

General Terms and Conditions

Non-binding Recommendations for the General Terms and Conditions between Clients and Private Law Market and Social Research Agencies as Contractors

ADM Arbeitskreis Deutscher Markt- und Sozialforschungsinstitute e.V.

1 Validity of these Terms and Conditions

- 1.1 The following General Terms and Conditions shall apply for all market and social research projects and for their execution, as well as for any future market and social research projects which the Client instructs the Research Agency to carry out and for their execution. They shall not apply to the co-operation between private law market and social research agencies in carrying out projects.
- 1.2 If clients have their own General Terms and Conditions, these shall not apply to the extent that they deviate from or contradict the Research Agency's General Terms and Conditions. In the event of a conflict between two clauses, their minimum common ground shall apply. This is the case even if the Client should demand absolute precedence of his own General Terms and Conditions. Should it prove impossible to determine the minimum common ground, these provisions shall not be part of the contract. In this case, the contract shall be governed by the individual agreements reached or by the statutory provisions.
- 1.3 Should agreements be reached that are at variance with these Terms and Conditions, or that amend them, either on conclusion of the contract or at a later time, these shall require the Research Agency's written consent.

2 Subject of the Contract

The Research Agency will carry out the projects it is commissioned with as advisory services in accordance with the accepted principle and rules of the market and social research profession. Through its services, the Research Agency will support its clients in their decisions. However, it will not itself make these decisions. The nature and scope of the services provided by the Research Agency shall be governed exclusively by the individual contract, unless provisions of these Terms and Conditions also apply.

3 Quotation, Research Proposal

- 3.1 The Research Agency shall on principle submit an offer to interested parties in the form of a research proposal stating the nature of the issue to be resolved, the services to be rendered in order to solve it, the time required for the study and the fee due.
- 3.2 The interested party shall receive the research proposal for the sole purpose of deciding whether to award the contract for the study offered. In the absence of any other agreement, the contents of the proposal must not be made available in whole or in part to any third party without mutual written consent.

- 3.3 Should the objectives pursued by the Client with the study not be obvious to the Research Agency, the latter will inform the Client accordingly. The Client must then disclose his objectives in writing.
- 3.4 The Research Agency cannot guarantee exclusiveness for specific product fields, objects of research or methods of research, unless this is expressly agreed in writing. When exclusiveness is stipulated, its duration and any additional fee that may be incurred as a result must be laid down.
- 3.5 Any changes in the project that are made after the conclusion of the contract must be confirmed in writing by the Research Agency.

4 Payment

- 4.1 The fee stated in the research proposal shall on principle cover all the services offered by the Research Agency in connection with carrying out the project outlined in the research proposal. The Research Agency is entitled to demand additional payment for supplementary services that are requested by the Client.
- 4.2 Additional costs which the Research Agency is not responsible for and additional costs which were not foreseeable by the Research Agency at the time that the project was commissioned, despite due care, may be charged separately by the Research Agency, provided they are linked to a legitimate factual cause and are clearly recognisable for the Client and are adequately defined. This shall also apply when the Client is not responsible for these costs.
- 4.3 The fees agreed upon are intended to pay for the cost of executing the study in question. For this reason, one third of the arranged fee shall be payable on commissioning the project, a further third when data collection commences (i.e. once the necessary preparations have been completed), and the final third on delivery of the results, in each case plus value-added tax, provided the parties involved have not made any other arrangements.
- 4.4 Fees are payable without any deductions directly on receipt of the invoice. On delay of payment, the Research Agency shall be entitled to charge interest on arrears at a rate of eight percentage points above the base interest rate. The Research Agency also reserves the right to withhold services if payments are overdue.
- 4.5 The Client shall only be entitled to offset the fee against counterclaims if those counterclaims are undisputed or have already been established judicially.

