



# General Terms and Conditions

## 1 Legal Scope

**1.1** The following General Terms and Conditions (the “Conditions”) are incorporated into all proposals and contracts issued by Interactive Things GmbH (hereinafter “Interactive Things”) to the exclusion of any of the Client’s general terms and conditions of business

## 2 Object of Contract

**2.1** The following conditions serve as a basis for all Services (both agency services and work services, together the “Services”).

**2.2** Interactive Things provides agency services as defined in the Swiss Code of Obligations (OR), Article 394 in accordance with agile software development methods. Project goals are continuously and mutually refined step-by-step throughout the Project under the leadership of and in close collaboration with the Client.

**2.3** The additional provisions under the “Special Agreement for Contracts for Works”(Articles 15 to 20 in these conditions) only apply to contract for works services in which case they apply in addition to Articles 1 to 14 of these conditions. When working under a contract for works Interactive Things will render the Services by working in accordance with the agile software development methodology.

**2.4** Both Parties agree to the details of the services and compensation as defined in the individual project contracts (“Contract(s)”), based on Interactive Things’ offers or proposals. Details regarding the scope of performance and technical specifications can be found in the written Proposals and resulting Contracts.

**2.5** Interactive Things is bound to the contract proposal for a period of 10 days from submission dare unless otherwise specified in the Contracts.

## 3 Scope of Work

**3.1** The information set forth in Interactive Things’ written Proposal and resulting Contracts must be carefully reviewed by the Client and is the sole basis for the work to be performed by Interactive Things.

**3.2** The Client is responsible for the acquisition and maintenance of all standard software and any required hardware, as set out in the Proposals and Contracts. This also applies to standard software, programming tools and utility programs required to support the use of the delivered project results. Deviations must be redressed on a case-by-case basis and will entitle Interactive Things to additional remuneration. In such cases, the general licence terms of the licensor will apply.

**3.3** Technical and other standards apply in the version valid at the time the contract was concluded and

are only to be complied with insofar as they are expressly listed or specified in the Contracts.

**3.4** Interactive Things will only exchange employees personally assigned to the Project following reasoned notification by the Client. Employees will be replaced by employees with comparable experience and qualifications, wherever possible.

**3.5** Interactive Things will immediately notify the Client if they recognize circumstances during the course of the project which could endanger the success of the project.

**3.6** Introductions and other training of the Client’s personnel will be executed by agreement and invoiced separately.

**3.7** Interactive Things will carry out the agreed Services with due regard to the objectives of the Project, applying the necessary skills and abilities. Interactive Things may use third-parties to fulfil any obligations.

## 4 Prices and Payment Conditions

**4.1** The prices quoted in the Contracts are estimates based on the information provided by the Client. Changes or additions to the information or purpose, or any adjustments to the Project objectives within the agile software development method, may result in price adjustments.

**4.2** The agreed prices are not fixed prices but serve as a cost cap. When the defined cap is reached, the Client and Interactive Things will jointly decide whether the cap may be adjusted or whether the Client waives Services.

**4.3** Unless otherwise agreed, an advance payment of 50% of the total Contract price will be invoiced at the start of the Project. Services performed during the Project will be invoiced after completion of the individual phases or iterations. If phases or iterations exceed one month, Services are billed at the end of each month.

**4.4** “Work days”, “person days”, “service days”, and the like represent eight-hour working days.

**4.5** Insofar as billing by the hour is applied and no corresponding hourly rates are agreed in the Contract, Interactive Things will invoice its services at the hourly rates of CHF 175.–.

**4.6** Travel costs, expenses and other third party cash disbursements incurred in conjunction with the provision of Services by Interactive Things will be invoiced additionally.

**4.7** All prices are quoted net in Swiss Francs, excluding value added tax and without any deductions.

**4.8** Invoices are payable within 20 days from invoice date.

**4.9** In the event of default in payment, Interactive Things is entitled to charge interest at the rate of 5%. Interactive Things reserves the right to claim higher damages for default.



