



BrainHive
Terms and Conditions
(T&C)

Terms & Conditions
BRAINHIVE CONSULTING GMBH
Subject of Contract

The following terms and conditions apply to all transactions between BRAINHIVE CONSULTING GMBH (BrainHive.de and BrainHive-Ethical-Marketing.com), hereafter referred to as "BrainHive" and his partner/s in accordance with the contract, hereinafter referred to as "client". Where the client requires different terms, such will be accepted by BrainHive only following separate and written recognition.

All agreements that are made between BrainHive and the client regarding the execution of an order must be agreed in writing. Changes, additions and collateral agreements must be made in writing. These terms also apply to all future business with the client, even if they are not explicitly agreed upon again.

BrainHive provides services in the areas of business writing, start-up consulting, marketing consulting and creation of audiovisual content for purposes of acquisition of funding and accomplishment of other business development objectives. The detailed description of the services follows from the proposals and correspondence as well as their facilities and performance specifications.

Elements of the Contract and Modification

The client's instructions are the basis for the delivery of work in addition to the project contract / offer. If the instructions are given by the client orally or by telephone, BrainHive forms a written statement about the content of the project instructions, which is given to clients within 5 business days of having received the verbal or telephone message at the latest. This instruction is a mandatory part of the contract unless the client modifies it within 5 business days.

Any changes and / or modifications to the contract and / or its components must be in writing. Additional costs shall be borne by the client.

Force majeure circumstances entitle BrainHive to postpone delivery of the work commissioned by the client for the duration of the respective circumstance and a reasonable start-up time. A claim for damages by the client against BrainHive shall not result from this. This applies even if deadlines and / or events important to the client cannot be complied with or take place as a result.

Copyright and Rights of Use

The client obtains the contractually agreed rights to use all of the products developed by BrainHive under the contract upon full payment of the fee for the agreed contract term and extent. This transfer of rights of use applies in all cases where the law permits such. In the absence of an explicit agreement the one made when assigning the work shall apply. Unless otherwise agreed, only the simple right of use shall be transferred. Rights to use of work that has not yet been paid for upon termination of the contract remain subject to arrangement made by BrainHive.

The services subject to contract are protected by international law as personal intellectual property under the Copyright Act. This agreement shall also be deemed valid if the threshold of originality required under the Copyright Act is not reached. Clients are given spatially and temporally unlimited rights to use the work upon full payment of the fee agreed.

Proposals and directives of clients shall not be seen as grounds to obtain right of use in and of themselves unless agreed in writing.

BrainHive is authorized to sign developed websites after consultation with the client in a reasonable and customary manner and publish the results of the work for purposes of self-promotion.

The transfer of granted usage rights to third parties and / or multiple uses, unless regulated in the first order/assignment, is permissible upon due payment of a fee and requires the approval BrainHive. BrainHive shall have the right to be informed about the scope of use of its products and work.

Compensation

Compensation shall be provided as agreed in the contract. Payments are, unless otherwise determined by contract, due within 14 days after invoicing without any deductions. If the payment is late BrainHive is entitled to obtain interest amounting to 5% above the applicable base rate without further notice. The right to claim further damages remains unaffected by this regulation. If the agreed services are carried out over an extended period, BrainHive can demand partial payment from the client for the partially completed work. These partial payments must not be such in a usable form for the client and are to be made available as the simple basis for further work on the part of BrainHive.

Upon changes or cancelation of orders, work and other similar occurrences by the client when / if changing the conditions for service provision, BrainHive shall be reimbursed for all the related costs and absolved of any liabilities to third parties.

All prices mentioned in quotations and orders and as a result due amounts are subject to the legal value added tax at the applicable rate.

Additional Services

Unplanned overhead costs will require mutual agreement and additional payment where applicable.

Delivery and Shipping

All delivery dates stated by BrainHive are non-binding unless a delivery date is expressly agreed in writing as binding. If the client requests changes or modifications to the order following receipt or if other circumstances making BrainHive's delivery impossible arise where BrainHive is not responsible for them, the delivery date will be postponed by an appropriate period of time.

Delivery by BrainHive is in principle carried out electronically via email or as download. If other specific ways of delivery are required by the client, BrainHive shall present the cost for purchases such as data carriers and the resulting extra time. BrainHive informs the client beforehand of the scope of the costs.

Acceptance of Services

The acceptance of the services of BrainHive by the client is in accordance with the international Commercial Code. If the client does not accept the services in writing or the acceptance cannot be established, which is the responsibility of the client, no transfer of usage rights takes place.

Client Responsibilities

The client provides BrainHive with all the information and documents required for the implementation of the project free of charge. All working documents are handled by BrainHive with care, protected from unauthorized access, only used for the development of the respective project and returned after project completion to the client.

Guarantees and Responsibility of BrainHive

The risk of the legal admissibility of the work developed by BrainHive is borne by the client. This is particularly effective in cases where the actions and measures violate competition laws, copyright and special advertising laws. BrainHive is obliged to refer to legal risks if he is aware of such in his field. The client frees BrainHive of responsibility of claims by third parties if BrainHive has acted at the explicit request of the client, even though he has informed the client of any concerns about the admissibility of the measures. BrainHive must inform the client of such concerns immediately following a written warning. If BrainHive finds an anti-trust regulation assessment by a qualified person or institution necessary, such shall be paid for by the client following a consultation with BrainHive as agreed.

