the contract, but the latter only if the defect makes the use of the work or a significant part of it impossible, or restricts it to such an extent that commercial utilization is not feasible.

The Customer bears sole responsibility for the correctness of the content of the materials supplied by the Customer. The Contractor is explicitly not obliged to examine the provided materials for the suitability for fulfillment of the contract or their usability. To this extent Evernine GmbH assumes no liability in this regard.

The guarantee lapses if the Customer changes the program code unless the Customer can prove that the fault would have also occurred if the program code had not been changed.

There is no guarantee for defects in software of third parties based on the work that is used with the agreement of the Customer.

8. Limitation

All claims of the Contractor for whatever legal reasons shall be subject to statutory limitation after 12 months. In the case of claims due to deliberate or deceptive behavior as well as claims subject to the Product Liability Act or in the case of recourse against the supplier in accordance with Sections 478, 479 of the German Civil Code (BGB), the legal deadlines shall apply.

9. Content of the work in the case of print orders

The contractual quantity is regarded as fulfilled up to a deviation of 2 %. A deviation of more than 2 up to 5 % is regarded as minor. It only entitles the Customer to a pro rata reduction in the price, not to a new delivery.

The responsibility for the correctness of the content of the prints lies solely with the customer.

10. Usage rights, material defects and defects in the title

If the work of Evernine GmbH is subject to copyrights or other industrial property rights, Evernine GmbH grants the Customer the time-unlimited usage extending over the entire German-language area for all purposes of commercial communication. These rights are acquired in each case by the Customer on full payment of the remuneration due.

Insofar as development work of Evernine GmbH is adapted for other countries, Evernine GmbH shall receive a separate fee for this which shall be agreed in advance on a case-to-case basis.

If Evernine GmbH uses third parties to fulfill the contract, it will acquire their usage rights and transfer these to the same extent to the Customer. If, according to the order description, the acquisition of creative services of third parties is intended or unavoidable, Evernine GmbH will acquire the necessary rights and charge the license fees as third-party costs. If the Customer objects to the acquisition of rights, Evernine GmbH will refrain from acquiring the rights and inform the Customer which part of the order is thus rendered unworkable.

Work materials (data carriers, draft materials etc.) remain the property of Evernine GmbH. Evernine GmbH is entitled to apply a copyright notice in the usual size and shape. Evernine GmbH can include the Customer in its reference list.

11. Poaching protection

The Customer shall not attempt to recruit any current staff or any otherwise contractually obliged person at Evernine GmbH either directly or indirectly insofar as such persons are entrusted with work or services subject to Section 1 of these General Terms and Conditions.

This agreement applies from the start of the contract, and ends one year after termination of the contract.

In the event of an infringement, Evernine GmbH reserves the right to impose a contractual penalty of € 40,000.00 in each case.

12. Secrecy

Evernine GmbH is obliged to maintain secrecy regarding all business and trade secrets of the Customer and the customers of the Customer that become known to it in the course of its work for the Customer. This secrecy agreement continues after the end of the contractual relationship, and also applies to the Customer in relation to Evernine GmbH.

Documents that Evernine GmbH received confidentially in the course of its work for the Customer shall be kept carefully and protected against access by third parties. The same applies to the Customer in relation to Evernine GmbH.

13. Place of fulfillment and place of jurisdiction

Place of fulfillment for the works and services is the domicile of Evernine GmbH unless agreed otherwise in the respective contract. The order is subject exclusively to German law with exclusion of the UN Convention on Contracts for the International Sale of Goods as well as the conflict of law provisions of German international private law.

Place of jurisdiction is the domicile of Evernine GmbH.

14. Concluding provisions

In the event that individual provisions of these General Terms and Conditions prove invalid, this shall not affect the validity of the terms and conditions as a whole. The invalid provision shall be replaced by a new provision which comes as close as possible to the original legal and commercial purpose of the invalid provision. The parties will immediately initiate negotiations in this regard.