

# General Terms and Conditions of Purchase of GfK SE and its affiliated companies (“GfK”)

## Part A General Conditions

### § 1 Application

(1) The following terms and conditions apply for orders issued by GfK. These terms and conditions of purchase shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.

(2) These terms and conditions of purchase shall also govern all future transactions between the parties and shall also apply if GfK accepts services/delivery despite GfK knowledge of differing or contrary terms.

(3) These terms and conditions of purchase shall only apply vis-à-vis merchants, governmental entities, or special governmental estates.

(4) In addition to these terms and conditions Part A the “Additional terms and conditions” Part B, C or D (whichever is applicable for Suppliers respective services) shall apply. The Additional terms and conditions can be found on [www.gfk.com/supplier](http://www.gfk.com/supplier)

### § 2 Offer, Conclusion of Contract

(1) The offers submitted by Supplier are free of charge. For sales call, preparation of plans, drawings etc. without prior written contract GfK will not admit any claims.

(2) The order issued by GfK alone determines the scope and type of performance. The Supplier shall provide to GfK after receipt of the order an order confirmation without undue delay. GfK can revoke the order if the Supplier has not accepted the order in writing or carried it out without reservation within the time requested in the order after receipt of the order.

(3) Orders, requests, terminations, contract amendments or supplements or other declarations must be made in writing or in text form. Orders, requests, terminations, contract amendments or supplements or other declarations made orally or by telecommunication are only binding if they are set down in writing or in text form by GfK.

### § 3 Prices, Payment

(1) Unless otherwise determined in written payment shall be made within 30 days after complete delivery of the goods and/or service (and acceptance, if acceptance has been agreed upon) and receipt of a proper invoice.

(2) Prices for goods include the respective statutory VAT and any and all costs for packaging, except as otherwise expressly agreed upon. The price agreed in the order covers the delivery „free of charge to the destination”. The price covers also the entire transport, insurance, packaging and other incidental costs and charges for delivery and unloading at the place of delivery indicated by GfK, unless otherwise agreed. Travel time and waiting periods as well as travel expenses shall not be compensated separately as far as not otherwise expressly agreed.

(3) The documents necessary for use of the performance/deliverables shall be provided – unless otherwise agreed – at least in the local language of the respective order and English and are included in the agreed price.

(4) The unconditional payment of the invoice amount by GfK does not involve the recognition of the performance of the Supplier as being in accordance with the contract.

### § 4 Invoices/Taxes

(1) The invoice shall clearly state the purchase order number of GfK, type and extent of the work, which has been carried out. Hourly fees and the number of hours worked shall be shown separately per employee or consultant if applicable. Where applicable the Value Added Tax shall also be specified on each invoice. Any default in payment due to an invoice which does not comply with the aforementioned requirements is not the fault of GfK.

(2) In the case of other services and deliveries of works which are subject to VAT in Germany and performed by foreign contractors, the tax liability passes to GfK (§ 13 a, b UStG). In the invoices for these services the Supplier may not include any German VAT. If, when performing the above-mentioned services, the Supplier brings objects from a third country to Germany and if in this connection import taxes are incurred, they shall be borne by the Supplier. For construction services pursuant to § 13 b UStG, GfK and the Supplier agree that the conditions of § 13 b UStG for transfer of the tax liability are met and that the provision applies accordingly.

(3) GfK may deduct from the gross price any withholding taxes (in particular building withholding tax pursuant to § 48 Income Tax Act and withholding tax pursuant to § 50a Income Tax Act) and pay them to the tax authorities for the account of the Supplier unless a valid certificate of exemption is provided by the Supplier.

### § 5 Delivery

(1) All delivery dates stated in the order or otherwise agreed upon are binding.

(2) The Supplier shall immediately inform GfK of any threatening or existing delay in delivery, the reasons for such delay and the anticipated duration of such delay. The foregoing shall not affect the occurrence of a default in delivery.

(3) In case of default in delivery GfK reserve all rights under applicable law.

### § 6 Passing of Risk

(1) The risk of loss or damage to the goods passes to GfK upon delivery at the agreed place of delivery and countersignature of the bill of delivery respectively upon acceptance.

(2) The title is transferred with delivery to GfK, a normal reservation of title in favour of Supplier remains unaffected.