BrainHive is not responsible for the verity of the information contained in the advertising materials on the products and the services of the client. BrainHive is also not liable for the patent, copyright and trademark protection or applicability of the ideas delivered under the assignment, suggestions, concepts and designs. Moreover, he is not liable for problems that occur during the project or after the fact with the site (server problems, incompatibility issues, ranking loss, security issues, etc.). Even with conscientious and careful work at all times, such issues arise irrespective of BrainHive's work. It is customary in the industry that service providers are absolved of liability in such cases.

The liability of the parties in accordance with this contract shall not be exclusive or limited in the following cases:

1. Death or personal injury caused with intent, their own negligence or the negligent behavior of agents, representatives or employees of the affected party;
2. Fraudulent misrepresentation; or
3. The statutory claims under the Product Liability Act.

Unless otherwise regulated, the total liability of BrainHive as an essential contractual obligation (cardinal obligation) is limited insofar as BrainHive is guilty and in case of slight negligence to covering the predictable, typically occurring damages.

Unless otherwise regulated, the total liability of BrainHive arising from other contractual violations, impermissible actions, negligence, pre-contractual or other commitments (where this is not fraudulent misrepresentation) or due to other claims arising from or in connection with the contractual deliveries and services and the operation of software shall be limited to the amount of EUR 5,000.

Further liability for damages as provided in the preceding liability regulations - regardless of the legal nature of the claim asserted - is excluded. This is especially true with regard to claims for damages from culpa in contrahendo (fault in conclusion of a contract), other breaches of duty or tort claims for property damage pursuant to international Civil Code.

The liability for the explicitly agreed quality or for explicitly stated guarantees is not limited by the above provisions if the expressly agreed quality protects the client from damage.

In the event of demands on the part of BrainHives to be exempt from warranty or liability, it may be appropriate to consider contributory negligence by the client, particularly when there were inadequate error messages or insufficient data backup. Insufficient data backup exists in particular if the client has failed to ensure adequate security measures against external hazards, especially against computer viruses and other phenomena, which pose a risk to some data or an entire database.

Collecting Societies

When applicable, the client agrees to transfer any applicable fees to collecting societies such as the PRS. If these fees are owed to BrainHive the client agrees to make payment upon receiving proof. This can be done even after the termination of the contract.

When applicable, the client is informed that an artist's social contribution (KSA) is payable to the Artists' social security benefits office (KSK) upon procurement of a service in the artistic, conceptual and advertising consultancy field from a resident of Germany who is a non-legal entity. This fee is to be paid by the client and not charged to BrainHive. The client is responsible for compliance with the registration and filing regulations.

Working documents and electronic data

All working documents, electronic data and records that are produced as part of the order preparation by BrainHive shall remain with BrainHive. The publication of these documents and data cannot be required by the client. BrainHive shall provide the agreed service in exchange for the agreed fee, but not work leading to this result in the form of sketches, drafts, production data, etc.

Media Planning and Organization

BrainHive performs projects in the area of media planning to the best of his knowledge and belief based on the available documentation of the media and generally available market research data. He does not guarantee the client industrial or commercial success thereafter.

BrainHive must consider and inform the client of all applicable reductions, special rates and discounts in the media circuit. In case of extensive media services BrainHive is entitled to bill the client for a certain amount of external costs as agreed and make an arrangement with the respective media after receipt. BrainHive shall not bear the cost arising from any conflict or misunderstanding due to delayed receipt of payment. No claim for damages shall be made against BrainHive by the client in such cases.

Confidentiality and Privacy

BrainHive holds the time-unlimited obligation to keep all the information designated as classified or business and trade secrets of the client known to him confidential. Disclosure to third parties that are unrelated to the client's project may only take place with the written consent of the client. All client's specific and personal data are collected, processed and used in accordance with the relevant legislation on the protection of personal data for the purpose of project execution, to protect legitimate business interests and with view to advice and support of the client as well as client loyalty.

BrainHive may disclose in his advertising materials to third parties that he has entered into a contractual relationship with the customer and is providing the services specified in the contract. Neither party of this contract shall disclose details on the contract terms to third parties.

Both parties agree to maintain secrecy from third parties in terms of company affairs emerging due to the abovementioned measures.

1. BrainHive assures the client confidentiality of all data provided to him.
2. BrainHive guarantees by means of appropriate technical and organizational measures that unauthorized third parties will have neither insight nor access to the "internal" data sets.

Modifications to the Terms and Conditions

BrainHive is entitled to change these terms in a reasonable manner and way and adapt them to legislative amendments. The client must be notified of this in writing by letter, fax or e-mail and through the publication of the updated Terms and Conditions on the website of BrainHive. If the client does not object to the changes within a period of three weeks, his behavior will be considered as acceptance of the new terms and conditions that thus become valid on a date determined by BrainHive.

Disputes

If a dispute arises in the course of or after completion of an order regarding the commissioned project, the parties must undergo extra-judicial dispute resolution before proceeding to judicial proceedings.

For disputes on issues of quality assessment or remuneration, external reports must be prepared to achieve an amicable agreement, where possible. The costs therein will be shared by the client and BrainHive.

Final Provisions

The client shall not be permitted to transfer claims pertaining to the contract. One-off or right of retention by the client is permitted only with recognized or legally established counterclaims.

If any provision of these terms and conditions becomes wholly or partially null and void or loses its validity on a later date, the validity of the remaining provisions shall not be affected. The nullified provision shall be modified by way of changes to the contract in terms of a provision which comes closest to that, which the parties would have wanted if they had been aware of the null and void provision.

This contract is ex post factor / supplement to all services provided by BrainHive if these services had been provided prior to the client's agreement with the currently effective General Terms and Conditions.

By accepting the relevant BrainHive offer the client confirms that he has understood and accepted the current 4-page Contract Terms and Conditions.