

**Art. 1. Applicability of General Terms and Conditions**

- 1.01 These General Terms and Conditions govern the relationship between INNOVATIS (Suisse) AG (hereinafter referred to as INNOVATIS), and its clients subject to all activities, all pre-contractual relations, any agreement, to every supplemental and further assignment of the client.
- 1.02 The General Terms and Conditions shall apply to any existing or any potential client, unless agreed otherwise in writing.
- 1.03 For existing clients these General Terms and Conditions come into effect two months from notification.
- 1.04 The clauses in these General Terms and Conditions have been included not only for the benefit of INNOVATIS, but also for the benefit of all persons working for INNOVATIS or persons that have been working for INNOVATIS and all third persons involved in the execution of any instructions, if their acts or omissions could lead to liability.
- 1.05 Client's general terms and conditions shall only apply if the parties have explicitly agreed thereto in writing.
- 1.06 For the sake of clarity, INNOVATIS uses only masculine pronouns in its forms. These are both understood as including both sexes.

**Art. 2. Services**

- 2.01 INNOVATIS will consider all instructions of clients to have been given exclusively to INNOVATIS even if the instructions are explicitly or implicitly intended to be carried out by a specific person.
- 2.02 INNOVATIS shall perform the mandate entrusted to in conformity with the agreement and represent the rights and interests of the client vis-à-vis all persons, with all due diligence and in accordance with generally accepted professional practice.
- 2.03 INNOVATIS shall have the right and obligation to represent the client to the extent that is necessary and expedient in order to comply with the agreement.
- 2.04 In case of different orders INNOVATIS, at its sole discretion, shall be entitled, irrespective of the date or the time of receipt thereof, to decide about the execution of such orders.
- 2.05 Any agreement must be in written form to be valid. The agreement may not be amended except by the written consent of INNOVATIS and the client.
- 2.06 The documents forming the agreement are to be taken as mutually explanatory of one another, but in the event of inconsistency, and unless otherwise provided herein, the agreement shall be interpreted in accordance with the following order or precedence:
- (i) the Special Conditions of Agreement
  - (ii) the General Terms and Conditions

**Art. 3. Contractual relationships with Third Parties**

- 3.01 The client takes notice that third parties, especially banks, directly conclude service contracts with their clients. It is the sole responsibility of the client to meet these contractual obligations. INNOVATIS itself pays attention to the provisions of these contracts in the execution of its services.
- 3.02 If the client fails to fulfill its obligations under these contracts and the third party does not continue its service to the client, INNOVATIS is entitled to terminate its own services entirely or partly, too.
- 3.03 Within the relationship to third parties the client is obliged to act in the best interests of INNOVATIS and agrees to refrain from any activity that could harm the relationship between INNOVATIS and the third party.
- 3.04 Damages suffered by the client itself, the third party or INNOVATIS because of non-compliance of the provisions mentioned in the three preceding sub-clauses shall be borne by the client.
- 3.05 In case of conflict between these general terms and conditions, the separate agreements and the general terms and conditions of such third parties the latter mentioned shall prevail.
- 3.06 The client takes notice that third parties, especially banks, regulators and stock market may obtain information direct from the client or by an independent auditor. The client is obliged to provide this information and to allow access to his premises.

- 3.07 Changes of fees and costs of third parties will be communicated to the client by third parties itself in accordance to these agreements. Notification period of third parties may differ from notification period of INNOVATIS. Changes of fees by third parties do not entitle the client to terminate the agreement with INNOVATIS under point 8.04.

- 3.08 Any refunds from third persons or third parties will be disclosed by INNOVATIS.

