

# General Terms and Conditions of Engagement

These General Terms and Conditions of Engagement (“Terms and Conditions”) shall apply to the services offered by effisma.group (hereinafter referred to as “effisma”) in accordance with the proposal signed by the client and effisma, to which these Terms and Conditions are attached. These Terms and Conditions, in conjunction with the proposal, constitute the entire agreement between the client and effisma with regard to the services described in the proposal, supersede all prior verbal and written communications, and shall not be amended or modified (including amendments in respect of the scope and nature of services or fees) except by written agreement signed by both parties thereto. If these terms and conditions diverge from those in the proposal, these conditions shall prevail. This does not apply if individual agreements have been made in the proposal. Unless stated otherwise, terms defined in the proposal have the same meaning in these Terms and Conditions.

## **1 Client obligations**

As a precondition for the provision of services by effisma, the client shall (i) fulfill the client obligations to which he is subject (as defined in the proposal) and ensure that all prerequisites (as stated in the proposal) are in place, (ii) provide effisma with the necessary reliable, correct and complete information, (iii) make decisions without delay and obtain the requisite approval from management, and (iv) make appropriate offices and the necessary resources and aids available to employees of effisma. Moreover, effisma may refer to all decisions made and permission granted by the client independent of this agreement and/or prior to conclusion thereof by the parties. Unless expressly specified otherwise in this proposal, effisma shall not be obliged to evaluate these decisions and permissions, provide advice in this respect, or modify, acknowledge or reject the same.

## **2 Confidentiality**

With regard to this agreement and the information provided in connection with this agreement which is designated as confidential by the disclosing party, the recipient shall: (i) protect the confidential information sufficiently and in accordance with the applicable professional principles, (ii) use confidential information solely for the purpose of fulfilling the obligations under this agreement, and (iii) and reproduce such information only as is required for the performance of this agreement. The above does not apply to information that (i) is common knowledge, (ii) already known to the recipient, (iii) already disclosed to a third party without restriction, (iv) has been developed independently, or (v) is disclosed in accordance with legal requirements or orders. Subject to the above rulings, effisma may disclose confidential client information to its sub-contractors and affiliated companies.

## **3 Deliverables**

(a) effisma is liable to render the advisory services described in the proposal and not to achieve a particular economic effect.

(b) The client may use, reproduce, distribute internally and modify the deliverables expressly described in the proposal (“deliverables”) for internal business purposes only. Without the prior written consent of effisma, the client shall not disclose the deliverables to a third party, quote them in public or refer to them. effisma reserves all rights and claims in respect of the following: (i) the deliverables, in particular with regard to all patents, copyrights, trademarks and other related industrial property rights, and (ii) all methods, processes, ideas, concepts, trade secrets and know-how contained in the deliverables or which effisma develops or supplies in connection with this contract (“effisma know-how”). Subject to the confidentiality restrictions in section 2, effisma has the right to use the deliverables and the effisma know-how for all purposes.

## **4 Acceptance**

The client shall accept the deliverables as conforming to the agreement if they (i) comply with the requirements of the proposal, or (ii) if applicable, pass the acceptance test plan. The client shall notify effisma without delay if the deliverables fail to comply with these requirements (“non-compliance”), and effisma shall be given sufficient time, to depend on the degree and complexity of non-compliance, to remedy such non-compliance. If the client uses the deliverables before having accepted the same, fails to notify effisma without delay of non-compliance, or delays the start of the acceptance test unnecessarily, the deliverables shall be deemed to have been accepted by the client.

## **5 Warranty claims**

(a) effisma warrants that the services will be rendered with due care and expertise. The client may claim the removal of any defects provided that they can be removed at reasonable cost and provided that the client

has notified effisma of the defects in writing within thirty days of performance, or if applicable, of the successful completion of the acceptance test plan. If the defect cannot be rectified, or an attempt to rectify the defect is unsuccessful, the client may rescind the agreement or demand a reduction of fees. In case of an assignment commissioned by a merchant acting in the course of his business, a legal entity under public law or a special fund under public law, the client may only withdraw from the agreement if the performance is of no interest to him due to the failure of an attempt to remedy defects. Section 6 shall apply to damages in excess of this.

(b) claims alike the ones specified in the section above that are not caused by intention become time barred one year after the statutory limitation period starts

(c) effisma shall not be liable for the products or services of third parties who are not acting as sub-contractors of effisma. The client's sole and exclusive rights and remedies with regard to such products or services of third parties shall be in respect of the third party and not in respect of effisma.

