

# General Terms and Conditions

of "Brilliant Voice®" Torben Rausch & Friends GbR (private partnership)  
(Advertising, Recruitment & Procurement Services)

## I. Scope

1. The following General Terms and Conditions apply for all contracts, deliveries and other services, including recruitment, procurement and advisory services, provided that they have not been altered or excluded with the express written approval of Brilliant Voice®.
2. The general terms and conditions of customers, voice artists or Principals of Brilliant Voice® are excluded from any contract entered into by Brilliant Voice®, even if they have not been expressly objected to by Brilliant Voice®.

## II. Tender and Conclusion of Contract

1. Tenders shall always be nonbinding, and contracts and other agreements shall only become binding if confirmed in writing by Brilliant Voice®. This applies in particular for agreements on the type and extent of exploitation rights to be transferred to the Principal or customer.
2. Materials and documents included in tenders such as manuscripts, drafts or demo recordings may only be used for the purpose of reviewing the advertising services offered by Brilliant Voice® and must be immediately returned to Brilliant Voice® on request.
3. When placing an order the Principal shall identify the advertiser and specify the product in question as well as the area of application and duration of use of the production or service. Changes to this must be communicated to Brilliant Voice® immediately.

## III. Copyright and Exploitation Rights

1. Every order placed with Brilliant Voice® shall be deemed a copyright contract for services which is aimed at the transfer of utilisation and exploitation rights to the advertising productions and advertising services provided by Brilliant Voice®. Utilisation and exploitation rights granted by Brilliant Voice® to productions and services such as radio, audio or TV productions, advertising or infotainment events or other individual services shall only pass to the Principal to the extent, for the time period and for the purpose agreed upon.
2. All drafts and completed productions shall be subject to the German Copyright Law. The provisions of the German Copyright Law (UrhG) shall also apply in cases where the degree of uniqueness required by § 2 UrhG is not reached. Proposals or other contributions made by the Principal shall not result in a reduced remuneration.
3. Neither the placement of an order nor the payment for an ordered advertising production or for advertising services shall establish exclusive rights or a prohibition to compete to the detriment of Brilliant Voice®. Exceptions to this must be expressly laid down in a separate written agreement. Save for such exceptions Brilliant Voice® shall be entitled to utilise their advertising productions and advertising services for other purposes after expiration of the Principal's terminable exploitation rights, provided this does not conflict with the Principal's personal rights or ancillary copyrights.
4. The utilisation and exploitation rights shall not pass to the Principal until the remuneration agreed upon has been paid in full. Aside from this Brilliant Voice® shall be entitled to forbid the Principal to make further use of their utilisation and exploitation rights to advertising productions or advertising services rendered by Brilliant Voice® with immediate effect if the Principal is in arrears with payments owed in connection with business dealings with Brilliant Voice® or with a voice artist or company recruited by Brilliant Voice® by more than 20 days.
5. Brilliant Voice® shall be entitled to make use of productions or services which came about by order of a customer for their own advertising purposes free of charge, at any time, at any place and in any media. In this case Brilliant Voice® shall be entitled to quote the name of the Principal or voice artist for this purpose.

## IV. Extent of the Principal's Exploitation and Utilisation Rights in Detail – Principal's Rights and Obligations in Exploitation

1. *Corporate films and corporate radio productions* within the meaning of these General Terms and Conditions and of contracts entered into by Brilliant Voice® are image films, product presentations, sales videos, in-store radio productions, educational and documentary films, training videos, technical films and other similar films that are not usually used as films for

radio, TV or cinema advertising or as advertising spots in these mass media. Corporate films and voice recordings therefrom may not be used for any purpose other than that agreed upon or presented to any other than the audience defined in the contract. In particular they must not be presented or used for advertising purposes in a mass medium. Any deviation from this must be laid down in a separate written agreement. In this case the present General Terms and Conditions shall apply accordingly for broadcasting and distribution rights for radio, TV and cinema advertising, especially advertising spots.

