



# General Conditions (GC) of eKat Communication

## Overview of Terms and Conditions

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### A Common provisions

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#### A 1 Preamble

1.1 EKat Communication is an individual company with its registered office at Rue de Vaudrès 14, CH - 1815 Clarens (hereinafter: the "Agent").

1.2 The Agent offers services mentioned below (hereinafter referred to as the "Services") to the public in the broad sense of the term (hereinafter: the "Principal")

**Communication.** The Agent manages the competitiveness of the Principal's brand through any means, including promotion via social networks and configuration of web site performance management tools.

**Creation and maintenance of websites.** The Agent creates, modifies and maintains through any means websites in order to obtain personalized services, specifically developed in accordance with the needs of the Principal (hereinafter: the Work).

#### A 2 Scope of application

2.1 These general conditions apply to all contractual obligations arising from a written or oral contract, of which the Agent is an integral part, unless the contrary is provided by the contractual or extracontractual relationship in question.

2.2 Contracts or parts of a contract subject to these general terms and conditions, the performance of which does not depend

solely on the Work of the Agent, but in whole or in part on external factors over which the Agent has no control (hereinafter: the Agency Contract), are governed by Chapter B, as well as Chapters A and C by analogy.

#### A 3 Offer

3.1 On the basis of the information provided by the Principal, the Agent prepares an estimate and submits it to the Principal.

3.2 The Agent shall not be bound by its offer until the expiry of the period specified in the estimate.

3.3 When the offer has been made in person or by telephone, without setting a time limit to accept it, the Agent proposing the offer is released if the acceptance does not take place immediately.

3.4 When the offer has been made not in person and without setting a deadline for response, the Agent remains bound until such time where it can legitimately deem the offer to have been refused following a suitable and customary waiting period for this type offer.



grant either an increase in the stipulated price, or termination of the contract.

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**A 4 Acceptance of the offer**

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- 4.1 The offer may be accepted either expressly or by a conclusive act.
- 4.2 A response indicating a willingness to accept the offer but containing additions, limitations or other alterations substantially altering the terms of the offer is considered as a rejection of the offer and will constitute a counter offer.
- 4.3 On the basis of the counter-offer, the Agent will draw up a new estimate and submit it to the Principal.
- 4.4 A response indicating a willingness to accept the offer, but containing additions, limitations or other changes that do not materially alter the terms of the offer is considered to be an acceptance of the offer.
- 4.5 Complementary or different elements relating in particular to the price, payment, quality and quantity of the Services, the place and time of delivery, the extent of the liability of a party in respect of the Services, or the settlement of disputes, are considered to materially alter the terms of the offer.
- 4.6 Moreover, the Agent is only obliged to carry out the Work indicated in the estimate. Nevertheless, it may take into account the wishes communicated by the Principal at the time of acceptance.

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**A 5 Duty of care of the Agent**

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- 5.1 The Agent carries out the Work carefully and faithfully safeguarding the legitimate interests of the Principal.
- 5.2 During the term of the contract and after its expiry, the Agent shall not use or disclose facts intended to remain confidential, such as trade secrets and business secrets of which he became aware during the performance of the contract. It is bound to keep the secret even after the end of the contract, as long as the safeguarding of the legitimate interests of the Principal so requires.
- 5.3 The Agent must avoid situations of conflict of interest as much as possible.
- 5.4 The Agent shall notify the Principal of any material circumstance relating to the execution of the Work.
- 5.5 The Agent has an obligation to be advised by the Principal on the choice of measures to be taken in his interest.

