



# GENERAL TERMS AND CONDITIONS

## LEADING SWISS AGENCIES

## **1. Scope**

These General Terms and Conditions (GTC) govern the relationship between you as our client (Client) and us [●] as an agency (Agency) (Agency and Client, the Parties).

The Agency's services and their scope are agreed and defined in an individual contract with the Client (Individual Contract or Individual Contracts). These GTC are a supplementary component of the Individual Contracts.

In the event of contradictions between these GTC and Individual Contracts, the contradictory provisions of the Individual Contracts shall take precedence. The invalidation of specific provisions of these GTC by deviating provisions in Individual Contracts shall not affect the validity of the remaining GTC provisions.

## **2. Conclusion of contract**

An Individual Contract shall become legally effective when the Client asks the Agency (generally with reference to the quotation) to provide certain services and the Agency confirms its agreement in writing or by e-mail (order confirmation). By concluding the Individual Contract, the Client declares their acceptance of these GTC.

A quotation is a non-binding estimate prepared to the best of our knowledge and belief of the cost of the services requested by the Client. The precise scope of the services, any deliverables and the costs will only be defined in a binding form in the Individual Contract.

The quotation shall be valid for a period of three months from the date of first issue. Subsequent price adjustments remain reserved but will be communicated to the Client in advance.

If the scope of services has not been sufficiently defined at the time the quotation is prepared, the Agency will support the Client in defining the specific scope. The related support and consulting services constitute a contractual relationship and must be remunerated separately at cost in accordance with the conditions applicable at the time the services are provided, unless other arrangements are agreed prior to the start of these services.

## **3. Subject of the contract**

The Agency's services and their scope are defined in the Individual Contracts between the Client and the Agency.

## **4. Client relationship**

The Individual Contract shall be concluded exclusively between the Client and the Agency. The Individual Contract creates rights and obligations exclusively between the Client and the Agency. The Agency's obligations under the Individual Contract apply only in respect of the Client. The Client alone may rely on the Agency's advice and enforce the provisions of the Individual Contract.

## **5. Third parties**

The Agency may involve third parties (media, suppliers, freelancers, marketers, etc.) working as subcontractors in connection with the Individual Contract. The Agency may also engage third parties on the Client's behalf.

Before engaging a third party on the Client's behalf that results in significant costs, the Agency shall discuss and agree this with the Client. The contractual relationship then exists directly between the Client and the third party.

Unless otherwise agreed, the invoices of subcontracted third parties shall be forwarded

directly to the Client for payment and the Client shall be obliged to pay them.

The Agency's liability towards the Client for errors and omissions on the part of subcontracted third parties shall be excluded to the extent permitted by law.

The Agency may transfer the Individual Contract together with all rights and obligations to companies that are controlled by it or under joint control (without the Client's consent).

#### **6. Instructions / amendments to the contract**

The instructions required for the performance of the contract (including amendments to the contract) may be issued by the Client in writing or verbally. Where verbal instructions are issued, the Client shall be required to confirm these in writing without delay.

The Client acknowledges and agrees that instructions resulting in an amendment to the Individual Contract may lead to changes in prices and/or deadlines. The Agency shall inform the Client of any amendments to the contract (including changes in prices and/or deadlines) upon receipt of written instructions or confirmation.

If the Client wishes to restrict the group of persons authorised to issue instructions to certain individuals, they must communicate this to the Agency in writing. Otherwise, the Agency shall be entitled to assume that all Client staff (including any auxiliary persons) are authorised to issue instructions.

#### **7. Fees**

The Agency's services and terms of payment shall be defined exclusively in the Individual Contract.

#### **8. Use of work results**

Unless specified otherwise in the Individual Contract, the Agency shall grant the Client, upon full payment

of the fee, a non-exclusive, non-transferable and non-sublicensable right, limited to Switzerland and the duration of the Individual Contract, to use the work results created by the Agency or by third parties in fulfilment of the Individual Contract (communication campaigns, communication concepts, advertising material, design, graphic drafts and sketches, texts, images, photos, cinematic works, analyses, software applications, sounds, animations, etc., hereinafter referred to as "work results"). Objectively, this right of use shall be limited to the scope specified in the Individual Contract or the fulfilment of the purpose of the Individual Contract. Subject to deviating provisions in the Individual Contract, the customer may process or modify the work results.

Work results that the (potential) Client is made aware of in the context of presentations (e.g. pitches) may only be used with the Agency's prior written consent.

The rules governing copyrights and rights of use for ICT services (information technology and telecommunications) are set out in the general terms and conditions of the SIK/CSI [Swiss IT Conference] ([www.sik.ch/agb.html](http://www.sik.ch/agb.html)).

The Client shall be responsible for compensating third parties in respect of any rights to work results (e.g. rights of third parties to images used). The Agency may pass on to the Client any such compensation payments.

#### **9. Use of trademarks**

The Client is not entitled to use or refer to the Agency's company names, logos and trademarks without the Agency's prior consent.

The Agency reserves the right to name Clients and present examples of previously published work for reference purposes.

