

# **General Terms and Conditions**

**Version: 1.0 (04.05.2023)**

## **1. Applicability; Conclusion of contract**

- 1.1 nexxar gmbh (hereinafter "nexxar") shall provide its services exclusively based on the following General Terms and Conditions (GTC). They apply to all legal relationships between nexxar and the Customer, even if they are not explicitly referred to.
- 1.2 Subsidiary agreements, reservations, amendments or supplements to these General Terms and Conditions of Business must be made in written form to be considered valid. This also applies to any waiver of this formal requirement.
- 1.3 Terms and conditions of the Customer, if any, shall not be accepted, unless explicitly agreed otherwise in written form on a case-by-case basis. On the basis thereof no other objection of nexxar to the Customer's GTC shall be required. If any provisions of these General Terms and Conditions are ineffective, the binding nature of the remaining provisions and the contracts concluded based on these provisions are not affected. The ineffective provision shall be replaced by an effective provision which comes as close as possible to the meaning and purpose of the ineffective one.
- 1.4 nexxar's offers and estimates shall be subject to change without notice, non-binding and valid for 14 days from the date of issue. Quotations and estimates are in Euro excl. 20% VAT, based on current labour and material costs. Prices are subject to change without notice.

## **2. Scope of services; Order processing; Customer's duties to co-operate**

- 2.1 The scope of the services to be rendered shall be based on the specifications of nexxar's agreement or nexxar's acknowledgement of order, and the briefing report. Subsequent modifications of the service content shall be subject to nexxar's written confirmation. When executing the order design flexibility within the framework specified by the customer is provided by nexxar.
- 2.2 It is not possible to transfer the agreed order volume for agency services, or even parts thereof, to third-party services (media agencies, media, etc.).
- 2.3 All services of nexxar (including but not limited to all preliminary designs, sketches, final artworks copies, coloured prints and electronic files) must be checked by the Customer and approved within three working days of receipt by the Customer in written form.
- 2.4 The Customer shall make all information and documents required for rendering the service to nexxar accessible in final form, structured and controlled on data carriers in a timely and complete manner. The Customer shall notify nexxar of all circumstances that are relevant to determine the order, even if they become known only within the course of execution of the order. The Customer shall bear all costs resulting from delayed or repeated work due to the Customer's incorrect, incomplete, or subsequently modified specifications. Any additional expenditure for data conversions will be invoiced time based.

2.5 In addition, the Customer is obliged to check all documents made available by them for the execution of the order (photos, logos, etc.) for potential copyrights, trademark rights, marks, or other rights of third parties (rights clearance). nexxar shall not be liable for an infringement of such rights of third parties by documents made available by the Customer. If nexxar is held liable for any infringement of such rights, the Customer shall indemnify and hold nexxar harmless and shall compensate nexxar for all inconveniences suffered due to third-party claims.

### **3. External services; Commissioning of third parties**

- 3.1 nexxar shall be entitled at its own discretion to render the services itself, to employ expert third parties as subcontractor [Erfüllungsgehilfen as defined by Section 1313a of the Austrian General Civil Code [ABGB]] and/or to commission a third party to render such services ("External Service").
- 3.2 Commissioning of third parties within the framework of an External Service shall be done either in nexxar's own name or in the name of the Customer. nexxar shall select the relevant third party with care and ensure that it is appropriately qualified.
- 3.3 As far as nexxar commissions necessary or agreed External Services, the respective contractors are not subcontractors (i.e. Erfüllungsgehilfen) of nexxar.

### **4. Deadlines**

- 4.1 Binding scheduling agreements are to be recorded in written form and confirmed by nexxar in written form. Agreed production timeframes are always to be understood after approval of the concept and after the complete handover of all materials in the agreed form by the Customer. If delays occur within this process, nexxar is no longer bound to the originally agreed on time frame.
- 4.2 If the delivery/service of nexxar is delayed for reasons for which nexxar is not responsible for, such as e.g. events of force majeure or other unforeseeable events that cannot be prevented by reasonable means, the service obligations shall be suspended for the duration and to the extent of the impediment and the deadlines shall be extended accordingly. If such delays last more than four weeks, the Customer and nexxar shall be entitled to withdraw from the contract.
- 4.3 If nexxar is in delay, the Customer may only withdraw from the contract after having granted nexxar a reasonable grace period of at least 14 days in written form and after said grace period has expired without effect. Claims for damages by the Customer due to non-performance or delay shall be excluded unless intent or gross negligence can be proven.

