



PROFONDIA

Profondia AG
Information. Knowledge. Results.

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General Terms and Conditions

All data delivery and service contracts executed by Profondia AG (hereinafter “**Profondia**”) for all services and supplies rendered by Profondia to the relevant business division of a customer (hereinafter “**Customer**”) shall be subject to the following General Terms and Conditions (**GTC**).

These GTC apply to all documents and data transmitted by Profondia and have been either accepted, or deemed to be accepted, by confirming any contract or order by a Customer. Any contradicting conditions stipulated by Customer are not binding for Profondia unless expressly acknowledged by Profondia in writing. Profondia is not obliged to oppose to such conditions explicitly.

Art. 1: Scope of application

These GTC shall apply to all terms of contracts concluded between Profondia and its Customer, in particular for any amendments or expansions of existing data delivery and service contracts. Both the entirety of the data delivered to the Customer and parts thereof are subject to these GTC. Any information on third parties received by Profondia’s Customer, in particular information on the marketing of information technology products or services, shall be considered to be company data (hereinafter “**Company Data**”).

The present GTC shall replace any earlier version of General Terms and Conditions of Profondia.

Art. 2: Services

Profondia shall provide the following services as standard:

- a. Execution of emails in the interest of the Customer (“Em@il Service”)
- b. Provision of a data set for single use (“Mailing Service”)
- c. Provision of a data set for multiple use (“Marketing Service”)
- d. Online access to Profondia’s userbase

If Profondia offers additional services, such services shall also be governed by the provisions of these GTC, unless Profondia informs the Customer that other provisions shall apply. Unless otherwise stipulated, in particular, the provisions of Art. 3 letter a of these GTC shall apply.

Art. 3: Right of use and restrictions on the right of use

a. General provisions

Profondia shall grant a non-exclusive and non-transferable right to the Customer to use the Company Data provided by Profondia during the duration of the respective contract as well as within the framework of the specific contractual relationship and in accordance with the provisions of these GTC (“Right of use”).

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A use for purposes not expressly agreed under the specific agreement shall be prohibited. Customer may not use information deriving from Company Data illegally or for illegal purposes. Customer may not use Company Data in any way that could compete with Profondia.

The right of use is restricted to the Customer's own use which includes a use of information for the marketing of the Customer's own products or services. However, Customer shall namely be prohibited from using information in the interest of third parties or for the purpose of marketing activities on behalf of third suppliers, and, in particular, preparing and implementing sales and marketing campaigns for the benefit of third parties, or on behalf of third parties. Customer must always act in its own name in the context of external communication using Company Data.

Customer undertakes not to disclose information obtained within the framework of a service provided by Profondia to a third party or to make information accessible to a third party in any other way. In particular, a sale, lease, or disposal in any other manner of Company Data to a third party – also without getting a consideration – is not permitted. A third party is deemed to be also a company affiliated to Customer, e.g. such as partner company, subsidiary and/or parent company.

If Customer transfers Company Data of Profondia into its own databases, the origin of the Company Data (i.e. the data's origin from Profondia's database) must be recognisable at all times so that such Company Data can be identified and deleted or destroyed at the expiry of a contract.

Customer must instruct its employees accordingly and take all reasonable steps to prevent a non-contractual use by Customer itself and by a third party respectively. Customer must inform Profondia without delay of any improper use or improper distribution of Company Data that comes to its knowledge.

If Customer is under a duty to delete data in accordance with these GTC or the applicable laws, Customer shall confirm Profondia in writing that the Company Data has been deleted/destroyed and that it has fully complied with the provisions of this Art. 3, in particular, that it has not disclosed Company Data to a third party.

b. Additional conditions governing the mailing service (single use)

If the agreed use consists of a mailing service, Company Data may only be used to address a single mailshot, unless multiple use has been agreed in writing. Company Data obtained shall be processed within 8 weeks of delivery (dispatch of advertising letter) and then deleted/destroyed.

c. Additional conditions governing the marketing service (multiple use)

The right to use the Company Data in the marketing service is restricted to one year after delivery by Profondia. After such period, the Company Data must be deleted/destroyed at the earliest convenience.



d. Additional conditions governing online access (userbase)

If Customer is given online access (userbase) to Company Data, it may only use the provided access password in accordance with the terms of use set out under letter a above. If the password is used in breach of contract by Customer or by an unauthorised third party, Profondia shall be entitled ipso jure to block access for all users or to terminate the data delivery contract without notice. If customer becomes aware that the password is being used in breach of contract or by a third party, it must inform Profondia without delay.

Art. 4: Em@il Service

Profondia shall provide the email service, subject to agreement, on the basis of the information provided by Customer or its own data.

a. Dispatch using the Customer's address data

Customer confirms that its address data comprise only email addresses of users who have given their consent (opt-in) to receive emails. If Profondia sends emails using data that Customer has provided to Profondia, Customer shall indemnify Profondia against any loss arising as a result of the use of such data. Customer shall inform Profondia timely before the agreed dispatch about contacts having expressly declared in the past to not wishing to receive emails (opt-out). If an email is sent to such a contact by the mistake on Customer, Customer shall bear all costs incurred.

b. Dispatch using the address data of Profondia

On request, Profondia shall send messages using contact data provided by Profondia. The contact data used by Profondia for this purpose shall be checked beforehand for emails relating to ICT issues. Customer, however, shall indemnify Profondia against any loss arising as a result of information in its text-message.