2. The following exploitation and utilisation rules shall apply for radio, TV and cinema advertising and advertising spots that are suitable or intended for presentation in similar mass media.

a) Drafts (*layouts*) are intended to aid the Principal in deciding whether they want to use a spot designed according to the layout. Advertising spots (*spots*) are ready-to-use radio, TV or cinema productions which are suitable for broadcasting or presentation, whether directly or after adaptation to the selected mass medium, and have been approved for this by Brilliant Voice® and the Principal. If the spot is broadcast or presented with the Principal's knowing and according to his wish, this will be taken to imply his approval of the layout as conforming to the contract and approval for release.

b) The Principal shall be entitled to use layouts or voice recordings produced or put at his disposal by Brilliant Voice® for presentations and market tests and to extract whatever motives he might need from the voice material. However, layouts that have not been approved for release by Brilliant Voice® may neither be broadcast or presented nor made available to the wider public in any other way, regardless for what purpose. This shall also apply for parts of the layout.

c) The Principal may have advertising spots broadcast or presented via the medium and within the region agreed upon over a period of 12 months starting from their approval for release by Brilliant Voice®, though for no longer than 12 months after the release. Unless the Principal specifies a broadcasting or presentation area in the contract, usage will be assumed to be regional or according to the Principal's typical activities. The Principal must review this at latest on receipt of the invoice and, if the intended usage deviates from the broadcasting or presentation areas given in the invoice, must immediately inform Brilliant Voice® accordingly. This review must be done on the basis of Brilliant Voice®'s current price list.

If the broadcasting area is agreed to be the German Federal Republic, the Principal's right to broadcast will extend to broadcasting channels that are operated from Germany but can be received throughout Europe. If other countries are included in the broadcasting area specified in the contract, the above provision on the decisiveness of the broadcasting company's location shall apply accordingly.

d) The Principal shall not be entitled to use a spot or part of a spot produced by Brilliant Voice® for producing another or a new spot or to use it in another medium or with the use of new media such as the Internet or other multimedia applications etc. without permission by Brilliant Voice® to do so. Such permission shall be subject to an additional exploitation fee. This shall also apply in cases where corporate films or corporate radio spots, within the meaning of the present General Terms and Conditions, are broadcast or presented to the public via a medium, or a new medium, other than those agreed upon.

3. Television contributions, television and radio presentations and moderation services for public events shall be provided by Brilliant Voice® on the basis of individual agreements with the Principal. This shall also apply for contributions to the production of videos, CD ROMs and multimedia applications that are to be sold or used for advertising purposes. If no individual agreement is made or if the individual agreement contains no ruling on the broadcasting or distribution rights granted to the Principal, the provisions laid down above with regard to advertising spots shall apply. Aside from this the Principal undertakes not to made audio or picture recordings of moderated programmes or events available to the wider public or broadcast such recordings via media.

4. The Principal must inform Brilliant Voice® whenever an advertising production created by Brilliant Voice® is to be released, be it in whole or in part or in its original or an edited version. This obligation to inform shall apply for the release via the medium originally agreed upon as well as for the release via another or a new medium; it shall further apply for the release in a new area or for the re-release following the expiration of the agreed time period. If the Principal fails to inform Brilliant Voice® prior to the release they must do so instead within twelve days after the release.

5. If the Principal is a registered trader, and if in violation of these General Terms and

Conditions they present or use voiceover work, layouts or spots beyond the scope agreed upon in this contract without a contractual basis or without permission by Brilliant Voice® or without informing Brilliant Voice® in good time as provided in Clause 4 above, they shall be liable to a contractual penalty in the amount of four times the exploitation fee originally agreed upon and without recourse to denial of continuation of offence. The Principal shall also be liable for acts of dissemination and exploitation by third parties who became involved in the production through the Principal's initiative.