#### **10. Liability and warranty**

The Agency shall only be liable to the Client for fraudulently concealed warranty defects.

Outside warranty defects, the Agency shall be liable to the Client for intentional and grossly negligent conduct.

Liability for subcontracted third parties shall be governed by Section 5 GTC.

#### **11. Confidentiality**

Both parties undertake to treat as confidential all business transactions and information of the other party which they become aware of in the course of the cooperation. This duty of confidentiality shall apply beyond the duration of this contract. However, this duty of confidentiality shall not extend to the work results, which the Agency and/or the Client may use pursuant to Section 8.

Information which is publicly accessible or was already in the possession of the other party before the conclusion of the contract or contract negotiations, as well as information that one party lawfully received from third parties unconnected to the Individual Contract, shall also not be classed as confidential.

A non-utilisation and non-disclosure agreement signed prior to the conclusion of the contract shall be deemed an integral part of this contract.

#### **12. Client's duties of information, advance performance and cooperation**

The Client undertakes to inform the Agency of all facts relevant to the execution of the Individual Contracts and to provide it with all information and documents required for this purpose.

If the Client provides the Agency with advertising material or essential components thereof for the

purpose of fulfilling the Individual Contract or makes these available to the Agency in any other way, the Client must make all data available to the Agency in accordance with the agreed technical specifications. If these technical specifications are not completely fulfilled, the Agency shall be entitled not to publish the advertising material until the corresponding technical specifications have been correctly implemented. The additional costs and other consequences, in particular the consequences of delays relating to data that are provided too late or are defective, shall be borne by the Client.

When providing advertising material or components, the Client shall be required to provide the Agency with the advertising material necessary for the delivery/placement of the advertising within the period agreed in the project order. The consequences of advertising material being provided too late or being defective shall be borne by the Client.

In the event of improper provision, in particular delayed provision or subsequent order changes by the Client, no warranty shall be assumed for compliance with the agreed placement date or achievement of the agreed performance. The Agency's full claim to remuneration shall remain in force even if the advertising material is placed late or not at all.

The Client shall grant the Agency all authorisations and copyright, usage, performance protection and other rights required to use the provided advertising material in the booked electronic media in accordance with the order, in particular the right to reproduce, distribute, transmit, process, store in and retrieve from a database, with respect to timing, location and content, to the extent necessary for the execution of the advertising order.

Fulfilment of the contract, and in particular adherence to binding deadlines and dates, is

dependent on the Client always meeting their advance performance and cooperation obligations in good time. The Client undertakes to take the necessary precautions to ensure that they can meet their advance performance and cooperation obligations at any time.

### **13. Data protection**

As a data processor, the Agency processes the personal data provided by the Client to the extent necessary for the fulfilment of the Individual Contract. The Client warrants that such personal data has been collected and disclosed to the Agency in accordance with applicable data protection legislation.

### **14. Data and registrations**

The Agency shall be required, at the Client's request but at the latest in the event of termination, to hand over to the Client in reproducible formats (to be agreed) all work results created under the Individual Contract, provided and to the extent that the Client has acquired the intellectual property rights to said work results or a corresponding right of use in respect of the same and has paid the compensation due for them.

Where the Agency has registered trademarks, designs, domain names and social media accounts in its own name in fulfilment of the Individual Contract, the Agency shall be required, upon first request, to arrange for the registration to be transferred to the Client.

### **15. Storage and destruction of documents**

The Agency shall retain draft data (and other Client data) until the fulfilment of an Individual Contract or the completion of a project. Unless otherwise agreed in the Individual Contract and subject to statutory retention obligations, the Agency shall not be required to store and archive Client data beyond the

fulfilment of an Individual Contract or the conclusion of the respective project.

After expiry of the applicable statutory and/or contractual retention obligations, the Agency may destroy the Client data (whether in analogue or digital form), including communication with the Client. The Agency shall also not be required to retain its internal notes and documents.

### **16. Contract duration and termination**

The contract duration shall be governed by the Individual Contract. Unless specified otherwise in the Individual Contract, the contract may be terminated in writing subject to a notice period of six months to the end of a calendar year.

The right to terminate the Individual Contract for cause at any time due to reasons for which the terminating party is not responsible remains reserved.

### **17. Assignment**

The Client may not assign the Individual Contract and all claims, rights and obligations deriving therefrom without the Agency's prior written consent.

### **18. Severability clause**

Should one or more provisions of these GTC be or become wholly or partially invalid, this shall not affect the validity of the remaining provisions. Any invalid provision shall be replaced by a provision that comes as close as legally possible to the economic purpose of the invalid provision.

**19. Applicable law and place of jurisdiction**

The Individual Contract (including these GTC) shall be governed exclusively by Swiss law and must be interpreted and construed in accordance therewith. The application of Swiss international private law and the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 is hereby excluded.

Any disputes arising out of or in connection with these GTC or the Individual Contract between the Agency and the Client shall be subject to the exclusive jurisdiction of the courts at the Agency's registered office.

LSA, May 2019