**Art. 4. Liability**

- 4.01 INNOVATIS is only liable to pay damages if INNOVATIS performance of agreed obligations is due to bad faith, willful misconduct or gross negligence. Any claims against INNOVATIS based on minor negligence are wholly excluded.
- 4.02 If the carrying out of instructions leads to liability, this liability shall in each case be limited to the amount charged by INNOVATIS or 10% of the transaction volume.
- 4.03 In the event of damage resulting from the defective execution, late execution or non-execution of instructions the liabilities of INNOVATIS are limited to an amount equal to the loss of interest, unless its attention has been expressly directed to the risk of extensive damage at the time of and in respect of such instructions.
- 4.04 The instructions that have been given shall only be carried out exclusively for the client. Third persons cannot derive any rights from the content of the work carried out. As third persons are particularly also to be considered corporate bodies or partnerships that are controlled partially or completely by the client.
- 4.05 As financial intermediary under Article 2 of the Anti-Money Laundering Act dated 10 October 1997 INNOVATIS is obliged to collect a minimum of data according to the service provided (identification, environment, etc.) For providing the agreed services with due care and diligence INNOVATIS depends on additional data of the client. INNOVATIS is obligated to treat this information as confidential and will not disclose it to third persons. Excluded from this are requirements under Law or under the agreement, the client entered into with third parties.. These obligations of INNOVATIS shall remain in effect also after termination of the contractual relationship.
- 4.06 Third parties being engaged in connection with the fulfillment of instructions of a client may wish to limit their liability in relation thereto. INNOVATIS will proceed on the assumption, and insofar as necessary stipulates, that all instructions given to it by clients include the authority to accept such a limitation of liability on behalf of those clients.
- 4.07 All rights of action and other powers of whatever nature vis-à-vis INNOVATIS related to services provided by INNOVATIS shall lapse in any event six months after the moment on which the client involved is aware or could reasonably be aware of the existence of these rights and powers.
- 4.08 INNOVATIS is bound by the duty to observe secrecy. As far as this is required in order to pursue its fees (in particular claims to INNOVATIS fees) or to avert claims that are made against INNOVATIS in particular damages claimed against INNOVATIS by the client or third persons, it shall be released from its duty to observe secrecy.
- 4.09 INNOVATIS reserves the right to outsource, in whole or in part, certain areas of business (e.g. Fund transfer and securities operations). INNOVATIS is obligated to take due care in selecting and instructing third persons and to supervise their performance accordingly.
- 4.10 INNOVATIS is not liable for third person negligence and/or non-fulfillment of obligations as far as no gross negligence is on the part of INNOVATIS regarding selection, instruction and supervision of these third persons.
- 4.11 INNOVATIS explicitly refers to the exclusion of liability under Article 11 Anti-Money Laundering Act.
- 4.12 Even in areas subject to stricter liability, INNOVATIS is not liable for any loss caused by:
- breakdown of/lack of access to IT systems or damaged data in such systems as a result of the below events, whether INNOVATIS itself or an external supplier is responsible for operating the systems;



- failures of the electricity supply or telecommunications, statutory intervention or administrative orders, acts of God, war, insurrections, civil commotion, sabotage, terrorism or vandalism (including computer virus and hacking);  
- strikes, lockouts, boycotts or blockades, whether or not the dispute is aimed at INNOVATIS, or INNOVATIS or its organization has started the dispute, and notwithstanding the reason for the dispute. This also applies if the dispute affects parts of INNOVATIS; or  
- other circumstances which are outside the control of INNOVATIS.

4.13 INNOVATIS will not be exempt from liability:  
- if INNOVATIS should have anticipated the cause of the loss when the agreement was entered into, or should have avoided or overcome the cause of the loss; or  
- if INNOVATIS, in any case, is liable for the cause of the loss according to Swiss law.

#### **Art. 5. Obligations of the Client**

5.01 INNOVATIS undertakes to check carefully the identity of its clients and their authorized agents as well as all transactions regarding money laundering. The client is liable for any damage resulting from failure to recognize falsification or incorrect identification provided.

5.02 The client is obliged to inform INNOVATIS promptly about any changes affecting the client or his environment. The client shall be responsible for damages suffered by the client itself, by third persons, third parties as well as by INNOVATIS resulting out of the disregard of this clause.

5.03 The power of disposal as notified to INNOVATIS shall remain in force and effect until written withdrawal. This is considered as agreed independent of signature procedures agreed with banks, entries in commercial registers or other public entries. The client is responsible for any damages resulting out of the non-execution of an order because of lack of clear identification.

5.04 The client shall guarantee that she/he has sufficient funds to meet its commitments to INNOVATIS in a timely manner.

5.05 The client has to disclose the beneficial owner of any transaction to INNOVATIS and is liable for any incomplete information.

5.06 If the client allows a third person to take cognizance of the content of the work carried out by for the benefit of the client, the client shall bring these general terms and conditions to the attention of the third person and ensures that they are also accepted by this third person.

5.07 The client is prohibited to use the services provided by INNOVATIS in another way as stipulated in the particular agreements.

5.08 The client shall at all times maintain complete and absolute confidentiality regarding the contractual relationship, INNOVATIS other's business, business sources and affiliates, and INNOVATIS proprietary knowledge and know-how, and will disclose such information to third persons only pursuant to the express written permission of INNOVATIS which made available the information. The client shall not directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass or obviate the interest of INNOVATIS or the interest or relationship between the client and INNOVATIS. This obligation shall remain in force and effect also after termination of the contractual relationship.

5.09 The client indemnifies and holds harmless INNOVATIS and its auxiliary persons against claims by third persons who claim that they have suffered damage as a result of or in connection with the work carried out by on behalf of the client or against claims by third persons who claim that they have suffered damage as a result of a disclosure mistakenly made by one of its employees or other auxiliary persons, except in cases of intent or willful recklessness on the part of INNOVATIS.

