

General Terms and Conditions of Business (AGB)

1 Validity of the conditions

The General Terms and Conditions of Business set forth in the following apply to all market and social research assignments and to their implementation as well as to all future market and social research projects commissioned by clients to the Research Agency including their implementation. They do not apply to the collaboration between Private Law Market and Social Research Agencies in the process of fulfilling assignments.

2 Subject of the contract

The Research Agency carries out assignments by clients in the sense of advisory services in accordance with the accepted rules and Codes of Conduct of the Market and Social Research professions. The Research Agency supports the Client by what it contributes to the Client's decisions. However, the Research Agency does not come to decisions on its own. As regards content and extent of what services the Research Agency supplies the specific contract is exclusively relevant, unless these AGB say differently.

3 Offer, research proposal

- 3.1 The Research Agency submits its offer to the Client on principle in the form of a research proposal stating the objectives, the services to be included, the time required for the study, and the fee due.
- 3.2 The Client shall receive a research proposal for the sole purpose of deciding whether to award the contract for the study to the Research Agency. In absence of any other agreement, the contents of the proposal submitted to the Client may not be made available in whole or in part to any third party, unless this were mutually agreed on in writing.
- 3.3 Should the Research Agency be asked to submit a proposal which, in its scope, surpasses the complexity of a usual outline of suggestions, the Research Agency will communicate to the Client before preparing the proposal to what extent specific records will be needed to use and/or to prepare (e.g. questionnaires, sample maps, documentation, etc.), and which fees the Client will have to pay for this extended service. The Research Agency may charge these fees if the Client has not disagreed despite having been given pertinent information and adequate time to decide. The Copyright of the Agency remains unaffected.
- 3.4 Should the goal pursued by the Client not be obvious to the Research Agency, the Client will inform the Research Agency accordingly. The Client must then disclose his aim(s) in writing.
- 3.5 The Research Agency can not guarantee exclusiveness for certain product fields, subject matters or methods of research, unless a written agreement is reached. When exclusiveness is stipulated, its duration and any additional fee that may be incurred as a result must be laid down in writing.
- 3.6 Changes of an order given the Research Agency need to be agreed on in writing by the Research Agency.

4 Remuneration

- 4.1 The fees specified in the proposal shall, on principle, include all of the services the Research Agency is offering in connection with conducting the work outlined in the research proposal. For any further services the Client asks for (e.g. preparation of pre or intermediary reports, translation of tables, charts, reports, ...) the Research Agency is entitled to charge additional fees.
- 4.2 Additional costs which the Research Agency is not responsible for and additional costs which were not foreseeable, despite due care, to the Research Agency at the time the contract was awarded, may be charged separately by the Research Agency, provided they are linked to a legitimate factual cause clearly recognisable for the Client and adequately determined. This shall also apply when the Client is not responsible for these costs. Changes in the volume of the contract after conclusion of the contract require an explicit agreement between the parties.

- 4.3 The fees agreed upon serve the purpose of paying for the cost of executing the commissioned study. Therefore, one third each of the agreed total fee plus the legally required VAT (where applicable) is due for payment on commissioning the study, a further third at the start of data collection / field work (i.e. after the preliminary tasks have been carried out) and the final third after delivery of results – unless differing terms of payment were agreed on by the parties.
- 4.4 Payment is due without any deduction immediately after invoices are issued. In case of default of payment the Research Agency has the right to charge default interest to the amount of eight percentage points higher than the official Base Rate. In case of defaulting payment the Research Agency reserves the right to hold back services agreed upon.
- 4.5 The Client is permitted set-offs against counterclaims only if and when the counterclaims are undisputed or have been established as final and absolute.

