

## GENERAL TERMS AND CONDITIONS OF ABCOMMUNICATION BV

### **Artikel 1. Definitions**

- 1.1. **"General Terms and Conditions"**: the present general terms and conditions of ABCommunication;
- 1.2. **"ABCommunication"**: the company ABCommunication B.V., having its registered office at 3300 Tienen, Aarschotsesteenweg 441a, with enterprise number 0628 968 586;
- 1.3. **"Agreement"**: the set of arrangements agreed between ABCommunication and the Customer, set out in a written agreement and/or offer, of which the General Terms and Conditions shall always form an integral part;
- 1.4. **"Customer"**: any natural person or legal entity with whom ABCommunication concludes an Agreement, or has made an offer, or the party with whom ABCommunication is negotiating the formation of an Agreement;
- 1.5. **"Influencer"**: a provider of online content

### **Artikel 2. Applicability of the General Terms and Conditions**

- 2.1. The General Terms and Conditions shall apply to all requests, offers, the Agreement and other undertakings between ABCommunication and the Customer/Influencer. After the conclusion of the (first) Agreement, the General Terms and Conditions shall apply to the contractual relationship of the parties and thus to future Agreements.
- 2.2. Deviations and/or additions to the General Terms and Conditions or the Agreement may only be agreed in writing.
- 2.3. It is expressly agreed that the Customer's General Terms and Conditions shall not apply to the Agreement.

### **Artikel 3. The offer and the formation of the Agreement**

- 3.1. Offers made by ABCommunication shall always be without obligation.
- 3.2. The Agreement between ABCommunication and the Customer is concluded if ABCommunication's offer is signed or approved by the Customer by e-mail or in case of unconditional performance of the assignment by ABCommunication.
- 3.3. Oral commitments by ABCommunication shall only be binding on it after the same have been confirmed by it in writing.  
Additions and amendments to provisions in the Agreement shall only be binding on ABCommunication after the same have been accepted by ABCommunication in writing.

### **Artikel 4. Performance of the agreement**

- 4.1. The Agreement shall be performed by ABCommunication to the best of its ability and in accordance with the requirements of good professional practices as well as applicable industry standards.
- 4.2. ABCommunication shall at all times be entitled to engage subcontractors and third parties at its discretion in the performance of the Agreement.
- 4.3. In the relationship between the Customer and the Influencer(s), ABCommunication shall be an intermediary of the Customer. Consequently, ABCommunication shall act in the relationship with Influencers (whether or not in the name and) on behalf of the Customer.
- 4.4. The Influencer and ABCommunication shall always have a best efforts obligation with regard to the content as well as its performance. ABCommunication's responsibility relates to finding the Influencer, concluding an Agreement, providing the necessary information and materials to the Influencer, and following up on the agreed arrangements for posting the content. The assignment of ABCommunication shall be completed once the arrangements are made with the Influencer. Even if the Influencer acts in bad faith and fails to honour the agreements despite urgent requests from ABCommunication, this cannot give ground to liability on the part of ABCommunication.
- 4.5. ABCommunication shall only be able to perform its Services properly if the Customer provides it with all the information and data required for that purpose in a timely and complete manner, and the Customer is also available for consultation. ABCommunication shall be entitled - without being liable to pay compensation - to suspend its obligations as against the Customer in case the Customer fails to fully comply with its information obligations as provided for in the present clause. Changes in the Agreement or late delivery of materials by the Customer may result in agreed delivery deadlines being exceeded by ABCommunication. In such case, the Customer shall not be entitled to claim compensation, dissolution and/or suspension

- 4.6. If during the performance of the Agreement, there is a change in the nature, content or scope of the Agreement, ABCommunication shall be entitled to revise its original fee. An amendment to the Agreement may also result in a change of the originally specified period of performance.
- 4.7. Without thereby being in default, ABCommunication may refuse a request to amend the Agreement if this could qualitatively affect the services to be provided by ABCommunication.
- 4.8. Up to 3 rounds of adjustments are possible in case ABCommunication proposes a PR plan, a creative concept, or a selection of media or Influencers for a campaign. Further adjustments, additions or new listings shall be charged at the usual hourly rate.
- 4.9. The final responsibility for the content of communicative expressions and selections of media and Influencers in the context of carrying out an assignment rests with the Customer.
- 4.10. If the Agreement stipulates (delivery) deadlines, these shall always be indicative, unless otherwise expressly agreed by the parties. If the Customer delays payments of advances or invoices, ABCommunication shall have the right to a proportional extension of the term of execution or delivery. If a delivery deadline is exceeded, ABCommunication shall always be given the opportunity to still perform the obligation within a reasonable term.
- 4.11. The price stipulated in the Agreement for the services to be performed shall always be an estimate. If there is a likelihood that ABCommunication shall exceed the aforementioned estimate for the services it has performed, it shall contact the Customer in order to make additional arrangements for the fee in respect of the services still to be performed. If the Customer fails to respond to ABCommunication's notification, the Customer shall be deemed to accept the additional services at the usual hourly rate.
- 4.12. After concluding the Agreement, ABCommunication shall have the right to issue a press release or online communication concerning the cooperation with the Customer, unless otherwise agreed between the Customer and ABCommunication.