## 5. Early termination, Resignation

- 5.1 nexxar is entitled to terminate the contract due to important causes with immediate effect. Causes shall include but are not be limited to
- (a) provision of service becomes impossible due to reasons caused by the Customer or is further delayed after the granted grace period of 14 days;
  - (b) the Customer continues to violate essential contractual obligations, such as e.g. the obligation to pay a first installment or duties of cooperation, despite a written warning and having been granted a grace period of 14 days.
  - (c) legitimate concerns exist regarding the Customer's credit rating and, upon nexxar's request, the Customer fails to make advance payments or to fulfill suitable security prior to provision of the service by nexxar;
  - (d) bankruptcy or composition proceedings are instituted against the customer's assets or an application for the institution of such proceedings is rejected for lack of assets sufficient to cover costs, or if the customer ceases to make payments.
- 5.2 If annual contracts ("retainers") are agreed upon with the Customer, these agreements may only be terminated at the end of the contract term or the respective calendar year, subject to a notice period of three months.

## 6. Fees

- 6.1 Unless otherwise agreed upon nexxar is entitled to render account of any specific service fulfilled. nexxar shall be entitled to ask for installments to cover its expenses.
- 6.2 When a project is ordered, 33% of the order amount must be paid at confirmation of the order, further 33% at approval of design, and the remaining 34% at completion of the project. Should delays occur after delivery of the final version that are within the Customer's control, the final invoice will be issued by nexxar no later than three weeks after delivery. If there are significant delays in the implementation of the project that are within the Customer's control, nexxar is entitled to invoice further partial installments.
- 6.3 The fees shall be stated as net fees plus statutory value-added tax.
- 6.4 The individual offer states which corrections caused by nexxar are included in the agreed fee. It is agreed upon that these are text corrections or minimal layout corrections. Should the desired corrections exceed this scope (Change Request), nexxar will charge for these services time based. nexxar agrees to provide the Customer with a corresponding offer.
- 6.5 All services of nexxar which are not specifically covered by the agreed fees shall be paid for separately. If changes occur during the implementation of the project (Change Request) or the offered services (number of pages, graphics, ...) of more than 5%, nexxar shall charge for these services time based. nexxar agrees to submit a corresponding offer to the Customer.
- 6.6 Any corrections after completion of the project will be charged time based.
- 6.7 All cash expenses incurred by nexxar shall be reimbursed by the Customer.

- 6.8 On-site services (programming, training, kick-off, etc.) are charged according to the actual effort plus travel time. For travel distances of more than 50 km one-way, travel expenses will also be invoiced according to the official mileage allowance.
- 6.9 For all services by nexxar not carried out by the Customer for whatever reason, nexxar shall be entitled to the agreed remuneration. The provision of § 1168 ABGB is excluded.

## **7. Payment Deadlines, Due Date, Interest on Arrears**

- 7.1 The fee shall be due for payment immediately upon receipt of the invoice without any deductions unless special payment terms are agreed on in written form on a case-by-case basis. The same shall apply to all cash and other expenses charged.
- 7.2 In case of payment default of the Customer the statutory default interest rate applicable to business transactions shall be charged. In the case of payment default, the Customer is also obliged to reimburse nexxar the dunning and collection charges incurred to the extent they are necessary for the appropriate pursuit of the claim. This shall in any case include the costs of two dunning letters at the market fee plus those of one dunning letter of a lawyer instructed to demand payment. The assertion of further rights and claims remains unaffected.
- 7.3 In the event of the Customer's default of payment, nexxar may immediately call due all services and partial services rendered under any contract concluded with the Customer. Furthermore, nexxar is not obligated to provide further services until the invoice is fully paid. If payment in instalments was agreed upon, nexxar reserves itself the right to demand immediate payment of the entire unpaid debt in the event of instalments or ancillary claims not paid on time (forward loss).
- 7.4 The Customer is not entitled to set off claims of its own against claims of nexxar unless the Customer's claim has been recognised by nexxar in written form or when ascertained by a court.