## **V. Recruitment of Voice Artists and Provision of Services**

1. When Brilliant Voice® recruits an external voice artist he/she and the Principal shall make a separate contract. This shall have no effect on the Principal's obligation to provide information to Brilliant Voice®. Unless stated or agreed otherwise the current price list of Brilliant Voice® shall also apply for the recruitment of external voice artists. The price lists can be viewed at URL <http://www.brilliantvoice.com>. Brilliant Voice® shall not be held liable for defaults or breaches of contract on the part of the recruited voice artist or the Principal. Furthermore, Brilliant Voice® can give no guarantee that the recruited voice artist or the product delivered by the recruited voice artist meets the Principal's requirements and expectations. Changes and corrections to voice recordings can only be made free of charge during the agreed recording session time. Changes and corrections that are found necessary at a later time shall be charged in any case. If Brilliant Voice® make their studio facilities available to a voice artist, this service shall be governed by a separate contract.

2. The Principal must bear any charges that may fall due to the German Artists' Social Security Insurance. If the Principal is a company which is exempt from payments to the German Artists' Social Security Insurance, they must inform Brilliant Voice® accordingly before placing an order. In this case Brilliant Voice® shall include the due charges in their invoice to the Principal and pass them on to the German Artists' Social Security Insurance.

3. The purpose of contracts between Brilliant Voice® and voice artists is the procurement of orders. Brilliant Voice® is under no obligation to actually procure orders.

4. Brilliant Voice® acts exclusively as agent between the voice artist and the Principal. A legally valid contract must therefore always be made between the voice artist and the Principal, even if Brilliant Voice® participates in the negotiations, conclusion of the contract, execution and settlement. In cooperating with either of the contracting parties Brilliant Voice® shall therefore never act in their own name but rather solely on behalf of that contractual party.

5. If an order is successfully procured, Brilliant Voice® shall charge the voice artist a commission. Unless agreed otherwise the commission shall be 20 per cent of the entire order value (including studio rental charges, travel costs and other ancillary costs) apportionable to the voice artist.

6. Brilliant Voice® shall not be liable for breaches of contract on the part of the Principal (delay of payment, late cancellation, violations of copyright or exploitation rights etc.). The voice artist must immediately inform Brilliant Voice® of any breaches of contract on the part of the Principal. If contrary to previous understandings and after exhaustion of the available legal options (cancellation, rebooking) a contract between the voice artist and the Principal does not come about after all, Brilliant Voice® shall charge no commission.

7. In no case shall there be an employment relationship between the voice artist and Brilliant Voice® within the meaning of the German National Insurance Law. It is the express will of the voice artist to act independently as a freelancer or contractor. The voice artist declares that he/she will pay any taxes due on earnings from voiceover work he/she contracts through the agency of Brilliant Voice®. He/She has informed the fiscal office of his/her occupation in this field. The voice artist is wholly responsible for paying any due levies, charges and taxes. If Brilliant Voice® is the Principal and a contract is thus concluded between the voice artist and Brilliant Voice®, the artist shall agree that he/she shall receive his/her agreed remuneration after Brilliant Voice® has received payment from the customer.

8. Brilliant Voice® shall negotiate the voice artist's remuneration on his/her behalf and order. The voice artist is entitled to decline orders. In accepting an order he/she also accepts the agreed terms and conditions and assumes responsibility for carrying it out in a smooth and professional manner. The voice artist must keep appointments with the Principal.

The voice artist undertakes not to solicit work from customers by whom he/she has been booked through the agency of Brilliant Voice®. If a customer with whom the voice artist has cooperated in the past through the agency of Brilliant Voice® proposes a contract not through Brilliant Voice® but directly to him/her, he/she shall inform Brilliant Voice® of this immediately. In this case too the voice artist shall be liable to pay a commission.

9. Brilliant Voice® shall make out an invoice to the Principal on behalf of the voice artist for the services booked, receive the payment and pass it on to the voice artist. Brilliant Voice® shall act solely as intermediary in such transactions. These shall in no way establish payment obligations on the part of Brilliant Voice®. Payments to the voice artist shall be made at the earliest when payment has been received in full from the Principal. If the Principal pays only a part of the due amount or if Brilliant Voice® is required to pay additional bank charges for the Principal's payment, the voice artist shall accordingly receive only a part of the amount owed to him/her. Brilliant Voice® is entitled to offset any moneys owed to them by the voice artist against payments owed to the voice artist. The voice artist shall receive an invoice for any such moneys owed. If the voice artist is domiciled abroad, he/she shall bear any costs that may arise through foreign bank transfers. Brilliant Voice® undertakes to send out reminders and warnings in the event that the Principal fails to meet their payment obligations. Unless agreed otherwise it shall be up to the voice artist to take further legal action. The costs of judicial (or any other means of) enforcement of claims shall be borne by the voice artist.