#### **Artikel 5. Prices, payment and collection costs**

- 5.1. ABCommunication is entitled to unilaterally index its fee on an annual basis at the start of each calendar year.
- 5.2. Payment should be made within 30 days after the date of the invoice.
- 5.3. In addition to the fee based on an hourly rate, ABCommunication may pass on to the Customer administrative costs as well as costs of third parties engaged by ABCommunication in connection with the performance of the assignment given to it. Administrative costs include (this list is not exhaustive) telephone, internet, postage, photocopying-clipping, media monitoring, translations, travel and accommodation costs (this list is not exhaustive). Third-party costs include all invoiced agency and procurement costs and third-party fees (this list is not exhaustive). Administrative and third-party costs shall always be charged to the Customer, even if the same exceed the amounts specified in an estimate. All amounts shall be exclusive of VAT.
- 5.4. ABCommunication shall raise a monthly invoice for the fee, administration costs and third party costs due for the previous month, unless otherwise agreed with the Customer.
- 5.5. In case ABCommunication pays costs in advance on behalf of the Customer at the Customer's request, ABCommunication shall be entitled to charge a commission of 15% and pass on such commission and costs to the Customer.
- 5.6. ABCommunication shall be entitled to ask the Customer for the payment of an advance on its fee and the various costs.
- 5.7. Contestations of the invoice shall only be valid if made by registered letter within 8 days of receipt of the invoice. In case the invoice is not paid on the due date, an interest charge of 12% per annum shall be charged without further notice, together with a fixed compensation equal to 15% of the invoice amount, subject to a minimum of €125. In case of non-payment, performance shall be automatically suspended.
- 5.8. The Customer shall not have the right to withhold payment of the fee from ABCommunication or to demand a reduction in the fee if the Influencer does not publish any/insufficient/incorrect content, or fails to fulfil its agreements, or does not achieve the desired performance (such as outreach numbers, likes or comments).

#### **Artikel 6. Termination or dissolution**

- 6.1. In case an agreement for an indefinite period has been agreed between ABCommunication and the Customer, ABCommunication and the Customer shall have the right to terminate the Agreement subject to the observance of a termination notice period of at least 3 months.
- 6.2. In case an agreement for a definite period has been agreed between ABCommunication and the Customer, ABCommunication and the Customer shall have the right to prematurely terminate the

Agreement subject to the observance of a termination notice period of at least 2 months. In case the Customer or ABCommunication do not terminate the Agreement in writing 2 months prior to the end of the term, the framework agreement shall be extended for a period of 1 year.

- 6.3.** Each party shall have the right to rescind the Agreement, or to prematurely terminate the Agreement, in case the other party commits a default in the performance of its obligations under the Agreement, and such other party fails to fully remedy such default within a reasonable period of time after receiving a notice of default in this connection. It shall not be necessary for this purpose that the shortcoming be ascribable.  
Each party shall always have the right to dissolve the Agreement with immediate effect, or to prematurely terminate the Agreement, without the need to issue a prior written notice of default in the following cases: a) (application for) bankruptcy; (b) (application for) suspension of payments; (c) (partial) liquidation; (d) attachment of the assets of the other party; (e) receivership or death of the other party; (f) the other party transferring (significant parts of) its business or the control thereof in whole or in part; and/or (g) breach of confidentiality.
- 6.4.** In case of dissolution or termination of the Agreement as referred to in subclause 3 of the present clause, all claims that ABCommunication has or may acquire against the Customer shall become immediately due and payable.
- 6.5.** The party terminating the agreement under application of subclause 3 of the present clause shall not be obliged to compensate any damage or pay/compensate costs in connection with the (premature) termination or dissolution.
- 6.6.** Obligations which by their nature are intended to continue after the Agreement comes to an end shall continue after the agreement comes to an end.