Customer shall have no claim to the email addresses of the contacts being addressed by such mailing. However, Profondia shall inform Customer if a contact to whom emails has been sent expressly declares that it does not want to be contacted again (opt-out). Customer is not authorised to use such contact data for another mailing or in any other way. Disclosure to a third party is prohibited. Customer guarantees that such de-registered (opt-out) contacts will not be sent any further emails.

c. General provisions

Profondia shall not be held liable if an email cannot be sent on schedule as a result of delay caused by Customer (including late submission of documents and information that Profondia has requested from Customer).



Art. 5: Infringements

For each infringement of the terms of use set out above (Art. 3 and 4), Customer undertakes to pay to Profondia a contractual penalty amounting to ten times the contract value, but not less than CHF 10,000.00. The payment of such contractual penalty does not exempt Customer from complying with the obligations. Assertion of any further damages shall be reserved. If Customer infringes any contractual provisions (including these GTC), Profondia can require Customer to delete/destroy immediately all provided Company Data and to return immediately all data carriers or equipment received.

Art. 6: Use of company data by a person authorised by Customer

Customer may delegate the use of the Company Data to a service provider (e.g. letter shop, telemarketing agency etc.) to the extent Customer itself is entitled to. In this context, Customer has to impose all restrictions of use and all other terms and conditions of the data delivery contract, including the present GTC, on the authorised service provider. The acts performed by such service provider shall be considered to be acts performed by Customer itself, even if Customer exercised proper care when choosing and instructing such service provider. Customer must ensure that the authorised service provider meets the statutory data security requirements.

Art. 7: Data quality and liability

Profondia will make all necessary and reasonable efforts in order to ensure the accuracy and the reliability of the Company Data and the services offered.

To the extent permissible by law, Profondia excludes liability to any possible damage resulting from the use of data and services provided by Profondia as well as indirect or consequential damage. This limitation of liability shall apply in particular to incorrect data. Profondia shall not be liable for loss or damage on account of force majeure or hacker attacks either.

Art. 8: Industrial property rights

Customer acknowledges that the data provided is protected by copyright as a data collection and that all Company Data and associated industrial property rights, in particular copyright, are the property of Profondia. Customer shall have no rights to the information provided beyond the rights set out in Art. 3 of these GTC. Customer must not change or remove any reference to Profondia's rights in any way. It always has to be clear that the data originate from Profondia (including copies).

Art. 9: Contract period and termination of the contract

a. Contract period and termination

Contracts within the meaning of Art. 2 letter a and Art. 2 letter b shall end upon termination of the agreed action.

Contracts within the meaning of Art. 2 letter c shall end after the agreed term expires.

Contracts for online access shall be effective as from date defined as start of the contract and are concluded for an unlimited period of time. Such contracts can be terminated by either party by written notice with a notice period of 90 days prior to the anniversary of the start date of the contract. If a longer contract period has been agreed upon (24 or 36 months), the



contract can be terminated by either party by written notice with a notice period of 90 days prior to the end of the agreed minimum contract period or, thereafter, by the end of each 12 months' period.

b. Premature termination by Profondia

If Profondia terminates the contract for online access before the end of the contract period for valid reason without observing the notice period set forth in Art. 9 letter a above (in particular because of data or password abuse by Customer), Customer undertakes to pay any granted discount as well as the contractual penalty and damages according to Art. 5 above.

c. Customer's duties in case of termination of the contract

When the contract is terminated, Customer is obliged to delete/destroy immediately any Company Data received from Profondia.

Company Data of persons or companies with whom Customer has had a positive personal interaction will be exempted from the obligation of deletion/destruction. Customer shall be under the obligation to disclosure of such interactions.

Art. 10: Terms of payment and consequences in case of non-payment

All invoices issued by Profondia have to be paid by Customer within 30 days after the date of invoice. Profondia may terminate the data delivery contract without giving notice or suspend the services if Customer does not pay an invoice after Profondia's request for payment within an additional period of ten days. Customer shall bear any costs incurred by Profondia for collecting the amounts owed. Profondia shall be entitled to a fee of CHF 30.00 for each letter requesting payment.

Art. 11: Other provisions

Customer may not assign or transfer, in whole or in part, all or any parts of its rights, interests or obligations under a contract to any other person or party without the prior written approval of Profondia. Any assignment or delegation made without such approval shall be null and void. All obligations imposed on Customer, in particular regarding the obligation to refrain from using the data and to delete/destroy Company Data or to pay debts, shall remain effective without restrictions also after termination of the respective contract.

Customer and Profondia undertake to comply with Swiss data protection legislation and guarantee to treat strictly confidentially the other party's business secrets of which they become aware.

Any amendment to a contract between Profondia and Customer, or these GTC, must be in writing.



Art. 12: Amendments of the General Terms and Conditions

Profondia reserves the right to change these GTC at any time. Customer has to be informed in writing of modifications of the GTC. Such modifications will be considered to be accepted if Customer does not raise an objection within a month's period.

Art. 13: Applicable law

The GTC and the individual contractals concluded in the frame of the GTC shall be governed by the substantive laws of Switzerland.

Art. 14: Place of Jurisdiction and Venue

For all disputes arising out of or in connection with the GTC and the individual contracts concluded in the frame of the GTC the **exclusive place of jurisdiction shall be at Profondia's registered seat.**