5 Executing the research

- 5.1 The Research Agency carries out – corresponding to # 2 – the assignment of the Client based on scientific methods of Market and Social Research practice.
- 5.2 In the case that after commissioning the project it becomes clear that the study can not be carried out in the expected methodology for reasons that neither the Client nor the Research Agency were able to foresee or are responsible for, then the Research Agency will inform the Client without delay. If both parties to the contract find no methodological solution to the problem, the Research Agency has the right to hand back the contract to the Client on account of inexcitability.
- 5.3 The Client has the right to look at original survey documents on the Research Agency's premises. Participation of the Client in the study as well as his inspection of the execution and of the results of the study shall require a separate preliminary agreement. If additional costs incur through this, these must be born by the Client. Here too and as always, the Research Agency is obliged to preserve the anonymity of the respondents or test participants.
- 5.4 In the course of fulfilling its obligations in a commissioned research study, the Research Agency is permitted to pass on sub-orders within its own organisation. If one intends to pass on sub-orders to others outside of the Research Agency's own organisation, the Research Agency will inform the Client as soon as possible and beforehand. On demand by the Client, the identity of these subcontractors shall be revealed to him.

The Research Agency warrants that in passing on sub-orders to subcontractors the necessary confidentiality will be preserved and the rules and methods of Market and Social Research as well as further regulatory requirements, e.g. data protection laws, will be respected and abided by.
- 5.5 If the Clients demands that a certain subcontractor be involved, the Research Agency will not be responsible for the correctness, completeness or quality of this subcontractor's work, unless there is a breach of duty of the Research Agency as put down in No. 8.4.

6 Copyright, intellectual proprietary right and accessory responsibilities

- 6.1 The rights vested in the Research Agency by the copyright acts shall remain with the Research Agency. The Client acknowledges that the exclusive copyright and all trademark rights regarding study conceptions and study designs, suggestions, methods, procedures and procedural techniques, graphic and tabular presentations originating from the Research Agency, as well as all further know-how incorporated in other services provided by the Research Agency belong exclusively to the Research Agency. The Client's copyright in the documents produced by him shall remain unaffected.
- 6.2 The title to the materials accrued while carrying out the work – all type of data carriers, questionnaires, additional written documents, etc. – and the data accrued, shall rest with the Research Agency, unless otherwise agreed. The anonymity of the respondents or test participants must not be jeopardised by such an agreement.
- 6.3 The Research Agency Institute pledges to store the survey records for a period of one year and data carriers for a period of two years from the time of submitting the research report, unless explicitly agreed otherwise.

6.4 Research Agency and Client commit themselves to treat all information mutually exchanged in the process of carrying out contracted work with strict confidentiality and to use it exclusively for the purposes of carrying out the contracted research. Collaborators are to be committed accordingly. This commitment is also valid after completion of carrying out the contracted work. This pledge does not cover such information which one party can prove to have known before the information was received from the other one, or that this information is generally accessible to the public before it was received, or that it was made accessible to the public after having received the information without the party receiving the information was responsible for passing it to the public.

7 Use of the research report and the research findings

7.1 Research reports and research findings are at the disposal of the Client only for his own, internal use, unless the Research Agency agrees that the content may be passed on in part or in whole to any third party, or be published, or the Research Agency declassifies them on account of their nature as such or on account on copyright or intellectual proprietary rights (see No. 6). Without preliminary assent of the Research Agency, they may not be copied, printed or stored, processed or diffused in documentation or information systems of any kind for the purpose of passing them on to third parties. These provisions also apply to research reports and findings resulting from Syndicated Studies. The Client does not acquire exclusive usage rights of these. These provisions shall not apply regarding merely insignificant parts of research reports or research results.

7.2 Publications comparing competitors and mentioning the name of the Research Agency may only be made after explicit approval of the research Agency has been given, after the research Agency has conferred the right to use the specific text to be published.

7.3 Use of research findings and research reports in the run-up to formal legal proceedings (e.g. lawsuits, arbitration, magisterial proceedings) is prohibited without preliminary written assent by the Research Agency – unless overridden by Administrative / Governmental directives or judiciary rulings.

7.4 If the Client wishes to cite part or in whole from the research report, these citations must be recognisable as such, and the Research Agency must be named as being the author of the research report.

7.5 The Client will indemnify the research Agency from all claims made against the research Agency as a result of the Client's deliberate or negligent use of properly gathered results in breach of the law, e.g. using them to advertise unlawfully and/or incorrectly.

