

# **General Terms and Conditions of Business**

1.7.2019

## **1 Object of this Agreement**

1.1 The following General Terms and Conditions of Business shall apply to all legal transactions of Polarstern Ltd, based in Lucerne, hereinafter referred to in short as “Agency”, with its contractual partners, hereinafter referred to in short as “Customer”. Any terms and conditions of the Customer that deviate from these Terms and Conditions of Business shall only be accepted by the Agency if they have been acknowledged separately and in writing.

1.2 Any and all agreements concluded between the Agency and the Customer for the purpose of carrying out an order must be agreed upon in writing. Any changes, amendments and ancillary agreements shall only be legally effective if they have been agreed upon in writing.

1.3 These Terms and Conditions of Business shall also apply to any and all future business relations with the Customer even if they are not expressly agreed upon again.

1.4 The Agency renders services in the field of communications. The detailed description of the services to be rendered is based on the tender documents, advertising briefings, project agreements, their appendices and the service specifications of the Agency.

## **2 Parts of and Changes to the Agreement**

2.1 The basis for the Agency’s work and part of this Agreement, besides the project agreement and its appendices, shall be the advertising briefing to be submitted by the Customer to the Agency. Where the advertising briefing is communicated by the Customer to the Agency verbally or by telephone, the Agency shall compile a re-briefing concerning the content of the briefing, which will be submitted to the Customer following the verbal or telephone communication. This re-briefing shall become a binding part of the Agreement unless the Customer objects to this re-briefing within 5 working days.

2.2 Any change and/or amendment to this Agreement and/or its parts shall only be legally effective if it/they has/have been agreed upon in writing. Any additional costs incurred as a result shall be borne by the Customer.

2.3 Events of force majeure shall entitle the Agency to postpone the project commissioned by the Customer for the duration of the obstruction and an appropriate initialisation phase. This shall not entitle the Customer to make any claims for damages against the Agency. This shall also apply if and when this has the effect that the Customer cannot meet important deadlines and/or cannot

observe important events and/or that these cannot take place.

### **3 Copyrights and Rights of Use**

3.1 By paying the full agreed-upon fee, the Customer shall acquire the rights to use all the works carried out by the Agency as part of this order for the duration and to the extent that have been contractually agreed upon. This transfer of the rights of use shall apply to the extent that such transfer is possible based on Swiss law, and shall apply to the agreed-upon use in the territory of Switzerland. Any use which exceeds this territory shall require a written agreement entered into as part of the order or a separate ancillary agreement in writing. Unless agreed otherwise, any rights to use works that have not yet been paid for upon completion of the Agreement shall remain with the Agency.

3.2 Any and all services provided and products created as part of the order are protected by copyright law as personal intellectual creations. This provision shall also be deemed as agreed upon if and when the threshold of originality required by copyright law is not reached.

3.3 The Agency shall be entitled to sign the advertising media developed by it in an appropriate manner and as typical for the sector and publish the awarded order for the purpose of self-marketing. This signing and use for advertising can be foreclosed by a relevant separate agreement between the Agency and the Customer.

3.4 The Customer or any third parties commissioned by the Customer shall not be entitled to change the works of the

Agency either in their original version or during reproduction. Any imitation, even of parts of the work, shall not be permitted.

3.5 The transfer of any and all of the granted rights of use to third parties and/or multiple uses shall – to the extent that they have not been laid down in the initial order – be subject to a fee and require the Agency's consent.

3.6 The Agency shall be entitled to the right of information about the scope of this use.

### **4 Remuneration**

4.1 The remuneration agreed upon in the Agreement shall apply. Unless contractually specified otherwise, any and all payments shall be due within 30 days of the date of the invoice, without any deduction. In the event that the due dates are exceeded, the Agency shall be entitled to claim interest on arrears of 5% without any further reminder. This provision shall not affect the right to claims for further damages.

4.2 If and when the provision of services and creation of products extends over a longer period of time, the Agency can invoice instalments for partial performances already rendered. These partial performances need not be available in a form that can be used by the Customer and can also be available as mere working bases on part of the Agency.

4.3 In the event of changes to or termination of orders, works and similar by the Customer and/or if the preconditions for service provision changes, the Customer shall be obliged to

compensate the Agency for any and all costs accrued and indemnify and hold the Agency harmless from and against any obligations to third parties.

4.4 In the event that the Customer withdraws from a contract before the beginning of the project, the Agency shall invoice the Customer the following percentages of the fee that has initially been regulated by agreement as a cancellation fee: up to six months before the beginning of the contract - 10%; from six months up to three months before the beginning of the contract - 25%; from three months up to four weeks before the beginning of the contract - 50%; from four weeks up to two weeks before the beginning of the contract - 80%; from two weeks before the beginning of the contract - 100%.

4.5 Any and all prices specified in quotations and orders as well as the resulting amounts to be paid are exclusive of the statutory value-added tax.