10. The voice artist undertakes to make only truthful statements to Brilliant Voice®. Brilliant Voice® shall be entitled to publish freely, pass on and reproduce all data, photos and files which are sent to them by the voice artist in whatever form for the purpose of advertising in any media, including the Internet, and to advertise thus the services of Brilliant Voice® and the voice artist. The voice artist undertakes not to send any data or files (including audio files and photos) to Brilliant Voice® over which he/she does not have full rights of use (in particular copyright and ancillary copyright) or which encroach on the rights of a third party or infringe laws. In sending data, files or other information to Brilliant Voice® the voice artist declares that he/she is either himself/herself the originator or is fully entitled to distribute, publish, edit and reproduce the material at any time and in any place. The voice artist shall hold Brilliant Voice® safe and harmless from any claims of third parties on account of violations of the law or presumed violations of the law in connection with files sent to Brilliant Voice®. The voice artist must bear all costs arising in this connection, including costs of legal representation that may become necessary, even in the event of self-serving declarations. Brilliant Voice® shall not be liable for any misuse by third parties of data or files belonging to the voice artist. The voice artist undertakes to inform Brilliant Voice® of any change to data relating to himself/herself which he/she has disclosed to Brilliant Voice®. This shall also apply in cases where there has been a change in the rights of use to files that were sent to Brilliant Voice®.

11. The voice artist undertakes to act loyally towards Brilliant Voice®. Business secrets must be treated confidentially; this shall also apply after the cooperation has ended. The voice artist is in particular forbidden to disclose to third parties names and data concerning customers whom the voice artist has come to know about through Brilliant Voice®.

12. Brilliant Voice® shall be entitled to terminate the contract with the voice artist at any time and with immediate effect without stating reasons. Overpaid contributions shall be refunded minus costs accrued.

## **VI. Advertising Productions**

1. Brilliant Voice® shall create advertising productions based on the Principal's specifications. Texts sent by the Principal for production purposes shall be considered approved. Texts prepared by Brilliant Voice® according to the Principal's specifications require the Principal's approval by authorised signature before the start of production. Brilliant Voice® shall not be liable for errors in texts sent in or approved by the Principal.

2. The customer must review advertising productions created by Brilliant Voice® immediately on receipt and confirm in writing that they have been received and are fit for presentation and free of errors. Complaints relating to advertising productions created by Brilliant Voice® must be communicated immediately upon receipt of the production.

3. Brilliant Voice® shall deliver productions by email, via Internet or post or through another delivery service. The costs of this shall be borne by the Principal. Brilliant Voice® shall not be liable for damage to or late delivery of the consignment, i.e. neither for direct damages nor for consequential damages or losses.