5.10 The client is liable for any damage resulting from his incapacity to act provided that such incapacity to act was not apparent to INNOVATIS on exercising the degree of due care. The client is liable in any case for any damage or loss resulting from incapacity on the part of his authorized agent or other third person. Further the client is also liable for all damages and lost profits suffered by third parties

resulting out of the unauthorized use of services provided by INNOVATIS

5.11 Complaints by a client relating to the execution of instructions as well as to other communications must be lodged immediately upon receipt of the communication concerned and at the latest within 14 days. If INNOVATIS fails to send a communication, which the client expects, the client must nevertheless lodge his complaint as if he had received the communication by ordinary mail. Any damage arising from delay in making a complaint is to be borne by the client.

5.12 Objections concerning account or safekeeping account statements must be submitted within one month upon receipt. After expiry of this period the statement is deemed approved.

#### **Art. 6. Correspondence, Communications**

6.01 INNOVATIS may use e-mail to correspond with the client and third persons. INNOVATIS points out that the electronic data-transfer per e-mail via internet is not safe with regard to confidentiality and authenticity and that loss of data may occur in the event of transferring data per e-mail via internet as well as viruses may be transmitted unnoticed. Should the client not want communication by e-mail, due to the possibility that third persons could take note of the content of the e-mails or for other reasons, in particular due to the aforementioned security reasons, INNOVATIS has to be informed accordingly.

6.02 The client agrees that INNOVATIS may record telephone conversations between the client and INNOVATIS and may keep these recordings for reasons of evidence.

6.03 Communications from INNOVATIS are deemed to have been duly transmitted, if sent to the last address supplied to INNOVATIS by the client or to the address notified in the particular agreements. If there is no address notified or if the client does not receive any correspondence according to the particular agreement, the correspondence INNOVATIS holds at the client's disposal as a protective measure, shall be deemed as delivered. Clients, who do not receive correspondence, bear the sole responsibility for any damages suffered by themselves, INNOVATIS, third persons or third parties resulting out of the non-delivery.

6.04 Any communication that needs to be in written form pursuant to the present general terms and conditions or to the conditions of the agreement may also be forwarded by means of telefax or e-mail, unless provided otherwise.

6.05 Any notice, request, or consent made pursuant to the agreement shall be in writing and shall be deemed to have been made when delivered in person or when sent by registered or certified mail, telex, telegram, facsimile or e-mail to:  
INNOVATIS (Suisse) AG  
Attention: President of Board  
Address: Alte Steinhäuserstrasse 1, 6330 Cham/Zug, Switzerland  
Facsimile: +41 44 215 30 61  
Email: office@innovatis-suisse.ch

6.06 Damage resulting from the use of postal services, fax, telephone, telex, e-mail and other means of communication or transport, such as from loss, delay, misunderstandings, mutilation or duplicate dispatch its to be borne by the client provided, that INNOVATIS has exercised the degree of due care.

#### **Art. 7. Right of lien and offsetting**

7.01 INNOVATIS has a right of lien on all assets it holds for the account of a client whether in its own custody or placed elsewhere and right of set-off as regards all funds credited to a client's account in respect of all claims which INNOVATIS may have against the client, irrespective of the due dates of such claims or currencies in which they are expressed. Immediately upon default by the client INNOVATIS shall be entitled to dispose, either by forced sale or in the open market, of any assets over which it has a right of lien.

#### **Art. 8. Fees**

8.01 INNOVATIS has the right to claim payment by the client of an appropriate fee in consideration of his services. Unless otherwise

agreed between INNOVATIS and the client or defined in the particular agreements, the honorarium will be calculated by multiplying the amount of hours worked with the hourly fees. The minimum of time registration is 6 minutes.

8.02 The hourly fees are as follows:

- Management of INNOVATIS SFR 600.00
- Senior staff of INNOVATIS SFR 400.00
- Junior staff of INNOVATIS SFR 300.00
- Office staff of INNOVATIS SFR 100.00

8.03 Besides the agreed honorarium clients will be charged with:

- All costs of third parties involved;
- Any fees arising, like filling forms fees, translation costs and other out-of-pocket expenses;
- General office costs (including but not limited to telephone, fax and copying costs) of 5% of the total amount of honorarium;
- Travel expenses;
- Value added tax (if applicable)
- Travel days of Meetings outside of the office will be charged with a day rate of SFR 4'000,00

8.04 INNOVATIS reserves the right to alter its rates at any time, e.g. in the event of changes in the market conditions, and to advise the client of such change in writing or by other suitable means respectively by the means defined in the separate agreements. The client has the right to terminate the agreement latest one month before the changes become effective. No deductions are allowed from rates and fees due to INNOVATIS.

