

GENERAL TERMS AND CONDITIONS

Article 1 Definitions

1. InstiCOM bvba, Avenue Victor Jacobs 74, 1040 Brussels, VAT BE 0822.761.720: the natural or legal person who is granted the assignment by the principal to render services or to deliver goods.
2. The principal: the natural or legal person who has requested InstiCOM to issue a tender or has granted it the assignment with respect to the rendering of services or the delivery of goods.
3. The agreement: the agreement between InstiCOM and the principal as concluded under the applicability of these general terms and conditions and in case of deviations between the general terms and conditions and specific agreements between parties, the specific agreement will prevail over the general terms and conditions.

Article 2 Applicability and validity of these general terms and conditions

1. These general terms and conditions apply to the establishment, the contents and the performance of all agreements concluded between INSTICOM and the principal.
2. Any deviations from these general terms and conditions shall only be valid to the extent to which these deviations have been agreed upon in writing between the parties.
3. The general terms and conditions (of purchase) of the principal shall only apply if it has been agreed upon explicitly and in writing that they will apply with the exclusion of these general terms and conditions.

Article 3 Agreement

1. Except in so far as the agreement also comprises the delivery of goods, the co-operation between the principal and INSTICOM shall be an agreement of assignment.

Article 4 General obligations of the parties

1. INSTICOM shall be obliged to execute the agreement to the best of its insights and abilities in accordance with the requirements of proper expertise. The agreement with the principal shall be an obligation to perform to the best of its abilities.
2. Both parties shall co-operate in the procedures agreed upon and shall mutually make available the information to the other party that is required for a proper execution of the work activities as soon as possible as it is requested by the other party. Objects, materials or data that have been made available to INSTICOM for, by or on behalf of the principal are kept for the account and at the risk of the principal.
3. INSTICOM shall be obliged to observe secrecy with respect to all that comes to its knowledge in the execution of its work activities that is of a confidential nature or that can be deemed to be recognised by the agency as being confidential. Except if necessary to comply with any legal obligation, INSTICOM shall only be allowed to ignore this obligation of secrecy with the permission of the principal.
4. If INSTICOM does not execute the work activities conform the wishes of the principal, the latter may suggest to INSTICOM that those work activities should be executed in another manner. If INSTICOM is not willing to comply with this request, which INSTICOM is allowed to be, the principal shall have the right to terminate the assignment by registered letter and by means of a term of notice of three months. The provisions of article 6 of these terms and conditions shall apply to such a termination.

Article 5 Duration and ending

1. Unless it is explicitly agreed upon otherwise in writing, the agreement shall be deemed to have been entered into for an indefinite period of time. An agreement entered into for an indefinite period of time can be terminated at all times with due observance of the term of notice provided for in the agreement, or in the absence of such a provision, with due observance of a term of notice of three months.
2. An agreement entered into for a definite period of time or for the time that is required for the completion of the assignment, may, except if it has been provided for explicitly otherwise in the agreement, only be terminated prematurely by one of the parties with due observance of a term of notice of three months.
3. Upon premature termination of the agreement by the principal in the sense of the preceding article 6.2., the latter shall owe a compensation to INSTICOM during the term of notice. This compensation shall at least be equal to the average of the fee as invoiced by INSTICOM over the twelve months preceding the term of notice (or so much shorter as the agreement has lasted). The above applies without prejudice to the obligation of the principal to pay the invoices for the work activities that the principal has executed by INSTICOM during the term of notice, in as far as the amount of these invoices exceeds the aforementioned average.
4. Upon premature termination of the agreement by INSTICOM the agency cannot claim any form of compensation other than for the work activities executed by INSTICOM during the term of notice. INSTICOM shall be obliged to properly finish the current work activities in a regular fashion until the end of the term of notice, unless the principal shall decide otherwise. If the principal requests so, INSTICOM shall be obliged to take care of an adequate transfer of the work activities.
5. Both parties shall have the right to terminate the agreement without judicial intervention and without observing a term of notice if the other party is declared bankrupt, applies for suspension of payment, or aims at an arrangement with its creditors outside bankruptcy or suspension of payment, this without prejudice to the right of the respective party to claim damages because of premature termination.

6. Both parties are also entitled to terminate the agreement without judicial intervention in case of material breach of contract or repeated breaches of contract, after written notification by the respective party without remedy in 30 days after written notification.

Article 6 Fees, costs and invoices

1. The fee charged by INSTICOM shall be based on hourly fees, unless another manner of remuneration has been agreed upon. Other remuneration can be a fixed compensation per time unit (retainer fee) or a fixed price (per project or assignment).
2. INSTICOM shall have the right to adjust its hour tariffs and/or fees that are determined on a different basis pursuant to the agreement, by indexing on the bases of the consumer index. Indexing can only take place maximally once per year and not earlier than three months after the establishment of the agreement. Raises as mentioned in the preceding sentence, shall only be charged after the principal has been informed about them.
3. If the work activities are carried out conform budgets agreed upon beforehand that have been based on the hour tariffs, INSTICOM shall not be allowed to deviate from these budgets, except for indexing as described in the preceding paragraph of this article or in the case of premature change of the agreement by the principal. If the principal reduces the size of the agreement prematurely, the principal shall continue to pay the original fee for as long as has been provided for in article 6, that provides for the termination of an assignment. INSTICOM shall be obliged, if an excess of the mutually approved of budget can be foreseen, to inform the principal immediately of this, and if necessary, to submit a new budget for approval.
4. Apart from the fee, the agency costs and the costs of any third parties used by INSTICOM within the framework of the agreement shall be owed by the principal after written approval. On budgets and invoices the costs are distinguished as follows: fee of the agency, agency costs and, if applicable, costs of third parties. Agency costs shall be deemed to include costs of telephone, facsimile transmitter, stamps, costs of couriers and cost of photocopies.
5. In principle the principal shall pay the costs of third parties (when priory approved in writing – see art. 4) directly. If the payment of third parties is done through INSTICOM, INSTICOM shall have the right to charge a surcharge for costs of interest and administration. INSTICOM shall also have the right to desire an advance payment with respect to such costs. It is regular that all discounts on supplies by third parties shall be passed on to the principal. The principal shall guarantee INSTICOM against every claim of third parties relative to the priory approved costs and/or invoices.
6. Unless it has been agreed upon otherwise INSTICOM shall invoice the fee and agency costs due over a calendar month each month after the end of that month. Costs of third parties may be passed on immediately after the receipt of the invoices related to them. The payment term for invoices of INSTICOM is 30 days, while the settlement of debts is excluded. Upon excess of that term, the principal shall owe an interest of 1% per calendar month or part of a calendar month from the date of expiration.
7. If the principal is in default in timely paying of invoices, it shall owe apart from the amount owed and the interest owed, an amount equal to 15% of the principal sum for all inconveniences and cost related to the invoices being unpaid, with a minimum of € 70,00.
8. If the parties have agreed that an hour tariff shall be charged, the hours spent on working activities should be specified sufficiently on the invoice.
9. All prices shall be exclusive of VAT, unless it has been mentioned explicitly otherwise.