### § 7 Packaging/Environmental Protection

The Supplier is obliged to recover, free of charge, the packaging material and electronic scrap related to the agreed services and to collect and dispose of it properly.

### § 8 Liability, Warranty

(1) GfK reserves all rights and remedies for non-conformity provided by applicable law. GfK is especially entitled, upon its election, to claim remedy of defects, delivery of conforming goods, and damages.

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(2) In case of imminent danger respectively in case of services with work results (Werkleistungen) after a set period of grace GfK is entitled, after giving notice to the Supplier, to remedy the defects on the Supplier's cost.

(3) If the remedy of defects has failed GfK is entitled to demand a price reduction or to rescind from respective order/contract and damages.

(4) Warranty claims shall be time-barred after 36 month of the passage of risk.

### § 9 Product Liability, Insurance

(1) The Supplier shall, upon first demand, indemnify GfK and hold GfK harmless from and against any and all liability or claims of third parties based on the manufacture, delivery, storage, or use of the delivered goods/services. The above indemnification shall not apply if the claim is based on GfK's intentional or grossly negligent breach of duties.

(2) If goods are sold, the Supplier shall, at all times during the term of an order/ contract, maintain product liability insurance with an adequate minimum insurance amount of 10 Mio. Euro for each single occurrence of personal and property damage and minimum insurance amount of 1 Mio. Euro for each single pecuniary loss. Further damages shall remain unaffected.

### § 10 Warranty of Title

(1) The Supplier warrants that the goods/services are free from rights of third parties and that delivery of the goods respectively its use does not violate any rights of third parties. The Supplier shall indemnify GfK, upon first demand, from any claims of third parties in this regard.

(2) Claims based on defect of title shall be time-barred 36 months on the passage of risk.

### § 11 Supplier Data

The Supplier acknowledges that its personal data gathered in connection with the entering or within the course of the business relationship will be processed, especially stored in accordance with applicable data protection laws.

### § 12 Provided Documents

(1) GfK reserves ownership and copyright to pictures, illustrations, calculations, models, samples, data and other documents provided to the Supplier ("GfK Material"). Such GfK Material may only be used by Supplier to provide the agreed performance.

(2) They may not be made accessible to third parties without consent of GfK and shall be returned on request but latest after completion of the order, including any copies made on the Supplier's own initiative.

(3) GfK Material provided shall be separated by the Supplier from other materials, marked as property of GfK and stored with the care of a reasonable businessman. The Supplier is obligated to prevent access by third parties. Adaptions or processing of the GfK Material shall be made for GfK.

### § 13 Confidentiality

(1) The Supplier shall keep confidential any and all information which are marked confidential or according to their nature are

to be considered confidential and all documentation also not being marked confidential of which it becomes aware about GfK or GfK's clients in connection with performance of an order. Within its enterprise, the Supplier may disclose such information and documents only to staff that is directly involved with the performance of the order and was accordingly contractually obliged to enter into a confidentiality covenant. No information may be disclosed to third parties without GfK's prior written consent. Should such consent be granted, the third party receiving such information shall be subject to same confidentiality obligations.

(2) The confidentiality obligations shall survive any termination or fulfilment of the order.

(3) At GfK's request, the Supplier agrees at any time to return any and all documents that it has received in connection with performance of the order or to provide evidence of destruction thereof.

### § 14 Data Protection

(1) The Supplier agrees to comply with the respective data protection regulations in the performance of an order and to maintain telecommunications secrecy and also to require employees and agents to comply with these regulations.

(2) In the case of the processing of personal data by the Supplier, he shall require his employees and agents to comply with the duty of data secrecy.

(3) The Supplier agrees to prove to the data protection officer of GfK upon request the compliance with this obligation in the form required by the statutory provisions.

(4) As far as it is necessary that the Supplier processes personal data on instructions, the parties shall conclude an agreement for contract data processing in Germany pursuant to §11 of the Federal Data Protection Act which the GfK shall provide. The Supplier shall use the data only for the purposes set down in writing in a particular case and not transfer them to third parties without prior consent of the GfK.

### § 15 Subcontractor

(1) The engagement of third parties as sub-contractors requires the prior written consent of GfK.

(2) Together with the request for consent Supplier shall submit to GfK details concerning identity and prices of the subcontractor intended to be used.