- 4.10** In the event of default in payment by the Client and expiration of a reasonable grace period set by Interactive Things without result, Interactive Things is entitled to terminate the respective Contract and at their discretion pursue the legal rights foreseen by applicable law, demand liquidated damages in the amount of 50% of the still outstanding agreed total remuneration, or claim compensation for proven damages on the grounds of non-performance. If payment has been agreed on a "time & materials" basis, the outstanding planned work-days, multiplied by the work-day rates, will serve as the basis for the 50% lump sum compensation.
- 5 Project Management**
- 5.1** Project Leadership is the responsibility of both Interactive Things and the Client.
- 5.2** Interactive Things primarily works according to the principles of agile software development. Project goals are continuously and mutually refined under the direction of the Client. It is pivotal that the Client provides the necessary resources and that respective decisions are made promptly together with Interactive Things.
- 5.3** The Client is required to designate a Product Owner with decision-making authority to take part in project management and/or project leadership meetings and approve the upcoming project goals and phases. The composition and tasks of the project management are specified in detail.
- 5.4** Any potential problems and/or disturbances that occur during the course of the Project will be resolved by the project leadership in the interests of the Parties and the Project.
- 5.5** The Parties will discuss the Project progress and any problems or risks identified, including recommendations for redress during regular project management meetings. In addition, the Parties will review the extent to which the Client has fulfilled their obligation to participate, and whether all necessary decisions with regard to the continuation of the project have been made.
- 5.6** Should problems arise that cannot be resolved within the framework of the project management and/or project leadership meetings, the issue will be escalated to a higher authority consisting of members of the executive board of both parties for further consideration.
- 6 Client Obligations**
- 6.1** Delivery of the specified Services by Interactive Things requires close cooperation between the Parties and participation of the Client. In particular, without limitation, the Client shall, in addition to participating in project management, supply free of charge and in due time requested and reasonable information, office space, technical environment, personnel for information purposes and documentation as needed for the performance of the Services. The Client will also make all relevant decisions relating to project performance and content and will notify Interactive Things without delay. Change recommendations presented by Interactive Things will be reviewed by the Client without delay.
- 6.2** In order to fulfil their obligations the Client will deploy adequately qualified personnel. The Client's employees will inform Interactive Things of industry specific or Client specific requirements and practices, even without specific enquiry, insofar as such are not specified in the Contracts. The Client will provide all technical documentation necessary for the successful completion of the Project in the form specified by Interactive Things. The Client will ensure that the employees deployed have the necessary decision and representation authority for the Project, including, without limitation, the right to authorise any amendments or supplements to the agreed scope.
- 6.3** The Client will update and inform Interactive Things of all circumstances within its environment that may have an impact on Interactive Things' contractual obligations, in particular regarding results, schedules, prices and the continued course of the Project. Furthermore, the Client is obliged to obtain all statutory authorisation required for the execution of the Project.
- 6.4** Should the Client fail to meet their obligations properly or on schedule, the contractually agreed upon project deadlines will be extended. Unless a longer or shorter delay can be proven or otherwise agreed, the deadlines will be extended by the time elapsed until the proper or delayed fulfilment of the Client's obligations. Interactive Things is entitled to invoice the Client for additional costs incurred hereby, in particular, without limitation, for the extended availability of its own personnel or resources on the basis of the agreed upon rates.
- 6.5** The Project start date is specified in the Proposal or Contract. If the Project start date is postponed through no fault of Interactive Things or if the Project is cancelled less than 30 days before the Project start date Interactive Things is entitled to invoice the Client for the provision of personnel or the provision of goods according to the agreed rates.
- 7 Changes in Scope**
- 7.1** If the scope of performance and/or technical specifications in a Contract is incomplete or unclear, Interactive Things may, at its discretion, reasonably amend or clarify such.
- 7.2** If additional costs are incurred due to incomplete documentation provided by the Client, Interactive Things is entitled to invoice the Client for the additional costs incurred on the basis of the agreed upon rates. This also applies to any additional costs that are incurred on the basis of contradictory or inaccurate information supplied by the Client, their employees or other agents.
- 7.3** Interactive Things reserves the right to accept changes or additional requests from the Client. If Interactive Things carries out change requests, the agreed deadlines for completion and acceptance of deliverables will no longer apply unless they are confirmed or newly set. Interactive Things will invoice the Client for the additional costs of performing the changes on the basis of the agreed rates.
- 7.4** Interactive Things reserves the right to invoice the Client for the costs incurred in reviewing the



change request and preparing a price quotation, on the basis of the agreed rates.

- 7.5** Interactive Things will continue to work on the basis of the existing Contract until written agreement is reached on any changes/additions.