#### **Artikel 7. ICT**

- 7.1.** If the Customer provides information carriers, electronic files or software etc. to ABCommunication, the Customer shall guarantee that the same shall be free of viruses and defects.
- 7.2.** If the Customer requests ABCommunication to use certain equipment and/or software, this shall always take place entirely at the expense and risk of the Customer. In such case, the Customer shall be bound to provide all the required instructions on how to use the systems, well in time and in full.
- 7.3.** ABCommunication and the Customer shall be obliged to ensure adequate security for their systems and infrastructure.
- 7.4.** Access or identification codes provided to the Customer by or on behalf of ABCommunication are confidential and shall be treated as such by the Customer.

#### **Artikel 8. Force majeure**

- 8.1.** Force majeure shall be deemed to exist in case the failure of one of the parties is not due to its fault, or for its account under the law, legal act or generally accepted practice. In case of force majeure, each party is entitled (notwithstanding the provisions of Clause 6.4) to dissolve/terminate the Agreement in writing in whole or in part with immediate effect without the intervention of the court, or to suspend the performance of its obligations.
- 8.2.** For ABCommunication, force majeure shall in any case include but not be limited to: (work) strikes in the organisation of ABCommunication, of the Customer, or of third parties on whom ABCommunication depends in any way for the performance of the Agreement, or the threat of war, or war, insurrection, loss caused due to wilful damage, boycott, government measures due to pandemics or epidemics, disruptions or impediments in traffic or transport, restrictive government measures, untimely delivery of raw materials or other necessary materials or failure to deliver, bankruptcy or suspension of payment on the part of one or more of its suppliers or third parties engaged by it, natural disasters, weather conditions that prevent the adequate performance of the services, electricity failures, failure of the Internet, computer network or telecommunications facilities and health complaints or death of key personnel of ABCommunication that cause impediments (including - but not limited to - its director(s)), and any other circumstance beyond the control of ABCommunication that temporarily or permanently impedes the performance of the Agreement.

#### **Artikel 9. Intellectual property**

- 9.1.** All intellectual and industrial rights relating to the works and/or goods produced by ABCommunication for or during the performance of an assignment shall be vested in ABCommunication. The same shall apply with regard to intellectual and industrial property rights

in respect of works and/or goods produced by third parties subcontracted by ABCommunication. The ownership of goods produced by or for ABCommunication shall also remain with ABCommunication, unless otherwise agreed with the Customer. Unless otherwise agreed in writing, the Customer shall only acquire a right of use relating to the goods produced for the period agreed with ABCommunication and for the purpose agreed with ABCommunication. ABCommunication shall not accept any liability for any infringement of third-party intellectual property rights resulting from the performance of the assignment. The Customer shall indemnify ABCommunication in respect of such liability.

- 9.2. The Customer shall indemnify ABCommunication against claims of third parties relating to intellectual property rights on materials or data provided by the Customer, which are used in the performance of the Agreement.
- 9.3. The Customer grants ABCommunication the right to use the (trade) names and logos and other indications relating to the Customer, such as images of the campaigns carried out for the performance of the assignment. The foregoing indications may be used among other things (but not exclusively) to promote ABCommunication, as a reference on ABCommunication's website, as well as in presentations to customers and prospects.

## **Artikel 10. Data and privacy**

- 10.1. Unless otherwise agreed in writing with the Customer, ABCommunication may, without further restrictions, store, process and (re)use all information that ABCommunication may obtain in the context of an Agreement, insofar as such information does not qualify as personal data.
- 10.2. Insofar as ABCommunication and the Customer share personal data with each other in connection with the (possible) formation of an Agreement or in connection with the performance of an Agreement, they shall ensure reasonable compliance with the requirements under applicable privacy legislation, such as the General Data Protection Regulation ("GDPR").
- 10.3. The parties warrant that they have taken appropriate technical and organisational measures to protect any personal data that the Customer may receive from ABCommunication. With respect to all data and personal data that ABCommunication receives from the Customer, ABCommunication shall take all necessary security measures and observe complete confidentiality, unless disclosure is necessary for the performance of an Agreement or to ensure compliance with a statutory provision or court order.
- 10.4. The Customer warrants that all data (such as personal data), provided by it to ABCommunication, have been obtained lawfully, and have been provided to ABCommunication in a lawful and secure manner, and that the processing of the data does not infringe any rights of third parties.

