

# Terms of business



## 1 Introduction

**1.1 Terms** – These terms apply to the services we have been engaged to provide under the letter of engagement (with any form of agreement made with the intent of constituting an engagement qualifying in this context as a letter of engagement). If any provision in the terms is found to be inconsistent with the letter of engagement, the terms shall take precedence unless the letter of engagement specifically amends any of the terms.

**1.2 Commencement** – The agreement shall commence on (i) the date of the letter of engagement or (ii) the commencement of the services, whichever is the earlier.

## 2 Services

**2.1 Services** – We shall perform the services described in the letter of engagement with reasonable skill and care. You confirm that their scope is sufficient for your needs. The services (including our deliverables) are provided solely and exclusively to you for the purpose set out in the letter of engagement or relevant deliverable.

**2.2 Deliverables** – You may not disclose any of the deliverables or make the benefit of the services available to any other party or make reference to the contents of any deliverable or any of the findings of our work except (i) as stated in the letter of engagement, (ii) with our prior consent in writing on terms to be agreed, (iii) where required to do so by law or regulation, or (iv) to your lawyers or group members provided that you tell them in advance that we accept no liability toward them and that no onward disclosure is permitted.

**2.3 Sole and exclusive liability to you** – We accept no liability toward anyone other than you in connection with our services unless we agree otherwise in writing. You agree to indemnify us for any liability (including legal costs) that we may incur in connection with any claims by any other party in relation to the services.

**2.4 Changes** – Either you or we may request a change in the services or the agreement. Any such change will be effective only when agreed upon in writing.

**2.5 Extent of services** – In the performance of the services, we shall not (i) conduct an audit or other assurance engagement in compliance with applicable professional standards or (ii) attempt to detect or be responsible for detecting fraud or other wrongdoing.

**2.6 Verbal advice and draft deliverables** – Only our final written deliverables may be relied upon. You may not rely on our verbal advice or draft

deliverables. If you wish to rely on something we have told you verbally, please advise us of the fact so that we can prepare a written deliverable on which you may rely.

**2.7 Deemed knowledge** – In the performance of the services we shall not be deemed to be in possession of information from other services.

## 3 Your responsibilities

**3.1 Information** – So that we may advise you properly, you will ensure that (i) any information given to us by you or any other party working with you or for you is (a) provided promptly, (b) accurate and (c) complete; and (ii) any assumptions made are appropriate. We shall not verify any information given to us relating to the services.

**3.2 Your obligations** – Our performance depends upon you performing your obligations under the agreement. We shall not be liable for any loss arising from you not fulfilling your obligations.

## 4 Confidentiality

**4.1 Confidential information** – We and you agree to use each other's confidential information only in relation to the services, and not to disclose such confidential information, except where required to do so by law or regulation or by a professional body of which we are a member. However, we may give confidential information to relevant subcontractors provided that they are bound by confidentiality obligations, and to your advisors who are involved in this matter.

**4.2 Making reference to you and the services** – We may wish to make reference to you and the services we have performed for you when marketing our services. You agree that we may do so provided that we do not disclose your confidential information.

**4.3 Performing services for others** – You agree that we may perform services for your competitors or other parties whose interests may conflict with your own provided that we do not disclose your confidential information and that we meet our ethical obligations.

## 5 Data protection

**5.1 Personal data** – You agree that we may process your personal data for the purposes of (i) providing the services, (ii) maintaining our administrative or client relationship management systems, including using IT outsource providers, (iii) quality and risk management reviews, and/or (iv) providing you with information about us and our

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service range. We may transfer personal data to our subcontractors in respect of any of these purposes.

**5.2 Data transfers** – We may, for the purposes set out in clause 7.1, permit the transfer of personal data outside of the European Economic Area (but only to a recipient who is (i) in a country that provides an adequate level of protection for personal data, (ii) certified under the US Safe Harbor program, or (iii) subject to an agreement that covers the EU requirements for the transfer of personal data to data processors outside of the EEA).

## 6 Intellectual property rights

We shall own the intellectual property rights in the deliverables and in any materials created under the agreement, and you will have a non-exclusive, non-transferable license to make use of the deliverables for your own internal purposes.

## 7 Materials

**7.1 Policy** – We may retain copies of all materials relevant to the services, including any materials that you give us or that are given to us on your behalf.

**7.2 Release** – We do not release materials that belong to us (including our working documents) unless we have specifically agreed to do so. We may require a letter of release from the recipient as a condition of disclosure.

## 8 A&P and subcontractors

**8.1 Subcontractors** – We may use subcontractors to provide all or parts of the services. Despite this, we remain solely responsible for the services.

**8.2 Restriction on claims** – You agree not to bring any claim (including a claim in negligence) against any A&P subcontractor, partner, member, director or employee in connection with the services.

**8.3 Group members** – You will ensure that no group member, including your subsidiaries, associated companies and any holding company (unless a party to the agreement), both while they are a group member and thereafter, brings any claim against any A&P subcontractor, partner, member, director or employee in respect of any liability relating to the services or the agreement.

## 9 Liability

**9.1 Specific types of loss** – You agree that we shall not be liable for (i) loss or corruption of data from your systems, (ii) loss of profit, goodwill, business opportunity, anticipated savings or benefits, or (iii) indirect or consequential loss.