### § 16 Applicable Law, Jurisdiction

(1) Any order shall be governed by the laws of the Federal Republic of Germany (excluding the Convention on Contracts for the International Sale of Goods).

(2) Place of performance and exclusive place of jurisdiction for all disputes arising out of or in connection with the fulfillment of contract shall be Nuremberg.

### § 17 Miscellaneous

(1) Should a provision of these terms and conditions or an individual agreement be or become invalid, the validity of the remaining provisions shall remain unaffected thereby. The Parties shall replace the invalid provision by a provision that is valid and that most closely reflects the commercial purpose

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and intent of the invalid provision.

(2) GfK is entitled to transfer individual or all rights and/or obligations under an awarded contract as well as the agreement as a whole to third parties without consent of the Supplier. This applies in particular for transfers to an affiliated company within the meaning of §§ 15 et seqq. Stock Corporation Act.

(3) The Supplier is not entitled to use information regarding an intended or existing contractual cooperation as well as GfK's trademarks or logotypes for reference, advertising and marketing purposes without prior consent of GfK.

(4) The Supplier will take notice of the GfK SE Code of Conduct published under [www.gfk.com](http://www.gfk.com) and warrants that he and his employees adhere to these rules.

(5) The Supplier's claims against GfK may only be assigned to third parties upon prior consent of GfK.

(6) The Supplier has no rights of retention in so far as they are based on counterclaims resulting from other legal transactions with GfK.

(7) The Supplier may only set off claims which are undisputed or recognised by final and binding judgement.

(8) The Supplier shall comply with all applicable laws, statutes, regulations and codes. Without limiting the generality of aforementioned regulation the Supplier agrees to perform the services in due compliance with the German Minimum Wage Act. The Supplier will not engage, actively or passively, nor directly or indirectly in any form of violation of basic human rights of employees or any child labor. Moreover, the Supplier will act in accordance with the applicable environmental laws and will use best efforts to promote the Code of Conduct for GfK Suppliers among its suppliers. The supplier takes notice of the Code of Conduct for GfK Suppliers available on [www.gfk.com/supplier](http://www.gfk.com/supplier)

(9) Insofar as the provisions of these general terms and conditions and their additional terms and conditions do not regulate certain matters, relevant statutory provisions shall apply. Relevant information is available on [www.gfk.com/supplier](http://www.gfk.com/supplier).

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# General Terms and Conditions of Purchase of GfK SE and its affiliated companies ("GfK")

## Part B

### Additional terms and conditions for consulting, programming or agency services

In addition to the terms and conditions stipulated under **Part A General Conditions** the following terms and conditions apply:

#### § B 1 Service

(1) The Supplier shall comply with the agreed specifications as well as the applicable statutory provisions, the regulations and guidelines of public authorities, trade associations and professional associations. All performances must correspond to the most recent state of technology and utmost care and attention.

(2) Pure consulting services are not subject to a formal acceptance, they are deemed provided if the certificate of performance has been signed by GfK. Any rights of GfK concerning malperformance remain unaffected.

(3) The Supplier shall, on request at any time, (i) provide a written report, of appropriate scope, detailing the particular status, and (ii) allow inspection of his documentation relating the services, still to be rendered.

(4) The right to issue instructions and directions to employees of the Supplier shall be retained without limitation by the Supplier, even if employees or other vicarious agents of the Supplier perform the services on GfK` s premises.

(5) GfK may demand any time modifications to the goods and services, provided such modifications are reasonable for the Supplier. The Supplier shall review the effects of the desired modifications in terms of compensation and compliance with the deadlines, and shall notify GfK in writing of such effects. Such notifications and the underlying review shall be free of charge. GfK shall then notify the Supplier as to whether or not the relevant changes are to be performed. Any modifications to be performed concerning programming services shall be updated in the documentation respectively. A written agreement shall be reached concerning any modifications to be performed.

(6) Should work need to be carried out in GfK's offices in order to perform an order, the Supplier shall comply with all statutory provisions, in particular, accident prevention provisions, and, in addition, shall comply with any and all company rules, inspection rules and administrative rules, in particular, the house rules of GfK.

(7) Should access to any GfK IT system be or become necessary for provision of the service owed, the Supplier agrees to comply with the provisions agreed in the separate IT access agreement.