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**A 6 Price**

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- 6.1 When the price has been fixed, the Agent is obliged to do everything possible to carry out the Work for the fixed amount.
- 6.2 However, the Agent may claim an increase not exceeding 20% of the agreed price if the Work required more work or expenses than was expected.
- 6.3 If the execution of the Work is prevented or made excessively difficult by extraordinary circumstances impossible to be foreseen or excluded by the parties' forecasts, a demand shall be made to the judge who, by virtue of his discretion, may

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**A 7 Payment due**

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- 7.1 The Payment shall become due as soon as the Principal accepts the Work, unless the contrary is stipulated in the contract or the estimate.
- 7.2 The contract may provide that the price is payable upon fulfillment of a condition or at the expiry of a term.
- 7.3 If the contract provides for the installment payment, each installment is due when the term expires. In case of non-payment on time, the Agent will invoice the first reminder 10.- frs from the due date, 25 frs the 2nd reminder at 14 days and 150.- frs the command to pay 30 days after the due date.
- 7.4 By accepting the estimate, the Principal waives any right to compensation and/or retention. In particular, the Principal is not entitled to withhold the payments for claims.
- 7.5 The hours of consulting in the office are invoiceable from the 2nd hour, the 1st hour being, in principle, free.

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**A 8 Reservation of the title**

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- 8.1 The Principal does not become the owner of the goods ordered, even after the goods have been delivered, until he has fully fulfilled all his obligations towards the Agent.

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**A 9 Power to delegate**

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- 9.1 In the performance of the contract, the Agent has the right to delegate all or part of its activity to an auxiliary, whether private or legal.
- 9.2 If the contract has been entrusted to the Agent because of its intellectual or artistic capacities, it can not delegate its activity. However, for this type of contract, the Agent may request express authorization to delegate from the Principal.
- 9.3 The Agent, who legitimately delegated its obligations to someone, only liable for applying due diligence with which it chose the subcontractor and the quality of the instructions provided.
- 9.4 In the case of a legitimate delegation, the Principal can act against the Agent only after having exhausted, without satisfaction, all the means at its disposal against the subcontractor.

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**A 10 Forum and applicable law**

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- 10.1 The Parties agree that all disputes shall be submitted at the place of domicile of the Agent.



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10.2 The parties agree that Swiss law is exclusively applicable to all contracts subject to these general conditions.

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#### **A 11 Unpredictable risks**

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- 11.1 The Principal bears the risk of the unforeseeable event and of the impossibility of execution.
- 11.2 No damage can be claimed from the Agent without serious fault at its side.
- 11.3 If the contract becomes impossible by the act of the Principal, the indemnity in favor of the Agent remains entirely due.

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#### **A 12 Garanties**

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- 12.1 The Principal represents and warrants that it is the legal owner of the equipment used or provided to the Agent and does not in any way violate the rights of third parties.
- 12.2 The Principal agrees to defend, indemnify and hold harmless the Agent, its respective employees, successors and others entitled in the event of a third party claim.
- 12.3 The Agent shall not be liable for any damage or damages incurred as a result of any modification made by the Principal or any other person outside the Agent's personnel.

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#### **A 13 Goods ancillary to the subject of the contract**

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- 13.1 The Principal must request the transfer of possession of any tangible or intangible goods related to the object of the Contract within 7 days after the delivery of the main object.

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#### **A 14 Intellectual Property**

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- 14.1 The reproduction and printing of all documents, texts, illustrations, models and others, given to the Agent by the Principal, shall be made only if the latter holds or has previously acquired the necessary reproduction rights; this is presumed.
- 14.2 This clause also applies to archived data that is reused.

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#### **A 15 Due time**

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- 15.1 In the event of exceeding any deadline specified in the quotation or otherwise stipulated, the Agent shall make every effort to fulfill its obligations as soon as possible.
- 15.2 The notice is deemed to be received only in case when it is sent in the form of the registered letter.
- 15.3 Under no circumstances will the Agent be held liable for any delays caused by the Principal.

**General Conditions (Gc)**

**eKat Communication**



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## **B The Agency Contract**

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1	Nature of the contract	5	Release from obligations
2	Applicable rules	6	Remuneration
3	Reinforced Due Diligence	7	Responsibility
4	Assignment of Rights	8	Termination

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### **B 1 Nature of the contract**

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- 1.1 The contract with the obligation of means (the Agency Contract) is a contract by which the Agent undertakes, under the terms of the agreement, to manage the business for which it took responsibility for or to render the Services that it promised.
- 1.2 Contracts or parts of a contract may be qualified, under these terms and conditions, as terms of the Agency Contract where:
- the Agent does not promise the achievement of a result, or
  - the realization of the subject matter of the contract does not depend primarily on the Agent, or
  - the Agent has delegated to a partner the performance of the contract in question.
- 1.3 The contracts concluded with the Agent are considered as the Agency Contract, relating mainly to:
- managing the competitiveness of the Principal's brand (communication contracts);
  - any type of service provided that the Agent does not personally execute the contract but delegates it to a specialized firm or to third parties;
  - any other obligation the Agent does not wish or can not perform personally and delegates it to a specialized partner.
- 1.4 The Principal accepts that this qualification is decisive for application of the rules on the Agency Contract of the Swiss Code of Obligations.

