

General Terms and Conditions of Business of Edupartner AG

1 Scope

1.1

These General Terms and Conditions of Business ("GTC") shall apply to all contractual relationships ("Order") established between Edupartner AG ("Edupartner") and its Customers ("Customer"). Any general contractual terms and conditions of the Customer shall only apply if they have been expressly accepted in writing by Edupartner. In the event of any discrepancies between the GTC and the individual agreements reached between Edupartner and the Customer ("Parties"), the individual agreements shall prevail.

1.2

Should any individual terms of these GTC prove to be invalid or unenforceable, this shall not affect the validity of the remaining terms.

1.3

These GTC contain the general provisions applicable throughout all business areas of Edupartner (section 2), in addition to the specific terms concerning services (section 3) and physical products (section 4). In the event of any discrepancy, the specific terms (sections 3 and 4) shall prevail over the general terms (section 2).

2 General terms

2.1 Communication between the Parties

As a general rule, communication between the Parties shall be conducted in writing (including email). Any instructions issued by telephone must be confirmed by the Customer in writing within 24 hours.

2.2 Scope of the services

The scope of the services due shall be that stated in the offer or in the Order. Any specifications, preliminary studies or similar documents furnished by the Customer shall be deemed to have been provided solely for information purposes and shall not be binding unless they have been incorporated into the Order as a constituent part of the contract.

2.3 Offer

Unless agreed otherwise in writing, Edupartner shall draw up its offer for the Customer free of charge. Unless agreed otherwise in writing, offers issued by Edupartner shall remain valid for 30 days.

After this period, or following expiry of the period agreed to, Edupartner shall no longer be bound by any prices or deadlines assured and by any performance obligations and may draw up a new offer for them.

2.4 Duties of cooperation

2.4.1

The Customer is obliged to furnish in good time any cooperation that is necessary in order to enable Edupartner to implement the Order placed. This shall include in particular the preparation and presentation of any necessary data and documentation. The Customer shall make available a sufficient number of qualified staff of its own for this purpose. The Customer shall moreover inform Edupartner in good time and in a suitable manner concerning any requirements, rules, internal regulations or other customer-specific needs of its own that are essential for performance by Edupartner.

2.4.2

The Customer shall bear liability for any losses caused by it owing to inadequate cooperation, specifically due to the provision of staffing or production-specific capacity at Edupartner that has proved to be unnecessary.

2.4.3

Edupartner needs to receive precise and complete information and data from the Customer in order to prepare an offer. If the information and data proves to be inaccurate or incomplete following conclusion of the contract, Edupartner shall be entitled, upon expiry of a grace period, at its choice either (i) to adjust unilaterally the prices agreed upon and/or to charge in addition for any services that are necessary or have been ordered or (ii) to withdraw from the contract and claim damages.

2.5 Acceptance

2.5.1

The Parties shall stipulate the arrangements applicable to acceptance in the Order. If the Order does not make specific provision, the Customer shall examine the services provided immediately as soon as it disposes of the services.

2.5.2

Edupartner shall be deemed to have provided the services due by handing them over and/or granting access to them. Formal acceptance shall only take place if expressly stipulated in the Order.

2.5.3

Any defects that do not impair usage for the intended purpose shall not preclude acceptance.

2.5.4

Services shall also be deemed to have been accepted in the event that acceptance does not occur as agreed within 30 days of the acceptance date agreed upon due to reasons for which Edupartner is not at fault or, if no such date has been agreed upon, within 30 days of handover or the granting of access.

2.5.5

Services shall be deemed under all circumstances to have been accepted if the Customer starts to use the service provided by Edupartner for production purposes.

2.6 Payment arrangements

2.6.1

Unless agreed otherwise between the Parties, the price shall be payable upon delivery or upon provision of the service by Edupartner. Edupartner reserves the right to request advance payments and/or to issue partial invoices in line with progression in work.

2.6.2

Unless agreed otherwise between the Parties, payment shall be made within 30 days of the date of the invoice. Following expiry of this period the Customer shall be deemed to be in default without any requirement for a reminder.

2.6.3

If the Customer has defaulted on the payment of an invoice, Edupartner may charge default interest of 5% per annum.