#### § B 2 Right to Use

(1) Supplier shall grant GfK an exclusive, transferable, indefi-

nite, worldwide, as to content or time unlimited licence in all work products (software, programming, documentation, training documents, concepts, marketing documents, etc.) prepared on the basis of an order/contract. GfK shall not pay any separate compensation for such licence. This includes the right to modify, rework and reproduce, to multiply, to change and extend the results and use the hereby created results in the same way as the granted rights into the original results. Furthermore this includes the right to distribute, make available, publish or dispose the work products and the right to sublicense.

(2) GfK shall have an exclusive right to any rights in inventions created in performance of an order/contract and shall be entitled to register intellectual property rights in respect of such inventions at its own discretion and its own name, specifying the inventor, in any countries in accordance with the applicable statutory provisions.

(3) It is essential that the services and work products are delivered free of any third party rights. The Supplier is under a duty to verify title and shall, insofar as he makes use of third parties in the provision of the service, ensure by means of contract, that the rights according to section B2 belong exclusively and without restriction as to time to GfK, and that they are unaffected by the termination of the contracts between Supplier and the third parties. The Supplier shall inform GfK of any possible conflicting industrial and intellectual property rights.

#### § B 3 Termination

(1) GfK may terminate an order/contract at any time without cause. In the event of termination, GfK shall notify the Supplier as to whether and, where applicable, which work that has already been commenced must be completed. In such cases, Supplier shall have a right to compensation for all goods and services provided until notice of termination and for any additional completion required by GfK of work that has already been commenced. Any additional (compensatory damages) claims shall be excluded.

(2) The right of each party to terminate because of due cause remains unaffected. A due cause commences by either party, if the other party makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts in general as they become or otherwise takes any action or causes any action to be taken which the other party reasonably believes will cause the acting party to be unable to perform its financial obligations under this agreement.

#### § B 4 Prices

(1) The agreed flat-rate fee shall constitute settlement of all services to be rendered by the Supplier and associated expenses, unless otherwise agreed in writing.

(2) If time-based remuneration is agreed, evidence of the performance shall be provided by Supplier on the basis of documentary records. These shall be presented to GfK for signature at regular intervals and copies thereof appended to the invoice.

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(3) Reimbursement for travel and overnight expenses shall only be reimbursed if approved by GfK in advance.

### Additional provisions for programming services:

#### (1) Software Specification

Should the Supplier prepare a software specification, it must contain a detailed specification of duties, detailed information concerning hardware and system software requirements, the interface definition, the quantity structure, the requisite operating resources and the start-up and acceptance conditions.

The software specification must be countersigned by GfK prior to commencement of the programming work/development work. The Suppliers responsibility for the software specification shall remain unaffected hereby.

Software specifications that have been signed by both parties may be modified only subject to mutual consent.

#### (2) Preparation of Software

The software shall be prepared solely on the basis of the agreed software specification, in accordance with applicable norms and guidelines (DIN, VDE/VDI etc.) and based on generally recognised quality standards.

Preparation of the software includes, unless agreed otherwise, in particular:

- system draft of the overall system;
- the program specification;
- the coding;
- the test programs and test data necessary for successful and rapid testing and start -up, and a test plan;
- the program testing and documentation.

#### (3) Documentation

The Supplier shall prepare documentation concerning preparation of the software/programming services without any separate compensation. The documentation to be provided by the Supplier shall cover, unless otherwise agreed:

- Comprehensible documentation concerning the development process
- System draft with function specification of the overall system
- Function and construction specification of the individual programs and equipment
- Interface specification
- Resources used (memory used etc.)
- Error messages
- Data file draft with data files and error specifications
- User handbook
- Installation instructions
- Program print out in the agreed programming language with comprehensive application-oriented com-

mentary

- Source program
- Test program and test data
- Executable machine program

#### (4) Instructions

Supplier shall instruct GfK free of charge in how to use the software. The scope of such instructions shall be structured such that, given normal prior knowledge, sufficient system knowledge is provided to thus enable reliable use of the system.

#### (5) Partial Acceptance/Final Acceptance

Following successful completion of the functionality test and following successful start-up of the software at GfK, the Supplier shall prove that the software prepared provides the services required under the software specification. Should defects be ascertained during acceptance, the Supplier shall promptly remedy same. The acceptance procedure shall be repeated.