## **5 Additional Services**

5.1 Any unforeseeable additional expenditure must be agreed upon by both parties and may require additional payment of fees.

## **6 The Agency's Obligation to Maintain Secrecy**

6.1 The Agency is obliged to treat as strictly confidential any and all information it obtains as a result of the Customer's order for an unlimited duration and to similarly oblige its employees as well as any third parties it employs to maintain absolute secrecy.

## **7 The Customer's Obligations**

7.1 The Customer shall make available to the Agency any and all data and documents required for carrying out the project free of charge. Any and all working documents shall be treated by the Agency with care, protected from access by third parties, used only to provide the respective service or create the respective product and returned to the Customer upon completion of the order.

7.2 In connection with a commissioned project, the Customer may only place orders with other agencies or service providers following consultation and in agreement with the Agency.

## **8 The Agency's Warranty and Liability**

8.1 The risk of the legal admissibility of the campaigns created and conducted by the Agency shall be borne by the Customer. This shall especially apply in the event that the activities and campaigns violate the provisions of competition law, copyright law and specific advertising legislation. However, the Agency is obliged to point out any legal risks to the extent that it becomes aware of such in the course of its work. The Customer shall indemnify and hold the Agency harmless from and against any third-party claims where the Agency has acted upon the Customer's explicit request, even if it has informed the Customer of its reservations related to the admissibility of the campaigns. The voicing of such reservations by the Agency to the Customer shall be made in writing immediately after it has become aware of them. Should the Agency consider it

necessary to commission a specially competent person or institution to conduct an examination of forthcoming campaigns in terms of competition law, the related costs shall be borne by the Customer following consultation with the Agency.

8.2 The Agency shall in no event be liable for any factual statements about the Customer's products and services included in the advertising campaigns. Similarly, the Agency shall not be liable for the ideas, suggestions, proposals, conceptions and drafts supplied as part of the order being eligible for protection or registration under patent, copyright and trade mark legislation.

8.3 The Agency shall only be liable for damage which it or its vicarious agents have caused intentionally or through gross negligence. The amount of the Agency's liability shall be limited to the amount of the one-off revenue of the Agency resulting from the respective order. The Agency's liability for any consequential losses on account of default in the performance of the Agreement shall be excluded if, and to the extent that, the Agency's liability does not arise from breach of obligations essential for fulfilment of the purpose of the Agreement.

## **9 Collecting Societies**

9.1 The Customer undertakes to remit any accruing fees for related rights to collecting societies such as Suisa, Suissimage, Société Suisse des Auteurs, Pro Litteris or Swissperform. In the event that the Agency advances these fees, the Customer undertakes to reimburse these

to the Agency on production of proof of actual expenditure. This can also be done after completion of the contractual relationship.

## **10 Third-Party Services**

10.1 Any and all freelance staff or third parties called in by the Agency shall be vicarious agents or assistants of the Agency. The Customer undertakes to commission such staff who are employed by the Agency as part of conducting the order neither indirectly nor directly in order to carry out projects without the Agency's cooperation in the 12 months following completion of the order.

## **11 Working Documents and Electronic Data**

11.1 Any and all working documents, electronic data and records created by the Agency as part of the provision of its services or creation of products shall remain with the Agency. The Customer cannot demand that these documents and data be handed over to it. If and when the Agency has been paid the agreed-upon fee, it shall owe the agreed-upon services and products, but not the interim steps in the form of sketches, drafts, production data, etc. that have led to that result.

## **12 Duration of Agreement, Periods of Notice**

12.1 The Agreement shall enter into force when it has been signed. It shall be deemed as concluded for the duration specified in the Agreement. Should the Agreement be concluded for an indefinite period of time, it can be terminated by either party with a period of notice of three months as of the end of every month. This provision shall not affect the

right to termination without notice for material breach of contract. A termination shall be effective only if it is in writing.

### **13 Disputes**

13.1 Should any disputes related to the commissioned project arise in the course or upon completion of the order, an extra-judicial mediation procedure must be conducted before initiating any court proceedings. Should any disputes arise on issues related to quality assessment or the amount of the remuneration, external expert reports shall be produced in order to reach an out-of-court settlement if at all possible. Related costs shall be shared by the Customer and the Agency.

### **14 Final Provisions**

14.1 The Customer shall not be entitled to assign any rights from the Agreement.

14.2 The Customer shall only be entitled to offset or claim a right of retention if and when there is a recognised or legally binding counterclaim.

14.3 This Agreement shall be governed by Swiss law. Lucerne shall be the place of performance and jurisdiction.

14.4 Should any provision in these Terms and Conditions of Business be invalid in full or in part or lose its validity at a later point in time, this shall not affect the validity of the remaining provisions hereof. In such a case, instead of the invalid provision, a different appropriate provision shall apply that reflects as closely as possible the commercial intentions of the parties hereto if they had been aware of the invalidity of the provision