2.6.4

Rebates and discounts shall only be granted if expressly acknowledged in writing by Edupartner in the Order.

2.7 Deadlines

Any deadlines and periods agreed to shall be extended automatically in the event that the Customer (i) changes its instructions relating to service provision, (ii) fails to cooperate as required or (iii) defaults on any payment.

2.8 Storage

Reproduction material may be stored at the risk of the Customer. The Customer shall in particular bear the risk that the material cannot be used at a later date, or cannot be used without error (e.g. owing to a change in processing technology). A duty to store working documents (digital Customer data, typesetting, tools etc.) shall only apply if expressly so agreed in writing.

2.9 Rights in relation to defects

2.9.1

In the event that performance is defective, Edupartner shall be responsible exclusively for rectification. If rectification is not possible, the Customer shall be entitled to claim a reduction in the price. This reduction shall be capped at 20% of the value of the order affected by the deficient service. For recurring services associated with a flat-rate annual fee, the reduction shall be capped at 20% of this fee.

2.9.2

Any objections relating to defects must be made within ten days of the time when the defect was or should have been discovered. If this deadline is not complied with, all claims relating to defects shall lapse.

2.9.3

Claims relating to defects must be made within one year of acceptance.

2.10 Special terms governing the liability of the Parties

2.10.1

Unless required otherwise by law, Edupartner shall bear no liability for any types of pecuniary loss.

The liability disclaimer also applies to the broadest possible extent in relation to the conduct of auxiliary agents. Pecuniary losses shall include, but shall not be limited to, loss of profit, loss of production, unrealised savings, losses resulting from data loss or data damage, frustrated expenditure by customers, third-party legal claims, default losses and any types of consequential loss.

2.10.2

If the service to be provided is rendered impossible due to events such as natural hazards, technical impairments or interruptions to production not resulting from fault, the interruption or failure of communications infrastructure, force majeure etc. or is delayed as a result beyond the agreed delivery deadline, Edupartner shall not be deemed to be in default for the duration of the impossibility of or interruption to performance, and shall not owe any particular damages on this basis.

2.10.3

The Customer warrants that the data and documentation provided by it in order to implement the Order does not infringe any third party rights (including in particular intellectual property rights and personality rights). If any action is taken against Edupartner before, during or after execution of the Order owing to an alleged infringement of rights, the Customer shall upon request indemnify and hold harmless Edupartner in respect of such third party claims. Edupartner may specify the form of such indemnification (reasonable advance payments and commitment to cover court costs in the event of court action; assumption of responsibility to conduct litigation, intervention etc.).

2.10.4

In the event that an Order is cancelled or suspended, the Customer shall owe full damages to Edupartner.

2.10.5

The Customer shall not be entitled to solicit any employees of Edupartner with whom it comes into contact in relation to an Order for the purpose of appointing them within its own business. This prohibition is due to the specialist knowledge and capabilities that employees deploy in relation to Order execution. The Customer shall be liable to pay damages in the event that it disregards this prohibition.

2.11 Liquidated damages

Under all circumstances in which Edupartner is entitled to claim damages from the Customer due to a breach of contract, Edupartner may – although shall not be obliged to – claim liquidated damages in the amount of 20% of the Order value.

2.12 Performance by a third party

Edupartner shall be entitled to provide the services owed under contract itself or to arrange for a third party to provide them in full or in part.

2.13 Confidentiality

The Parties undertake towards each other to treat in the strictest confidence all information and documents pertaining to their reserved business matters. This obligation shall continue to apply after the Order has been executed. Edupartner shall be entitled to advertise the existence of its cooperation with the Customer in the form of references, unless the Customer expressly requests that also this matter be treated as confidential.

2.14 Copyright and licences

2.14.1

Edupartner shall be entitled to affix to works an indication concerning its authorship and/or to its involvement in the creation of the work.

2.14.2

Any licence fees shall be invoiced by Edupartner in accordance with its obligations towards the licensor. The Customer shall be obliged to comply with any third party licence terms and conditions.