Should different dates for acceptance of individual software components, acceptance shall be restricted to the respective partial performance. Upon acceptance of the final component of partial performance, proper interaction of all components must be determined

#### (6) Open-source software

The Supplier warrants that his services do not include Open Source Software or only include such software whose use has been approved by GfK in advance and in writing. "Open Source Software" shall mean any software which is transferred by the rights holder to any user, free of charge, with the right of processing and/or distribution on the basis of a license or other contractual provision, including but not limited to GNU General Public license (GPL) or GNU Lesser GPL (LGPL).

#### § B 6 Delay

Time is of the essence and agreed deadlines shall be binding. Should the Supplier default in provision of the agreed goods and services, GfK may demand a contractual penalty of 0,5% of the contract value per week commenced, not exceeding a maximum, however, of 5% of the relevant contract value. The application of the relevant statutory provision shall remain unaffected thereby.

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## Part C

### Additional terms and conditions for the purchase of field-work services from a firm (not an individual person):

In addition to the terms and conditions stipulated under **Part A General Conditions** the following terms and conditions apply:

#### § C 1 Service

(1) Supplier shall carry out word for word the questionnaire/questionnaires stipulated by GfK, including the introductory texts and other stipulated texts.

(2) The Supplier represents and warrants that: (i) the services shall be performed in accordance with, and shall not violate, applicable laws, rules or regulations and the Supplier shall obtain all permits or permissions required to comply with such laws, rules or regulations; (ii) the Supplier has the necessary qualifications, skills, resources, tools and equipment to perform the services and does not require any training by GfK in connection with the performance of the services; (iii) the Supplier will perform the services in accordance with the specifications established by GfK to ensure conducting of the study in accordance with the study design and (iv) in accordance with the professional principles and etiquette of market and social research industry including, without limitation the ESOMAR International Code of Marketing and Social Research Practice for survey research ([www.esomar.com](http://www.esomar.com) "Standards and Guidelines") and in Germany the rules of the Arbeitskreis deutscher Markt- und Sozialforschungsinstitute e.V. „ADM“, (to found under [www.adm-ev.de](http://www.adm-ev.de)). The Supplier shall comply with all of GfK's standards and procedures when working on-site at GfK.

(3) Supplier shall commit the employees entrusted with undertaking the order accordingly.

(4) In accordance with ESOMAR Rule 3, Supplier shall especially ensure that the participation of the respondent in the interview is always voluntary, which means that the respondent must be able to stop the interview at any time.

(5) Should an alteration or adjustment of the performance become necessary during the undertaking of the order, then Supplier undertakes to attend to these matters without delay, duly stating the effects in terms of content, costs and time, in agreement with GfK.

(6) Supplier undertakes to subsequently pay the respectively valid statutory value added tax if it should emerge that the performance should have been paid plus value added tax.

#### § C 2 Loyalty obligations of Supplier

(1) Supplier agrees that while GfK engages Supplier and continuing for a period of six months from the date that such engagement terminates, Supplier will not, directly or indirectly (i) solicit, pursue or attempt to persuade any client of GfK for which Supplier performed services to do business with or become a customer or client directly of Supplier or of any person or firm other than GfK or (ii) solicit or encourage to leave GfK's

employment or engagement, any employee, consultant, or contractor of GfK within one year of such employment or engagement.

(2) Supplier assumes the responsibility for itself, its employees, commissioned third parties or other vicarious agents to maintain confidentiality on matters, data and other facts from the business sphere of GfK or of its clients which Supplier learns, even after the termination of the cooperation.

(3) Supplier is furthermore not authorised without the agreement of GfK to notify third parties of the work results or parts thereof or to inform third parties of the ongoing or already undertaken surveys.

(4) Even after the termination of the order/contract, Supplier is prohibited from exploiting its knowledge acquired in the course of the order/contract which forms the subject-matter of the respective order/contract when undertaking other projects.