## **8. Retention of title**

- 8.1 All services of nexxar and all rights of use shall remain the property of nexxar until full payment including all ancillary liabilities has been carried out.

## **9. Title and copyright**

- 9.1 nexxar shall retain title to all services of nexxar, including services in connection with presentations (e.g., suggestions, ideas, sketches, preliminary designs, scribbles, final drawings, concepts, slides), including parts thereof, as well as the individual workpieces and original designs and nexxar may demand at any time, in particular in case of termination of the contractual relationship, that they be returned.

By paying the fees the Customer shall acquire the right to use the services for the designated purpose agreed upon. Acquisition of rights to use and exploit nexxar's services shall, in any case, be subject to full payment of the fees charged by nexxar thereof.

- 9.2 Modifications and/or editing of nexxar's services, including but not limited to further development of these services by the Customer or third parties working for the Customer, shall only be permitted with the explicit consent of nexxar and the individual creator, to the extent that these services are protected by intellectual property rights of said creator (e.g. purchased stock material).
- 9.3 Use of nexxar's services beyond the originally agreed on purpose and scope of use shall be subject to nexxar's consent irrespective of whether such service is protected by intellectual property rights or not. In consideration thereof nexxar and the author are entitled to a separate reasonable fee.
- 9.4 In the course of designing websites or other commissioned works, nexxar shall also use stock material subject to licensing (photos, videos, music, etc.). To this material, the license terms of the respective provider shall apply exclusively.

## 10. Warranty

- 10.1 The Customer shall notify any defects immediately and in any case within three days after completion of the project (provision/publication) by nexxar and hidden defects not later than three days after they were identified in written form including a description of the defect; otherwise, the service shall be deemed approved. In this case the assertion of any warranty claims or claims for damages as well as the right to assert claims on account of defects shall be excluded.
- 10.2 In the case of a justified and timely notification of defects, the Customer shall be entitled to improvement or replacement of the delivery/service by nexxar. nexxar shall repair the defects within a reasonable period of time whereby the Customer shall enable nexxar to take all measures which are necessary to examine and repair the defects. nexxar shall be entitled to refuse improvement of the service if asked improvement is impossible to achieve or if nexxar has to incur disproportionately high efforts. If so, the Customer shall be entitled to cancel the contract or get a fee reduction as provided for by law. In the case of improvement, the Customer shall be responsible to carry out the transfer of the defective (physical) item at their own expense.
- 10.3 The Customer is also obliged to examine the service for its compliance with – including but not limited to – intellectual property rights such as competition law, trademark law, copyright law and/or administrative law. nexxar shall not be liable for contents if they were advised or approved by the Customer.
- 10.4 The warranty period is two months from completion (provision/publication) of the project. The right of recourse to nexxar as defined in Section 933 b (1) ABGB shall be forfeited one year after delivery/service. The Customer is not entitled to withhold payments on the ground of complaints. The presumption rule [Vermutungsregel] of Section 924 ABGB shall be excluded.

## **11. Liability and product liability**

- 11.1 nexxar shall be obligated to pay damages in all cases under consideration only in the event of intent or gross negligence.
- 11.2 nexxar is not liable for indirect damages, loss of profit, loss of interest, loss of savings, consequential and pecuniary damages, damages from claims of third parties as well as for the loss of data and programs and their recovery.
- 11.3 Any liability of nexxar for claims asserted on the ground of services rendered by nexxar for the Customer shall be explicitly excluded, provided that nexxar complied with its duty to inform or if it was unable to recognize such a duty, even due to slight negligence. nexxar is, in particular, not liable for costs of legal proceedings, lawyer's fees of the Customer, costs of publication of judgments or for claims for damages, if any, or other claims of third parties; the Customer shall fully indemnify nexxar in this case.
- 11.4 The liability of nexxar, regardless of its legal basis, is limited to the net order value per case of damage. Claims of the Customer for damages shall be forfeited six months after knowledge of the damage and in any case three years after nexxar's infringement.