2.14.3

If Edupartner creates any copyright-protected work when providing its own services in relation to an Order, it shall be vested with the resulting rights, including in particular the relevant usage rights. Rights shall only be transferred to the Customer under the terms of a written agreement. Any transfer shall be conditional under all circumstances upon full payment of the fee for execution of the Order. Protected works shall include in particular computer programs, derivative works and collective works. Clause 2.14.3 shall also apply if Edupartner provides the recipient with any copyright-protected works other than in relation to an

Order, such as within its own offers, in advertising or within competitive procedures (e.g. pitches).

The recipient shall be obliged to destroy or erase unsolicited any works provided as hard copies or electronically in the event that a contract is not entered into between it and Edupartner. If the recipient infringes the copyright of Edupartner, it shall be obliged to compensate the resulting losses. It shall owe liquidated damages of CHF 10,000.00 without any requirement for further evidence.

2.15 Choice of law and jurisdiction

2.15.1

The Order shall be governed by Swiss law.

2.15.2

Exclusive jurisdiction over any disputes arising out of or in relation to the Order shall lie in Zurich.

3 Services

(Communication, publishing service, internet, publication systems, pre-media services etc.)

3.1 Handling of electronic data

3.1.1

The Parties may transmit data electronically. Each Party shall bear individual responsibility for its own electronic communication and shall take appropriate precautions commensurate with the state of the art in order to ensure secure and error-free data exchange.

3.1.2

The Customer shall bear responsibility for ensuring that the electronic data provided by it or procured from third parties are substantively correct and complete with regard to the Order placed.

3.1.3

Edupartner declines any liability in the event that the data provided are not compliant with standard-industry formats and/or with the formats mentioned in the offer or cannot be processed or used in the ordinary manner for any other reason, if this give rise to any defect. Edupartner shall further be entitled to carry out any data processing that is necessary in order to avoid and/or rectify defects and to charge for such work in addition. Clause 2.10 shall apply in addition.

3.2 Electronic systems in the service sector: liability; protection

3.2.1

For the purposes of this part, systems mean electronic solutions provided by Edupartner to the Customer for business purposes and/or operated for it.

3.2.2

Edupartner shall not bear any liability for losses arising in relation to any temporary restriction of system availability due to technical issues.

3.2.3

Edupartner shall not bear any liability for incorrect calculations carried out using third party systems (specifically value added tax authorities, customs authorities, credit card providers, logistics companies etc.).

3.2.4

Edupartner shall not bear any liability for losses arising in relation to the usage of third party software, third party systems or third party infrastructure.

3.2.5

Edupartner does not warrant that systems will be protected against unauthorised third party access and shall not bear any liability for losses resulting from the consultation or usage of information obtained by third parties as a result of unauthorised access. In particular, Edupartner shall not bear any liability for the unauthorised usage of credit card information.

4 Physical products

(production of printed matter such as books, magazines, catalogues, advertising material etc.)

4.1

The price and performance risk shall pass to the Customer as soon as the product manufactured is prepared for loading at the Edupartner site, irrespective of whether the Customer collects it or arranges for it to be shipped or delivered by Edupartner.

4.2

Production-related considerations may require changes to be made to workmanship and materials, in particular with regard to cutting precision, the fidelity of reproductions to the original, tonal value and the quality of print media (paper, cardboard etc.). If Edupartner is subject to any supplier tolerances, these shall also apply in relation to the Customer.

4.3

Unless agreed otherwise, there shall be no entitlement to object to excess quantities or shortfalls arising as a result of production conditions. The amount actually supplied shall be invoiced.

4.4

Approval for production shall be granted by the Customer on the basis of print-outs or electronic documents. No further substantive and/or quality checks will be carried out by Edupartner following approval. If the Customer issues any instructions upon approval concerning the reworking of any individual parts produced, and

dispenses with any subsequent examination, Edupartner shall only bear liability for defects in the event of gross negligence.

4.5

Customer records are printed copies required by third parties appointed by the Customer (e.g. advertising agencies). They shall be invoiced to the Customer in addition.

4.6

Printed records are printed copies that are required by Edupartner for internal purposes (presentations, documentation etc.). Edupartner shall be entitled to create printed records for such purposes, which shall pass into its ownership. It shall further be entitled to make printed records available to interested libraries. Edupartner shall produce printed records at its own cost.

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Zurich, January 2020