#### § C 3 Right to use

(1) Supplier shall grant GfK an exclusive, transferable, indefinite, worldwide, as to content or time unlimited licence in all deliverables and work products prepared on the basis of an order/contract. GfK shall not pay any separate compensation for such licence. This includes the right to modify, rework and reproduce, to multiply, to change and extend the results and use the hereby created results in the same way as the granted rights into the original results. Furthermore this includes the right to distribute, make available, publish or dispose the deliverables and work products and the right to sub-licence.

(2) It is essential that the deliverables and work products are delivered free of any third party rights. The Supplier is under a duty to verify title and shall, insofar as he makes use of third parties in the provision of the service, ensure by means of contract, that the rights according to this section belong exclusively and without restriction as to time to GfK, and that they are unaffected by the termination of the contracts between Supplier and the third parties. The Supplier shall inform GfK of any possible conflicting industrial and intellectual property rights.

#### § C 4 Data protection

(1) Supplier shall comply with the rules and obligations of the applicable data protection provisions in its country and the professional principles and etiquette of market and social research including, without limitation the ESOMAR International Code of Marketing and Social Research Practice for survey research and in Germany the rules of the ADM and should it enlist the services of third parties, it shall commit them accordingly.

(2) The parties shall conclude a separate contract for order data processing which will include as minimum the following:

a) Supplier may use address data provided by GfK only within the scope of the GfK's instructions.

b) The personal data and addresses surrendered to the Sup-

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plier may not be made accessible or notified to unauthorised third parties or otherwise put at their disposal for use. Therefore Supplier shall take all technical and organisational measures necessary in particular as follows and shall advise the persons employed in data processing of the obligations assumed herein:

- to prevent unauthorised persons from gaining access to data processing systems with which personal data are processed or used
- to prevent data processing systems to be used without authorisation
- to ensure that persons entitled to use a data processing system have access only to the data to which they have a right of access, and that personal data cannot be read, copied, modified or removed without authorisation in the course of processing or use and after storage
- to ensure that personal data cannot be read, copied, modified or removed without authorisation during electronic transmission or transport, and that it is possible to check and establish to which bodies the transfer of personal data by means of data transmission facilities is envisaged
- to ensure that it is possible to check and establish whether and by whom personal data has been put into data processing systems, modified or removed
- to ensure, that in case of commissioned processing of personal data, the data is processed strictly in accordance with the instructions of the principal
- to ensure that the personal data is protected from accidental destruction or loss
- to ensure that the data collected for different purposes can be processed separately

(3) Supplier undertakes to provide GfK when accepting the order and on written demand within a reasonable time with all information necessary for the realisation of an extensive order control.

(4) Supplier shall undertake the deletion respectively destruction of the surrendered address data and data carriers concerning this data as well as all copies or reproductions hereof by the end of the survey and the controls associated with it and to document in writing the proper fulfilment of deletion respectively destruction.

### § C 5 Warranty / Remedies in case of delay or error

(1) Supplier shall render the performance assumed by it in full, on time and in conformity with recognised quality standards as well as with the professional principles and etiquette of market and social research. Within this scope, Supplier shall be liable for any infringement of the contract for which it is responsible. Supplier shall reimburse GfK all costs and the loss which GfK incurs due to the fact that a claim is made on GfK by third parties on account of an infringement of the order/contract for which Supplier is responsible.

(2) The performance of the services shall be rendered in strict compliance with the agreed time schedule as time is of essence and agreed volume as non-achievement of sample size means in most cases complete non-usability of the delivered data.

(3) If the delivery of the Services are impeded or delayed by Supplier due to its fault, then Supplier will be liable to pay compensation at a rate of two percent (2%) of the full contract value per day of delay from the agreed timeline as set out in this agreement. The maximum amount of compensation paid will be limited to thirty percent (30%) of the full contract value. If such maximum amount of compensation has become liable, GfK will have an express right to terminate the agreement with Supplier immediately upon notice.

### § C 6 Term and Termination

(1) The respective order shall come into force on the date stated in the order and shall end with the conclusion of the last survey wave agreed.

(2) Both contracting parties' rights to terminate this contract for due cause shall remain unaffected by the above stipulation.

(3) Supplier grants GfK an extraordinary termination right with immediate effect in respect of an order/contract, especially in the event of the culpable infringement of the obligations stipulated in Section C 2 and C 4. Claims for damages by GfK shall remain unaffected by the above stipulation.