Article 7 Preparatory work activities

1. If, before an agreement is concluded, the principal requires from INSTICOM that it should familiarise itself with knowledge with respect to public relations / communication that is specifically relevant for the principal and/or knowledge with respect to the specific problems of the principals, INSTICOM shall be allowed to claim reasonable compensation for this.
2. Before INSTICOM carries out these preparatory work activities, it shall notify the principal in writing that costs will be charged for these work activities, also if the agreement is not concluded.

Article 8 Conflicting interests

1. INSTICOM shall not accept assignments with respect to which INSTICOM knows or should know that execution of those assignments is contrary to the interests of the principal without prior written permission of the principal.

Article 9 Use of more agencies

1. The principal shall only grant public relations assignments to other PR/Communication agencies / advisers after timely prior consultations with INSTICOM.

Article 10 Copyright

1. The principal shall obtain from INSTICOM full ownership for the use of works protected by copyright that are made by INSTICOM in the execution of the agreement for the benefit of the principal, it being understood that the license and the transfer of the copyrights only shall apply as soon as and for as long as the principal performs its financial obligations related to the making available of the work protected by copyright.
2. The aforementioned license shall exclusively apply to the use of the work in question by the principal itself. Therefore use by third parties is only allowed after prior written permission of INSTICOM.

Article 11 Statements and notification

1. Any statements and notification, in whatever form, that shall be made/take place by INSTICOM on behalf of the principal within the framework of the execution of the agreement shall be submitted to the principal for approval beforehand.
2. Statements and notification made/ done by INSTICOM on behalf of the principal within the framework of the execution of the agreement shall exclusively occur for the account of and at the risk of the principal. If a complaint is filed against the principal or if court proceedings are instituted against the principal with respect to such statements or notification, the principal shall decide about the form of the defence in consultation with INSTICOM.

3. If legal proceedings are instituted against INSTICOM with respect to the statements / notification mentioned in the preceding paragraph or if a complaint is filed against it, INSTICOM shall inform the principal of this immediately. It shall be decided in consultation between the parties whether INSTICOM will defend itself independently or whether the principal will act in the proceedings on behalf of INSTICOM. In both cases all costs of the handling of the complaint and/or the proceedings shall be for the account of the principal, including any order to pay the costs of the proceedings or to contribute in the costs for the benefit of the other party.
4. The principal shall indemnify INSTICOM and hold it harmless against all claims of third parties based on the (in)correctness and the factual contents of the statements and notification made / done by INSTICOM on behalf of the principal within the framework of the execution of the agreement.

Article 12 Liability

1. In the case of advising activities INSTICOM shall be liable for damage resulting from imputable shortcomings in the performance of the obligations resulting from the agreement. Shortcomings are imputable in as far as they concern a manner of acting or negligence on the part of INSTICOM that can not be expected from a reasonably adequate and reasonably acting public relations / communication adviser.
2. Except in cases of wilful intent or conscious recklessness, the liability for damage resulting from shortcomings in the execution of the advising activities shall be limited to the fee received by INSTICOM for its activities within the framework of the agreement. In the case of agreements that have a duration exceeding twelve months, in addition a limitation of the aforementioned liability shall apply until maximally the invoice amount over the past twelve months preceding the shortcoming in question.
3. In the case of liability of INSTICOM for the delivery of goods, INSTICOM shall either pay a compensation until maximally the value of the invoice of the goods delivered, or replace the goods delivered free of charge, this to be chosen in its sole discretion.
4. INSTICOM is liable for imputable shortcomings on the part of third parties used by INSTICOM, notwithstanding the right of the principal to directly claim damages from the defaulting party. In as far as INSTICOM can claim damages to which the principal is not directly entitled from a third party that it has used without contestation of the principal, INSTICOM shall do all to make such a claim valid or, respectively, to enable the principal to make such a claim valid.
5. INSTICOM shall have no liability for additional or other damage, including consequential damage, special or indirect damages.
6. Any claims of the principal as mentioned in this article must be submitted in writing to INSTICOM within six months after the discovery of the shortcoming or after the point of time at which the shortcoming could reasonably have been discovered, in default of which the claims will have become invalid.

Article 13 Disputes

1. Any disputes between the principal and INSTICOM resulting from or related to the agreement or its execution shall be solved by the court that has jurisdiction in the place of establishment of INSTICOM.
2. These general terms and conditions and the agreement shall be governed by Belgian law.