## **8 Copyright and Licence**

- 8.1** After and subject to full payment of any remuneration stipulated in the relevant Contract by the Client to Interactive Things, Interactive Things grants the Client a non-transferable and non-exclusive right to use the Project results specifically developed for the Client ("Product(s)"). Interactive Things grants the Client the right to use the Product only for the purposes stipulated in the Contract after full payment. Otherwise Interactive Things retains sole and exclusive right of use, sale and distribution with regard to the Products. All intangible property rights, in particular copyrights applicable to the Products and any other proprietary rights shall vest in Interactive Things, subject to the licence right of the Client as stipulated above.
- 8.2** The Client acknowledges and agrees that working with Open Source Software products imposes certain restrictions on Interactive Things' ability to assign the Products or work results to the Client, subject to the terms and conditions under which the Open Source Software is being used (e.g. GPL Standards). To the extent such restrictions or (re-) disclosure obligations derive from the open source license terms, Interactive Things shall be released from any conflicting obligations and only be obliged to assign to the Client the Products or work results on a non-exclusive basis, as permitted by the Open Source license terms.
- 8.3** The Client is entitled to use the Product for their own internal business purposes only. The Client shall be entitled to copy the documentation provided, including data storage media, for these purposes. The Client will use appropriate means to control the use of the rights granted hereunder by their employees. Where standard software is supplied, the licensor's general licence terms for the standard software will apply.
- 8.4** The granting of the rights in Article 8.1 shall not apply to any proprietary standard products of Interactive Things or third-parties used in the course of the Project or Product. Any use of such standard products by the Client shall require a separate license agreement and separate terms or be agreed directly between the Client and Interactive Things or the respective licensors.
- 8.5** The granting of rights according to Article 8.1 shall not apply to Interactive Things' pre-existing materials and tools or third-parties' tools used by Interactive Things during the Project or for enhancements, supplements, amendments or changes to Interactive Things' pre-existing materials and standard products. The exclusive, unrestricted rights in such pre-existing materials and tools as well as enhancements, supplements, amendments or changes shall vest in Interactive Things. However, Interactive Things shall grant to the Client a non-exclusive, non-transferable license free of charge to use any of Interactive Things

pre-existing materials and tools and third party tools as well as any enhancements, supplements, amendments or changes to Interactive Things' pre-existing materials, tools and standard products, to the extent that such use in combination with other work products developed for the Client by Interactive Things in the course of the Project is required for the Client for internal business purposes only.

- 8.6** In no event shall Interactive Things be precluded from independently developing for itself, or for others, anything, whether in tangible or intangible form, which is competitive with, or similar to, the deliverables. In addition, Interactive Things shall be free to use their general knowledge, skills and experience, and any ideas, approaches, results, concepts, know-how, methodologies, procedures, and techniques that are acquired or used in the course of providing the Services.
- 8.7** The Parties retain the exclusive rights to commercial patents, copyrights and other know-how that it possessed on the date of Contract closure or acquired outside the scope of a Contract.
- 8.8** 2.8 The Client grants Interactive Things a free and non-exclusive right to use its relevant existing intellectual property to the extent required for the fulfilment of Interactive Things' Services within the Project. This particularly includes the right to use any of the Client's relevant data processing facilities and software applications.
- 8.9** Should Interactive Things achieve Products in the course of the Project that are suitable for registration as patents, samples or models, Interactive Things reserves the right to enter such registration in its own name and at its own expense. In such cases, the Client will receive a free licence for use in a scope commensurate with the contractual arrangements stipulated about the use of the Products by the Client above.

## **9 Confidentiality**

- 9.1** Interactive Things and the Client are obliged to keep confidential business and company secrets and other confidential or proprietary matters regarding the respective other party, which are either made available or accessed in context of the execution of a Contract. They shall use such confidential information only for the proper performance of a Contract and shall not to use such for their own or third party purposes. The Parties will also obtain commitment by their respective employees and relevant third-parties used in the execution of the Project, to said obligation.
- 9.2** The obligation to maintain confidentiality does not, however, apply to information which (a) is or was in the public domain, or (b) was independently developed by one party without using any of the confidential information of the other party, or (c) was acquired from a third party that was not under any confidentiality obligation with respect to such information, or (d) was already known to the Parties without any commitment to confidentiality. Further legal confidentiality provisions remain unaffected.