## **6 Liability**

(a) effisma's liability to the client, its employees, vicarious agents and third parties, irrespective of the legal grounds for the claim with the exception of claims from the bodily injury, loss of life and health impairment, is limited to EUR 500.000,00 in a case of damage caused by slight negligence. A single case of damage is defined as the sum of all claims for damages of all persons entitled to make claims arising from a single service that is coherent in terms of time or subject matter. For damage arising from several infringements in the context of several services of the same kind caused by the same professional error, effisma's liability is limited to EUR 500.000,00. If, in the client's opinion, the foreseeable contractual risk significantly exceeds EUR 500.000,00, effisma will try, at the client's request, to obtain supplementary insurance in excess of its liability for a higher amount, provided that insurance coverage may be obtained from a German insurance company and the client agrees to pay the additional insurance premium.

(b) The limitations on liability and other provisions of paragraph (a) shall also apply to cases of damage caused by gross negligence if the assignment has been commissioned by a merchant acting in the course of his business, a legal entity under public law or a special fund under public law. This also applies to damages caused by gross negligence by a non-executive employee.

(c) effisma shall not be liable for extraordinary damages which do not arise in the ordinary cause of performance of the agreement if such damages are caused by negligence unless effisma was informed by the client of possible damage due to exceptional circumstances.

(d) the parties shall not be liable for delays or non-performance due to circumstances beyond their control.

(e) effisma shall not be liable for the success of the client overall or for the successful achievement of a project goal (time, cost, quality) as long as effisma has not hindered the client in reaching the overall goal by negligently violating vital liabilities.

(f) Since effisma renders services solely for the benefit of the client, the client shall indemnify effisma, its affiliated companies and their partners, and other employees against all costs, charges, expenses, obligations to pay damages and liabilities in connection with claims of a third party in conjunction with or by reason of effisma services or in connection with third party claims from the use of the deliverables or this agreement by the client (including costs of legal representation).

(g) Actions against effisma shall be brought within eighteen months of occurrence of the cause of action. This shall not affect shorter statutes of limitation.

## **7 Employees**

(a) effisma shall endeavor to comply with the client's wishes for the deployment of particular employees; effisma shall, however, deploy and re-assign employees as is appropriate and possible for the provision of the services.

(b) During the term of this agreement and for a period of six months after expiry or termination of this agreement, no party shall actively make efforts to employ employees of the other party who are directly involved in the provision of services under this agreement.

## **8 Termination**

(a) This agreement may be terminated by either party at any time, giving notice to the other party in writing of fifteen (15) days.

(b) The client shall remunerate effisma for the services rendered and the expenses incurred until the termination becomes effective and shall compensate effisma for all costs reasonably incurred in connection with termination.

(c) Except for matters connected with confidentiality or industrial property rights, the parties shall initially try to settle disputes or an alleged infringement of the agreement amongst themselves, through management, and shall conduct proceedings to settle the dispute that are acceptable to both parties before resorting to litigation.

## **9 General provisions**

(a) Neither party may use the name, brands, logos, trade names and/or trademarks of the other party without the latter's prior written consent. Unless stipulated otherwise herein, effisma may mention or list the name of the client and/or a general description of the services/project. The client furthermore agrees to provide information about effisma, having been given reasonable notice by effisma (e.g. in telephone

conversations with analysts, clients, presentations and the like).

(b) Rights and obligations under this agreement may not be assigned or otherwise transferred without the prior express written consent of the other party. Effisma may transfer rights and obligations under this agreement to a subsidiary of its international organization or use its sub-contractors to render the services.

(c) Notices given in the context of this agreement shall be in writing, sent to the addresses specified in the proposal and shall be regarded as sent once they have been received.

(d) No provision of this agreement shall be considered to have been waived and no infringement of provisions of this agreement shall be excused unless the waiver or consent has been given in writing and signed by the party declaring the waiver or consent.

(e) If any provision of this agreement is declared to be unlawful or unenforceable, this provision shall be deemed to have been deleted and all other provisions shall remain valid without limitation.

(f) This agreement does not cause one party to become a representative or legal agent of the other, nor does it establish a company or a joint venture. The parties are independent of each other and act for their own account.

(g) Sections 2 to 9 of these Terms and Conditions shall remain valid after this agreement expires or has been terminated.

(h) This agreement is governed by the laws of the Federal Republic of Germany.

(i) Place of performance and jurisdiction for all services under this proposal is Stuttgart.

(j) The client confirms and acknowledges that (i) effisma and the client will correspond or send information on the internet by e-mail unless the client expressly rejects this method of communication in writing, (ii) neither party is able to influence the efficiency, reliability, availability or security of electronic mail sent via the internet, and (iii) effisma shall not be liable for any losses, damages, expenses, disadvantages or disruptions caused by the loss, delay, interception, destruction or manipulation of electronic mail for reasons beyond effisma control.

Correct as of: March 2015