## **VII. Remuneration**

1. The amount of remuneration in an individual case shall be determined primarily by individual written agreements between the parties or by the order confirmation sent by Brilliant Voice®. Verbal agreements shall only be valid if they have been confirmed by Brilliant Voice® in writing. In the absence of a written agreement or order confirmation giving the amount of remuneration, or if additional contractual services are performed in the course of processing an order, the amount of remuneration will be determined by the price list of Brilliant Voice® that was current at the commencement of order processing and which can be asked for at any time.
2. Draft and layout work must be paid for as a matter of principle even if it does not lead to the broadcasting of a spot. In the event of a broadcast or presentation an exploitation fee shall be charged in addition to the layout fee. If the Principal fails to meet an obligation to provide information pursuant to Section IV Clause 4 of the General Terms and Conditions, they shall be liable to pay, in addition to the exploitation fee, 10% interest per year for a period starting twelve days after the release (or re-release) which established the basis for remuneration and ending on the date of the invoice made out by Brilliant Voice® but ending no later than the date on which the information owed pursuant to Section IV Clause 4 is received. The right to demand interest on arrears in the event of a delay of payment shall remain unaffected by this.
3. If the Principal cancels a production appointment or if they fail to keep a production appointment without due notice of this, the Principal must pay Brilliant Voice® the agreed remuneration minus any expenses saved. In this case Brilliant Voice® may charge a flat amount of 40% of the agreed remuneration unless the Principal proves that the expenses saved were higher. A production appointment on a working day shall be deemed cancelled with due notice if it is cancelled at the latest 24 hours before the start of the appointment; a later cancellation will only be deemed made with due notice if the Principal had to cancel the production appointment for reasons unrelated to themselves and it was not possible to give earlier notice.
4. If Brilliant Voice® fails to keep an agreed production appointment due to illness on the part of the voice talent or of the designated employee or the recruited voice artist or for another reason unrelated to the voice talent or to the designated employee or the recruited voice artist (analogously to § 616 of the German Civil Code), Brilliant Voice® shall not be liable for any resulting damage or costs. This shall also apply in the event that Brilliant Voice® is prevented from keeping the production appointment for other reasons unrelated to themselves.
5. The agreed remuneration shall be excluding the legally required sales tax in the amount legally required in the individual case. Payment must be made within 20 days of the invoice date such that the invoice amount becomes available at the latest on the due date.
6. Counterclaims that are contested by Brilliant Voice® and are not legally effective may not be set off against payments owed to Brilliant Voice®. All claims to a right of retention on account of counterclaims that are contested or not legally effective shall be excluded unless such counterclaims originate from the same legal relationship.

## **VIII. Liability**

1. Brilliant Voice® shall not be liable for the content of the productions. To this extent Brilliant Voice® shall act exclusively according to the instructions and in the interest of the Principal and shall have no control over the content of the productions. Brilliant Voice® shall therefore not be liable for any legal consequences of an advertising production whose content and form have been specified by the Principal, including consequences with regard to competition law, copyright law or trademark law. This shall apply in relation to the Principal as well as in relation to third parties. It shall also apply for productions to which Brilliant Voice® has contributed more than only its advertising services or which have been directed by Brilliant Voice®.
2. Any liability on the part of Brilliant Voice® for the violation of secondary contractual obligations, negligence in contracting or for offences relating to tort law or industrial property law shall be excluded save for cases of intent or gross negligence on the part of the proprietor of Brilliant Voice® or one of his vicarious agents.

## **IX. Data Privacy / Electronic Business Transactions**

1. Brilliant Voice® shall treat data of customers and voice artists confidentially and shall only make them available to third parties to the extent permissible under data protection law or permitted by the Principal or the voice artist. Brilliant Voice® advises that their customers' and voice artists' data will be subject to electronic processing.

2. Brilliant Voice® uses electronic media (Internet, email) to carry on their business. This also applies for invoices, credit notes and reminders. Customers and voice artists shall have access to their personal data via their user name and password. Passwords may not be passed on to third parties. Brilliant Voice® shall not be liable for damages resulting from the misuse or manipulation of data or files that are made available on the Internet pages of Brilliant Voice®.

## **X. Final Provisions**

1. The place of fulfilment of the parties' mutual contractual obligations shall be Berlin. Customers are required to make payments to the domicile of Brilliant Voice®, in deviation from the provisions of § 270 of the German Civil Code. If non-cash payment has been agreed on, the risk of timely receipt shall rest with the Principal.

2. To the extent that the Principal is a registered trader, a corporate body or a special public asset, the legal venue in the event of legal disputes shall be Berlin.

3. The legal relationship between the contracting parties, including the present General Terms and Conditions, shall be governed entirely by the laws of the German Federal Republic.

4. If any clause of the above General Terms and Conditions or any other contractual provision contained in any other agreement between the parties should be or become ineffective, this shall have no effect on the legal validity of the remaining provisions or agreements. In this case the parties shall undertake to replace the ineffective provision by one that most closely approximates the economic intent of the ineffective provision.

Berlin, 1 June 2009