



# General Terms and Conditions

## Curve Interactions GmbH

Version 1.2, March the 14<sup>th</sup>. 2018

### 1. Scope and specification of services

1.1. Services provided by Curve Interactions within the domains of Digital Platforms, Branding and Communication, as well as Media and Analytics may include:

- a) Creation and development of analyses, concepts, and communication strategies
- b) Consulting and project management
- c) Creation and design of interactive, digital user interfaces
- d) Programming and adaptation of software
- e) Development, integration, and approval process for systems; running and maintaining hardware and software
- f) Creation of branding and communication campaigns
- g) Production and delivery of marketing materials
- h) Media strategy and media planning, as well as reporting and analytics for communication initiatives

The definite scope and specification of the service is subject to the respective service specification. In case of a verbal briefing, the written confirmation thereafter provides the working basis of Curve Interactions.

A first informal meeting is free of charge and without obligation to both parties. Further activities provided by Curve Interactions, in particular the development of project proposals and making of offers, will be charged unless there is an agreement to the contrary in which case Curve Interactions will inform the customer in advance. If Curve Interactions accepts an order regarding a presentation, Curve Interactions will notify the customer in advance of the presentation fee. The use of subsequent proposals requires written consent of Curve Interactions. In case of a breach of this clause, a contractual penalty of CHF 50'000.- is to be paid by the customer. The provisions on intellectual property (section 7 below) are applied in analogy. If proposals are implemented, any fees already paid will be taken into account.

### 2. Duties and responsibilities of Curve Interactions

- 2.1. If the use of computer equipment is required to provide a service, Curve Interactions uses its own where appropriate, unless otherwise agreed. If the use of special equipment is required to provide an assignment/job, the parties will agree a fee on a case-to-case basis.
- 2.2. Curve Interactions is obliged to apply all due care to the selection and professional proceeding of project members as well as to an appropriate supervision. On customer's demand Curve Interactions is providing the project organization, the staff's names as well as their role in the project.
- 2.3. Curve Interactions is entitled to call in a third party to fulfill the contract unless substantial reasons require an execution through Curve Interactions or if requested by the customer.
- 2.4. Curve Interactions reports regularly and in writing if requested on the progress of the project, and, if a payment on expenditure is applicable, on the work progress and the arisen costs.
- 2.5. Curve Interactions shall inform the customer in due time of any difficulties which might endanger the contractual fulfillment or which might lead to inexpedient solutions. If exceptional circumstances occur, Curve Interactions will inform the customer on time.

### 3. Duties of the customer

- 3.1. The agreed fee for services Curve Interactions has to provide, is paid by the customer.
- 3.2. The customer releases designated staff on time and ensures that possible installation spaces are ready in a timely manner.
- 3.3. On demand, the customer is providing the project organization, the staff's names as well as their role in the project.
- 3.4. The customer points out to Curve Interactions on time any special technical requirements as well as legal, administrative or other rules as far as these are of importance for the properties and the use of the product. The customer will provide all documents, data and information necessary and grants access to rooms and buildings to the staff of Curve Interactions as far as required.



#### **4. Indemnities, budgets, terms of payment**

- 4.1. Payment on expenditure is agreed for services provided by Curve Interactions unless otherwise agreed. The level and mode of payment shall be defined in writing if a lump sum is agreed for the services to be provided.
- 4.2. Not included in the fee of Curve Interactions and additionally charged are the following expenses:
  - extraordinary cash expenditure, expenditure and payments in connection with trips and events
  - translation works
  - third-party services with the customers explicit approval
  - travel costs to customer as far as necessary for the general support.
- 4.3. In case the customer changes or terminates orders, works, planning etc. outside the on-going support, Curve Interactions charges the arisen costs, including possible commissions and fees and the customer shall release Curve Interactions from any liabilities towards third parties.
- 4.4. In case a volume of orders is cancelled or cut massively the customer is obliged to pay 20% of the previously agreed volume of orders.
- 4.5. Unless otherwise agreed, agreements may be terminated regarding released capacities of Curve Interactions, at the end of a quarter, provided that a three month notice period is observed. Terminations be in breach of the agreed notice period are considered to be delayed and entitle Curve Interactions to indemnity. The contractual penalty as a result thereof amounts to 20% of the previously agreed volume of orders.  
Single orders expire upon fulfillment.
- 4.6. Invoices are issued on a case-to-case basis. Unless otherwise agreed, the customer has to effect payment within 10 days after receipt of the invoice, net.
- 4.7. Upon the expiration of the payment deadline Curve Interactions is authorized to account default interests with 7%.

#### **5. Data and documents**

- 5.1. Curve Interactions keeps with care all documents needed for the fulfillment of contractual obligations for the duration of the collaboration.
- 5.2. Curve Interactions can only be forced to provide data and documents regarding the work if the assignment to the customer of rights attached to it was reimbursed or agreed. Data and documents submitted by the customer are to be delivered to the last-mentioned upon request.
- 5.3. Curve Interactions is authorized to destroy data and documents regarding the work in case the customer does not request restitution within one year after fulfillment.

