

# Terms and Conditions

of

**INNOFACT AG**  
Neuer Zollhof 3  
40221 Düsseldorf  
Germany

## **1 Validity of Conditions**

1.1 The following Terms and Conditions apply to all market research and opinion research orders and execution of the same, as well as to future market research and opinion research orders which the Client issues to the Institute and execution of the same. They do not apply to co-operation between private law market research and opinion research agencies in carrying out projects.

1.2 Where the Client uses its own Terms and Conditions, these shall not apply insofar as they deviate from or contradict the Terms and Conditions of the Institute. In case of contradictory clauses, the minimum common ground of these clauses shall apply in the first instance. This shall also apply, if the Client claims mandatory application of its Terms and Conditions. If a minimum common ground cannot be established, these clauses shall not form part of an Agreement. The content of the Agreement shall then be compiled, as far as possible, in accordance with the individual agreement reached, or legal provisions.

1.3 In case of deviating or additional agreements upon or after conclusion of the Agreement, written consent of the Institute shall always be required.

## **2 Subject of the Agreement**

The Institute shall execute the orders accepted in the role of a consultancy service provider in accordance with the professional principles and standard rules of market research and opinion research. The Institute shall provide services to the Client to support decision-making processes of the latter. However, the Institute shall not make these decisions itself. The content and scope of the services to be provided by the Institute shall be determined solely by the respective individual Agreement, unless otherwise stipulated by these T&Cs.

## **3 Proposal of Costs, Offer of Research**

3.1 The Institute shall issue its proposal to the Interested Party in the form of a proposal of costs and/or offer of research, in which details shall be provided of the project tasks, the services to be rendered for execution of these, and the time required for the research.

3.2 The Interested Party shall receive an offer of research solely for the purposes of reaching a decision regarding award of contract in this regard. Its content may only be published or passed on to third parties, in part or in whole, with mutual written consent, unless otherwise agreed.

3.3 Insofar as the Client is using the order to pursue an objective that is not clear to the Institute, the Institute shall inform the Client of this. The Client must then state its objective clearly in writing.

3.4 The Institute cannot guarantee exclusivity for certain product fields, research objects, or research methods, unless such is agreed in writing. Insofar as exclusivity is agreed, the duration of such, and any additional fee applicable in such case, shall be established.

3.5 Amendments to the order after conclusion of the Agreement require the written confirmation of the Institute.

#### **4 Remuneration, Amendment of Offer of Research**

4.1 The remuneration stated under the proposal of costs shall in principle cover all services offered by the Institute in its offer of research in association with execution of the order. The Institute may demand additional remuneration for services beyond this that are desired by the Client.

4.2 Additional costs, for which the Institute is not liable, and such which the Institute could not have foreseen upon the order being issued, despite observing due diligence, may be invoiced by the Institute separately, where such are associated with a materially justified cause, and where such costs are clearly identifiable and sufficiently defined for the Client. This shall apply, even if the Client is not liable for these costs. The Institute makes clear to the Client that any amendment to the offer of research may impact remuneration. Such amendments shall be dealt with amicably with the Client and require the written consent of the Client.

4.3 The agreed remuneration is due after completion of the project.

4.4 Remuneration shall be payable immediately upon issuing of invoice without any deduction. In case of default, the Institute shall be entitled to charge interest on late payments to the amount of eight percentage points above the base interest rate of Germany. The Institute also reserves the right to withhold services in case of late payments.

4.5 The Client is only permitted to charge any counterclaims, if such counterclaims are established as uncontested or have been deemed legally effective by a court.

#### **5 Execution of Order, Participation of the Client**

5.1 The Institute, in accordance with Para. 2, shall execute the order according to scientific methods of market research and opinion research.

5.2 Should it become apparent after the order is issued that the research cannot be executed for methodological reasons which neither the Client nor the Institute could have foreseen, the Institute shall inform the Client immediately. If neither Party can find a methodological solution to the problem, the Institute shall be entitled to return the order due to unfeasibility.

5.3 The Client may participate in the development and/or revision of the survey or discussion guidelines. The survey or discussion guidelines must be approved by the Client, unless the Client has relinquished claim to revision and approval. This shall be documented in such case.

5.4 The Institute is entitled to issue sub-orders within its own organisation for the purposes of fulfilling its duties from the research order. Where sub-orders are to be issued outside of the Institute's own organisation, the Institute shall inform the Client of this as soon as possible in advance. Upon issuing sub-orders, the Institute shall ensure that the level of confidentiality required is guaranteed, and that the rules and methods of market research and opinion research, and other legal stipulations, such as data protection, are observed.

5.5 If the Client demands a specific sub-contractor, the Institute shall not be liable for the correctness, completeness or quality of the work of this sub-contractor, unless the Institute is in breach of its obligations in the sense of Para. 8.4.

## **6 Copyright, Proprietary Rights and Accessory Duties**

6.1 All rights, to which the Institute is entitled according to the German Copyright Act, shall remain with the Institute. The Client acknowledges that sole copyright and all proprietary rights to research designs, suggestions, methods, process and procedural techniques, graphics and table presentations coming from the Institute, as well as rights to know-how embodied in other services of the Institute, belong solely to the Institute. The copyright of the Client to documents which it has produced itself is not unaffected.

6.2 Ownership of the material produced during execution of the order (data carriers of any type, other written documents etc.) and ownership of data accrued shall remain with the Institute, unless otherwise agreed. The anonymity of survey participants or test persons may not be impaired by such an agreement.

6.3 The Institute undertakes to maintain primary data sets (raw data, including unadjusted, completed questionnaires, recordings of qualitative investigations and similar) for a period of 12 months, and a copy of the final versions of all other documents associated with the research for a period of 24 months after final delivery of the research report, unless otherwise explicitly agreed.