**9.2 Our liability** – You agree that our total liability (including interest) for all claims in connection with the services or the agreement (including but not limited to negligence) shall be limited to the greater of the amount of the fees payable for the services (excluding VAT) or CHF 50,000.

**9.3 Unlimited liability** – Nothing in the agreement will limit a person's liability for (i) death or personal injury caused by that person's negligence, (ii) that person's fraud, or (iii) anything else that cannot be limited by law.

**9.4 No claims against individuals** – You agree to bring any claim (including a claim in negligence) in connection with the services solely against us and not against any individual. Should our individuals be described as partners, then they are acting as one of our members.

**9.5 Proportionality** – Should we be liable to you under the agreement and another person would also be liable to you in respect of the same loss (were it not for your contractual arrangements with them), then (i) the amount of compensation payable by us to you in respect of that loss will be reduced; (ii) the reduction will take into account the extent of the other person's responsibility for the loss; and (iii) in determining the extent of the other person's responsibility for the loss, no account will be taken of (a) any limit or exclusion placed on the amount that person will pay or (b) any shortfall in recovery from that person (for whatever reason).

## 10 Fees

**10.1 Payment for services** – You agree to pay us for our services. Any estimate we may give you shall not be binding.

**10.2 Basis of fees** – Our fees may reflect not only the time spent but also other factors including complexity, urgency, inherent risks, use of techniques, know-how and research, coupled with the level of skills and expertise required of the personnel needed to perform and review the services. Our fees may include time spent traveling for the purpose of the services that cannot be used productively for any other purposes.

**10.3 Expenses** – You will pay any reasonable expenses incurred by us in connection with the services.

**10.4 Taxes** – You will also pay such taxes, including VAT, as are due in relation to our goods and services. You will pay us any invoice total in full, irrespective of any deduction that the law requires you to make.

**10.5 Invoices and payment** – We may invoice you monthly. All invoices are payable 14 days after the invoice date. If you do not pay an invoice within 30

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days of the invoice date, we may charge you interest at the statutory rate.

## 11 Termination

**11.1 Immediate notice** – Either we or you may end the agreement with immediate effect by giving notice to the other party in writing if (i) the other party materially breaches the agreement and fails to remedy said breach within 14 days or (ii) the other party is or appears likely to be unable to pay its debts or becomes insolvent.

**11.2 Fees payable on termination** – You agree to reimburse us for all services rendered and costs incurred up to the point of termination. In the case of lump-sum agreements, which cannot be terminated for any reason save those set down in 11.1, you agree to pay an additional indemnity (e.g. phase-out cost of team, lost productivity of team members, etc.), which will be derived on a case-by-case basis depending upon the conditions of the specific agreement.

## 12 Dispute resolution

**12.1 Mediation** – Should a dispute arise, the parties will attempt to resolve it by discussion, negotiation and mediation prior to commencing any legal proceedings.

**12.2 Law and jurisdiction** – The agreement and any dispute that may arise from it, whether of a contractual or non-contractual nature, will be governed by Swiss law and be subject to the exclusive jurisdiction of the Swiss courts (whenever possible the court in St. Gallen).

**12.3 Limitation period** – Any claims must be brought within 2 years of the date the claimant should have become aware of the potential claim and, in any event, no later than 4 years after any alleged breach.

## 13 General

**13.1 Matters beyond reasonable control** – No party will be liable to any other party in the event that it fails to meet its obligations owing to matters beyond its reasonable control.

**13.2 Entire agreement** – The agreement forms the entire agreement between the parties in respect of the services. It replaces any earlier agreements, representations or discussions. Subject to clause 8.4, no party shall be liable to any other party (whether for negligence or otherwise) for a representation that is not contained in the agreement.

**13.3 Your actions** – Where you consist of more than one party, an act or omission on the part of one

party will be regarded as an act or omission on the part of all parties.

**13.4 Assignment** – No party may assign, transfer or deal with their rights or obligations under the agreement without obtaining our prior consent in writing, but we may novate the agreement to a transferee of all or a part of our business. This novation will take effect on written notice from us such that (i) the transferee will replace us with effect from the date specified in the notice and we will no longer have any rights and obligations under the agreement save in respect of work performed prior to that date and (ii) the combined aggregated liability of the transferee and us will not exceed the limit of our liability before the novation took place.

**13.5 Rights of third parties** – Except as set out in clauses 8.5, 9.2 and 9.3, no person who is not a party to the agreement has any rights to enforce any of the terms of the agreement. A&P and individuals referred to in those clauses may enforce them in their own right. Their consent is not required to vary or rescind the agreement.

**13.6 Quality of service** – If you are not satisfied with the services, or have any suggestions for improvement, please contact your engagement letter. We will carefully and promptly consider any complaint.

**13.7 Survival** – Any clause that is intended to continue to apply after termination of the agreement will do so including, but not limited to, clause 2.3, 2.4, 2.6, 2.7, 5, 6, 7, 8, 9, 10, 11.3, 12, 13 and 14.

## 14 Interpretation

In the agreement, the following words and expressions have the meanings assigned to them below:

**services** – the services set out in the letter of engagement

**the agreement** – these terms and the letter of engagement to which they relate (including any schedules)

**we, us, our** – refers to Androschin & Partner Management Consulting GmbH (company number CH-320.4.056.574-2) whose registered office is at Kornhausstrasse 3, CH-9000 St. Gallen, Postfach 243, CH-9001 St. Gallen

**you, your** – refers to the party or parties to the agreement (excluding us)