## **Artikel 11. Liability and indemnity**

- 11.1. ABCommunication shall only be liable for direct damage caused by an ascribable failure of ABCommunication in the performance of any of its substantive obligations towards the Customer. Under no circumstances shall ABCommunication be liable for any indirect damage except in the event of intent or wilful recklessness on the part of ABCommunication. The Customer is obliged to take out and maintain adequate insurance in connection with the liability incumbent on it under this clause.  
ABCommunication's liability towards the Customer shall in any event be limited to the compensation to which ABCommunication is entitled for that part of a performed assignment that caused the damage which is not covered by the Customer's insurance.
- 11.2. The Customer shall fully and unconditionally indemnify ABCommunication against claims of third parties related to the performance of the Agreement. All costs and damage incurred by ABCommunication resulting therefrom shall be borne by the Customer.
- 11.3. The Customer shall indemnify ABCommunication against claims of third parties relating to intellectual property rights on materials or data provided by the Customer, which are used in the performance of the Agreement. The Customer shall indemnify ABCommunication against any claims or actions by public authorities and/or individuals against ABCommunication arising from any infringement by the Customer of any third party rights or obligations under privacy legislation
- 11.4. In case ABCommunication makes arrangements with Influencers on behalf of the Customer, ABCommunication shall merely be acting as an intermediary. ABCommunication shall not be liable for Influencers who fail to honour their agreements or make complaints concerning the choices made by the Customer. In case ABCommunication, at the request of the Customer or otherwise, has to resort to legal means to enforce Agreements with Influencers, the Customer shall in such case be obliged to reimburse reasonable costs incurred by ABCommunication in connection with the legal remedies employed or the defence put forward.

The Customer shall indemnify ABCommunication against damages by Influencers who target ABCommunication as intermediaries because they were not selected to receive reviews or products from the Customer.

#### **Artikel 12. Confidentiality**

- 12.1. ABCommunication and the Customer shall be bound to strict confidentiality of all data, information and knowledge obtained under this Agreement, which should reasonably be assumed to be confidential, unless disclosure is necessary for the performance of an Agreement or compliance with a statutory provision or court order.
- 12.2. ABCommunication and the Customer warrant and shall ensure that their employees and the customers engaged by it shall comply with the same obligation of confidentiality.
- 12.3. ABCommunication and the Customer shall not make negative comments about each other in public.

#### **Artikel 13. Non-solicitation clause**

- 13.1. The Customer shall not, except with the prior written consent of ABCommunication, either during the term of the Agreement or for a period of 1 year after the Agreement comes to an end: i) enter into agreements with Influencers without ABCommunication's intervention, ii) recruit employees or representatives of ABCommunication by offering them (temporary) employment, or to otherwise have them perform services, and/or ii) induce or attempt to induce other business relations of ABCommunication to terminate their relationship with ABCommunication in whole or in part.
- 13.2. In case the Customer violates this stipulation, it shall be liable to pay ABCommunication, without the need to issue a prior warning or a notice of default, or the need for judicial intervention, immediately due and payable liquidated damages of €10,000 per violation and €500 for each day that such violation continues. If ABCommunication proves that the actual damage is higher than the aforementioned liquidated damages, it may also claim compensation for such higher damage.

#### **Artikel 14. Miscellaneous**

- 14.1. The invalidity of any provision of the Agreement and/or the General Terms and Conditions shall not affect the validity of the remaining provisions of the Agreement and the General Terms and Conditions.
- 14.2. If it is established in court that one or more clauses of the Agreement or of the General Terms and Conditions are invalid or otherwise not binding, ABCommunication and the Customer shall, through mutual consultation and in the spirit of the Agreement and/or the General Terms and Conditions, amend them into provisions that differ as little as possible from the relevant non-binding articles.
- 14.3. Obligations which by their nature are intended to continue after the Agreement comes to an end shall continue after the agreement comes to an end. These obligations shall at least include but shall not be limited to the obligations under the confidentiality and non-solicitation clause.
- 14.4. In order to be effective, all communications relating to arrangements between the parties under the Agreement shall be in writing. For these purposes, the term "in writing" shall mean by (registered) letter or e-mail.

#### **Artikel 15. Applicable law and jurisdiction**

- 15.1. The Agreement and the relationship between ABCommunication and the Customer shall be governed by Belgian law.
- 15.2. All disputes that may arise between the Customer and ABCommunication shall in the first instance be laid before the Court of the District of Leuven.

Version November 2022.