5 Execution of the Project

- 5.1 The Research Agency shall carry out the project – in line with Section 2 – by means of the scientific methods of market and social research.
- 5.2 Should it emerge after the project has been commissioned that the study cannot be conducted for methodological reasons which could not have been foreseen by the Client or by the Research Agency, and which were beyond their control, then the Research Agency shall inform the Client of this imme-

diately. If the two parties to the contract are unable to find a methodological solution to the problem, the Research Agency shall be entitled to terminate the project on the grounds of impracticability.

- 5.3 The co-operation of the Client in the study, and any check-ups by the Client on the execution and the results of the study, shall require a separate agreement. If additional costs arise from this, they must be borne by the Client. In such cases the Research Agency is – as always – obliged to ensure that the anonymity of respondents or test participants is protected.
- 5.4 The Research Agency shall be entitled to subcontract parts of the overall project to other departments within its own organisation in order to fulfil its obligations. If subcontracts are to be awarded outside its own organisation, the Research Agency informs the Client of this in advance and at the earliest possible time. At the Client's request, the identity of the subcontractor must be revealed. The Research Agency promises that the requisite discretion will be maintained in awarding such subcontracts and that the rules and methods of market and social research will be observed, along with any other legal requirements, such as data protection.
- 5.5 If the Client demands the use of a specific subcontractor, the Research Agency shall not be liable for the correctness, completeness or quality of that subcontractor's work, unless the Research Agency is in breach of duty according to Section 8.4.

6 Copyright, Property Rights and Accessory Duties

- 6.1 The rights vested in the Research Agency by the copyright act shall remain with the Research Agency. The Client admits that the sole copyright and all the proprietary rights in research concepts, proposals, methods, procedures and methodologies, graphical and tabulated presentations that originate with the Research Agency, and in any other know-how represented by the services of the Research Agency, are entitled solely to the Research Agency. The Client's copyright in the documents drawn up by him shall remain unaffected by this.
- 6.2 The materials arising in connection with executing the project – all forms of data carriers, questionnaires, additional written documents etc. – and the data collected shall remain the property of the Research Agency, unless otherwise agreed. The anonymity of the respondents or test participants may not be endangered by such an agreement.
- 6.3 The Research Agency shall undertake 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 expressly agreed otherwise.
- 6.4 The Research Agency and the Client shall undertake to treat all the information supplied to each other for the purposes of carrying out the research in the strictest confidence and to use it exclusively for the purposes of executing the project. Members of the workforce shall be placed under the same obligation. This obligation also extends to the time after completion of the project. It does not extend to such information that the other party can show to have been already known before it was received, or that was available to the general public before being received, or that was available to the general public after being received, without the receiving party having been responsible for this.

7 Use of the Research Report and the Research Results

- 7.1 The research reports and research results are made available to the Client for internal use only, unless the Research Agency agrees to their being passed on to third parties or published, in full or in part, or unless the Research Agency releases them for publication due to the nature of the matter or due to copyright issues or property rights (see Section 6). Neither may they be duplicated, printed or stored, processed or disseminated in documentation or information systems of any kind for the purpose of passing them on to third parties or publishing them, without the prior consent of the Research Agency. These provisions shall also apply to the research reports and the research results resulting from syndicated studies. The Client shall not hold a sole right of utilisation in these. These provisions shall not apply to merely nonessential parts of the research reports or research results.
- 7.2 Publications in which comparisons with competitors are made, are only permitted with the express permission of the Research Agency, which must first authorise the concrete text to be published.
- 7.3 The use of research results and research reports in the preliminary stages of proceedings of a legal nature (e.g. lawsuits, arbitration proceedings, proceedings by government authorities) is prohibited without the prior written consent of the Research Agency – save when legal / administrative regulations or court rulings have precedence.
- 7.4 If the Client wishes to cite the research report, in part or in whole, 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 shall indemnify the Research Agency against all claims made against the Research Agency as a result of the Client's deliberate or negligent, unlawful use of the properly obtained results, in particular using them to advertise unlawfully and/or incorrectly.