- 5.4. Outsourcing, editing, copying and sending of data and documents can be done at additional cost-covering charge. Outsourced data and documents are trans-ported at customer's risk and expense.
- 5.5. In case Curve Interactions outsources documents and data for whose management henceforth the customer is responsible, Curve Interactions takes no responsibility after the date of outsourcing.
- 5.6. If the contract is terminated prematurely on the customers part, the customer is only entitled to data and documents regarding the work, if both the outsourcing fee and the associated rights are agreed and paid beforehand.

#### **6. Intellectual property**

- 6.1. If the agreed service-fee is paid to Curve Interactions, the customer is entitled to use to the intended extent during the collaboration, but shall not pass on to third parties the provided software, know-how, data carriers, the documentation and all deliverables gained within the context of collaboration with Curve Interactions unless otherwise agreed (e.g. separate license agreements). Excluded from this are specially developed surfaces, designs and similar deliverables, whose unlimited right of use transfers to the customer upon agreed payment. If software or data have been specially developed for the customer, and Curve Interactions is not capable of carrying out the maintenance or completing the necessary adjustments in line with the market requirements, the customer is entitled to claim data or source codes in exchange for a reasonable compensation.
- 6.2. The use of the intellectual property (including copyrights, deliverables, software, know how) of Curve Interactions beyond the contract period by the customer (wholly or partly) needs prior agreement on a case-to-case basis and entitles Curve Interactions to charge an additional fee.
- 6.3. The intellectual property of software, know how and deliverables created by Curve Interactions and the right to further applications, remains with Curve Interactions or its licensor in any case, even if Curve Interactions exceptionally provides source codes or if the customer subsequently modifies software programs or know how. Curve Interactions reserves the right to use ideas, concepts and methods, which Curve Interactions has developed itself or in collaboration with a customer, in proposing for services of similar nature for other customers.
- 6.4. Curve Interactions expressly reserves the right on indicating names and of publishing their work on its own media channels (corporate site, Facebook, Twitter, YouTube, etc.).
- 6.5. In case of improper use of works developed by Curve Interactions, in particular for purpose of use,



for which no right of use was agreed and compensated, the customer owes a contractual penalty of CHF 20'000.- to Curve Interactions per violation and work. Curve Interactions reserves the assertion of further claims. Any claims based on the violation of rights of use remain applicable. Curve Interactions is entitled to forbid the improper use of works.

- 6.6. The use of rights of infeasible works, which are paid on expenditure or have been created according to a project order and have been charged with a lump sum, remain with Curve Interactions.

## 7. Property rights of third parties

- 7.1 The parties ensure that the provided software, the know how, the data carriers and documentations do not violate property rights of third parties. Possible property rights of third parties must be reported by following receipt of information. In case a third party claims the infringement of property rights each party must report to the other party in writing without delay of any claims made and the rights do defense.
- 7.2 Each party makes good a possible direct damage to extent that the party is liable for infringement of property rights of third parties according to the following liability regulation.

## 8. Confidentiality

- 8.1. Possible company and business secrets of the other party, which the parties have learned directly or indirectly within the scope of collaboration, are to be kept secret and – except for the scope of collaboration – must neither be utilized nor disclosed or made accessible to any third party. Each party is entitled to designate confidential information and data on a case-to-case basis.
- 8.2. Matters of common knowledge, matters that are easily accessible and matters which the concerned party already knew of or which have been carried to in a permissible manner are not covered by professional secrecy. The parties conveniently delegate professional secrecy to the staff.
- 8.3. Professional secrecy shall continue even after the contract has come to an end, provided there is a legitimate interest.

## 9. Time limits

- 9.1. The parties agree to time schedules or individual dates. Deadlines are only binding when agreed in writing. Agreed times shall be duly prolonged in case
- a) the customer does not communicate in time or

does not provide the entire information needed for execution;

- b) the customer is behind schedule with the executions of his works or his contractual obligations, in particular if he fails to comply with the payment conditions (under reserve of rescission, section 5 above);
- c) restricting events occur, which do not lie within Curve Interactions' intention, such as natural events, accidents, sickness, significant interruption to operations, late or defective supply or official action. Curve Interactions is entitled to provide partial delivery.

In case of a delay through fault of Curve Interactions, the customer has to set a reasonable additional time limit to effect the subsequent performance. If Curve Interactions does not comply until that deadline, the customer is entitled, after having notified Curve Interactions within 3 days, to abandon the right of an additional performance or to withdraw from the contract, if Curve Interactions culpably caused the delay. In this case, the customer is - despite of later fulfillment, renunciation of performance or withdrawal from the contract - entitled to assert the actual damage, however not exceeding 20% of the value of the delayed or failed service. Further claims based on the delay such as indirect damages or consequential damages are excluded.

If the customer is in default of payment according to the agreed budget more than 30 days after a written reminder issued by Curve Interactions, if the customer goes bankrupt or becomes insolvent, Curve Interactions is entitled to immediately terminate the collaboration. In that case, Curve Interactions shall inform the customer in writing.