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### **B 2 Applicable rules**

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- 2.1 The rules of the Code of Obligations (CO) governing the agency contract (art. 394 CO et seq.) apply as an auxiliary provision.

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### **B 3 Reinforced Due Diligence**

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- 3.1 In addition to the general duty of care set out in the general part, the Agent, in the context of a contract with an obligation of means, has as specific duties:

to advise ;  
to avoid the conflicts of interests ;  
to follow the instructions of the Principal ;  
to report on the management ;

- 3.2 The Principal waives all claims that the Agent may receive in any capacity during the performance of the contract.
- 3.3 The accountability of management is limited to the information necessary for the overall control of the activity.
- 3.4 In no case shall the Agent transmit to the Principal any information revealing business secrets or its contractual partners without this being essential for the protection of the legitimate interests of the Principal other than the right to information.

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### **B 4 Assignment of Rights**

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- 4.1 The rights against the subcontractor(s), mandated for the performance of the contract, available to the Agent, will be transferred to the Principal.
- 4.2 The Agent who legitimately delegated to someone only responds to the care with which he has chosen the subcontractor and given his instructions.
- 4.3 In the case of a legitimate delegation, the Principal can act against the Agent only after having exhausted all the other means at his disposal against the subcontractor.
- 4.4 With respect to the assignment of rights, s. B5 of the present Contract shall remain applicable by analogy.

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### **B 5 Release from obligations**

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- 5.1 The Principal must release the Agent, in view of due performance of the Contract, from the Principal's obligations with third parties which may have an influence on the performance of the contract so that the Agent can perform the contract without restriction.

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### **B 6 Remuneration**

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- 6.1 By mutual agreement, the parties may agree that the price shall include the Agent's remuneration and the reimbursement of the expenses.
- 6.2 Expenses are composed of advances and fees that the Agent has made to perform the Contract on a regular basis.
- 6.3 The pecuniary claim of the Agent to the reimbursement of the expenses arises and becomes due when the Agent makes the expense. The parties may agree that the Principal incurs the expense upon signing the Contract or in stages.
- 6.4 The pecuniary claim of the Agent to remuneration arises from the expiration of a term agreed in the Contract.
- 6.5 If the Contract has been terminated prior to the collection of all agreed periodic benefits, the Agent shall be entitled only to a portion of the remuneration that covers the Services already provided at the time of the termination, even if it is not yet due.

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## **B 7 Responsibility**

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- 7.1 The Principal waives any claims arising from the mere negligence of the Agent.
- 7.2 It further undertakes to indemnify the Agent for any damage caused by the execution of the mandate.

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## **B 8 Termination**

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- 8.1 The Contract or parts of a contract relating to the obligations of means may be terminated by registered letter at any time and even contrary to any conflicting stipulations in the Contract.
- 8.2 If the Principal terminates the Contract without any fact being reproached to the Agent or untimely, it shall pay the Agent the full indemnity stipulated in the estimate.



## General Conditions (GC) Ekat Communication

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### C Special provisions

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1	Binding Character	2	References
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#### D 1 Binding Character

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- 1.1 The special provisions of this chapter derogate from the provisions of the preceding chapters insofar as they can not be regarded as complementary.

#### D 2 References

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- 2.1 The Principal grants the Agent the right to include his / her / its name / logo, internet links on websites, all advertising creations and to refer to it on its own website.
- 2.2 The Principal is not allowed to remove these mentions even if it entrusts the adaptation, the relooking or the updating of his website to another agency of internet creation.
- 2.3 The Principal authorizes the Agent to use its name and products developed on its behalf for its own commercial promotion.