(4) GfK may terminate an order/contract at any time without cause. In the event of termination, GfK shall notify the Supplier as to whether and, where applicable, which work that has already been commenced must be completed in such cases, Supplier shall have a right to compensation for all goods and services provided until notice of termination and for any additional completion required by GfK of work that has already been commenced. Any additional (compensatory damages) claims shall be excluded.

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## Part D

### Additional terms and conditions for the purchase of addresses, panellist recruitment or hosting services:

In addition to the terms and conditions stipulated under **Part A General Conditions** the following terms and conditions apply:

#### § D 1 Services

(1) GfK engages Supplier to perform Services that may include (i) purchase of addresses, (ii) recruiting individuals to join a survey panel owned by GfK ("**Recruitment Services**"), and (iii) hosting a survey panel join page on behalf of GfK for the purpose of collecting registration information from individuals joining a survey panel owned by GfK, which join page is hosted on servers and systems owned, operated, and/or maintained by and on behalf of Supplier ("**Hosting Services**") as described more detailed in individual Work Orders. Any reference to "**Services**" in the following shall mean both, Recruitment Services and Hosting Services.

(2) Supplier hereby represents, warrants, and covenants to GfK that (i) the professional staff and subcontractors it assigns to perform Services are, and at all times will be, competent and properly qualified to perform the Services as required hereunder, and (ii) the Services shall be performed under this Agreement in a professional manner; consistent with all applicable laws and regulations and the highest professional industry standards, practices and procedures prevailing in Supplier's industry and market and social research industry including, without limitation the ESOMAR International Code of Marketing and Social Research Practice for survey research ([www.esomar.com](http://www.esomar.com) "Standards und Guidelines") and in Germany the rules of the Arbeitskreis deutscher Markt- und Sozialforschungsinstitute e.V. „ADM", (to found under [www.adm-ev.de](http://www.adm-ev.de)) and in strict compliance with the terms, obligations, representations, agreements and requirements set forth herein and in any applicable Statement of Work.

(3) Supplier shall not delegate or subcontract any of its rights or obligations hereunder to a third party without the prior express written consent of GfK. In the event such delegation or subcontracting is consented to by GfK, the third party to which such rights or obligations are delegated or subcontracted shall be bound by the terms and conditions of this Agreement applicable to Supplier, and any failure by such third party to comply with the terms hereof shall constitute a breach of this Agreement by Supplier. The Supplier's delegation or subcontracting of all or any part of the Services or any of its rights or obligations hereunder will not relieve or release Supplier from its responsibilities and obligations hereunder and Supplier will be responsible to GfK for the performance of the party to whom the Services or rights or obligations are delegated or subcontracted to.

(4) If GfK becomes dissatisfied with any Supplier personnel or subcontractor providing the services, GfK will notify Supplier of the details of its dissatisfaction, and the parties shall work together in good-faith to remedy the problem as soon as reasonably possible; provided that upon GfK's request, Supplier shall

promptly remove and replace any such Supplier personnel or subcontractor.

#### § D 2 Obligations of Supplier

##### For Recruitment Services:

(1) The Supplier shall only use e-mail templates which have been verified and provided by GfK in regards to content and layout. If such templates have not been provided by GfK it is the obligation of Supplier to ask GfK for them.

(2) GfK may request at any time a change of the used e-mail templates and Supplier shall promptly implement such request.

(3) Before sending out recruitment e-mails Supplier shall align his e-mail address list intended to be used against GfK's suppression or black lists provided or supplied by or on behalf of GfK concerning individuals that are not allowed to be contacted and shall communicate these lists either internally within Supplier or to Supplier's subcontractors.

(4) Supplier shall only contact individuals that have declared via Double Opt-In their consent in being contacted by e-mail. "Double Opt-In" means the confirmation of the consent via second confirmation email given by the Panelist. The saved Opt-In documentation shall include:

- Source IP, timestamp, and host of the Opt-Ins
- IP, timestamp, and host of the double Opt-Ins

The storage of this data shall be encrypted, the editing of these data shall be subsequently impossible and the Double Opt-In documentation must be kept by Supplier for at least two years. Any confirmation of consent via Double Opt-In shall not be older than 18 months. Upon request the documentation of the Double-Opt-In of a used e-mail address must be submitted to GfK within 5 working days.

