



# GENERAL TERMS AND CONDITIONS OF BUSINESS GfK SWITZERLAND AG

## Preamble

The intention of these General Terms and Conditions of Business is to achieve a fair balance of interests between the principal and the contractor in the field of market and social research. Responsibility for drawing up the present General Terms and Conditions of Business therefore lies with the Board of the asms Association of Swiss Market and Social Research, comprised equally of principals and contractors.

## Introduction

The Institute carries out its work in the context of advisory services in accordance with the recognised practice of the industry.

The recognised practice of the industry ensues from the codes and guidelines relating to ESOMAR, Eurocenter 2, Barbara Strozziilaan 384, 1083 HN Amsterdam, The Netherlands, [www.esomar.org](http://www.esomar.org)) and the provisions of the regulations and its appendices concerning the use of the collective trademark asms swiss interview institute® of the asms Association of Swiss Market and Social Research, which has its headquarters in Alpnach. These are binding for the Institute.

## Quotes

The Institute shall submit a quote to the interested party principally in the form of a proposal for a survey based on detailed instructions from the principal. The proposal is a framework proposal and includes terms of reference, structure of the survey (methodical procedure, sample survey, length of interview) and evaluation criteria as well as fee demanded, time requirement for the survey and the manner of reporting.

The working expenses incurred in connection with the preparation of quotes are only to be reimbursed if the interested party has been informed about this.

A quote remains valid for 60 days from the date of the quote.

It shall be assumed that instructions have been given for consultation if the Institute is also to draw up the briefing with the interested party which, unless otherwise expressly agreed, shall be charged separately in addition to the fee for the quote and independently of the extra charge for the main contract. The interested party is to be informed of the costs in connection with advisory services prior to commencement of this work stage.

## Services and fee

The Institute shall inform the principal in advance, if

- a) the contract is to be combined or syndicated with contracts of other principals. The identity of the other principal need not be made known.
- b) a significant part of the services is to be performed by a sub-contractor or an independent consultant. The Institute may assign the contract if nothing has been agreed to the contrary. The identity of the sub-contractor and consultant shall be made known to the principal on request.

The fee stated in the proposal includes in principle all defined services to be rendered by the Institute in connection with performance of the contract, including the services of sub-contractors and consultants.

Additional services ordered by the principal, such as additional presentations, provision of further copies of the report, additional translation etc. shall be charged separately. The principal shall be made aware of the consequential costs.

The Institute may charge additional costs if the principal expresses a desire for amendments or additional items subsequent to signing the contract, if it offers to the principal the additional services in excess of the agreed fee within 5 working days, but in every case prior to performance of the services, and if the principal does not object in good time. The principal may cover the additional costs with a reduction in other services of the Institute not performed until that time, insofar as this does not result in the Institute suffering demonstrable damage.

The risk involved with an all-inclusive contract in making a proper quote is borne by the Institute. If individual elements of service have been quantified within the scope of an all-inclusive contract, i.e. if the suppositions upon which the making of the quote is based have been disclosed, the Institute may only charge for additional expenditure on rendering these elements of service if it proves that the additional expenditure was not foreseeable when the order was placed, despite the application of the necessary diligence, and if the principal was immediately without delay.

If the principal cancels the contract, the principal shall pay to the Institute the fee for the services performed in accordance with contract up to the date of cancellation and shall reimburse it for all ascertainable costs. The Institute may demand an additional charge of 10% of the fee for the cancelled part of the contract in addition to its fee for services performed in accordance with the contract if the cancellation was made at an inopportune moment and no fault lies with the Institute in connection with the cancellation. Evidence of greater damage shall remain reserved.

Postponement of a contract shall be treated as the equivalent of a cancellation if no fresh date for the performance of services is determined. In the event of postponements, the Institute may charge separately for services and costs incurred on account of the postponement (e.g. services for change of arrangements, costs for the time booked with interviewers).