## 10. Acceptance

- 10.1. The contracting parties shall agree upon the modalities of delivery and acceptance procedure.
- 10.2. Unless specific acceptance procedures have been agreed, the customer must check the deliveries himself. If the delivery of a functioning system has been agreed, the customer is entitled to a demonstration of the agreed features by Curve Interactions.
- 10.3. If an acceptance procedure is agreed and there is a delay through no fault of Curve Interactions, the customer stays obliged to make payment on time.

## 11. Liability

- 11.1. Curve Interactions avouches that the works submitted are executed with due care and the best of its knowledge respectively that the deliverables meet the qualities assured in writing.



- 11.2. The parties follow any legal requirements as well as the principles of fairness in advertising. The customer is solely responsible for internet presences and their contents (including publicity and advertising). If Curve Interactions acts upon the express wish of the customer, the customer shall hold Curve Interactions harmless from possible claims made by third parties.
- 11.3. Even if Curve Interactions performs carefully, the customer is aware of software development and consulting being not always error free, that Curve Interactions is not liable beyond the qualities assured in writing and that Curve Interactions does not guarantee the fulfillment of hoped-for objectives.
- 11.4. Curve Interactions is liable for any damages to the customer caused by a breach of duty of care to a maximum of 20% of the value of the faulty service. This limitation shall not apply to cases of gross negligence or willful intent.
- 11.5. Excluded from the liability are shortcomings and failures through no fault of Curve Interactions, such as normal wear and tear, acts of God, improper care, interference of the user or third parties, excessive load, inadequate equipment and extreme environmental conditions. Expressly excluded is any liability for damages arising out of violated contractual obligations to third parties by the customer as well as indirect damages, consequential damages such as lost profit or claims of third parties.
- 11.6. Curve Interactions will correct defects of the assured qualities as well as errors that are evidently caused by Curve Interactions within the scope of warranty at their own discretion by subsequent improvement or product replacement. The customer keeps ready a correct documentation of the errors.
- 11.7. Curve Interactions will provide warranty at their own discretion by subsequent improvement or product replacement in its own accommodations or at the customer's site. Dismantling costs, assembly costs, transportation costs, packaging costs, travel costs and subsistence expenses shall be born by the customer. Products and parts replaced by Curve Interactions within the scope of warranty become Curve Interactions' property.
- 11.8. Any prescription period will not be interrupted by acknowledgement or abolishment of a defect.
- 11.9. In case a defect cannot be repaired, the customer is entitled to a price reduction and may request compensation for direct damage evidently caused by Curve Interactions, limited to 20% of the defective service. This limitation shall not apply to cases of gross negligence or willful intent. Further claims of liability are excluded. The customer is in particular not authorized to withdraw from the contract.
- 11.10. Curve Interactions assumes no liability for services provided by a third party, for whose acquisition Curve Interactions acted as agent only.
- 11.11. Defects of parts of the work or the work as a whole, for Curve Interactions assumes no liability due to direct or indirect instructions of the customer, are excluded.
- 11.12. Curve Interactions does not guarantee success for its performances, nor does it perform for a success fee.
- 11.13. Curve Interactions' contractual warranty for defects of title and quality is limited to the 20% of the value of the volume of orders. Any further contractual liability is excluded. Reserved are compulsory legal liability regulations.
- 11.14. Curve Interactions is not liable for defects of title for documents, which are provided by the customer or a third party commissioned by the customer.
- 11.15. Curve Interactions is only liable for cost overruns if they are caused by improper performance of the contract. The liability is limited to the damage caused by the breach of faith.
- 11.16. No liability is assumed for additional costs caused by extra performance by the wish of the customer, by price changes on the market, customary excess deliveries or conceptual changes by the customer.
- 11.17. Curve Interactions assumes no liability for defects within customary tolerances.
- 11.18. Curve Interactions is only liable for the loss of data caused by gross negligence, not by an act of God.
- 11.19. Liability is limited to the substitute of the material value at the time of the loss.
- 12. Non-solicitation clause**
- The customer will not entice, hire, assign or otherwise employ staff of Curve Interactions directly or indirectly for the duration of the collaboration as well as during two years thereafter, unless with the express approval in writing of Curve Interactions. Any person who has an employment contract for the duration of the collaboration is considered to be staff for the purposes of this regulation. Failure to comply with these conditions will result in a contractual penalty of CHF 50'000.-.
- 13. Written form**
- All changes and/or additions of these regulations shall be effective only if made in writing.
- 14. Transfer**
- The transfer of rights and obligations to third parties or affiliated companies requires prior written consent of the parties involved.



**15. Severability clause**

Should any of these regulations herein be ineffective the such ineffectiveness is to be restricted only to that particular regulation. The parties shall replace such ineffective regulations forthwith by an effective regulation that approaches as closely as possible the purpose sought and its financial significance.

**16. Attachments**

Possible attachments are to be mentioned and are considered to be integral elements of the agreement reached by the parties.

**17. Place of jurisdiction**

The courts at the residence of Curve Interactions have jurisdiction over disputes arising from this agreement. Swiss law will be applied exclusively.

Zurich, March the 14<sup>th</sup>, 2018  
Curve Interactions GmbH

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