8 Warranty and Liability

- 8.1 The Research Agency's liability and the Client's claims arising from defects are governed by the statutory provisions, unless otherwise stated below. The Research Agency guarantees that the survey is carried out correctly and the results are analysed scientifically. Warranty claims for obvious defects shall only be permissible if the Client notifies the Research Agency of these in writing within two weeks of the receipt of the research reports and the research results. In the case of non-obvious defects, the period of notice begins when the defect comes to attention, but at the latest three months after the last legally relevant data are disclosed.
The warranty period shall begin with the receipt of the last legally relevant data and shall last one year.
- 8.2 The Research Agency does not guarantee that the data collected, processed and analysed by it in accordance with the rules and methods of market and social research will be able to be used by the Client in a specific commercial way.
- 8.3 The Research Agency shall not be liable for damage incurred through or in connection with the Client's interpretation of the data / results supplied, unless the Research Agency is in breach of duty according to Section 8.4.

- 8.4 The Client shall only be entitled to make claims against the Research Agency or its legal representatives or its subcontractors or vicarious agents for damages in cases of culpable injury to life, body or health, in case of a culpable violation of a duty that is essential to the contract, or in cases of premeditated or grossly negligent breach of duty by the Research Agency, its legal representatives or its vicarious agents, or in cases of fraudulent concealment of a defect in the survey.
- 8.5 In the case of damage caused through the negligent breach of key contractual duties, the Research Agency shall only be liable for foreseeable, typical damage. The amount of the damages shall be limited to the total amount of the net remuneration for the particular project in question. Compensation for indirect damage and unforeseeable consequential damage shall be excluded.
- 8.6 Should the Client face claims for damage on account of alleged breach of duty by the Research Agency, and should the Client intend to seek recourse against the Research Agency; the Research Agency must be informed at the earliest possible time. The Research Agency is entitled to conduct or be in charge of the lawsuit. This right of the Research Agency shall not affect the Client's right of defence.

9 Delay of Performance

- 9.1 Should the Client delay in providing the information necessary for carrying out the survey or providing the necessary documents, the Research Agency shall not be obliged to meet the agreed deadlines for delivery and performance.
Should the Client fail to meet his duty of collaboration even after the Research Agency has granted an appropriate extension, the Research Agency is entitled to terminate the contract for serious reasons and to claim damages.
- 9.2 If delivery is postponed, the Research Agency shall only be liable in cases of default. The Client can only claim for damages according to Section 8.
- 9.3 If agreed dates of delivery are not met because of delays caused by acts of God, rioting, strikes, acts of state, lockouts, or stoppages beyond the Research Agency's control, also on the part of a subcontractor, the period of performance shall be extended by the corresponding period up until the end of the disruption. The Research Agency shall inform the Client of the beginning and end of such disruptions.
In the case of long-term stoppages caused by acts of God or stoppages beyond the Research Agency's control, the Research Agency shall be entitled to terminate the contract for serious reasons, with the exclusion of all claims for compensation.

10 Product Tests

- 10.1 The Client shall indemnify the Research Agency against all claims made against the Research Agency or its employees as a result of damage caused by any defect in the product to be tested.
- 10.2 The Client shall be responsible for ensuring that all the necessary chemical, medical, pharmaceutical or other 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 that an examination was necessary and has taken place (see above), that this examination gave no indication that the product could cause any harm.



The Client shall be responsible for ensuring that all information prescribed by the 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 Clause

11.1 If both parties to the contract are merchants, the place of performance and venue shall be the Research Agency's principal place of business.

11.2 Unless specifically agreed otherwise in writing, the contractual relationship between the Research Agency and the Client shall be governed by the laws of the Federal Republic of Germany.

11.3 Written notice or consent in the sense of these General Terms and Conditions is taken to include tele-fax and e-mail transmissions.

Frankfurt am Main
May 4th, 2006