## Rights of ownership and copyright

The rights of ownership and copyright relating to material arising from the execution of the contract – any types of data carrier, questionnaires and other written documentation etc. – remain property of the research institute. The rights of ownership and copyright for the data arising will be transferred to the principal in an anonymous form. The copyright belonging to the principal in relation to any documentation which he has developed remains unaffected; provisions which deviate in the paragraph following remain reserved.

## Data control and maintenance of secrecy

a) Basic principle  
Data relating to markets, opinions and social research shall be passed to the principal only in an anonymous form, unless the principal is itself an institute associated with the *asms swiss interview institute*<sup>®</sup> collective trademark (for foreign clients: a member of a corresponding organisation) or ESOMAR, or an official office which has undertaken in writing to observe the rules stipulated by *asms swiss interview institute*<sup>®</sup> and the statutory provisions relating to protection of data and persons. Those cases where the person providing information expressly requests disclosure of his/her identity or expressly consents to communication of his/her identity, shall form a further exception. This consent shall be obtained in both cases through express, duplicated inquiry in the questionnaire.

b) Syndicated studies  
Copyright to all information communicated to the principal and control over the data shall remain wholly with the Institute. The principal shall receive the survey solely for use for his own purposes. He undertakes not to pass to a third party the results of research, reports etc. as well as the material upon which they are based, either in full or as an extract or otherwise in a form of usable information, unless otherwise agreed in writing. Persons or companies with which the principal is connected by way of significant interests, with which it has an agency relationship, or which require such particulars for fulfilling a contractual duty vis-à-vis the principal shall not be deemed to be third parties. The principal shall however undertake to impose the contractual obligation on such persons and companies not to pass the information on.

If particular circumstances require publication of the data ascertained by the Institute to a third party, the Institute shall at the request of the principal, if need be

following consultation with recipients of the same information, decide in respect of consent to such communication to the third party.

The principal shall be liable for observance of these provisions, as well as for their observance by persons and companies to which the principal has communicated the information. The principal shall owe the Institute a contractual penalty in the event of breach, the amount of which the parties shall stipulate separately for each contract. The right to prevent further use of the data and claim to compensation shall not be excluded by this.

#### c) Surveys

In the case of commissioned surveys, the principal may use the anonymous data and conclusions of the survey for further research projects, for archiving and publication in any form whatsoever. He may grant rights of exploitation in data and conclusions to third parties. The principal shall possess sole control over the data. The Institute shall guarantee to the principal not to communicate further specific data and/or knowledge relating to the principal arising from conduct of the survey to a third party without its express permission.

The Institute may however continue to use general insights arising out of the survey, for example, for standardising the form of questionnaires or formulating anonymous standard values from several surveys carried out for different clients. It shall ensure that a third party cannot deduce the identity of the principal from the results of the survey and use of the know-how.

The Institute and the principal shall endeavour to ensure that the following additional information shall be publicised on first public release of surveys which are intended for publication in communications media:

- name of the Institute
- name of the principal
- method of enquiry
- date of the survey
- literal phrasing of the questions
- definition of the basic generality
- description of the selection process, as well as
- the number of interviews.

The separate terms of the «Guidelines for the Conduct of Public Opinion Polls Relating to Voting and Elections which are Intended for Publication Prior to the Ballot» concerning mandatory publication of the methodical profile on the homepage [www.asms-vsms.ch](http://www.asms-vsms.ch) by the Institute itself remains reserved.

#### Copy of data records

In the case of commissioned surveys, the principal may demand an anonymous data record from the Institute, against payment.

#### Inspection/anonymity

The principal shall have the right to inspect the original survey documentation at the offices of the Institute. The anonymity of persons supplying information may not however be prejudiced. If measures which are required to protect anonymity give rise to costs, these shall be borne by the principal to the extent that it has been informed about them in advance.

#### Duty to preserve records

The Institute shall archive survey documentation for one year and data carriers and other material for two years following delivery of the survey report. Longer periods shall be subject to express agreement.