- 9.3** This obligation to maintain confidentiality may not be interpreted in any way that could restrict Interactive Things' right to engage in projects of a similar nature or to perform similar services for other clients. The obligation to maintain confidentiality remains unaffected.
- 9.4** This obligation to maintain confidentiality remains valid after termination of this Contract.
- 9.5** The Parties will comply with the respective data protection laws and the provisions for professional and bank secrecy and will only use employees who are committed to these laws. Within the framework of these Conditions, Interactive Things is entitled to collect personal data in relation to the Client, their employees and managers, and to use and disclose such for contract-related purposes. The Client hereby gives their consent to such processing in their own name and on behalf of their employees, executive board, and managers.
- 10 Liability**
- 10.1** Interactive Things is liable for damages incurred by the Client only to the extent that Interactive Things or its agents act in a grossly negligent manner or in the case of intentional misconduct.
- 10.2** Any further liability is excluded. Where liability cannot be wholly excluded due to binding legal provisions, insofar as legally feasible it will be limited to compensation for direct damages up to a maximum of 10% of the total Contract value (i.e. Contract price).
- 10.3** Except in the event of gross negligence or intentional misconduct, Interactive Things will not be liable for indirect or consequential damages, lost profits or damage to programs or data media.
- 10.4** The aforementioned limitations of liability also apply to the benefit of Interactive Things' employees.
- 10.5** If the Client tampers with the supplied Product without written consent from Interactive Things, Interactive Things will no longer be liable for the Product. Interactive Things reserves the right to assert their own claims for damages. Tampering in the sense of this Article also includes modifications to software and decompiling.
- 10.6** The Client's responsibility to avoid damages, particularly in the event of loss of data or files, remains unaffected. Interactive Things is not liable for replacement of lost data unless it has been backed up regularly, at least once per day on separate data carriers.
- 10.7** Prerequisite for bringing forward liability claims is that such have been submitted to the other party in writing within 2 years following Project termination or, in the event of a contract for works, the declaration of acceptance.
- 11 Commercial Proprietary Rights**
- 11.1** Interactive Things warrants that the Product supplied to the Client does not violate the rights of third-parties if used in accordance with the Contract. The Client will inform Interactive Things of any such claims by third-parties and permit Interactive Things to control the legal defence or settlement negotiations.
- 11.2** Third party rights in the context of Article 11.1 solely applies to third party rights in Switzerland.
- 11.3** Interactive Things is entitled to carry out alterations to the Products necessary to address the intellectual property claims of third-parties at its own expense, regardless of whether the Products have been accepted and/or paid for.
- 11.4** In exceptional cases, Interactive Things reserves the right to terminate the right to use a Product deemed to be in violation, and to reimburse the Client the not yet amortised part of the remuneration paid, calculated on the basis of linear depreciation of the Product over the economic it's life.
- 11.5** Regardless of Article 11.1, the Client will indemnify Interactive Things against third party claims in relation to the use of Products by the Client.
- 12 Termination**
- 12.1** Insofar as law for contracts for services ("Auftragsrecht") is applicable, a Contract may be cancelled or terminated in writing by either party at the end of a Project phase. In the event that the Client terminates a Contract, they shall pay for the Services rendered by Interactive Things in full up to the date of end of a Contract.
- 12.2** The obligation to compensate for damages in the sense of Art. 404 Article 2 OR means that the Client terminating a Contract shall fully pay for the Services rendered by Interactive Things up to the end of a Contract period and shall pay an additional lump sum of 50% of the value of Services not yet performed. If a number of sprints have already been estimated, named or defined for the individual project phases, in particular the design & development phase, this number applies to the calculation of the compensation. Interactive Things reserves the right to claim higher proven damages.
- 13 Miscellaneous**
- 13.1** If the Services are carried out on the premises of the respective other Party, each Party retains their capacity as the employer of its own personnel, including the authority to instruct. Nevertheless, such employees are subject to the safety regulations stipulated by the other Party.
- 13.2** Supplements, modifications or sub-agreements to these provisions must be made in writing. This also applies to cancellation of this written form requirement.
- 13.3** If any provision of these Conditions should be found to be invalid or void, it will be replaced by a mutually agreed provision that represents the intention of the invalid or void provision as closely as possible.
- 13.4** Interactive Things may name the Client and the Project as a reference for marketing purposes.
- 13.5** The Client may not assign any rights and obligations under a Contract without prior written consent from Interactive Things.
- 13.6** The Client may only offset claims in the case of undisputed or legally endorsed counter-claims.
- 13.7** Interactive Things is entitled to retain a copy of all Project documents for quality assurance and documentation purposes after project completion.