8.05 Any expenses, taxes or other charges applying in connection with the agreed services are to be borne by the client. This also applies to future costs and taxes. The client notes that third parties will charge him directly with fees, costs and taxes due to the separate agreements.

8.06 INNOVATIS reserves itself the right to charge the client at any time in advance or on account. Furthermore, INNOVATIS normally require a reasonable advance payment for anticipated costs and expenses. A final invoice will be sent when the business relation is completed or has ended otherwise.

8.07 Invoices are issued according to the provisions of the particular agreements. Unless otherwise agreed, INNOVATIS will send clients a monthly invoice, which reflects the amount of fees and expenses attributable to the matter. At the option of a client, the invoice will be either generalized or detailed. The generalized invoice will indicate total fees due for work accomplished and the total costs charged to the agreement. In the alternative, the invoice will have a detailed backup sheet showing the person that worked on the matter (to the tenth of an hour); the work performed; the time spent on the task; and the total fee amount due.

8.08 Payment of INNOVATIS invoices shall take place within 14 days of the invoice date, without suspension or set off. Invoices issued shall be considered as accepted, if the client does not raise any objections within 5 working days upon date of issuance in writing. Except if the client protests promptly upon receipt of INNOVATIS invoice, and its third party account foundation are entitled to set off monies received for or from client against, or use them in payment of, whatever the client owes INNOVATIS.

8.09 If no payment is received within 15 day, INNOVATIS is authorized to charge SFR 30.00 administration costs and a yearly interest of 5% above the respectively applicable basic interest rate, with a minimum of SFR 20.00. The interest is calculated over full months (Basis 360 days). All judicial or extra judicial costs connected with the collection of outstanding amounts – with a minimum of 15% over and above the amount to be collected – shall be for the client's account. Judicial costs are not limited to the nominal costs of the procedure awarded by the court, but shall be for the account of the client in full of he is judged to be in the wrong (to a preponderant degree.)

#### **Art. 9. Duration of Agreement**

9.01 Agreements shall generally be for an indefinite period. The relationships established shall not lapse upon the death, incapacity or bankruptcy of the client. In the absence of special instructions for

such cases or in cases of doubt INNOVATIS acts in good faith at its own discretion.

9.02 INNOVATIS or the client may terminate the business relationship at any time and at either's own discretion by registered letter with one month period of notice. INNOVATIS fee claims shall remain unaffected by the foregoing.

9.03 If the client violates the provisions of these general terms and conditions, the particular agreements, the general terms and conditions of third parties as well as local provisions or if the client does not pay agreed fees, INNOVATIS is entitled to discontinue its services without prior notification.

9.04 If INNOVATIS provides services on the basis of a contract with third persons and if this contract is terminated for any reason, INNOVATIS is also entitled to terminate the corresponding agreement with the client effective to the same date. The same applies, if INNOVATIS is deprived of concession or rights. Overpaid fees will be refunded to the client pro rata temporis.

9.05 Upon termination, either by INNOVATIS or by the client, the client, upon request, must sign all papers and documents, which INNOVATIS believes necessary to accomplish its withdrawal from the agreement.

9.06 The obligation of INNOVATIS to store all documents received from the client or third parties in the context of the agreement expires one year after the termination of the agreement. INNOVATIS does not owe longer storage.

#### **Art. 10. Applicable law and venue for legal proceeding**

10.01 All legal relations between the client and INNOVATIS are governed by Swiss substantive law.

10.02 Unless there are peremptory statutory provisions to the contrary, the parties shall agree on the sole competency of the court with jurisdiction over the subject matter at Zürich for any and all legal disputes arising from, or in connection with the contractual relationship, governed by this General Terms and Conditions, which shall also include disputes regarding its validity.

10.03 However, INNOVATIS also has the right to file claims against the client at any other competent court in Switzerland or the place at which the client has his/her seat, domicile, place of business, or property.

#### **Art. 11. Final Provisions**

11.01 If any provision of the agreement between INNOVATIS and the client (including these general terms and conditions), or the application of any provision to any person or circumstance, shall be held to be inconsistent with any law, ruling, rule or regulation, the remainder of the agreement between INNOVATIS and the client, or the application of the provision to persons or circumstances other than those as to which it is held inconsistent, shall not be affected thereby.

11.02 The contracting parties undertake to replace such illegal or unenforceable provision(s) by a provision serving an economically similar purpose.

11.03 INNOVATIS reserves the right to amend the general terms and conditions at any time. The client will be notified in writing or other suitable means and shall be regarded as having been approved if no objections are received within one month.

11.04 Amendments of the general terms and conditions have to be announced to clients with existing agreements by the means defined in the separate agreements two month before becoming effective. The client has the right to terminate the agreement in writing at least one month before amendments becoming effective.

11.05 In case of discrepancies regarding interpretations of these general terms and conditions the German version shall be binding. zu kündigen.