#### Confidentiality

The Institute shall not disclose the identity of the principal in connection with a specific commission. It shall treat in strict confidence all information received from the principal and shall use this solely for performance of the contract. Agreements to the contrary shall remain reserved.

The results achieved shall only be available to the particular principal except when it shall be a question of syndicated studies or services which are obviously to be rendered for different clients.

The Institute may mention the name of the principal as a reference without referring to a certain commission.

#### Liability of the Institute

The Institute shall conduct the survey (collection, compilation, evaluation and final preparation of data) with the degree of care necessary according to the recognised rules of market and social research. The Institute shall exercise its discretion according to the best of its knowledge if the issue of instructions leave scope for discretion open. Fault in the conduct of the survey shall only be established if the Institute culpably breaches the duty of care to which it is subject.

The Institute shall undertake to define the structure of the survey and the information thereby collected according to the best of its knowledge and ability («best practice»), so that it corresponds with the use declared in the instructions from the principal. Likewise, production of the survey shall be made according to the «best practice» rules applicable for market research. Liability for consequential or indirect damage, such as in particular loss of profits, loss of data or loss of earnings, shall in every case be excluded.

The duty of the market research institute to accept liability for damage for which it is responsible shall be

limited in amount to the total amount of the agreed fee for the particular individual commission.

Complaints must be directed to the Institute in writing within 60 days following receipt of the information.

The Institute shall not accept liability for faults which may be ascribed to an evaluation program, if such evaluation programs have been made available by the principal.

The Institute shall not be liable for the consequences of delayed delivery or loss, or damage to test material, to the extent that the delay or loss, or damage is based on circumstances which lie outside the operational area of the market research institute, or have not been culpably caused by the Institute, or are the result of natural disasters and other events of force majeure or official action or industrial disputes.

### **Liability of the principal**

The principal shall accept liability irrespective of blame for all direct and indirect damage to the Institute or third parties arising from use of the test materials made available by it.

### **Delivery of account**

The agreed fees serve to finance the particular research project. One third of the agreed amount of the fee shall therefore be due for payment at the time of the placement of the order, one third at the time of the start of the survey work, and one third upon delivery of results, unless otherwise agreed. One half of the amount of the fee shall be due for payment at the time of the placement of the order and the other half after delivery of results in the case of surveys where the fee is less than CHF 20,000.00 and/or where the results are due in less than eight weeks. The Institute shall have the right to defer delivery of data in the event of failure to pay the outstanding instalments.

### **Exclusivity**

The market research institute cannot guarantee exclusivity for certain fields of products, the subject matter of enquiry or survey methods, unless this has been expressly agreed. Insofar as exclusivity is agreed, the duration thereof and any additional fee to be charged shall be stipulated.

If an institute receives a request for a survey which the principal wishes to publicise to a broad section of the public or to a closely defined target group (e.g. for the purpose of acquiring customers) and it is already working on a project of this nature together with another client

or on its own account, the Institute must if possible at the time of the request for a quote, but at the latest on receipt of instructions relating to this quote:

- a) refuse, or
- b) notify the first client and request his consent and then similarly inform the interested parties in respect of the first, current project.

### **Termination of the contractual relationship**

Contracts which are entered into for an unspecified duration and which involved the rendering of services at periodic intervals may be terminated – unless otherwise agreed – both by the principal as well as by the Institute at any time by means of a registered letter, subject to adherence to a three-month period of notice.

The instructions may be cancelled at any time with immediate effect if one party has been demonstrably in arrears with the performance of his contractual obligations for four weeks.

### **Applicable law/place of jurisdiction**

The contract is subject to the law of Switzerland. The parties shall agree the place of the registered office of the Institute as the place of jurisdiction for all disputes. The Institute shall however have the right to take legal proceedings against the principal at his ordinary place of jurisdiction.

### **Coming into force**

The Board of asms approved these sample General Terms and Conditions of Business on 12 September 2013.