6.4 The Institute and the Client undertake to treat all information mutually exchanged within the context of execution of the order as strictly confidential, and to only use the information mutually exchanged for the execution of the order. Employees shall be obliged to observe the same. This obligation shall also apply after execution of the order has been completed. This shall not apply for such information which the other Party demonstrates was known before receipt, or which was known to the general public before receipt, or which was accessible to the general public after receipt, without the receiving party being responsible for such.

## **7 Use of the Research Report and Research Results**

7.1 The client is fully entitled to research reports and research results.

7.2 Publications in which comparisons with competitors are made and the Institute is named are only permitted to use with the express consent of the Institute after the Institute has approved the exact text to be published.

7.3 The use of research reports and research results in advance for legal-type procedures (e.g. trials, arbitration proceedings, procedures of a public authority) is not permitted without the prior written consent of the Institute - subject to legal/administrative-law provisions or court decisions which shall take precedence

7.4 Should the Client wish to cite the research report in part or in whole, it must clearly indicate these citations as such, and must name the Institute as author of the research report.

7.5 The Client shall indemnify the Institute of all claims which are enforced against the Institute due to the Client using properly acquired results illegally as a result of intent or gross negligence, in particular as a result of unlawful and/or incorrect advertising.

## **8 Guarantee and Liability**

8.1 The liability of the Institute and claims for damages of the Client shall be in accordance with the legal provisions, unless otherwise defined below. The Institute shall guarantee proper execution and scientific evaluation of the research. Guarantee claims for obvious errors shall only exist, if the Client submits written complaint of such to the Institute within two weeks of receipt of the research report and the research results. In case of errors that are not obvious, this time limit shall apply from the moment, at which the error is identified, though no later than three months after disclosure of the latest material data. The guarantee period shall start upon receipt of the latest material data and shall last for one year.

8.2 The Institute shall not be responsible for the case that the data collected, evaluated and analysed by it according to the rules and methods of market research and opinion research may be exploited by the Client for commercial purposes in a specific way.

8.3 The Institute shall not be liable for damages which arise from or in connection with the Client's interpretation of the data/results delivered, unless there exists a breach of obligations on the part of the Institute in the sense of Para. 8.4.

8.4 Claims of the Client for compensation enforced against the Institute or its legal representatives, auxiliary persons or vicarious agents shall only be applicable in case of culpable loss of life, personal injury or harm to health, in case of material breach of contractual obligations, or in case of breach of obligations on the part of the Institute or its auxiliary persons by means of intent or gross negligence, or in case of fraudulent concealment of an error in the research.

8.5 In case of material breach of contractual obligations caused by grossly negligent damages, the Institute shall only be liable for foreseeable damages typical of the Agreement. The sum of damage compensation in such case shall be limited to the total net remuneration of the respective individual order. Compensation for indirect damages and unforeseeable subsequent damages is excluded. 8.6 Insofar as claims are enforced against the Client due to apparent breach of obligation on the part of the Institute, and insofar as the Client wishes to seek legal recourse from the Institute, the Institute shall be informed of this as early as possible. The Institute shall be entitled to conduct or oversee the legal dispute. This right of the Institute shall not affect the Client's right of defence.

## **9 Delay**

9.1 Should the Client delay in issuing the information required for execution of the research, or in providing documents required for the same, the Institute shall not be obliged to observe agreed delivery and performance deadlines. Should the Client fail to fulfil its obligations of participation, despite the setting of an appropriate grace period by the Institute, the Institute shall be entitled to terminate the contractual relationship for good reason and to demand damage compensation.

9.2 In case of late delivery, the Institute shall only be liable in case of delay. The Client may only enforce claims for compensation according to the stipulations of Para. 8.

9.3 In case of failure to observe the agreed delivery deadlines due to delay caused by force majeure, civil unrest, strike, government measures, lock-out, or other disruptions to operations, including such at a sub-contractor, for which the Institute is not liable, the execution period shall be extended by the time it takes for the disruption to be resolved. The Institute shall inform the Client of the start and end of this disruption. In case of continued disruptions to operations caused by force majeure or other reasons, for which the Institute is not liable, the Institute shall have the right to terminate the contractual relationship for reason, excluding any claims to compensation.

## **10 Product Tests**

10.1 The Client shall indemnify the Institute of all claims enforced against the Institute or its employees due to damages caused by the product to be tested.

10.2 It is the Client's responsibility that all necessary chemical, medical, pharmaceutical, or other technical inspections/research/analyses of the test product have been conducted. It is the Client's responsibility that the product is suitable for the test, and that there is no indication that the product may cause any damages, insofar as an inspection (see above) was necessary and has been performed. It is the Client's responsibility that all information stipulated by law or directive and/or necessary for use of the product is provided to the Institute such that the Institute can hand this over to the test participants.

10.3 The Institute shall ask the Client for suitable instructions for the handling, storage and safekeeping of the materials and products delivered by the Client. The Institute must observe these instructions, unless methodological reasons prevent this.

10.4 The Institute shall ensure that the test persons are provided with suitable information, according to applicable laws, for the safe use and operation of the products used in the research project.

10.5 The provisions of the Germany Product Liability Act shall apply otherwise.

## **11 Final Provisions**

11.1 Place of execution of the contract and place of jurisdiction shall be the domicile of the Institute.

11.2 The law of the Federal Republic of Germany shall apply to the contractual relationship between the Institute and the Client, unless otherwise explicitly agreed in writing.

11.3 The written form in the sense of these Terms and Conditions includes fax and e-mail