(5) Supplier shall be responsible to ensure and warrants that any of its subcontractors also adhere to the requirements as set out in sections (1) – (4).

##### For Hosting Services:

(6) The Supplier shall only host survey panel join pages which have been verified and provided by GfK in regards to content and layout. If such pages have not been approved by GfK it is the obligation of Supplier to ask GfK for approval.

(7) GfK may request at any time a change / update in content and layout of the hosted pages and Supplier shall promptly implement such request.

(8) The panel join pages must contain correct imprint, data protection and cookie policies and the parties will work jointly to fulfill this obligation.

##### For purchase of addresses:

The addresses sold by Supplier to GfK shall meet the requirements concerning Double Opt-In as stipulated in section § D (4).



# General Terms and Conditions of Purchase of GfK SE and its affiliated companies ("GfK")

## § D 3 Subcontractors

(1) The engagement of any third parties as sub-contractors for Recruitment and Hosting Services requires the prior written consent of GfK.

(2) The Supplier's delegation or subcontracting of all or any part of the Services or any of its rights or obligations hereunder will not relieve or release Supplier from its responsibilities and obligations hereunder and Supplier will be responsible to GfK for the performance of the party to whom the Services or rights or obligations are delegated or subcontracted to.

## § D 4 Indemnification

Supplier hereby agrees to save, protect, defend, indemnify, and hold GfK and/or any members, managers, officers, employees and/or agents harmless from and against any and all claims, liabilities and damages, including without limitation reasonable expenses of litigation, arising out of or resulting from claims, actions or lawsuits filed or commenced by any third party to the extent arising out of the breach of the representations, warranties, covenants, and agreements of Supplier to Client set forth in section D2 of this Agreement.

## § D 5 Data Protection

(1) The parties shall conclude a separate contract for order data processing which will include as minimum the following:

a) Supplier may use any personal data provided by GfK or collected for GfK only within the scope of GfK's instructions.

b) The personal data and addresses surrendered to the Supplier may not be made accessible or notified to unauthorised third parties or otherwise put at their disposal for use. Therefore Supplier shall take all technical and organisational measures necessary in particular as follows and shall advise the persons employed in data processing of the obligations assumed herein:

- to prevent unauthorised persons from gaining access to data processing systems with which personal data are processed or used
- to prevent data processing systems to be used without authorisation
- to ensure that persons entitled to use a data processing system have access only to the data to which they have a right of access, and that personal data cannot be read, copied, modified or removed without authorisation in the course of processing or use and after storage
- to ensure that personal data cannot be read, copied, modified or removed without authorisation during electronic transmission or transport, and that it is possible to check and establish to which bodies the transfer of personal data by means of data transmission facilities is envisaged
- to ensure that it is possible to check and establish whether and by whom personal data has been put into data pro-

cessing systems, modified or removed

- to ensure, that in case of commissioned processing of personal data, the data is processed strictly in accordance with the instructions of the principal
- to ensure that the personal data is protected from accidental destruction or loss
- to ensure that the data collected for different purposes can be processed separately

(2) Supplier undertakes to provide GfK when accepting the order and on written demand within a reasonable time with all information necessary for the realisation of an extensive order control.

(3) Supplier shall undertake the deletion respectively destruction of the surrendered address data and data carriers concerning this data as well as all copies or reproductions hereof by the end of the survey and the controls associated with it and to document in writing the proper fulfilment of deletion respectively destruction.

## § D 6 Term and Termination

(1) The respective order shall come into force on the date stated in the order and shall end with the conclusion of the last survey wave agreed.

(2) Both contracting parties' rights to terminate this contract for due cause shall remain unaffected by the above stipulation.

(3) Supplier grants GfK an extraordinary termination right with immediate effect in respect of an order/contract, especially in the event of the culpable infringement of the obligations stipulated in Section D 1 and D 2. Claims for damages by GfK shall remain unaffected by the above stipulation.

(4) GfK may terminate an order/contract at any time without cause. In the event of termination, GfK shall notify the Supplier as to whether and, where applicable, which work that has already been commenced must be completed in such cases, Supplier shall have a right to compensation for all goods and services provided until notice of termination and for any additional completion required by GfK of work that has already been commenced. Any additional (compensatory damages) claims shall be excluded.