8 Warranty and liability

8.1 The liability of the Research Agency and warranty claims of the Client conform to legal provisions, unless stated otherwise below. The Research Agency warrants the correct implementation and scientific analysis of the study. For obvious deficiencies, warranty claims can only be made if the Client admonishes the Research Agency in writing within two weeks of receiving the research report and the research findings. For non-obvious deficiencies, this time limit starts running at the time when the deficiency was noticed, but at the longest runs up to three months after disclosure of the last legally relevant data. The warranty period starts at reception of the final legally relevant data, and is one year.

8.2 The Research Agency does not vouch for the specific economic use the Client will be able to make of the data the Research Agency collects, evaluates and analyses according to the rules and methods of Market and Social Research.

8.3 The Research Agency will not be liable for any damage resulting from use of the data / findings or the interpretation thereof by the Client, unless there was a breach of duty (in the sense laid down in No. 8.4.) on the part of the Research Agency.

8.4 The Client will only be able to claim liability of the Research Agency or its legal representatives or its assistants or collaborators if there is culpable impairment of life, body injury or impairment of health, culpable infraction of an obligation essential to the contract, or a deliberate or negligent breach of duty by the Research Agency, its legal representatives or assistants, or in the case of malicious concealment of a deficiency of the study.

- 8.5 In the case of damage generated by the careless breach of fundamental contractual obligations the Research Agency is liable only for damages which are typical, foreseeable in the context of the contract. Compensation is limited to the total net fee agreed upon for the respective contract. Compensation for secondary effects and predictable follow-up damages are barred.
- 8.6 In case the Client is called upon on account of alleged breach of duty by the Research Agency and is thinking of recovering from the Research Agency, the latter must be informed about this at the earliest possible time. The Research Agency has the right to conduct or to attend to a lawsuit. This right of the Research Agency does not affect the right of the Client for defence.

9 Default

- 9.1 Should the Client be in default regarding the transmission of information essential to implementing a study or in placing necessary test materials at the Research Agency's disposal, the Research Agency is not bound to the performance and delivery dates previously agreed on. Should the Client not comply with his obligation to contribute within a reasonable time extension proposed by the Research Agency, the latter is entitled to withdraw from the contract on account of important reasons and to claim compensation.
- 9.2 In case of delayed delivery, the Research Agency will be liable only for default. Claims for damage can be made by the Client only as put down in No. 8.
- 9.3 In case delivery dates previously agreed on are not met on account of Acts of God, riots, strike, sovereign intervention, lock-out or obstructions in the company operations of either the Research Agency or a subcontractor, not in the responsibility of either alone or together, the time limit will be extended to eliminate the impairment. The Research Agency will inform the Client about the beginning and the end of the impairment. In case of lasting obstructions in the company operations on account of Acts of God or of lasting obstructions of operations the Research Agency is not responsible for, the Research Agency has the right to withdraw from the contract on the basis of important reasons, barring any claim for compensation whatsoever and for whatever reasons.

10 Product tests

- 10.1 The client shall indemnify the Research Agency from all claims made against the Research Agency or its staff as a result of damage caused by the product to be tested.
- 10.2 The Client shall be responsible for ensuring that all the necessary chemical, medical, pharmaceutical or other technical tests / studies / analyses of the test product have been carried out. He shall assume responsibility for the suitability of the product for the test and, to the extent of that an examination was necessary and has taken place (see above), that this gave no indication that the product could cause any harm. The Client shall be responsible for ensuring that all information prescribed by law or ordinances and / or necessary for the use of the product, is made available to the Research Agency, so that the latter may pass it on to the persons participating in the test.
- 10.3 In all other respects, the regulations of the product liability laws shall apply.

11 Final Clauses

- 11.1 If both parties to the contract are merchants, the place of performance and venue shall be the seat of the Research Agency.
- 11.2 All contractual relations between the Research Agency and the Client shall be based on the laws of the Federal Republic of Germany, unless explicitly agreed on differently in writing.
- 11.3 In the context of these General Terms and Conditions 'in writing' also includes Facsimile and E-Mail.

These General Terms and Conditions are based on the recommendations of ADM Arbeitskreis Deutscher Markt- und Sozialforschungsinstitute e.V. of 4th May 2006

Munich, 1st January 2007