## **12. Special provisions when providing web design, web consulting or software development services.**

- 12.1 The Customer acknowledges that any intervention in the programming codes, for example in the form of changes by the Customer or third parties, may impair the functionality. nexxar shall not be liable for such impairments. Any repair work shall be invoiced according to expenditure.
- 12.2 nexxar points out that the programs and websites created by nexxar are developed for the server environment of nexxar and may not or only partially be ported to systems of other providers. Coordination work with a provider will be invoiced based on time and material.
- 12.3 Ongoing and future security updates and patches as well as other software updates and maintenance of server-side software such as, but not limited to, operating system, frameworks, databases, programming languages, and content management system (CMS), as well as front-end software and libraries are only included in nexxar hosted reports for the duration of a current hosting agreement with the Customer. nexxar also has no duty to inform the Customer if it has received knowledge of available software or security updates (information duties arising from legal obligations such as data protection remain unaffected, of course). nexxar does not assume any warranty for third-party software (e.g. content management).
- 12.4 Unless otherwise agreed, the development shall be optimized for the most current browser versions of Microsoft Edge, Google Chrome, Mozilla Firefox and Apple Safari on the current operating system versions of Windows and macOS at the time of the development start. For mobile devices, we optimize for the latest Android version with Chrome and Safari in the latest iOS version. For older versions such as Internet Explorer or Windows 7 and other browsers and operating systems not listed here, we do not optimise in particular.

- 12.5 The choice of the programming language is incumbent upon nexxar. In this sense, nexxar does not guarantee that the chosen programming language can be further used by third parties or is supported by third parties, e.g. providers.
- 12.6 Web server access data as well as administrator rights for the CMS are generally not passed on to the Customer or third parties.
- 12.7 Source codes as well as raw material of video productions shall not be passed on without exception and shall remain the property of nexxar.

### **13. Data protection**

- 13.1 The Customer expressly agrees that nexxar may process and transmit the data disclosed by the Customer (name, address, e-mail) for the purpose of fulfilling the contract, supporting the client and publication as a reference on the homepage of nexxar and on social media channels (LinkedIn, Instagram, Facebook, Twitter). The Customer agrees to receive electronic mail (i.e. newsletters, event notices and seminar invitations). The consent to data processing can be revoked at any time by sending an email to [office@nexxar.com](mailto:office@nexxar.com).
- 13.2 The Customer is the responsible party under data protection law. The client shall verify the compliance with data protection law on its own behalf and for its own account and shall fully indemnify nexxar in data protection matters. The Customer is obligated to identify themselves in written form as a data protection authority within the scope of the project. This can be done in the imprint for web projects.

### **14. Applicable law**

- 14.1 The agreement and all mutual rights and duties resulting therefrom as well as any claims between nexxar and the Customer shall be subject to Austrian substantive law, and its conflicts of laws rules. UN Sales Law shall be excluded.

### **15. Place of performance and place of jurisdiction**

- 15.1 The place of performance shall be the registered office of nexxar. In the case that goods are shipped the risks shall pass to the Customer once nexxar has delivered the goods to the carrier chosen by it.
- 15.2 The agreed place of jurisdiction for all legal disputes arising between nexxar and the Customer in connection with this contractual relationship shall be the court having subject-matter jurisdiction for the registered office of nexxar. Notwithstanding the foregoing, nexxar shall be entitled to sue the Customer at their general place of jurisdiction.  
Errors, misprints and technical changes reserved.
- 15.3 The parties of this contract have agreed that the German version of the contract, its regulations and general terms and conditions shall be legally binding. The English version is only for informal and informative use. In case of discrepancy of the German and English version, the German version is applicable and shall be used for interpretation.