## **14 Jurisdiction**

- 14.1** The legal relationship between the Parties as well as any assessment of the legal validity of the agreed forum for litigation are governed by Swiss law, however any conflict of laws principles and the UNCITRAL Regulations or other treaty shall hereby be expressly excluded.
- 14.2** EXCLUSIVE PLACE OF JURISDICTION IS ZURICH, SWITZERLAND.

## **Special Agreements for Contracts for Works**

### **15 Scope of Work**

- 15.1** The Client will review Proposals and resulting Contracts carefully, particularly in relation to quantities (including reserve capacity), response times, specific industry and professional stipulations, interoperability and technical prerequisites prior to placing the order.

### **16 Client Obligations**

- 16.1** The Client will honour all obligations under the contract for works as primary contractual obligations.
- 16.2** Rights under Art. 107–109 OR apply in addition to the rights under Article 6.4.

### **17 Acceptance**

- 17.1** Upon notification of readiness, the Client shall process acceptance of the Products, (respectively, in accordance with the agile software development methods, the defined goals of the Project phase or iteration). The Client will provide test data in machine-readable form and in the quantity and format requested by Interactive Things prior to inspection and functional testing. Interactive Things is entitled to participate in the inspection and functional testing.
- 17.2** The Client shall submit a written acceptance certificate no later than 10 working days after all tests have been completed and the Product has been approved and accepted.
- 17.3** Acceptance may not be refused on the grounds of defects that result in immaterial disruption to the use of the Product. This does not effect Interactive Things' obligation to redress defects in accordance with Article 19.
- 17.4** Acceptance is deemed to have been granted if the Client has not conclusively asserted the reasons for refusing acceptance in writing within 10 working days, or if the Client uses a Product productively.
- 17.5** Interactive Things is entitled to demand partial acceptance of independent partial deliverables and interim Products. In the event that the contractual agreement includes the preparation of a Project specification, a functional outline, detailed design or technical specification, Interactive Things is entitled to request acceptance by the Client for interim Products. Interactive Things may also request functional testing certification of Products that are not classified as Products under a contract for works. Each newly accepted document replaces the previously agreed upon specification.

## **18 Copyright and Licence**

- 18.1** The right of use specifically includes software in machine-readable, runnable program code and application documentation.
- 18.2** The Client will not edit or decompile the Product. If information is required to ensure the interoperability of the Product with independent software, Interactive Things reserves the right to supply the Client with such in return for a reasonable fee.

## **19 Warranty**

Interactive Things provides a product warranty in accordance with the following conditions:

- 19.1** Defects in the sense of this article are only such which can be technically reproduced and which are comprehensible.
- 19.2** Interactive Things reserves the right to remedy defects by altering the Product or replacing it with another Product of equivalent functionality.
- 19.3** The Client must immediately notify Interactive Things of any defects upon discover and in writing including a detailed description of the defect. Immaterial defects will be collected and documented by Interactive Things to be redressed jointly within a reasonable time following notification by the Client.
- 19.4** Until it becomes conclusively evident that the defect cannot be remedied, the Client may neither reduce the agreed remuneration nor rescind a Contract.
- 19.5** The Client is entitled to demand a reduction in the agreed remuneration or to rescind the respective Contract, in compliance with the provisions of Article 19.3 above. The Client will have no further rights.
- 19.6** The Client will support Interactive Things in redressing defects, including, without limitation, the provision of computers, office space and telecommunication facilities. Interactive Things may demand that the Client's personnel installs submitted program parts with corrections ("bug fixes"). Upon request, the Client will provide Interactive Things with a reasonable amount of documentation and information to enable Interactive Things to assess and redress the defect. The Client's personnel will provide Interactive Things with detailed information for the purpose of assessing and redressing defects, where appropriate verbally.

## **20 Termination**

- 20.1** Insofar as law of contracts for works ("Werkvertragsrecht") is applicable, a Contract may be terminated by either party for causes expressly specified by law or otherwise for due cause. If one party terminates for due cause, Interactive Things will be paid for its Services rendered until the end of a Contract. The right to claim damages remains unaffected.
- 20.2** Full indemnity in the sense of Art. 377 OR means that the rescinding Client must remunerate Services already performed by Interactive Things in full, and additionally a lump sum of 50% for Services not yet performed by way of compensation. Interactive Things reserves the right to claim higher proven damages have been incurred.